

1 NATIONAL INDIAN GAMING COMMISSION
2 REGULATORY REVIEW CONSULTATION
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8 REPORTER'S TRANSCRIPT OF PROCEEDINGS
9 JUNE 21, 2001
10 9:01 A.M.
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15 HELD AT: HARRAH'S RINCON CASINO AND RESORT
16 777 RINCON WAY
17 VALLEY CENTER, CALIFORNIA
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25 JOB NO. NJ331344

1 VALLEY CENTER, CALIFORNIA; JUNE 21, 2011; 9:01 A.M.

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3 CHAIRMAN MAZZETTI: Do you hear me out there?

4 Oh, there we go. All right. We'll get
5 started here.

6 First of all, I'd like to welcome all of you
7 to our home in the valley. Thank you Gaming
8 Commissioner Norm DesRosiers for being here with us
9 today.

10 We'd like to open up with a prayer. That's
11 our custom. Councilman Stallings, would you -- I'll put
12 you on the spot there, sir.

13 COUNCILMAN STALLINGS: We ask for guidance from
14 our creator, Lord Jesus. Please provide guidance to all
15 of us here today who make and -- come together and make
16 concrete and sound input into the National Gaming
17 Commission's regulatory role for our tribes. Please,
18 Lord, guide us in our discussions and have each of us be
19 better brothers, sisters, parents, friends. Welcome
20 everyone from -- especially people from out of town who
21 have come to provide us their input into this process.
22 We ask these things in your name, our lord Jesus. Amen.

23 CHAIRMAN MAZZETTI: Thank you.

24 To open, I was thinking about the
25 Commission, their goals, objectives, what they're

1 required to do, and it really came back that it's up to
2 each tribal leader to stand up for what's right in terms
3 of these laws. They enforce them, but it's up to us to
4 make sure we stand up for what is right in terms our
5 sovereignty. It's an ongoing issue. So we can't look
6 to these folks to take up that cause. That's up to us.

7 So I'd like to thank all of you here. And I
8 think we should go around the table and introduce
9 ourselves, if we may.

10 I'm Bo Mazzetti, Chairman from Rincon.

11 CHAIRWOMAN STEVENS: Good morning. My name is
12 Tracie Stevens. I'm the chairwoman of the National
13 Indian Gaming Commission and a member of the Tulalip
14 Tribes of Washington.

15 ATTORNEY ROBERTS: Good morning. My name is
16 Larry Roberts. I'm the general counsel for the National
17 Indian Gaming Commission and member of the Oneida Nation
18 of Wisconsin.

19 COMMISSIONER RODRIGUEZ: Good morning. My name
20 is Sherry Rodriguez of La Jolla Gaming Commission.

21 COMMISSIONER DESROSIERS: Norm DesRosiers,
22 Commissioner for the San Manuel Band of Serrano Mission
23 Indians.

24 COUNCIL MEMBER STALLINGS: Steve Stallings,
25 Tribal Council at Rincon and serving on the management

1 committee on the Harrah's property here.

2 MS. MAJAL: Ushla Majal.

3 MR. SHCULTZE: Jerry Shultze, Morongo Gaming
4 Commission.

5 MR. HINES: Steve Hines, Morongo.

6 MR. HOFSTETTER: Andrew Hofstetter, Chairman,
7 Santa Ysabel Gaming Commission.

8 MR. RAMOS: Willie Ramos, Pechanga Gaming
9 Commission.

10 MR. MALDINADO: Jason Maldinado, Pechanga Gaming
11 Commission.

12 MS. COSTA: Jan Costa, travel administrator
13 with Chicken Ranch Rancheria.

14 COMMISSIONER BURRIS: Tracy Burris, Viejas
15 gaming commissioner.

16 MR. ANDREWS: Good morning, Jason Andrews, Big
17 Sandy Band of Western Mono Indians Tribal Gaming
18 Commission.

19 MR. DELGADO: Chad Delgado for the Bishop
20 Tribal Council.

21 CHAIRWOMAN STEVENS: Thank you, Chair Mazzetti.
22 Thank you everyone who is attending here today,
23 especially the tribal leaders. I understand your
24 schedules are very busy with your governing role in your
25 community. I appreciate Chairman Mazzetti taking some

1 time this morning to open up our meeting in a good way.

2 I do want to recognize the staff that we
3 have here from the National Indian Gaming Commission.
4 Many of you know our regional director, Eric Schalansky,
5 who is right back here, his administrative assistant Kim
6 Angeles. I think she is out in the foyer. Field
7 Investigator Mannie Sanchez. Many of you have worked
8 with him as well as Frank Hernandez and Field Auditor
9 Paul Bycroft. Those are all the folks from NIGC along
10 with Larry Roberts and Melissa Schlichting over here
11 running the computer.

12 What I'd like to do first is remind
13 everybody that this is the tribal consultation and
14 tribal consultation is between the federal government
15 and tribal representatives, tribal governments and their
16 representatives, whoever that might be, as each tribe
17 designates. And we just want to be reminding folks of
18 that because we've had folks that are not representing
19 tribes attending the meetings. So we wanted to make
20 that clear.

21 Also, we've changed up our agenda. If
22 anyone has attended any of these previously -- this is
23 our eighth one, I think. I think it's our eighth one,
24 eighth or ninth consultation. And we're going by roots
25 in these as we review these regulations. We've divided

1 them up in the federal register a few months ago.

2 So what we had been doing is just talking
3 about all the regulations and then letting tribes talk
4 through the rest of the day and having a conversation on
5 any particular part. As we move forward, we're into a
6 number of regulations, including very large regulations,
7 like the minimum control standards and technical
8 standards. So we've broken the agenda up, as you'll see
9 in your handouts, to try to do a bit at a time during
10 the two days that we're here. And rather than trying to
11 drink from a fire hose, we're just going to take sips
12 and talk about each of the groups one at a time.

13 Also, in this agenda you'll see areas where
14 there are times that say "open tribal statements." I
15 also appreciate that tribal leaders have -- and everyone
16 here has a very busy schedule. Many tribes come to
17 these consultations with a prepared statement, have
18 already taken a position or would like to convey their
19 position to us and do so through written statements and
20 would prefer to just come in, make their statements and,
21 you know, get on with their schedule. So that's what
22 that represents on the schedule.

23 I think, other than that, I do want to
24 remind everybody this is being transcribed, and so
25 everyone needs to speak into the microphone. And I'll

1 have a staff person make sure we have a remote
2 microphone -- Eric has one back there -- so that
3 everyone can speak directly into the microphone. We
4 have our transcriptionist back here who is recording and
5 transcribing this conversation so that others who are
6 unable to attend this meeting know what happened and can
7 read for themselves to inform them, and also in an
8 effort to be transparent and open in this process.

9 Other than that, we have designated break
10 times. We have coffee and refreshments back there for
11 anyone who needs some coffee or refreshments.

12 Other than that, I'd like to open the floor
13 right now for any individuals or leaders who have
14 prepared statements or would just like to have an
15 opportunity to make an opening statement.

16 CHAIRMAN MAZZETTI: In reference to definitions,
17 can we work on net revenue, that definition, that
18 different section? Section one -- okay.

19 CHAIRWOMAN STEVENS: That one is part of Group 4
20 under "Definitions." And I think we just opened up
21 group four recently before this meeting, actually. So
22 we'll be talking about that as well today.

23 CHAIRMAN MAZZETTI: Whoever speaks up first gets
24 a lobster dinner.

25 CHAIRWOMAN STEVENS: Larry, you want to -- what

1 we'll do next, then, is we will go through a portion of
2 the PowerPoint. And hopefully everybody can see this.
3 If not, in your handout, you have the PowerPoint that's
4 on the wall. And we'll go through portions of Group 1,
5 the regulations that are included in Group 1, and then
6 we'll open the floor for discussion.

7 You also -- in Group 1, in your handouts, we
8 do have a discussion graph that was posted some time ago
9 for 514 fees, and 559 facility licensing will be covered
10 in this section of the PowerPoint.

11 So barring any other opening statements,
12 I'll go ahead and turn the microphone over to Larry
13 Roberts who will go through sections of Group 1 and
14 those regulations so that we can have more discussion on
15 each of these areas.

16 ATTORNEY ROBERTS: Good morning, everyone. As
17 the chairwoman started off by saying, this consultation
18 is a tribal consultation between tribal government and
19 tribal governments, and so, obviously, participation is
20 limited to tribal leaders, tribal organizations and
21 their delegates. So if you are not here on behalf of a
22 tribe or a tribal organization, we ask that, you know,
23 you take some time and leave the consultation because
24 this is a government-to-government consultation. These
25 meetings are not open to the public. The public is able

1 to participate in this regulatory review process through
2 comments to the Commission, written comments. And we
3 are having an open and transparent process as part of
4 this regulatory review. But we're here for a government
5 consultation. We ask that you respect the underlying
6 notion of that consultation, which is government to
7 government.

8 Tribal consultation is -- is based in
9 part -- what we're doing today is based in part on
10 Executive Order 13175, and for those of you who have
11 attended these consultations before, you know that that
12 executive order provides that when an agency is looking
13 to determine federal standards that we consult with
14 tribal officials early on on the need of tribal
15 standards and alternatives that would limit tribal
16 standards or otherwise preserve the sovereign authority
17 of tribes. And so this is a meeting in our consultation
18 process with tribal governments on how the Commission is
19 going to review these regulations and make changes
20 appropriately.

21 As the chairwoman explained, there are five
22 regulatory groups. The commission has organized these
23 groups based on a number of factors. The groups do not
24 indicate priority, but they were developed after
25 considering factors, such as the subject matter. So

1 you'll see, for example, we have in Group 2 the
2 enforcement and appeals process. We have made some
3 technical standards in another group for class two.

4 And so we developed these regulatory groups
5 not based on priority but based on comments received
6 from the notice of inquiry. The Commission issued a
7 notice of inquiry basically asking tribes and the public
8 what regulations the Commission should look at and in
9 what order and what priority, what needs to be changed,
10 what doesn't need to be changed. It was a process
11 question, the notice of inquiry. We've now moved on to
12 a second stage where we're actually looking at the
13 substantive regulations and looking at changes to those.

14 And so we also established these groups
15 based on the estimated time to complete those and
16 priority. Not the priority. Estimated time to complete
17 and the resources that would be required.

18 So there are three phases to the regulatory
19 review process, and this is somewhat different than
20 perhaps a regulatory process that a federal agency would
21 do in the normal process just with the public. We are
22 taking an extra step with the tribes as part of the
23 consultation process where we are putting out there
24 preliminary -- a preliminary drafting phase. And as the
25 chairwoman explained, we have put out a preliminary

1 draft of fees and a preliminary draft of the facility
2 license regulations. And this is somewhat similar to
3 what the Committee has done in the past. Rather than
4 introducing a bill right away, the Committee in the past
5 has issued discussion drafts for feedback from tribes
6 and the public before we move forward.

7 So during this preliminary drafting phase,
8 the Commission will be issuing various drafts, various
9 items for discussion.

10 After we've received comment from tribes on
11 those discussion drafts, we will then move forward with
12 a proposed ruling. That is the normal process where we
13 issue notice of proposed rule making and put forth the
14 changes and explain why we're suggesting various
15 changes. If the Commission then decides after the
16 proposed rule to go forward with a final rule, we will
17 then provide that process.

18 The proposed rule generally would provide a
19 60-day comment period from tribes and the public on the
20 proposed rule, and the final rule would provide a 45-day
21 time frame for written comments.

22 So as the PowerPoint notes, the preliminary
23 discussion drafts are initial working drafts. As the
24 chairwoman noted, these consultations are being
25 transcribed so that those that have not been able to

1 attend this particular consultation will know what was
2 discussed. And the written comments and transcript will
3 all be posted on our website.

4 The Commission's commitment is that tribal
5 comments and comments from the public that are received
6 will be reviewed and considered, that any proposed or
7 final rule will include a summary of the comments and
8 that the commission is -- is committed to a clear and
9 transparent process as part of this regulatory review.

10 As the chairwoman noted, we have a lot on
11 our agenda over the next couple of days. Group 1, we're
12 going to talk about fees. This is the fees that NIGC
13 collects from tribal gaming operations. We're going to
14 talk about the review and approval of existing
15 ordinances, ordinances that were existing in 1993 that
16 are not yet submitted to the Commission for review.
17 We're going to talk about the process for addressing
18 minimum internal control standards for class three
19 gaming. And we're going to talk about facility license
20 notifications, renewals and submissions. And then,
21 finally, whether the Commission should adopt a
22 regulation that provides for the Commission to buy from
23 tribal entities.

24 In Group 2, as I mentioned a few minutes
25 ago, we're going to talk about the Commission's

1 enforcement regulations and then the appeals process.
2 And then we'll be ready for comment from tribes on how
3 the appeals process has worked, how it can be more
4 effective, how it can be streamlined, how it can be --
5 provide more detail to tribes as they go through that
6 process.

7 We'll talk about, later this afternoon,
8 Group 4, background investigations for primary
9 management officials and key employees, the pilot
10 program NIGC has been offering for some time. We'll be
11 talking about gaming licenses for key employees of
12 primary management officials. We'll be talking about
13 part 571, the monitoring and investigations regulations,
14 collateral agreements, the Commission's review of
15 collateral agreements and the background investigations
16 process for persons or entities with a financial
17 interest in or management responsibility for a
18 management contract, and then as Chairman Mazzetti
19 mentioned, we'll be talking also about the definitions
20 section.

21 So Group 1, what we're going to focus on
22 this morning includes fees, the review and approval of
23 existing ordinances or resolutions, minimum internal
24 control standards for class three gaming facility
25 licenses and the buying in regulation.

1 All of you should have in your packets a
2 preliminary draft of part 514 involving fees. And the
3 preliminary draft, for our discussion purposes, proposes
4 having the fee calculation be made on a gaming operation
5 fiscal year rather than a calendar year, that it
6 provides for the fee rate to be published March 1st
7 rather than February 1st to allow time for a more
8 accurate preliminary rate to be issued by the
9 Commission, and it removes the term "amortization" from
10 Section 514B to reflect existing practices.

11 The preliminary discussion draft also moves
12 to a quarterly payment system and it clarifies that
13 gaming operations will use -- utilize the calculation
14 set forth in 514B to determine assessable gross
15 revenues. And then, finally, it proposes a notification
16 period if a gaming operation changes its fiscal year.

17 One of the things that we've -- has been a
18 focus of our consultations is a new section relating to
19 the late payment system prior to a notice of violation.
20 And so, as you'll see in the discussion draft, it
21 basically provides for appeal options if there is a late
22 payment. It provides for a -- it defines a late payment
23 as a payment that's made within 91 days of the end of
24 the fiscal year versus a failure to pay an annual fee,
25 which is what we're operating under presently with the

1 regs. And that -- the way the discussion draft
2 formulates it is that a failure to pay an annual fee is
3 essentially defined as a payment that is made after 91
4 days of the fiscal year. So there is this 90-day period
5 within the regulations of which a late payment could be
6 made and it will not result in an NOB. So late payment
7 results in an actual fee, whereas the failure to pay an
8 annual fee after that 91st day, that would -- could
9 result in an NOV or a possible closure.

10 We also have in part 514 a new section
11 discussing the fingerprint processing fees. It
12 clarifies NIGC's collection of those fees and it
13 provides for NIGC to publish the fee amount biannually
14 to make adjustments of the costs incurred as far as
15 processing those fingerprint applications to the FBI.

16 Finally, you'll see in the discussion draft
17 the question of whether we should change the term
18 "admission fee" to "entry fee" and whether tournament
19 fees should be included as examples of an admission or
20 entry fee.

21 The commission is also looking for comment
22 from tribes on whether the definition of "gross gaming
23 revenue" should be changed to a definition consistent
24 with GAAP. This discussion draft does not make that
25 change. Also, the Commission is looking at whether it

1 should define "wager" and "payout" as set forth in IGRA.

2 The written comment period on the discussion
3 draft closed on May 31st. We are still interested in
4 tribal comments at this consultation on the written
5 discussion draft. And as I mentioned earlier, if the
6 Commission decides to go forward with a proposed rule,
7 tribes and the public will have an opportunity to submit
8 comments on the proposed rule as well. So if you
9 haven't submitted written comments, not to worry. If
10 the Commission goes forward with a proposed rule, there
11 will be another opportunity to submit comments.

12 Anyone need coffee at this point? Okay.

13 COMMISSIONER DESROSIERS: (Inaudible.)

14 ATTORNEY ROBERTS: Absolutely.

15 Mr. DesRosiers from the San Manual Band of
16 the Mission Indians commented, will there be an
17 opportunity to comment on the fees discussion that I
18 just rolled through the PowerPoint.

19 And what I'd like to do, if it's okay with
20 tribal leadership here, is to go through all of Group 1
21 in the PowerPoint and then open it up to parts 514, to
22 part 559. And that will be most of our discussion this
23 morning.

24 Part 523 is review and approval of existing
25 ordinances and resolutions. We don't think that there

1 are any tribes impacted by us repealing this section.
2 This section only applies to tribal ordinances enacted
3 before January 22nd, 1993 and that have not yet been
4 submitted to NIGC for approval. So we're wondering if
5 this part should be repealed, whether it's obsolete.
6 We'd be interesting in hearing from any tribes that feel
7 that this part should not be repealed.

8 Part 559, facility license notifications,
9 renewals and submissions: As part of the notice of
10 inquiry in terms of priorities and looking at what
11 regulations need to be reviewed, we ask whether this
12 part should be reviewed by the Commission. A number of
13 comments submitted in response to the NOI support a
14 review of this part. Some of the comments express
15 concern about the process in which this part was
16 promulgated, and some of the comments suggested or made
17 the point that NIGC does not have the regulatory
18 authority over environmental public health and safety
19 issues and that those issues are within the jurisdiction
20 of tribes and other federal agencies.

21 As we'll talk more this morning, the
22 discussion draft for part 559 changes the time frame for
23 tribes who are providing notice of a new facility
24 license and provide changes to time frame by which NIGC
25 will act on those notices. It changes it from a 120-day

1 period to a 60-day period with a potential 60-day
2 extension, and it basically includes a process whereby
3 we can expedite our looking at that license where the
4 circumstances permit. And so, for example, there are
5 some instances where we've heard from tribes, "Hey,
6 we've submitted our facility license. We want to open
7 within 90 days, and we haven't heard from NIGC, do you
8 have any concerns with this license?"

9 And so what we've done in those
10 circumstances is that we've looked to be responsive to
11 that tribal request and to say, "We've received your
12 facility license. Thank you for submitting it. We
13 don't have any issues or concerns," or, alternatively,
14 we might say, "Well, can you provide additional
15 information about the exact location of the facility,"
16 that sort of thing.

17 The discussion draft provides for the
18 licenses that are issued or renewed to be sent to NIGC
19 within 30 days, and it also provides a different
20 proposal in the sense that I know that existing
21 regulation requires tribes to submit a list of
22 information on how the facility, the construction, the
23 maintenance and the operation, all of the -- a list of
24 tribal laws, regulations, other laws that provide for
25 the facility to be operating in a manner that adequately

1 protects the environment, public health and safety.
2 This draft proposal changes that. And the draft
3 proposal would require a tribal certification to NIGC
4 that it has at the tribe as a sovereign has determined
5 that its facility is conducted in a manner that
6 adequately protects the environmental public health and
7 safety.

8 The discussion draft also provides for
9 notice to NIGC within 30 days when a license is
10 terminated or expired or a facility closes or reopens so
11 we know what facilities are in operation, and it
12 provides for additional information to be provided to
13 NIGC on its request and makes clear that electronic
14 submissions of this information are acceptable.

15 The written comment period on this
16 discussion draft closed on Friday. Again, as part of
17 this consultation, we welcome tribal comments on the
18 discussion draft. The Commission will review the
19 written comments received on the discussion draft as
20 well as the comments made in these consultations in
21 deciding whether to move forward with a proposed rule.

22 Buy Indian regulation: This is something
23 that was highlighted in the notice of inquiry, and
24 this -- the question is whether the Commission should
25 implement some sort of Buy Indian requirement on the

1 Commission, not on tribes. But when the Commission is
2 procuring services, products, should they first look to
3 tribes, tribally-owned entities, Indian entities, to
4 procure those services and products. It's supported by
5 IGRA's specific statutory regulation which provides for
6 NIGC to contract with tribes, states and private
7 entities in the performance of its services and
8 responsibilities. And the Commission may distribute a
9 draft -- discussion draft on this issue depending on
10 comments that we receive from tribes, whether tribes
11 feel this is something that the Commission should take a
12 close look and move forward on or what have you. So
13 we're very interested in tribal input on this concept.

14 Finally, we're going to -- as part of this
15 discussion this morning, we would like tribal comment on
16 how NIGC should address the Class III MICS issue. As
17 most of you are aware, this has been an issue before the
18 agency for some time. This Group 1 is focused on
19 getting tribal comments on how we should address the
20 issue, ideas on how we should address the Class III MICS
21 issue. Group 5, which is coming up quickly, will
22 then -- we anticipate the Group 5 consultations to focus
23 on, okay, this is what we have heard from tribes; this
24 is what NIGC has come up with internally; and these are
25 a slew of options in terms of how to address Class III

1 MICS and what are the practical implementations, steps
2 that we can take to build on solutions identified during
3 this consultation today.

4 So again, this consultation is going to
5 focus on how do we address the Class III MICS issue. As
6 most everyone, I'm sure, is aware, the D.C. circuit held
7 that the Commission does not have authority to
8 promulgate regulations establishing Class III MICS. And
9 this issue, the Commission has heard from the tribe --
10 from tribes and the public, that it impacts each tribe,
11 each region, and each state differently because there
12 are a whole host of layers that can impact how the CRIT
13 decision affects a particular tribe. We've heard from
14 some tribes that the Class III MICS are incorporated in
15 the tribal-state compacts. We've heard from some tribes
16 that have adopted the Class III MICS as part of their
17 tribal ordinance. We've heard from some tribes that
18 have said NIGC has no authority over Class III MICS and
19 should stay out. So what we're looking at is a --
20 potential solutions from tribal governments on how to
21 move forward with this.

22 So, as I mentioned, some of the comments
23 that we've received in response to the notice of inquiry
24 is that the Commission should replace part 542 with
25 guidelines. Some tribes have commented and the public

1 have commented that we should address these through some
2 sort of agency-tribal compacting process. As I
3 mentioned, some tribes have commented that a tribal
4 ordinance incorporate 542 and some tribes have commented
5 that for those tribes that decide to incorporate 542
6 within their ordinance, they should be on a different
7 fee rate within the schedule of fees for those tribes
8 that NIGC is providing additional services for them.
9 And then some have -- have said that NIGC should
10 maintain part 542 right where it is and convene a group
11 to update the current regulation. And some have said
12 CRIT has ruled that 540 -- the Commission doesn't have
13 authority to promulgate 542 and part 542 should be
14 repealed.

15 And at this point, we're going to open it up
16 for tribal comments.

17 CHAIRWOMAN STEVENS: Okay. I know that that was
18 quite a bit of information, and that's why we want to
19 pause on Group 1. Again, going over what's on the
20 schedule here and perhaps opening the floor to any of
21 these parts that you have questions, you need
22 clarification, you want to make comment on.

23 514 fees. 523, the repeal of existing
24 ordinances prior to '93. 542 was just discussed on how
25 to approach a MICS -- Class III MICS regulation. Part

1 559, facility licensing and the concept of a Buy Indian
2 practice for the NIGC.

3 Yes.

4 COMMISSIONER DESROSIERS: Thank you, Madam Chair.

5 Last time we met, we were asked on the fee
6 regulations -- we weren't prepared written comment
7 because most of us needed our chief financial folks to
8 review that comment. So ours did, and I just have a
9 couple of comments that they would like to convey on
10 those, not much.

11 The fiscal issue, fiscal year really doesn't
12 affect them. There was some concern that if you're
13 going to the quarterly payment but you're moving up the
14 published fee notification to March 1st rather than the
15 existing, I think, February 1st, that's published, that
16 that compresses -- if the fee is due by March 31st, the
17 end of the quarter, it compresses their time by a month
18 in which they have to calculate that fee. If you're
19 moving the fee publication date from February to March,
20 it compresses their time in calculating to get that fee
21 submitted. Some of these don't even make a lot of sense
22 to me, but I'm sure they will to you and the bean
23 counters.

24 They support the amortization. There was --
25 on 514B, tournament fees. The question of tournament

1 fees was such to be added as income seems okay to them
2 as long as they can deduct the amount of prizes paid
3 out. They note that this actually could be an
4 accounting benefit since it costs more to have these
5 tournaments. However, they point out that these
6 tournaments have always been looked at as promotional
7 marketing and not gaming revenue, and so -- so that
8 question arises because the money is not house money in
9 these tournaments; it's player pool money, at least in
10 our case and in a lot of cases. So it's not the tribe's
11 money at stake; it's player pool money that's used for
12 these tournaments. So there is some confusion as to
13 whether that gets lumped in with revenues.

14 And that was really the only comments I had
15 on the fees. Thank you.

16 CHAIRWOMAN STEVENS: Thank you, Commissioner
17 DesRosiers.

18 Do we have other questions, concerns about
19 any of the parts that we've discussed in Group 1?

20 Yes, sir? If you could state your name and
21 who you represent.

22 COMMISSIONER POWLESS: Thank you. Good morning
23 Madam chairman. Good morning, Larry.

24 I'd like to thank the Rincon management for
25 hosting this consultation, opportunity to comment,

1 provide testimony, once again, before the NIGC. I had a
2 few comments with regards to the process in regards to
3 the regulatory process.

4 CHAIRWOMAN STEVENS: Can I interrupt for just one
5 moment? I notice that it's easier for me to just pull
6 the microphone out of the stand. There we go. And if
7 you could state your name.

8 COMMISSIONER POWLESS: Yes. My name is Mark
9 Powless. I'm the gaming commissioner of record for the
10 Big Sandy Rancheria Band of Western Indians. And I'm
11 here today to provide some comments and testimony with
12 regards to what's been proposed.

13 We would like to express our thanks for
14 being provided the opportunity to offer comments with
15 regard to the issues that have been identified.

16 Big Sandy Rancheria would also like to
17 express our thanks to the approach NIGC has undertaken
18 in relationship to seeking comments and input from
19 tribes on a regular transparent basis.

20 We'd like to thank you for giving the
21 opportunity to tribes with regards to this process.

22 The following comments are based upon our
23 tribe's experiences and its familiarity with said
24 issues. Hopefully, Big Sandy Rancheria's experiences
25 will assist in the formulation of revised and/or

1 amendment to NIGC regulations, which will encourage and
2 enhance the regulations from a day-to-day regulatory
3 perspective.

4 With regards to the fees section, Big Sandy
5 Rancheria is of the opinion that the revised draft
6 language relating to the fees is clearly an improvement
7 upon the present regulation. The specificity protects
8 the tribes in the event an alleged violation is found in
9 relation to a late payment of fees and/or failure to pay
10 fees. The process outlined in the draft language
11 indicates that the due process for the tribes has been
12 considered and that our tribe's previous comments were
13 taken into consideration.

14 Thank you for the opportunity with regards
15 to addressing the fees area. I have other comments as
16 well. Should I just continue on?

17 With regard to Class III, minimum tournament
18 control standards, this particular area is of primary
19 concern to Big Sandy Rancheria. The Big Sandy Rancheria
20 recognizes the internal control standards that are
21 extremely important to the gaming industry and, more
22 particularly, to our tribe due to its intent to provide
23 the protection of tribal assets as well as provide for
24 the integrity of the tribe's gaming operation.

25 In addition, Big Sandy Rancheria also

1 recognizes that there needs to be consistency in the
2 auditing process of internal control standards in Indian
3 gaming. The experience has shown that many tribes that
4 offer Class III gaming have used NIGC bulletins as a
5 clear indication of all guidelines and have used said
6 bulletins as primary guidelines for the purposes of
7 regulating Indian gaming.

8 Big Sandy Rancheria believes that tribes
9 that offer gaming are just as technically knowledgeable
10 and professional as most commercial non-Indian gaming
11 entities and are aware that if they did not develop and
12 institute their own tribal internal control standards
13 that they would, in effect, be opening themselves up to
14 illegal activity.

15 Big Sandy Rancheria looks to industry
16 standards in the gaming area and if it does not possess
17 the expertise and technical ability in various gaming
18 areas, it retains someone or some entity to carry out
19 what is needed to protect its gaming operation for the
20 benefit of its tribal members.

21 It is my tribe's belief that it forms the
22 due diligence required in relation to following industry
23 standards, whether or not a regulation requires it.

24 Should part 542 Class III MICS be eliminated and
25 replaced with guidelines, it is Big Sandy Rancheria's

1 opinion that the tribes will continue to institute
2 industry standard internal controls in the area of Class
3 III.

4 As for those tribes who have incorporated
5 542 Class III MICS in their ordinance or it is a part of
6 their compact, there may be resulting challenges. But
7 we believe that most tribes have appropriate internal
8 controls in place and that the internal control
9 guidelines will be used to supplement what is in
10 previously adopted ordinances.

11 In summary, Big Sandy Rancheria would
12 recommend that said internal control standard be issued
13 as guidelines and they would be provided to the tribes
14 in a bulletin format and be updated on a regular basis
15 as technology changes. Technology is changing so
16 quickly that governmental notice and rule making process
17 is not going too slow to keep up with said changes, but
18 may prove to be more costly in the long run. Possibly
19 internal control standards could be addressed in
20 recommended changes to tribal ordinances.

21 With regards to submission of gaming
22 ordinances or resolutions, Big Sandy Rancheria believes
23 that this section does not need revision, but perhaps
24 the bulletins could be issued that address the
25 recommended changes in an ordinance. If a tribe chooses

1 to update their ordinance, for instance, the issue of
2 internal control standards could be identified.

3 Again, we'd like to thank you for the
4 opportunity to provide oral testimony. And at the same
5 time, we will be following this up with written
6 testimony for the record. And thank you for the
7 opportunity to be able to express our opinion today.
8 Thank you.

9 CHAIRWOMAN STEVENS: Thank you.

10 Do we have others that would like to make a
11 statement or have questions? Any comments on the drafts
12 that we have out today on 514 and 559? Yes?
13 Commissioner DesRosiers.

14 COMMISSIONER DESROSIERS: Thank you, Madam Chair.
15 Norm DesRosiers.

16 Back to the fee. We had some discussion
17 last time we met about the late fee. And I guess it's
18 not a fine. I'm not sure what it is. But then there
19 was some discussion, what happens if they go -- a tribe
20 says, "Okay. We've paid the fee. I mean, you know,
21 we're assessed but we're not going to pay the penalty
22 payment." What happens then? Has there been any more
23 thought on that? Is it now an NOV situation. Is it an
24 NOV for not paying the fine or is it NOV for not paying
25 the fee on time? I mean, remember that discussion?

1 CHAIRWOMAN STEVENS: I think the way that we have
2 set it up right now is up to the 91st day, we're --
3 we're asking in the draft, should we apply a percentage
4 or flat sort of penalty fee for being late. We all have
5 other things in our lives that, you know, if we don't
6 pay on time, there is a penalty. That's the concept.
7 And that increases as more time goes by.

8 And I think the way that we have it
9 structured here is on the 92nd day, that's when, at the
10 discretion of the chair, I can issue an NOV for a late
11 payment. And that's, I think, the concept, you know.

12 We've heard as we've gone across the country
13 there are various reasons, extraordinary circumstances
14 that can arise that may cause a tribe to be late. And
15 we've heard a surprising number of things. And we
16 certainly don't want to be overly harsh with our
17 penalty. I know that there was a period of time before
18 where if you were, you know, late, it was an immediate
19 NOV. And we heard a lot of feedback from tribes that
20 that's not the first step that should be taken and it
21 wasn't really clear what the steps were. So we're just
22 laying out sort of the steps. When you're 30, 60, 90
23 days late, increasing a late fee.

24 COMMISSIONER DESROSIERS: And I think it's a good
25 concept. I don't argue that. But legally, technically,

1 if on the 89th day, they paid the fee, but they say they
2 don't want to pay the penalty, that's the issue. What
3 does that become? If it's not late up until 90 or 91
4 days or it's payable with a penalty without an NOV. You
5 know what I'm saying?

6 ATTORNEY ROBERTS: It's a helpful comment, a
7 helpful observation. We have not revised this
8 preliminary draft at this point. We're still looking at
9 tribal comments like the one made at Palm Springs, I
10 think you're referring to, when we met there. We're
11 looking at how to address that issue moving forward with
12 the proposed rule if the Commission decides to go that
13 route. So we do appreciate the comment and the
14 observation on what happens if a tribe pays its fees 89
15 days late but says "We're not paying the late fee." So
16 it's something that we would have to address if the
17 Commission decides to move forward with the proposed
18 rule. And then, obviously, there would be an
19 opportunity for public comment on that proposal.

20 CHAIRWOMAN STEVENS: We certainly would want to
21 address tribes that have a consistent pattern of being
22 late. There is usually something underlying that that I
23 would want to get to. But if it's just, you know, a
24 pattern that, you know, we want to look at -- and part
25 of this is meant to identify patterns and consider a

1 tribe's history with late payments, if there are reasons
2 why, and getting to a point of the NOV should consider a
3 tribe's history. That's something we've heard pretty
4 consistent from tribes is that one tribe that pays
5 pretty regularly, you know, they might be a day or two
6 late for some unheard of circumstances, they didn't want
7 to receive the same penalty as a tribe that was
8 consistently late every time and trying to address sort
9 of the abuses of the system.

10 But I think you do bring a good question up
11 about what to do with those tribes who sort of wait it
12 out and then refuse to make the late payment fee and
13 what do we do in those instances.

14 COMMISSIONER DESROSIERS: As long as I've got the
15 floor, I'll go down the Group 1 list here.

16 523: We have no comment or objection to
17 eliminating that, as obviously, it's obsolete.

18 I'll save 542 for last. But the facility
19 license and notifications, you know, you can go back
20 through to the history of when that regulation was first
21 proposed. I objected to the renewal portion of it
22 because there was no IGRA requirement to renew. I
23 thought that was outside of the Commission's authority,
24 and especially the first proposal was annual renewals,
25 and I really objected to that because, in our case,

1 compacts only require every two years renewal.

2 So anyway, you know, I don't -- I don't --
3 we don't have much comment on that, especially the
4 renewal part.

5 The Buy Indian, I don't have a comment other
6 than I'm curious, I guess, what motivates that notion.
7 I don't know what's brought that to the surface. So any
8 comment you have on that, I'd appreciate it.

9 CHAIRWOMAN STEVENS: In policies set forth in
10 IGRA, the whole statute was meant to support and
11 encourage tribal economic development. We are
12 completely funded by fees paid by tribes that we
13 regulate. And in support of that policy, you know, we
14 believe that we should be sort of turning that -- those
15 fees back into those economies that -- that really drive
16 our fees, sort of circulating those fees back into our
17 purchases, our goods, our services, like here -- being
18 here. There was not a consistent practice of holding
19 these consultations or meetings with tribes at tribal
20 facilities, and we just noticed that when we first came
21 in.

22 Do you have any other observations, Larry?

23 That was really the policy set forth in IGRA
24 and trying to support. We don't receive any other funds
25 except from tribes. And it was brought to our attention

1 by the tribes to come out in Indian country.

2 COMMISSIONER DESROSIERS: Well, thank you. I
3 guess I still question why you can't do that as a matter
4 of policy without having a regulation to do it.

5 CHAIRWOMAN STEVENS: Well, that would be my next
6 question too is: Does it need to be a regulation or can
7 we have it be an internal policy or practice? There is
8 two different areas that we can draw from, which is the
9 Buy Indian Act, but we also have the authority under
10 IGRA that we can contract for supplies and services. So
11 there is, you know, doesn't need to be a regulation.
12 We've heard tribes on different sides of this issue.
13 Does it really need to be a regulation, or can it be an
14 internal practice? And think the argument and what I've
15 heard is that, you know, regulation it's cemented more,
16 really holds our feet to the fire and any commissions
17 that follow us.

18 So I would be happy to hear what your
19 thoughts are on one version or the other.

20 COMMISSIONER DESROSIERS: For exactly your last
21 comments, I'm -- I don't know why the Commission itself
22 or -- would want to bind future commissions to not only
23 to that much rigidity, but when I think you can
24 accomplish the same thing by policy. But as you well
25 know, it's an expensive and cumbersome process to

1 promulgate regulations. And I mean, everybody gets
2 their finger in it from the OMB, the Federal Register to
3 who knows what.

4 So is it -- I just -- I wouldn't want to be
5 doing it if I were in your seat. But that's me.

6 All right. Let me go to the Class II --
7 Class III, excuse me -- 542. You know, our position is
8 well founded for our tribe in your record on that.

9 Our tribe finds itself in two of the
10 situations that you've described. One, our compacts
11 cite, you know, your MICS as our standard.
12 Additionally, we have a state regulation which sets your
13 MICS as the standard. And we're in another category.
14 Our ordinance not only cites them as the standard but
15 may supersede the NIGC authority for oversight. So
16 we've got a whole bunch of vested interest and many
17 other tribes do.

18 And so you read my -- you probably read my
19 article on it. I really studied the CRIT ruling. I'm
20 not convinced that the judge said you couldn't
21 promulgate regulations. He said you couldn't promulgate
22 mandatory regulations, you couldn't impose regulations
23 and, in fact, cited an opportunity where you may have to
24 promulgate Class III regulations for tribes without
25 compacts operating under secretarial procedures. And

1 even the judge cited that potential need for NIGC to do
2 Class III regs. So I think the door is open. And the
3 question I've heard raised a couple times, and I guess
4 it falls into this: Should some tribes pay a different
5 fee if their -- if they're doing Class III regs for
6 them? I guess I would find that not only an accounting
7 nightmare for your agency but, unnecessary. You know, I
8 mean, you're assessing fees on Class III revenues as it
9 is, so, you know, that -- I don't think it's necessary
10 to have a different fee structure.

11 The other question that comes up is: How
12 could you justify spending NIGC money on regulations
13 that you don't have authority, I guess, in your eyes to
14 promulgate? Well, first of all, I think you have to --
15 you don't have the authority to enforce them unless
16 given to you by a tribe. But I think you have the
17 authority to promulgate them.

18 There are many who seem to put forward the
19 notion that it would be perfectly fine to spend NIGC
20 money to give technical assistance in Class III gaming,
21 to put out bulletins and best practices and guidelines
22 for Class III gaming, technical training in Class III
23 gaming issues. It's okay to spend all that money but
24 not to promulgate a regulation. That doesn't make sense
25 to me, that argument that NIGC should not spend money on

1 Class III regulatory efforts. It doesn't make sense to
2 me. And so that's the -- again, you know, our position
3 is well established on your record, but I wanted just to
4 add those comments for today. Thank you very much.

5 CHAIRWOMAN STEVENS: If I may, with a follow-up
6 question -- and we didn't put it in the PowerPoint.
7 What about sort of taking -- I know that many tribes
8 have -- I think we're up to 16 now in California that
9 have put enforcement Class III MICS enforcement
10 authority into their ordinances for the NIGC to enforce,
11 and that there is a whole structure around that with the
12 state. That's -- I mean, that's, I mean, one way of
13 saying, yes, we'd like the NIGC to enforce. For other
14 tribes, they've already negotiated their minimum
15 internal controls for Class III gaming in their compacts
16 or appendices to their compacts.

17 So for those tribes that have put it into
18 their ordinance, you know, do you think it's necessary
19 that we need to take another step to have an agreement
20 with the tribe not just in the ordinance but like an MOU
21 or I think it was said in the PowerPoint, like a compact
22 agreement between the NIGC and a specific tribe that is
23 saying, yes, we want you to enforce or MICS, our Class
24 III MICS. Because some tribes are not going to do that.
25 For my state, no thanks. We spilled blood over the

1 Class III MICS for the state, and we got it all sorted
2 out. Arizona is similar. So, you know, what about
3 those tribes? Would that be an extra step to sort of
4 cement that enforcement authority?

5 COMMISSIONER DESROSIERS: I think it's an option
6 in lieu of. I don't think it has to be an extra step.
7 If you've approved the ordinance and that ordinance was
8 submitted by the tribe that says that's what they want,
9 I don't think we need an extra step in compact. I think
10 the notion of compacting in separately or in addition to
11 the ordinance, that's an interesting concept. I don't
12 know why that wouldn't work. It would almost be like,
13 you know, some of the contracting we were talking about.
14 I wouldn't see that necessary in addition to the
15 ordinance.

16 CHAIRWOMAN STEVENS: I only bring that up because
17 I think a tribe had mentioned that process. So -- I'm
18 checking the time.

19 Do we have other -- yes, sir.

20 UNKNOWN SPEAKER: I just want to agree with Norm
21 on that issue. I mean, we have our tribe -- United
22 Auburn tribe has an ordinance approved by the tribe and
23 approved by the NIGC, and I don't think any kind of
24 other agreement or compact or MOU would be necessary,
25 and leave it alone.

1 CHAIRWOMAN STEVENS: Okay. Do we have any other
2 questions or concerns about these parts?

3 One of the questions we do have -- I
4 mentioned earlier in our discussion with Norm about
5 what's sort of open for question on our draft discussion
6 514 on fees on whether the penalties should be the late
7 fee assessment, should be a percentage, or if it should
8 be just a -- like, a hard number. You know, this much
9 for 30 days or this much, or a percentage-based system
10 based on the percentage of what they would have owed for
11 their fees. We've heard different views on this and how
12 that would affect tribes.

13 Yes, Norm?

14 COMMISSIONER DESROSIERS: Well, I -- thanks
15 again. Norm DesRosiers, for the record.

16 I think a percentage certainly
17 proportionally is probably the right, fair thing to do.
18 You said a set fee, that's going to be much more
19 burdensome for smaller tribes than for larger. I think
20 that's pretty obvious. The challenge there is
21 percentage of what? You don't know really probably what
22 their fee is supposed to be until they tell you what
23 they've calculated for that last quarter. So I would
24 guess if you're going to do a percentage on anything, it
25 might be their last quarterly payment, whatever it is

1 they paid. I just point that out.

2 CHAIRWOMAN STEVENS: Any others want to weigh in
3 on the percentage versus -- if you can grab a
4 microphone, pull it out of the stand.

5 COMMISSIONER ANDREWS: Jason Andrews, Big Sandy
6 Rancheria.

7 I think another idea that could go along
8 with that -- I concur with what Norm was saying. I
9 think a flat fee, just a general flat fee would be --
10 could be burdensome on small tribes, and depending on
11 the location or area. I think another idea on the --
12 percentages could be based on the tier system of the
13 tribe. That's just an idea.

14 CHAIRWOMAN STEVENS: On 514, are there any
15 comments on the change from a calendar year to a fiscal
16 year? We -- one of the reasons, just so you know, we
17 did this is because it became a nightmare for us and
18 only because we were having to do quite a few fee audits
19 because we were imposing a calendar year when the
20 tribe's budget or their -- they went by fiscal year,
21 whenever that might have been. Many tribes are still on
22 the federal government fiscal year system from October 1
23 to September 30th. We actually have a handful that do
24 March -- April 1st to March 31st. Some tribes' fiscal
25 year, it benefits them if it's the calendar year.

1 And so when tribes were trying to assess
2 their calendar that -- a calendar year, when a fiscal
3 year didn't match the calendar year, it subjected the
4 tribe to possible fee errors, the assessment of federal
5 fees when they made their payment. And so our audit
6 department has been having to do a number of fee audits
7 to catch those errors.

8 So we thought that moving it to whatever the
9 tribe's fiscal year is would make it easier on tribes.
10 We would already be getting their financial audit
11 statements, so we wouldn't have to double back and do a
12 fee. It would already have been based on what they
13 submitted in their statements. It might appear that it
14 be burdensome for us with all these fiscal years moving
15 around, but we've just -- I think we had to weigh the
16 difference, you know, of burden -- would it be a greater
17 burden for us to continue to do fee audits and free
18 up -- and have a lot of our audit staff spending their
19 time on fee audits or, you know, tracking the fiscal
20 years for the tribes based on their financial or the
21 audited financial statements and what that would do.

22 We figured it would be easier for us and it
23 would free up some of our auditors' time to do other
24 types of auditing besides fee audits. But if there
25 is -- if there is any comment on that, if it's going to

1 be that burdensome, we'd like to hear if you support the
2 idea of fiscal, the change to the fiscal year. We'd
3 like to hear that as well.

4 ATTORNEY ROBERTS: I think another practical
5 consideration is: If the Commission goes forward with
6 the proposed changes in the preliminary draft and we
7 would go forward with a notice of proposed rule making,
8 I think it would be very important to hear from tribes
9 as to the practical effects of an implementation date.
10 Are there any implementation issues? When would it be
11 best to implement this change? I know it's not a -- a
12 high profile topic, but it is going to be an important
13 one if this change is made for the folks behind the
14 scenes that are actually calculating the fees and having
15 to comply with the new regulations. And so any feedback
16 on any implementation issues would be greatly
17 appreciated.

18 CHAIRWOMAN STEVENS: We have a -- I think
19 Commissioner DesRosiers did mention a -- the terminology
20 used on tournament fees, entry fees, whether those
21 are -- those are -- that's player money. So we were
22 looking at -- and I think that the practice has not been
23 formalized, but I think many of your financial staff
24 when they're submitting their fees are talking to the
25 NIGC about entry fees, admission fees when they

1 calculate their fees. And we're looking at the
2 possibility of defining that in our fee section so it's
3 clear to everyone what that -- what is deductible, what
4 is not deductible. You know, aside from Norm's
5 comments, does anyone have any comments? Are there any
6 comments or concerns about adding those definitions?

7 ATTORNEY ROBERTS: The other question that we're
8 looking for feedback from tribes on is the -- in the
9 preliminary discussion draft on fingerprint fees, the
10 preliminary discussion draft sets forth a time frame by
11 which NIGC will essentially change or look at the charge
12 and that the fees will be based on the -- what is
13 charged by FBI and costs incurred by the Commission.

14 So this is not something that would generate
15 any revenue, but what we would be looking at is
16 reviewing annually the costs and then modifying those
17 rates every year. And some of the consultations we've
18 heard from tribes, "We don't want you to modify them
19 every year. That causes budgeting issues on our part."

20 And so we are interested in hearing from
21 tribes as to whether -- whether this provision of
22 fingerprint fees -- how often should the Commission
23 revisit that issue? Again, I think that this is
24 something that might have practical implications on the
25 operations, but we would appreciate any feedback on

1 that.

2 I saw some heads nodding that annually may
3 be too often, but . . .

4 COMMISSIONER DESROSIERS: Norm DesRosiers here.

5 I guess maybe I made that comment last time
6 we met. And frankly, Chris had a good comment, your CFO
7 there. Forgive me. I forgot what it was, but the point
8 I had made was, you know, in 18 or 20 years, that fee
9 has never changed. Now, certainly, I don't advocate
10 reviewing it every 15 years or anything, but I don't
11 think you'll see that much change from year to year. I
12 think it needs to be reviewed periodically, but I don't
13 think annually is necessary. I mean, every two or three
14 years, but not annually.

15 CHAIRWOMAN STEVENS: How about a really fun one?
16 Gross gaming revenue. Definition of "gross gaming
17 revenue." The draft defined "gross gaming revenue."
18 We've had tribes ask us to use GAAP. But our concern
19 and a concern that's been brought to us is: If we do
20 use GAAP in a definition, it does set forth the
21 definition of net revenues, does GAAP conflict with
22 other provisions of IGRA and our regulations, and that
23 GAAP is subject to change and would that cause further
24 confusion or ambiguity if we start tinkering with that
25 definition?

1 Do we have any -- any tribes here that -- I
2 know there were some -- I don't know here -- that had
3 mentioned that it would be more confusing. Yeah. We
4 have others that say you should use GAAP and does that
5 run up against what IGRA defines net revenues as.

6 With that, I think we all need to get up and
7 stretch. Is everyone up for a break here? Get up and
8 stretch, take a break, take those phone calls that are
9 making your phone go crazy. And we'll meet back in
10 about 15 to 20 minutes, if that's all right with
11 everybody.

12 (Recess taken from 10:17 to 10:52 a.m.)

13 CHAIRWOMAN STEVENS: Okay. Thank you all. I
14 think that was an extended break. We'd like to continue
15 our discussion on Group 1, however, I do -- someone had
16 mentioned during the break, folks were wondering how
17 it's been going on our consultation. And we have many
18 more planned into the future that go out into February
19 of next year based on groups. And as we said in our
20 opening, the groups were based on what we heard back
21 from tribes and what we thought would be time and
22 resource management issues. There's some of these
23 regulations that are going to be a little easier to move
24 through. There are others that are going to be more
25 challenging and more time consuming and resource

1 consuming. So if you look at the regs in each of the
2 groups, you can probably easily identify which ones are
3 going to be moved through quickly or more quicker than
4 others, and we're spending a lot of time on the issues
5 that there's not an agreement between tribes, and that
6 would be the MICS and the technical standards, both
7 Class II and Class III MICS and the technical standards.

8 So this is where we're at in our process,
9 No. 9. So far, we've been getting really good feedback
10 from tribes both in these meetings but also in Rincon.
11 And we understand that many attendees here come and sit
12 and listen. I used to do this for my tribe and I was
13 not necessarily authorized to speak for my council, but
14 I was sent as sort of a scout of sorts to listen in,
15 hear what other tribes are saying in consultation
16 formats with the federal government.

17 This is also a new process that the NIGC has
18 embarked upon where we're having this -- everybody sit
19 and listen to what others have to say. We did that
20 immediately upon coming into the commission and into the
21 agency so that tribes could hear the concerns of others
22 and possibly come up with a solution that would suit all
23 interested parties. It was something that we heard. We
24 didn't know that there was issue X for a tribe when they
25 shared the same issue or a solution that was proposed

1 might actually negatively affect one tribe and, you
2 know, the desire of tribes to be able to sit and listen
3 to all the concerns were so that at least we could come
4 up with a solution together or at least put everything
5 on the table and know that you've been heard and can
6 hear what other tribes are saying.

7 So, you know, this is a new format, and I
8 think those who deal either in operations or the gaming
9 commissions are probably accustomed to this new process.
10 Tribal leaders probably are familiar with this
11 particular process or this type of process because you
12 do consultation with other federal agencies who do this
13 very same type of format. So I would say overall our
14 consultations are going well. We're being well-received
15 and we are putting forward a sincere and honest effort
16 to address concerns that we've heard about, address the
17 priorities the tribes have laid out and come up with
18 some solutions together.

19 I'm confident that even in the challenging
20 regulations, we are going to come to some solution that
21 will work for everyone, because, as you've heard today,
22 on some of those challenging regulations, you know, that
23 some of the tribes are just diametrically, you know,
24 opposed to what the others are suggesting. Just because
25 that's the case doesn't mean that we can't come up with

1 a solution. It's one of the benefits of sitting here in
2 this forum, this type of format, so that we can come up
3 with that type of solution.

4 So they are going well. Our next stop -- we
5 may actually have three weeks off. We will be at the
6 Northwest Indian Gaming Conference and Trade Show up
7 around Seattle. And I can't remember from after that,
8 but we are trying to hit all the regions. On a number
9 of different occasions, we have recently put a Federal
10 Register notice out, if you want to check the Register.
11 We're adding more groups to the next several. I think
12 it goes all the way out into September where we end up
13 in Bismarck, North Dakota where we're going to be
14 talking about all the groups at one -- over two days.

15 So, originally, they were smaller
16 discussions, but we've expanded them to include all of
17 the groups and regulations because we were getting some
18 feedback from tribes that they prefer to be able to do
19 like a one shot -- you know, can I come to one
20 consultation and get all my concerns heard? I don't
21 have to follow you around the country. I don't have to,
22 you know, submit every time there is a comment. I can
23 just tell you everything, similar to the opening
24 statements. And so we added -- there is four or five or
25 six of them that we're doing where we're going to be

1 talking about all the groups together over a two-day
2 period over all these different regions.

3 So that was recently changed. And you will
4 see various forms of us. If anyone is following us or
5 attending, you might see different versions of
6 representatives from the Commission. Again, trying to
7 be mindful of the resources that are paid by you and
8 mindful of our budget so that we don't have an army of
9 people from the NIGC here. We have just enough to keep
10 the show going to have a discussion. So you -- you
11 know, one consultation you might see me, you might see
12 the Vice-Chair Stephanie Cochran. You might see Dan
13 Little, the associate commissioner, other staff members.
14 We try to keep the resources down but also try not to
15 burn ourselves out because that can very easily happen.

16 So that's what's going on with the
17 consultations. Somebody had asked about it and asked
18 that I speak about how it's going and what we're doing
19 and any changes that have come about since we issued the
20 notice of regulatory review.

21 So with that, we have some time between now
22 and lunch, and what we thought we might do to stimulate
23 some conversation is to go line by line on -- or not
24 necessarily line by line, but look at the discussion
25 draft for Part 559, "Facility Licensing Renewals and

1 Submissions."

2 I'm going to have Larry take over. Did you
3 want -- yes.

4 MR. JAEGER: Yes, Madam Chair. Before we get into
5 that, I -- just based on your comments just made, I'd
6 like to commend you and the Commission for the effort
7 that you're making in consultations with Indian tribes.
8 It's a difficult process. You're dealing with many
9 tribes Nationwide. This is a new process. I think you
10 guys are to be commended for the effort and with the
11 number of sessions and the process that you've outlined
12 here for the next several months. So on behalf of the
13 United Auburn Tribe, we appreciate the opportunity.
14 Thank you.

15 CHAIRWOMAN STEVENS: Thank you very much for
16 those kind words. One thing I do want to add is that
17 we, like we did with the change to the number of which
18 groups we were going to address and which consultation,
19 we added more to several of the dates and locations, I
20 just want to highlight that we're open -- you know,
21 we're keeping an open mind if -- you know, if we need to
22 change the -- you know, how we're going doing this,
23 we're open to doing that. So we're really flexible is
24 my point. Like we did when we heard back from the
25 tribes who were saying "I'm waiting for the one where I

1 can go and, like, do the full buffet of regs." So we
2 thought we would add those and add those into all of the
3 regions that we would be visiting to afford as many of
4 the tribes as we could the opportunity to just do a
5 one-shot let's talk about all of the regs that are up
6 for review. So we're going to remain flexible, and, you
7 know, if we feel -- we hear enough back from tribes that
8 we need to, you know, change this process, we'll
9 certainly let you know and certainly give adequate
10 notice. So if there are -- barring any other comments,
11 I'm going to turn the microphone over to Larry to talk
12 about part 559.

13 ATTORNEY ROBERTS: All right. Everyone in
14 their -- should have in their materials a preliminary
15 discussion draft for part 559. And I'm just going to
16 touch upon the highlights. And if anyone has any
17 questions as we're going through the draft, please
18 interrupt with a question. This is intended to be a
19 dialogue. This is intended to receive feedback from
20 you.

21 The first change is in 559.1(a), we've added
22 language to say "obtain verification," and it's obtain
23 verification that the construction and maintenance and
24 operation is conducted in a manner that adequately
25 protects the environment and the public health and

1 safety.

2 This is a change that we're adding to be
3 consistent with the changes we're making later in the
4 draft about the tribes certifying that these mechanisms
5 are in place.

6 559.2 changes the time period for a tribe to
7 provide notice that a facility license is under
8 consideration. It changes it to a 60-day notice.
9 Although you'll note -- from 120 days. Although, you'll
10 note in part B that, depending upon the circumstances,
11 the chair may elect a one-time extension of 60 days if
12 necessary. But part B also provides that, where
13 appropriate, the chair will expedite the process and
14 provide feedback sooner than 60 days. And so it really
15 depends on the specific license being issued and whether
16 there are any ambiguities with that.

17 I'm turning to 559.4 on page 3. This is
18 just a cleanup for when a tribe should submit a newly
19 issued or renewed facility license to the chair. Again,
20 once a newly issued or renewed license is issued, there
21 is no change here. It's still 30 days. The majority of
22 the changes fall within 559.4 at the bottom of page 3
23 and top of page 4. It basically provides, rather than a
24 tribe submitting a long list of what laws are in place
25 and how the tribe is ensuring that the facility is

1 constructed and operated in a manner that provides --
2 addresses emergency preparedness, food and water,
3 construction, hazardous materials, sanitation, other
4 environmental and public health and safety laws and
5 resolutions.

6 What we've done is we've proposed that as
7 part of the facility license the tribe simply certify
8 that it is in compliance with these applicable -- that
9 they have determined, not that it's in compliance, but
10 that the tribe has determined as a sovereign that the
11 construction maintenance and operation is conducted in a
12 manner that adequately protects the environment and
13 public health and safety.

14 And so what we've heard from tribes is that
15 the existing rule requires a lot of time and unnecessary
16 effort. We've heard from tribes that EPA, obviously,
17 issues clean water permits, the tribe is in compliance
18 with federal laws, why do they need to provide this
19 information to NIGC and what -- so we've changed it so
20 that the tribe is certifying that it has made a
21 determination as a primary regulator that the facilities
22 protect public health and safety.

23 559.5 discusses the issue of providing
24 notice for when a facility license is terminated or
25 expires, again, so that NIGC has the information to know

1 which facilities are open, which facilities are closed,
2 which facilities are currently in operation.

3 And what we've heard very early on from
4 tribes is "Well, what about seasonal closures?" "How
5 about temporary closures?" And you'll see that we're
6 specifically asking for comment on temporary closures;
7 how long is enough time, days or temporary closures
8 where you wouldn't have to submit a notice? What's a
9 reasonable amount of time? And we're really looking for
10 feedback from tribes in the public on that issue.

11 The other parts of 559 remain the same. It
12 provides for the chair to request additional
13 documentation, if necessary, and it also provides for
14 tribes to provide this information electronically. And
15 so we're interested in any comments tribes have on the
16 discussion draft, any proposed changes, we've put it
17 out. We've numbered these line by line to make it
18 easier to facilitate discussion in this format. And
19 we'd be very interested in any questions or comments you
20 have today.

21 CHAIRWOMAN STEVENS: Yes, sir. Commissioner
22 DesRosiers.

23 COMMISSIONER DESROSIERS: It's Norm DesRosiers,
24 San Manuel.

25 It's just an observation, but this obviously

1 eliminates any requirement to do renewals and -- which
2 is fine. I don't imagine too many people are going to
3 object to that. But it seems inconsistent that you
4 would require us -- if we do renew, that we have to
5 submit that reissued license. Why would we have to do
6 that if a renewal is not required? And that's under
7 559.3.

8 ATTORNEY ROBERTS: You're right. This discussion
9 draft does take out the requirement that at least once
10 every three years, they issue a renewal. But in 559.4,
11 it states the same. So if there is a renewed license
12 issued, it would still have to be provided to NIGC.
13 This discussion draft just doesn't require trying to get
14 it every three years. Some tribes have a longer time
15 frame in terms of their license renewals. So if a
16 license renewal -- facility license renewal is issued, I
17 believe 559.3 would require a copy of that renewed
18 facility license.

19 COMMISSIONER DESROSIERS: I see that. My
20 question is why. If we're not required to renew, then
21 why are we required to give you a copy of a renewed
22 license?

23 ATTORNEY ROBERTS: Well, I would think that we --
24 for our own purposes, we would want the most current
25 license issued by the tribe.

1 CHAIRWOMAN STEVENS: We're not requiring the
2 renewal. The tribes may -- you know, a tribe may be on
3 a one-year basis, might be a three-year basis, whatever
4 their time lines are. Just send us a copy of whenever
5 your renewing cycle is. But I can see how that might be
6 confusing. Maybe we need to clarify that.

7 COMMISSIONER RODRIGUEZ: Sherry Rodriguez,
8 La Jolla gaming commissioner.

9 I think what you're alluding to is, as in my
10 ordinance, my gaming ordinance, if I am required to
11 renew my facility license for my own requirements every
12 two years, you want us to send you a copy of that.

13 Is that what you're saying?

14 I just think it needs to be articulated
15 differently.

16 CHAIRWOMAN STEVENS: That's right. I think we
17 need to make it clearer that the renewal is based on
18 whenever the tribe's renewal time line is. Just send us
19 a copy.

20 Does anyone -- yes.

21 COMMISSIONER RODRIGUEZ: I'm sorry. Again, I had
22 an a epiphany. It may not be a good thing. But then if
23 we're not required to notify you of a renewal, then,
24 really, why do we have to send it? I guess -- does that
25 make sense? I mean, we may require it, but it would be

1 an internal requirement for us. So it's not required by
2 NIGC, then why would we then do that?

3 ATTORNEY ROBERTS: The intent is that -- and this
4 is a discussion draft, and I think it's good that we're
5 having this conversation. The intent is that NIGC has a
6 copy of the facility license that is in effect at that
7 time. So for example, let's say a tribe in their
8 ordinance sets forth renewal shall occur every four
9 years, and the renewal, let's say, has -- or let's say
10 that the license itself has a four-year term in it. We
11 will have a copy of that. At the end of four years,
12 NIGC will be asking, "Has it been renewed?" "Has it been
13 terminated?" "What's going on with this license?"

14 And so this process basically provides a
15 tribe on its time frame as provided by law to send those
16 renewals to NIGC so that we have the most current
17 information.

18 COMMISSIONER RODRIGUEZ: Thank you.

19 CHAIRWOMAN STEVENS: Thanks for pointing that
20 out. Just in terms of reading this, I think we know
21 what our intent is, but it is going to be -- if it's
22 possible that it can be misconstrued, then we certainly
23 want to know that now. I think our objective here is to
24 have the most current license on file so we know which
25 facilities are opened and which ones have been closed.

1 ATTORNEY ZERBI: Hi. Jane Zerbi, attorney with
2 United Auburn Indian Community and the Pala Band of
3 Mission Indians.

4 I just wanted to point out just to inform
5 the discussion that some tribes in some states may have
6 a tribal standard as well as -- all states have a tribal
7 standard as to when they renew. But, for instance,
8 compacts also have standards and California tribes are
9 required to every two years to renew that facility's
10 license. And that's for the state. So I think you'll
11 see both compact standards and tribal standards that
12 blend together.

13 CHAIRWOMAN STEVENS: Thank you. Tracy.

14 COMMISSIONER BURRIS: Have you guys given any
15 thought on the number of days?

16 CHAIRWOMAN STEVENS: We're asking for comments.
17 It's different depending on climate, really, or whether
18 there is a -- like, a substantial rebuild happening.
19 Temporary does need to be temporary. You know, I don't
20 know that you would go on for years and years. So that
21 might be unreasonable. But I know that there are
22 facilities that close for 6 months out of the year or
23 maybe are only open -- they're only open -- they're
24 closed more than they're open because they are capturing
25 the seasonal market and then they close for 9 months

1 depending on the weather or where you're located.

2 So we understand those. But, also, for
3 rebuilds, remodels, you know, what's a reasonable amount
4 of time to be closed and should those be -- I don't know
5 if they should be segregated or not.

6 COMMISSIONER BURRIS: I'm just saying, you know,
7 there is also predictability when the architects think
8 they're going to get a project done. But the reality is
9 when it does occur.

10 CHAIRWOMAN STEVENS: Two weeks. Be done in two
11 weeks.

12 COMMISSIONER BURRIS: Yeah.

13 CHAIRWOMAN STEVENS: Do you have any thoughts?

14 COMMISSIONER BURRIS: Well, I'm just trying to
15 figure out on that which goes with the rebuilds and so
16 forth that somehow we can figure out how to put that
17 into consideration. I understand the seasonal aspect of
18 it, and that's predictable in a sense because we've been
19 doing it.

20 The question is: What do we do when we have
21 a project projected to take only 4 months and in reality
22 it takes 6 months or 5 1/2 months. Where do we stand in
23 terms of missing that deadline? Do we just issue a
24 letter to the agency stating we're extending that time
25 for this reason, or is that sufficient? That's what I'm

1 concerned about, because I'm going through one of those
2 projects now. So it makes me consider.

3 But under the current reg, I've got to show
4 it now. I've got to show it as being closed.

5 ATTORNEY ROBERTS: And I understand your concern
6 about that temporary closure and some things being
7 outside of the tribe's control on that and maybe a
8 potential solution would be to add some language in
9 line 11 that says a tribe does not need to provide
10 notification of seasonal closures or temporary closures
11 anticipated to be within a duration of. That way if a
12 tribe anticipates based on the best information they
13 have from their architects or builders, "This is how
14 long we anticipate we're going to be closed in October,
15 two weeks or three weeks" and there's a way to address
16 that situation.

17 COMMISSIONER BURRIS: I would hope that it would
18 only be two or three weeks, but . . .

19 CHAIRWOMAN STEVENS: Yes.

20 MS. ANDREWS: You know, I'm going to claim the
21 new card here because I haven't worked that much with a
22 gaming facility. I'm sorry. My name is Jasmine
23 Andrews, secretary of the Bishop Paiute Tribe.

24 Where do you guys get the authority for all
25 the health and safety and all that good stuff?

1 ATTORNEY ROBERTS: It's in 2710 regarding tribal
2 ordinances, tribal ordinances providing for the
3 protection of health and safety.

4 MS. ANDREWS: I completely agree with the fact
5 that it appeals back to the tribe certifying because it
6 is duplicate if I have -- I just don't deal with my
7 facilities. I have my own TIPPA, my own travel and
8 environmental that deals with those issues. We work
9 with emergency preparedness through different
10 organizations. It's just I'm dealing with a lot of
11 other people and it's an extra requirement.

12 I'm also curious about 559.6. How often
13 have you guys used 559.6? And I think, for me, what
14 comes to mind, especially, you know, tribal politics and
15 tribal organizations, is, you know, disgruntled
16 employees, disgruntled tribal members who might be
17 calling NIGC, you know, just off cuff and saying "Hey, I
18 think there is some serious health and safety issues
19 over there." Granted, they aren't necessarily
20 substantiated, but how do you guys deal with 559.6 in
21 reality?

22 ATTORNEY ROBERTS: We've been with the Commission
23 since July of last year, and so in my term as general
24 counsel, I know that we've made requests for additional
25 information, but I think that the point of the provision

1 is in circumstances, you know, we certainly want to
2 have -- in appropriate circumstances, put tribes on
3 notice that we may be requesting that additional
4 information. But it's hard to set out those
5 circumstances, I think, in a regulation itself.

6 So I think in practice, it's not the
7 practice or the rule, it's more the exception. It is to
8 make sure that we have whatever information we need.

9 MS. ANDREWS: Okay. Thank you.

10 ATTORNEY ROBERTS: If I may, I just wanted to
11 follow up. I really appreciate the comments that you
12 have in terms of all of the different federal agencies
13 and tribal agencies that are -- that you're working with
14 on a daily basis on this particular issue.

15 Are there other tribes that can speak to
16 that and share their experiences?

17 EXECUTIVE DIRECTOR SCHULTZE: Jerry Schultze,
18 Morongo.

19 What she forgot is also every year through
20 CGCC7, the state regulatory that the tribes have all met
21 and agreed to, we have to certify this to the state of
22 California every year. And it covers everything
23 basically what was removed, that you guys removed. And,
24 also, like we were saying, we do our facility licenses
25 every two years, and we have to send them copies. So if

1 we violate that, then that's subject to having their
2 compact being revoked.

3 CHAIRWOMAN STEVENS: Any others that can share
4 sort of processes that you go through? I know some
5 tribes contract local agencies, whether it's cities or
6 counties or with the state for services, federal
7 agencies that you all have to deal with. I mean, or
8 having your own tribal organizations, please let us
9 know.

10 COMMISSIONER BURRIS: Tracy Burris, Viejas.

11 Madam Chair, this question brought to my
12 attention an interesting thought. What about right now
13 there's two tribes, the Omaha tribe in Nebraska, because
14 of the flooding. And that's -- we can say it's seasonal
15 but it's not. It's not. You know, how does that -- how
16 would they forecast that?

17 CHAIRWOMAN STEVENS: That's a good observation
18 because I'm thinking of fires that have occurred,
19 flooding that has occurred in some areas, you know,
20 tornadoes, you know, any natural disaster that would
21 cause a closure, maybe, think about, you know, there
22 does have to be a time limit where you're just closed
23 long enough that, you know, whatever it's due to, and
24 having to say, "Okay, we're just going to pull this
25 license until we can get it rebuilt."

1 COMMISSIONER BURRIS: Or it takes excess water is
2 flooded around it, so it's a matter of when the water
3 goes down and the road becomes passable and there is no
4 damage to the structure. And in our case, the fire, the
5 smoke and all the damage and stuff around it may not
6 have gotten to -- so there's sort of that -- it's one
7 thing if it burns the facility but what if it's really
8 access to the facility by roads and everything else
9 around it? Because that is the problem.

10 CHAIRWOMAN STEVENS: Tracy, continue and then
11 we'll move over there.

12 COMMISSIONER BURRIS: One more question -- and
13 just out of curiosity, food for thought.

14 When addressing the facility notification,
15 one thing I noticed is you hadn't addressed whether it's
16 a Class II or Class III facility. Has there been any
17 thought given to that?

18 ATTORNEY ROBERTS: No. But we'd be interested in
19 your thoughts on that issue. Are there that many
20 facilities out there that are simply Class III?

21 COMMISSIONER BURRIS: Yes and no. I mean,
22 obviously, due to certain states, that would make a
23 difference. It just -- it's a good thought process, so
24 I'm just looking for other thought on that. Thank you.

25 CHAIRMAN HOFSTETTER: Andrew Hofstetter, Santa

1 Ysabel Gaming Commission. Going back just one step
2 regarding -- we were talking about the temporary
3 closures of the facility. This is just food for thought
4 as I'm listening to all the dialogue go back and forth.
5 Obviously, there's various factors that can happen when
6 you talk about natural disasters -- flooding, different
7 things that happen throughout the United States.
8 California may be more earthquakes and fires.

9 Something to consider would also be
10 having -- for those different factors that occur is have
11 an extension process, that the property -- tribe file
12 for an extension, you know, based upon, you know, the
13 particular things that they're faced with. Thank you.

14 CHAIRWOMAN STEVENS: Yes.

15 ATTORNEY ZERBI: Just raising to consider that in
16 Section 559.5, when you're talking about the duration of
17 temporary closure, it may be helpful to talk about what
18 the NIGC's regulatory objective is, because it may be
19 that, for instance, rather than a time line and a period
20 of days, you may be getting at the need to reissue a
21 license because it triggers license criteria. So you
22 might look at something other than just days.

23 CHAIRWOMAN STEVENS: Any others on this
24 particular regulation draft? You've given us a lot of
25 foot for thought for some of the areas that we did

1 change and modify, so that informs and that will inform
2 the next draft.

3 I think we've already talked about fees and
4 facility licensing in terms of 523, the review and
5 approval of existing ordinances prior to 1993. Not
6 heard a lot except, you know, support that we remove
7 that part. It's obsolete now.

8 And we've heard some discussion on Buy
9 Indian, that we should consider a policy internally
10 rather than regulation.

11 MS. ANDREWS: I was just listening to some of the
12 discussion earlier and I was actually just having this
13 exact same conversation with my TERO commissioner. I
14 was saying, "Well, why isn't there a policy?" And I
15 understand that -- you know, that there are individual
16 circumstances and expedited matters and all kinds of
17 other things that any entity has to deal with. I'd
18 really like to see this in policy as far as the Buy
19 Indian goes. It's one thing to carry an internal policy
20 on it. It's another thing that you actually go out of
21 your way to write it down, make sure that you can see it
22 really follows through in the coming years and that it's
23 very clear that that should just be just policy.

24 CHAIRWOMAN STEVENS: So you would be opposed to a
25 regulation, whether it stems from the Buy Indian Act or

1 from our own authorities under IGRA?

2 MS. ANDREWS: (Nods head.)

3 CHAIRWOMAN STEVENS: Okay. It's not like we do a
4 whole lot of procurement. It's basic running of office
5 issues really where the bulk of what we do is when we
6 come out and do meetings. Sometimes -- I do want to
7 share with you sometimes it costs more to come to an
8 Indian facility and we have to make a judgment call on,
9 you know, whether or not we're going to utilize an
10 Indian facility, because I know there are some
11 facilities that just don't hold Indian conferences or
12 government -- government conferences because there is an
13 expectation it's a government rate and that certain
14 facilities don't really even have to cater to that
15 market. They get enough convention and meeting business
16 that they don't have to cater to a lower rate. And
17 those tend to be some of the more popular facilities,
18 and we won't always go to those because of the cost. We
19 do want to have enough discretion to be able to say
20 "That's too costly. It's an Indian facility and it's
21 just too much money and we can find another facility
22 nearby or elsewhere that is substantially less." Just
23 some food for thought.

24 Again, it's -- we're run by fees paid by you
25 and we want to be very mindful of how we spend that

1 money, that we use it to the best and highest good
2 efficiently and to do our jobs effectively at a
3 reasonable or the best cost. Just a little FYI about
4 doing business in Indian country.

5 Are there any other thoughts on the Part 542
6 on how to proceed on minimum term control standards?
7 We've heard a variety of different positions here, and
8 we do as we move throughout the country.

9 EXECUTIVE DIRECTOR SCHULTZE: Jerry Schultze,
10 Morongo again.

11 I think our biggest fear here in California,
12 we're afraid of the State Gaming Commission or the
13 Department of Justice trying to promulgate regulations
14 mixed for us if we don't have this one standard that we
15 can allude to. Our compact we've agreed to to 2006, but
16 it doesn't say that if 2011 or '12 come along, we're
17 going to automatically have to do that. But I think
18 anybody who's been in this business for a while -- I
19 know you guys in Washington have dealt with the state
20 and there is not a lot of trust, I think, with the state
21 making regulations for us. And that's another concern.

22 Now, whether you guys should have
23 enforcement power or not, I don't know. But I'd sure
24 like to see it as this is what we think is the industry
25 standards to protect the tribes' interest. And that's

1 what it's for. It's to protect the tribes' interest.

2 CHAIRWOMAN STEVENS: I think everybody supports
3 the standards, the concept of industry standards. I
4 certainly do. I think everybody in here from tribal
5 leaders to the regulator. Standards have to be in place
6 to ensure the integrity of the facility, the movement of
7 money and go to the goal and the objective -- policy
8 objective that the tribes are the primary beneficiaries.
9 And there has to be controls in place to ensure that
10 that happens. We're all supportive of that. It's the
11 mechanism that we do that, we're hearing different
12 things. Keep the regs in place, revise the regs, repeal
13 the regs. Because there are different views on what
14 CRIT says. Put out guided bulletins. Put out a
15 standard. That's sort of where we're kind of at logger
16 heads here is the mechanism.

17 We all support control standards. I think
18 that's a given. It's how do we -- how do we do it in
19 the face of all these varying methods that Class III is
20 being regulated out in Indian country.

21 ATTORNEY ZERBI: Jane Zerbi on behalf of the
22 United Auburn Indian community and the Pala Band.

23 We've made these comments in writing. They
24 support the maintenance of the NIGC Class III MICS and
25 the mechanism for those tribes who choose voluntarily to

1 do it the tribal ordinances that allow for the adoption
2 by the tribe of the federal MICS and then enforcement by
3 the NIGC.

4 And I think that one point we would add to
5 the comments that Norm made earlier is that that
6 process, while there may be others that work for other
7 tribes, it does leave that to each tribe to determine
8 whether that works and fits for their tribal government
9 facility.

10 COMMISSIONER RODRIGUEZ: Sherry Rodriguez,
11 La Jolla Gaming Commission.

12 As a lot of us in this industry have gone
13 through the process with CGCC8 and taking two years, I
14 think it was, to get -- three years to get this done,
15 that was an integral part of CGCC8 and St. Parker and
16 for La Jolla preparing to go forward in a business,
17 we've had our ordinances for a few years, so we -- we
18 salute you for keeping the MICS. It is something that
19 we've signed into our ordinance and we find that it is
20 what our tribe needs to support us.

21 CHAIRWOMAN STEVENS: Can I ask a clarifying? To
22 keep the MICS in regulation form? Is that what you're
23 saying is to keep the regulation in the -- keep the
24 regulation, whether they're amended or not, but to keep
25 the method that works for your tribal situation?

1 COMMISSIONER RODRIGUEZ: For our tribe. Every
2 tribe is an individual and, again, everybody has to take
3 it on one at a time as a government-to-government.

4 COMMISSIONER BURRIS: Tracy Burris.

5 Madam Chair, what I would state, reemphasize
6 is that we believe that Indian country has its own
7 standard. As a regulator, I'd like these regs, whether
8 it's Class II or Class III, because I believe it's a
9 standard that gives credibility to our industry.
10 Operators may disagree with me, but as a regulator, I
11 would say that we need this direction that we
12 consistently throughout Indian country. Do we do it for
13 nothing else that we look for Indian country has
14 consistency as a whole, not for our individual state
15 compacts or anything like that. So that's what I would
16 say personally, that I think it's very important that we
17 as a whole as an Indian country have an industry
18 standard.

19 CHAIRWOMAN STEVENS: In regulation? Should they
20 be -- because at one time they were not segregated. So
21 you said Class II or Class III. You want to elaborate
22 on that, Tracy?

23 COMMISSIONER BURRIS: I mean, you've got 423 and
24 547. It doesn't matter. Either way. You can have both
25 of them. We've got to have something for the industry.

1 I mean, we're a billion-dollar-a-year commerce in Indian
2 country. There has to be some direction.

3 And the other reason why it is, it avoids
4 sort of that tipsy turnsy confusion about the states
5 didn't have the regulatory ability in the beginning.
6 Tribes evolved and created. Now tribes are getting --
7 states are getting involved in the last 5 to 10 years
8 with compacts and now they think they know, and I'd like
9 to think that Indian country already knows because we
10 already stole all the good people ahead of time. And so
11 we've created a very good structure. And a lot has been
12 the guidance of the original MICS. The NICS, as a
13 federal agency, there is some good things that can be
14 done with this. So it's important, I think, personally.

15 CHAIRWOMAN STEVENS: Yes, Norm.

16 COMMISSIONER DESROSIERS: Norm DesRosiers.

17 I'd like to add one point that actually
18 hasn't been brought up, I don't think, but one of the
19 unintended consequences maybe of eliminating these
20 standards as a regulation will be on the auditing side.
21 Our compact has auditing requirements for MICS and AUP
22 requirements and some of your regs have procedural
23 requirements for auditing controls. And some tribes
24 that have bonds and lenders, you know, require these
25 standards to be audited and an opinion as to whether

1 there's compliance. And there's a whole bunch of
2 compliance and auditing effects that will be, I think,
3 adversely affected if these regulations cease to exist
4 as well.

5 CHAIRWOMAN STEVENS: Thank you. Were there other
6 comments? Yes.

7 MEMBER REID: You know, there's one of the things
8 I think we've got to be mindful in theory in determining
9 regulations and determining compacts and one of the
10 things mentioned in CTCC8 --

11

12 CHAIRWOMAN STEVENS: Sir, can I interrupt you?
13 Can you pull the mike out and bring it right up? We all
14 want to hear you.

15

16 MEMBER REID: Okay. And what was CTCC8? It was
17 a regulation that was -- took a lot of time to go over
18 and finally come to a solution. But what was in it is
19 something that was kind of scary for a lot of tribes is
20 that some of these regulations -- I'm not just pointing
21 out those that could be regulations that are determined
22 by California in some cases can be negotiated of course
23 negotiated as a sovereign economic in the compacts with
24 the state by these tribes. And when this happens, the
25 same regulations opposed to it is brought out in
regulation and it is determined by the tribes, which

1 when the tribes look at it, these regulations were
2 negotiated in a compact by some tribes. And what took
3 place is the regulation that was voted on was voted on
4 by those same tribes and the tribes that had not used
5 this sovereignty to negotiate through a compact, such as
6 these regulations, sort of got that taken away from
7 them. And I think we have to be very mindful that
8 taking away the sovereign rights of other tribes in
9 regulations is something that really has consequences
10 down the road. And I think that we have to be mindful
11 and look into what could be done to make sure that other
12 sovereigns have that same ability and not take away from
13 them in negotiations for that type of regulation. Thank
14 you.

15 CHAIRWOMAN STEVENS: Sir, can I get your name and
16 what tribe you're with?

17 MEMBER REID: My name is Morris Reid with
18 Picayune Rancheria of Chukchansi Indians.

19 CHAIRWOMAN STEVENS: Thank you.

20 So I just want to make sure I understood you
21 correctly. So you're saying that some of the tribes
22 negotiate regulations that are part of the group -- I
23 always get this acronym wrong CC8 -- I'm a fed. You'd
24 think I'd have my acronyms down. And those were
25 negotiated by seven tribes and there was some tribes

1 that it was not part of their compact and were not part
2 of the discussion?

3 MEMBER REID: Yeah. I think it states in here
4 that some tribes negotiated compacts. And that was
5 similar to what we would do with CGCC8. And in a way,
6 it was almost like the non-amending compacts for tribes
7 had a little, what would you say, crossed that ability
8 to negotiate in the compacts this type of regulation.
9 And it also brought to light that there has to be
10 something put forward to if this is done by a tribe,
11 that participation on both sides has to be looked at.
12 And I think that was something that we had to be very
13 mindful of.

14 COUNCILMAN STALLINGS: Steve Stallings, Rincon.
15 I think that we would be fully supportive of
16 the MICS being a regulation with this idea that they are
17 a recommended set of standards. And I think in that
18 format where the written regulation recommends a set of
19 standards to really kind of meet the needs of -- not
20 every tribe in the U.S., but I think from our standpoint
21 we would be supportive of it.

22 CHAIRWOMAN STEVENS: Others on this particular
23 issue or other issues that we've been discussing this
24 morning? Because if not, I'm inclined to break for
25 lunch, and we'll come back at 1:30 and we're going to

1 talk about a whole new group of exciting regulations on
2 enforcement, service, appeals, and just generally
3 appeals. And if there are attorneys in the room, this
4 is your shot. Okay. We'll be back at 1:30.

5 (The lunch recess was taken from 11:43 a.m.
6 to 1:38 p.m.)

7

8 CHAIRWOMAN STEVENS: Okay. Welcome back,
9 everyone. Hope everyone had a nice break.

10 We have really exciting material. We were
11 hoping there were more attorneys in the room. This is
12 the section when the attorneys really get their teeth
13 into. Let me check on time. We'll go ahead and get
14 started. If there is -- I don't see any new faces here.

15 As I said earlier today, we have spots on
16 the agenda to let tribal leaders, if they have a
17 prepared or written statement, to make it, to go ahead
18 and step up to the microphone and have an open --
19 basically, it's an open mike, except this is not
20 karaoke, so Norm, no karaoke. But if we don't have any
21 of that, then what we'll do is proceed to Group 2 and
22 we'll go over the areas that we've asked questions about
23 in the notice of inquiry where we've heard back in the
24 notice of inquiry what we put out in the notice of
25 regulatory review. This really is about -- and I'll

1 turn it over to the general council here in a moment --
2 about our own processes and trying to make clear our
3 processes inside the agency to try for the ease of use
4 and that there is structure, more structure to the
5 processes that we're going to talk about in terms of
6 enforcement actions and appeals.

7 So I'll turn it over to Larry and we'll go
8 ahead and get started with the review of Group 2.

9 ATTORNEY ROBERTS: Okay. We've saved the most
10 exciting topic to follow the lunch break. So let's
11 start with part 573. For this part, we're going to be
12 talking about enforcement, looking at those regulations
13 and then regulations that set forth the appeals process,
14 both service, ordinance appeals, management contract
15 appeals and then appeals before the Commission. For
16 part 573 in the enforcement process, as part of the
17 notice of inquiry, the Commission requested comment
18 priority of review of this part and whether the
19 Commission should consider looking at drafting a
20 regulation to provide for withdrawal of a notice of
21 violation. And in response to the notice of inquiry,
22 tribes essentially said that -- some tribes said a
23 regulation would be unnecessary, that the agency
24 retains -- and the chair retains the discretion that
25 they issue and that would be to change their mind and

1 withdraw an NOV.

2 Some tribes, sort of like the Buy Indian
3 regulation, commented that an agency policy would be
4 sufficient to address this and that we wouldn't need to
5 promulgate a regulation. Some comments from the public
6 suggested that a regulation that outlines the process
7 and the criteria for withdrawal of an NOV would be
8 appropriate and would be transparent, and some others
9 suggested that after an NOV is issued by the chair that
10 only the Commission as a whole should have authority to
11 withdraw an NOV.

12 Additional comments on part 573 is: Tribes
13 have suggested that there should be some process for
14 expungement of an NOV after a period of years or after
15 the issue that led to the non-compliance has been
16 resolved. The tribes -- some tribes commented that an
17 NOV has not only consequences -- the normal consequences
18 that come with it, but also that NOVs can affect the
19 ability to secure financing. It impacts on the
20 reputation of the facility. And so some tribes
21 suggested that some sort of an expungement process
22 should be provided. Some tribes suggested that if NOVs
23 are going to go up on a website, that identifying
24 information should be redacted from those NOVs. Some
25 public comments supported providing clients assistance,

1 that the tribe -- that NIGC should -- if there is an
2 issue on compliance, NIGC first reach out with
3 compliance assistance so that an NOV is never a surprise
4 to a tribe and that if NIGC had worked with a tribe to
5 achieve compliance and ended up issuing an NOV after a
6 non-compliance that -- that that situation should not be
7 eligible for a withdrawal of an NOV. And the public
8 commented that a -- the commission should utilize a
9 voluntary compliance model, a model where the NIGC is
10 reaching out with technical assistance and training,
11 compliance assistance and an NOV if necessary.

12 The NOI also as part of the larger
13 regulatory process also requests a comment on whether
14 the Commission should review its procedures and
15 proceedings before the Commission of those rules. And
16 the comments from the public essentially were twofold.
17 Some said that a more formal process or a more detailed
18 process may be burdensome and be more costly for tribes
19 and could end up actually a delayed review of whatever
20 was at issue, whether it be an ordinance or a NOV.

21 Comments suggested that any rules or changes
22 to the rules that we would make would have to guarantee
23 due process. Some comments suggested that rather than
24 having the appeals process in different parts, that all
25 of those parts be consolidated into one larger part

1 laying out the full appeals process.

2 Some comments suggested eliminating the
3 presiding official proceedings and some comments also
4 suggested adding some sort of informal hearing process
5 for ordinance and management contract abuse.

6 And that is it for Group 2. So for Group 2,
7 we're talking about enforcement. We're talking about
8 the rules that apply to service, and Part 5, maintain
9 ordinance appeals, and Part 524, management contract
10 appeals, and part 539, and then appeals before the
11 commission, Part 577.

12 CHAIRWOMAN STEVENS: Trying to catch up to where
13 we are, match my page.

14 Okay. So that's the exciting world of due
15 process inside the agency. We've been in other areas.
16 We were in Minneapolis about a month ago, I suppose,
17 when we first started talking about these proceedings,
18 especially with regard to the appeals and the appeals
19 process. Also -- well, let me stay on that topic for a
20 minute where we did see -- we did hear representatives
21 for tribes, their attorneys in particular, talking about
22 the need for having clearer processes in place so they
23 can -- it's clearer for those who represent tribes to go
24 through the process.

25 I would be really interested in hearing what

1 folks have to say about whether we should consolidate
2 these parts together or do they just -- are they okay on
3 their own but need further clarification on the appeal
4 process. And that may not be something -- if you all
5 haven't been subject to the appeal process, then it may
6 not be familiar territory for you. So understandably,
7 there may not be some -- a lot of comment on that. But
8 enforcement in particular, what kind of steps would
9 we -- would be clearer? We've heard a lot about the
10 heavy-handed NOV and whether there are other steps
11 possible before we get to that point, more formalized
12 processes, the possibility of expungement, possibility
13 of withdrawal of an NOV by the chair and whether or not
14 that would work or not.

15 So we are happy to hear what your thoughts
16 are on enforcement and the process in 573 as well as
17 appeal -- the appeal sections.

18 Yes, Norm.

19 COMMISSIONER DESROSIERS: General comment time?

20 Norm DesRosiers, San Manuel.

21 My guess is that most of us in the room here
22 aren't strangers to appeals and due process. We all
23 have to have within our own agencies a process of
24 appealing and having hearings for licensing actions that
25 we take. So I don't think it's too alien of a concept

1 here.

2 You know, I've developed procedures in my
3 own jurisdictions for this and I -- I'm just making a
4 comment. I don't think I have any answers for you.

5 But I think it's important to see the
6 balance. My first concern is fairness, you know, that
7 they have a fair opportunity to present their side.
8 Now, how we do that? That's what's up in the air. I
9 hate to see the process get so bogged down in
10 formalities that it takes three lawyers, 2,000 billable
11 hours to get everybody through the process. And so I'd
12 try to keep it informal but with some structure, you
13 know, that allows that fairness. To me, that's --
14 that's the big concern here. I would like, for
15 example -- commissioners around the country have various
16 levels of expertise and experience and some have lawyers
17 with them do everything; some don't. But, I mean, I
18 would like the opportunity to come -- first of all,
19 maybe get a notice that you would have an issue with me
20 before I'm cited for a violation, given an opportunity
21 to discuss and address it and remedy it.

22 If I disagree with you, then you probably
23 will cite me for a violation, but then I would like the
24 opportunity to meet formally and give my entire side of
25 the issue without having to drag a \$500-an-hour attorney

1 along with me.

2 So I don't know what the answer is, but
3 those are my considerations on it when I look at this
4 issue.

5 CHAIRWOMAN STEVENS: Thank you, Norm.

6 And, actually, that's our concern as well as
7 we've heard that. Look, I said we were in Minneapolis
8 and we had a number of attorneys that represented
9 several sort of varying types of tribes in terms of the
10 scale of their operations, some larger facilities that
11 might be able to afford an attorney, those who were
12 in-house counsel to a tribe, they expressed the same
13 concerns. We don't want to make it so stringent that it
14 takes a lot of time to get through the process and it
15 takes a lot of money to get through the process.

16 In trying to balance out where we are now
17 with the Part 7573 -- because there are no steps.
18 That's the other thing. We would like clearer steps on
19 something is coming instead of having an NOV just sort
20 of as a hammer.

21 You know, what I know now of the way our
22 staff works is there is a lot of back and forth between
23 tribes, but it's not really a formal process, like a
24 sort of like a notice of potential non-compliance of
25 some sort before we get to that step. And I'm sure as

1 TGRAs, you know, you may even have some of these in your
2 own -- in your own ordinances, in your own due
3 process -- your own due processes.

4 So we share that concern with you. We have
5 to strike some sort of balance between having some
6 clarity and a little more structure than we have now,
7 opportunities to remedy before the hammer comes out.
8 Because as I've said before, an NOV should never be a
9 surprise to a tribe. It should never come just out of
10 nowhere. They should know that it's coming. How can we
11 formalize that process?

12 Some of the other questions we have -- if
13 you all want to address the question of a step process
14 for violations in the enforcement action, that would
15 be -- we'd love to hear either what you have in place or
16 what your experience has been, either too structured or
17 not structured enough or your own experience if you want
18 to -- just to clarify.

19 If you haven't been issued an NOV by the
20 NIGC, you may not be familiar with our process of how we
21 go through that. And there may be tribes in here that
22 have not received an NOV with us. And that's what I
23 want to clarify. You might not be familiar with that
24 process, the enforcement or the NOV process or the
25 appeal process because you haven't gone through it with

1 us, although I imagine many of you in your jurisdictions
2 have these processes in place. So I would be happy to
3 hear any of your own experiences with that.

4 Another question that's out there is
5 expungement and withdrawals of NOV's. We'd like to hear
6 your thoughts on that. We've heard some tribes say
7 that's kind of like a bad mark on your record. When
8 they say it goes down on your permanent record, it
9 really goes down on your permanent record. You really
10 can't get away from it. It does affect the tribe's
11 ability to get financing, bonds, you know, partnerships,
12 ventures. So, you know, we're interested in what anyone
13 has to say about their experience with that.

14 Norm?

15 COMMISSIONER DESROSIERS: Well, just on the
16 withdrawal, I mean, it strikes me that if you're going
17 to have a fair appeals process that there is an
18 assumption there that the appellant may prevail and,
19 therefore, wouldn't you have to withdraw the NOV? I
20 mean, that seems to be kind of a given to me.

21 ATTORNEY ROBERTS: Yeah. I think -- I think one
22 of the questions is whether that needs to be something
23 that's set forth in the regulation or whether that's
24 some sort of guidance.

25 For example, we've heard some comments that

1 we ought to have a regulation that says if a tribe meets
2 these three criteria after the issuance of the NOV that
3 those criteria the chair could consider withdrawing the
4 NOV, notwithstanding any appeal that's going on.

5 And so I think it's another one of these
6 questions, is it something that we need a rule on? Is
7 it something that can be accomplished through guidance
8 or is it something that we don't need any guidance on,
9 that it's going to be so fact specific based on how it's
10 moving through the appeals process what information the
11 chair and the Commission receive after an NOV has been
12 issued, that sort of thing.

13 CHAIRWOMAN STEVENS: So I just wanted to clarify
14 that, Norm, you were saying that just by operation of
15 the appeal, it would have to, if they prevail, then it
16 is technically withdrawn, their opportunity to have it
17 withdrawn is through the appeal process. Did I hear
18 that correctly?

19 COMMISSIONER DESROSIERS: (Nods head.)

20 CHAIRWOMAN STEVENS: And part of the reason it
21 has come up is that tribes do ask that -- we're right in
22 the NOV process and they ask us to pull back. You know,
23 and there is no formal process for that or do we need
24 one?

25 COMMISSIONER DESROSIERS: Okay. Looks like there

1 might be two scenarios for withdrawal. One is the tribe
2 prevails in appeal. The other would be, okay, we agree
3 there was a violation, but we have remedied that. Would
4 you please withdraw?

5 Is that kind of what you're getting at?

6 CHAIRWOMAN STEVENS: (Nods head.)

7 ATTORNEY ROBERTS: (Nods head.)

8 COMMISSIONER DESROSIERS: Okay.

9 CHAIRWOMAN STEVENS: Yeah. I'm thinking that
10 there has been one instance by the time the NOV came
11 out, they remedied it because they knew that it was
12 coming.

13 The other side of that, I guess, is, if we
14 put some procedures in place on the sort of steps
15 towards an NOV, compliance notice or warning notice,
16 letter of non-compliance, whatever we call it, that we
17 make sure that the NOV is sort of the last stop or, you
18 know, certainly emergency situations where I would have
19 to issue one, but, you know, preventive so that there
20 would be no question about the validity of the NOV.
21 There may be demonstrations that there wasn't any remedy
22 or adequate remedy, that the NOV is -- that's the thing
23 to do, the tribe knew that it was coming, that we take
24 the measures we need to in a tiered-step process so that
25 the question of withdrawing doesn't have to present

1 itself, or it's easier to say, "Hey, we did all of this
2 before we got to this point."

3 COMMISSIONER DESROSIERS: I think historically,
4 to my knowledge, almost without exception, most NOV's
5 have resulted in settlement agreements. And whether
6 that be a combination of fine and conduct or rules and
7 how you're going to change the behavior, at the point
8 that the settlement agreement is fulfilled, they've
9 complied with the agreement. I guess at that point
10 there might be a question. Okay, now is it expunged or
11 withdrawn or does it just hang out there forever? I
12 guess -- is that one of your considerations?

13 CHAIRWOMAN STEVENS: Well, that's a consideration
14 that's been brought to our attention, if just sits there
15 forever more, even if there is a settlement agreement.
16 That goes to the question of expungement as well.

17 And would expungement do what you intended
18 it to do, sort of clear your record after a certain
19 amount of time or a certain measure was taken or a
20 combination or both? I'm worried about -- somebody
21 brought this to our attention, I forget where -- if a
22 bank wants to know -- you know, we have something in our
23 regs that talk about expungement, say, 573.X, a bank
24 could simply ask you, "Have you exercised any of your
25 rights under 573.X?" to sort of get around that question

1 of "Hey, have you" -- it's kind of like the bankruptcy
2 question, "Have you ever requested an expungement?" and
3 that may get around -- they may be able to get to
4 whether you had an NOV or not, even if it has been
5 expunged. Really, would an expungement do what some are
6 asking or hoping that it would do? You see what I mean?
7 It could be expunged. We could set it out in regulation
8 have it expunged. But, you know, partners or banks or,
9 you know, management officials, whoever you're doing
10 business with could still ask the question if you've
11 exercised the expungement processes.

12 Can I ask, what do you all do? I mean, if
13 you're issuing -- as TGRAs, what you're doing with
14 violations to individuals or to the operations with
15 anyone that you do business with, what happens to those
16 records? What goes on? It stays on the record?

17 COMMISSIONER DESROSIERS: We -- if it was a
18 regulatory warning, usually a year or two, it goes away.
19 If it's an actual enforcement action, a licensing
20 sanction or fine imposed, it don't get expunged; it's
21 there forever. But, you know, in your case and our
22 case, I mean, in that relationship, I guess one of the
23 other concerns besides lenders looking for compliance is
24 if the state is looking at my record of compliance with
25 NITC, I'm probably going to get a lot more scrutiny from

1 them breathing down my neck than if I have no history of
2 violations. I mean, to me, that would be a
3 consideration as well.

4 CHAIRWOMAN STEVENS: Yes, Sherry?

5 COMMISSIONER RODRIGUEZ: I know this is kind of a
6 naive way of looking at it, I guess. The two
7 comparisons you were just talking about, how we do it
8 within the commission and dealing with license issues or
9 compliance issues within the facility or NIGC, who is
10 supposed to be helping us figure this stuff out and
11 following -- helping us follow guidelines, I don't know.
12 I just -- I would see it more as you guys would be
13 willing to work with us to help figure this out and not
14 put black marks on us if we're trying to figure it out.
15 You understand what I'm saying? So it's an automatic
16 mark on your record because we did an NOV and we're
17 willing to work it out so we worked it out. To me, I
18 don't know. I guess I'm just thinking there would be an
19 assumption that you guys would be willing to work with
20 us to help keep or record clear because we're really
21 trying to do the right thing.

22 CHAIRWOMAN STEVENS: So more of a compliance
23 model versus a punitive model?

24 COMMISSIONER RODRIGUEZ: Right.

25 CHAIRWOMAN STEVENS: That would be my hope is

1 that we could solve the issue before it comes to the
2 point of an NOV because I really how serious an NOV is
3 for a tribe. And perhaps the way to go here is with the
4 sort of step system before you get to an NOV, a more
5 formalized -- formalized process.

6 Here's a question: Yeah, this one always is
7 an interesting question. In the appeal process, many
8 of, you know, the decisions for enforcement there --
9 they come from the chair. The chair makes the decision.
10 And on appeal, if a tribe appeals it and they don't go
11 through the settlement process, the chair sits on the
12 appeal board. There's three commissioners and the
13 appeals go to the full commission. And so the question
14 is: Should the chair sit on the appeals? We only have
15 three people.

16 So the only reason we ask these questions is
17 because they have been brought to our attention. At
18 some time a tribe has mentioned or multiple tribes have
19 mentioned to us, "Hey. Why does this happen and should
20 the chair be sitting on the appeal?"

21 Yes.

22 COMMISSIONER POWLESS: Mark Powless, Big Sandy.

23 With the chair as part of the appeal process
24 and the chair making a determination that there is an
25 NOV, sitting in the appeal process would be seen as a

1 conflict of interest. The fundamental perception exists
2 that there is a conflict of interest. The perception
3 being what it is and perhaps there should be some type
4 of a recusal process for a chair. I would naturally
5 think that the chair would make a decision, the appeal
6 goes to the chair and to the other members. And whether
7 or not an individual would have a process for appearing
8 would be a question of which creates a conflict of
9 interest. That would be my perception anyway.

10 CHAIRWOMAN STEVENS: Thank you.

11 DEPUTY COMMISSIONER ROBERTS: John Roberts,
12 San Manuel.

13 Putting a lawyer hat on for a bit, just
14 going on past history and everything, I understand the
15 argument that the chair would have to recuse. The other
16 problem then is that, again, most courts of appeal you
17 have an odd number of judges for a good reason.

18 So in the instance here, you have two
19 commissioners, one votes for, one votes against or in
20 the instance in recent history where there was only two
21 commissioners. So you'd have the chair recusing and
22 you'd have one commissioner making the decision. So
23 that would be something else. There may be a perception
24 that there is a violation of due process.

25 The other side of it is the chair would be

1 issuing the ruling. You still have the opportunity
2 where the chair is either convincing the other two
3 commissioners of the soundness of the decision or the
4 other two commissioners could prevail upon the chair to
5 show, you know, the weakness of their ruling. But I
6 think the problem is you've got to keep up with the odd
7 numbers and the more you keep whittling it down, the
8 less due process you actually have.

9 CHAIRWOMAN STEVENS: Yes. Grab a microphone
10 there.

11 UNKNOWN SPEAKER: John, question on that and I
12 was consulting with the almighty Tracy Burris. Could --
13 and not having the lawyer hat on, could there be
14 something where there would be a presiding officer for
15 your initial and then go to the full commission as an
16 appeal?

17 DEPUTY COMMISSIONER ROBERTS: Knowing how the
18 federal government is set up and how the agency is set
19 up, I'm not sure how much flexibility they have for
20 something like that. Again, you're looking at a whole
21 set of regs, which is probably the last thing we want.

22 CHAIRWOMAN STEVENS: Yes, Tracy?

23 COMMISSIONER BURRIS: Just out of curiosity, I'm
24 trying to think back. The process goes to the chair,
25 the commissioners, and anyone challenging goes to

1 interior to the administrative hearing officer?

2 ATTORNEY ROBERTS: It can go to a presiding
3 official to determine facts and make a recommendation
4 and then it goes back to the commission.

5 But following up on the comment that it
6 may -- if the chair does participate within the appeal,
7 which has been the practice, sometimes the other
8 commissioners -- I mean, history has shown that the
9 chair has changed their mind on appeal and actually
10 changed their position and sided with the other
11 commissioners. So at least the history of the process
12 has shown that even where a chair issues a decision
13 that's on appeal, they have reversed themselves.

14 Could we just show a show of hands of folks
15 that have been involved in any sort of appeal before the
16 Commission? How about appeals before your own
17 commission?

18 And is your process -- generally speaking,
19 is it a detailed -- I mean, is everything laid out in
20 writing, the process very clear? I mean, one of the
21 comments, quite frankly, from our staff reviewing these
22 is our regs don't speak to this issue, our regs don't
23 speak to that issue. And I don't know whether that's
24 good or bad, but you can always get a number of
25 attorneys in the room and try to draft something down to

1 the minutia. But there seems to be a lot of flexibility
2 in our regs because things are not addressed squarely in
3 the regs. And so if folks have general comments on it,
4 that would be very appreciative. The Commission would
5 appreciate that input on how can we make these regs more
6 transparent without making them overly burdensome so
7 that tribes need to hire a slew of attorneys.

8 CHAIRWOMAN STEVENS: Yes.

9 COMMISSIONER DESROSIERS: I'll share our process
10 with you if you like. It's actually -- it's a two-step
11 process. I have delegated authority to certain
12 directors in the agency with authority to take licensing
13 actions and then whether it be a denial or a suspension,
14 the licensing would then appeal that action to a hearing
15 with me.

16 There is service notice requirements, time
17 requirements for notice, giving them notice of when the
18 appeal is. They are notified that they have the right
19 to have representation of their own choosing and at
20 their own expense. They're advised of the rest of the
21 process, if they don't like my ruling that they can
22 appeal, in that case, the tribal court. The hearing
23 process itself is much like -- the burden, of course, in
24 licensing is on the licensee to prove their suitability.
25 So -- but the director that took the licensing action

1 more or less acts as the prosecutor, presents their case
2 first on why they took the action that they took. The
3 appellant has the opportunity to question them or any
4 witnesses or any documentation, everything is provided
5 them, an opportunity to examine all documentation,
6 evidence that's presented or any surveillance evidence
7 is presented.

8 They then get their turn, either themselves
9 or through their representation to give their side of
10 the story or we're allowed to ask them questions. And
11 it's structured. Like, we have a formal court reporter
12 that records the entire hearing process. And then I
13 render a ruling in writing within a certain time frame
14 I'm required to do. It has to be served within a
15 certain time frame and service of that ruling again
16 advises them of the further appeal process. It's not if
17 they want -- if they want to appeal to tribal court,
18 there is tribal court procedures on how that goes.
19 Essentially follows the same program and you petition
20 the court when the notice of appeal and within certain
21 time frames. Your petition has to include a bunch of
22 certain things, the reason why you're appealing, what
23 the ruling was and why you think it's subject to being
24 overturned, in other words, is there new evidence or
25 something.

1 The court procedures do specify to some
2 degree that -- that the appeal -- that the judge's
3 ruling on my ruling can only consider did I prove the
4 violation and did I have authority to do what I did. In
5 other words, they can't tamper with the sentence, so to
6 speak. They can't modify my sentence. If we proved
7 they did this and we prove that that's a violation, then
8 my sentencing, whether it be a revocation or a fine,
9 isn't subject to modification by the appellate body.

10 Is that helpful? I mean, that's . . .

11 ATTORNEY ROBERTS: Just following up on some of
12 the steps that you laid out in terms of issuing a ruling
13 within a certain time frame. Do you -- is that days or
14 weeks or generally speaking?

15 COMMISSIONER DESROSIERS: My ruling is supposed
16 to be issued within 10 days of the conclusion of the
17 hearing.

18 ATTORNEY ROBERTS: And so I guess that we'd be
19 interested in comments in terms of, you know, should the
20 Commission consider setting some sort of time frame or
21 issuing a decision where we have, you know, written
22 submissions. Let's say, you know, it's just on the
23 papers and enforcement actions or actions to modify or
24 void contracts, those sort of issues. Should the
25 Commission impose some sort of deadline? Should the

1 Commission impose some sort of deadline in terms of the
2 submission of new evidence? Should it be within a
3 certain time frame after the briefing? Should -- or
4 should we just leave it to, you know, something like
5 before the Commission issues the decision? Any sort of
6 thoughts on time frames and deadlines would be helpful.

7 COMMISSIONER DESROSIERS: Well, if your appeal is
8 based only on written submissions, briefs and any new
9 evidence and there's no -- there's no physical formal
10 hearing, oral arguments or any of that, then I would
11 think you get one shot, you know, to make a case and I
12 would think you would want a deadline by which they have
13 to complete that submission. And then I think it's
14 reasonable that you would have a deadline to rule on
15 what was submitted.

16 CHAIRWOMAN STEVENS: Yes.

17 COMMISSIONER DESROSIERS: Just to add a little
18 bit more. The way we do it, we keep it somewhat
19 informal and the licensee friendly. We don't follow
20 Federal Rules of Evidence. We don't follow California,
21 you know, state rules of evidence.

22 But as both sides have a chance to examine
23 any documents and they're given adequate time, you know,
24 to review, asked do they have any reason to doubt the
25 authenticity of the document, that sort of thing.

1 Having been involved in the process, you
2 know, it flows very quickly and without getting bogged
3 down in minutia. And, again, keeping the lawyers away
4 from it in the sense we're just -- you know, sense of
5 fair play and justice. That's really the overriding
6 concern. We just set some realistic parameters because
7 here and there having reviewed other ordinances and
8 other policies sometimes we leave out, and within "X"
9 period of time, you need to render a decision.

10 But, also, keeping it realistic in terms of
11 if notices are being sent by regular mail, you know,
12 keep in mind what the time constraints on that are on
13 your end and also, you know, on the appellant's end.
14 Just kind of straightforward simplicity should work.
15 And we've found it's very effective in our operation.

16 CHAIRWOMAN STEVENS: Here's a question. And it
17 relates back to an earlier conversation this morning on
18 fees. And if we get to a point where late fees have
19 been assessed and still fees have not been paid, fees
20 have not been paid and we trigger a point in time where
21 an NOV should be issued, some action needs to be taken
22 because there is no compliance to pay the fees, even if
23 we set that mechanism up, should that late fee notice
24 and the assessment appeal process be governed by the
25 same as NOVs, the same sort of appeal process as what we

1 have in place or will have in place for NOVs, civil
2 fines and closures? Same process?

3 Yes.

4 COMMISSIONER BURRIS: Tracy Burris, Viejas.

5 So how bad is that process? I mean,
6 statistically, how many late fees? How many late -- how
7 bad is it? I mean, it goes to the structure. You're
8 saying 50 percent of us or 60 percent of us are doing
9 late or is it 2 or 3 percent, 1 percent? I think there
10 has to be a degree of severity by which we want to set
11 the fee process that compares to the fee.

12 CHAIRWOMAN STEVENS: Well, one of the reasons why
13 we're changing or suggesting that we change to a fiscal
14 year is I think some of the trouble is that tribes
15 trying to fit into the calendar year and the time it's
16 taking them to assess their fees and put them forward
17 based on that. And we're hoping that remedies some of
18 it. And we're using their audited financial statements
19 instead. That might be causing some of the problem. As
20 far as numbers, I don't know right offhand. Most of the
21 tribes are paying on time and paying what they should be
22 or giving their best effort to pay what they should
23 based on the calendar year. So I really couldn't give
24 you numbers on that. I think it will go down. When we
25 change to fiscal year, I think the calculation from the

1 fiscal to the calendar year is what's causing some to be
2 late.

3 COMMISSIONER BURRIS: I mean, those that are
4 having problems would be objecting to anything that is
5 severe and those are that meeting the schedule might
6 think whatever because we know we're going to meet that
7 for whatever reason.

8 COMMISSIONER DESROSIERS: I can't speak for the
9 NIGC today, but when I was there, probably 90 percent of
10 NOVs dealt with either late fees or failure to submit
11 their audits. And it's probably still the vast majority
12 I would guess.

13 The only other kind of things that might be
14 appealed, denial of approval of a management contract,
15 denial of approvals of certain contracts that they
16 approve. But those are really in my experience where
17 the minimum -- there was never an NOV issued for
18 non-compliance with MICS. That was more of a mutual
19 let's-work-it-out-with-the-clients kind of situation.
20 There were never any NOV's for that.

21 Does that answer your question?

22 COMMISSIONER BURRIS: You know, part of me says,
23 hell, make it tough as hell. I mean, I do it. Most
24 people I know meet it. So why would I worry about it?
25 But on the other hand, I don't know how many are missing

1 for whatever reason. And if it's a high number, then
2 obviously, if it's the fiscal year versus calendar year,
3 it may have an impact and there definitely needs to be
4 study. And if not, we really need to figure out the
5 real reason why. But I don't want it to carry over --
6 this type of process to carry over into something else.
7 My tendency would be let's be relaxed. And then I don't
8 know, does it go to pre-NOV or does it go straight to
9 NOV?

10 ATTORNEY ROBERTS: I think as Norm mentioned,
11 some just went to NOVs. And so, you know, one of the
12 questions here is if we set up a process whereby what we
13 were talking about this morning, you know, if it's
14 within a 90-day time frame, there is a late fee
15 assessed. What sort of appeals process should we have
16 for that assessment of a late fee? Because let's say --
17 let's just make up the late fee is \$500. Well, appeal
18 of that late fee is going to cost more than the late fee
19 itself. And so should the Commission look at some sort
20 of streamlined process for those? Because let's say we
21 say "Hey, the assessment is wrong. You didn't pay your
22 fee on time" and the tribe comes back and says, "Well,
23 actually, we think the way you've calculated is wrong.
24 We think we've paid the amount is due at NIGC."

25 And so how do we handle those sort of

1 processes, and should we use a relaxed more informal
2 process something different than what we have on the
3 book right now?

4 COMMISSIONER BURRIS: The question I ask, then,
5 is what is the impact on the NIGC? Does this short your
6 budget? What is the impact? In other words, the
7 severity of the crime should impact -- you know, a lot
8 of people who respond because they didn't pass their
9 budget maybe.

10 On the other hand, what is its true impact?
11 As you say, \$500. Some may say, "\$500? I might as well
12 be late." You know, so is it 5,000 or, you know,
13 percentage?

14 But then again, I have to ask the agency:
15 What's the impact to you, or is it just the fact that
16 it's late? And we have to have a standard based on
17 that. I think in fairness to the tribes, if you're
18 operating on tribal money, then what is the impact to
19 you?

20 CHAIRWOMAN STEVENS: That gives me information
21 that I should have the next time we talk because our
22 operation is funded by fees, and if there is an ongoing
23 pattern of late fees or miscalculated fees, that causes
24 a problem for us operationally. So that's just
25 information we're going to need for the next time we

1 discuss this.

2 COMMISSIONER BURRIS: I'm going to ask a
3 question, and I don't remember. I know I've asked it,
4 but a long time ago, something I heard. When the NIGC
5 collects fees for a given year, any overage of what you
6 extend in your budget each year, do you carry it over or
7 does it have to go calculate back to the tribe for that
8 year?

9 CHAIRWOMAN STEVENS: We have authority under the
10 Act to carry it over.

11 COMMISSIONER BURRIS: It's a certain amount,
12 though, isn't it, that you normally carry it over?

13 CHAIRWOMAN STEVENS: We have to get by long
14 enough. Right now the fees are six months apart.
15 They're biannual. So we need enough to carry us six
16 months.

17 COMMISSIONER BURRIS: Ahead of time?

18 CHAIRWOMAN STEVENS: Ahead of time.

19 COMMISSIONER BURRIS: Yeah.

20 CHAIRWOMAN STEVENS: So we have enough to get by
21 for the next six months and then the next fee assessment
22 comes in and the tribes pay their fees. So unnerves me
23 a little bit because I don't live like that personally.
24 It's a little nerve-racking because if something happens
25 to those fees, whatever it might be, whether it's late

1 or the industry stabilizes a little bit, and our budget
2 goes down, the amount of fees that are coming in --
3 yeah, we go for six months and then the next set of fees
4 come in to fuel us for the next six months.

5 COMMISSIONER BURRIS: You know, you raise a good
6 question there because now you're talking about the
7 impact of the economy which does alter what the
8 conclusion may be. So it may mean the severity of the
9 penalty would be higher because of the unseen
10 forecasting of the economy and the need for NIGC to have
11 its funding. Thank you.

12 CHAIRWOMAN STEVENS: Does most everybody e-mail?
13 I know that seems like a strange question. Or faxing?
14 Service by fax? We've heard a lot of concerns about
15 whether we should be serving tribes by fax or whether it
16 needs to be an actual document, how we actually have
17 tribes that have trouble with faxing. We actually have
18 tribes that have issues with e-mailing as part of the
19 service. We're looking at what methods by which we
20 should provide service on notices and appeals.

21 MS. ANDREWS: I think I went through collecting
22 the late fees and stuff that you guys were talking
23 about. I don't think there is any harm in having
24 something informal. A late fee is a late fee. It's not
25 an NOV yet. If you have the procedure down for an NOV,

1 I really like the idea of having some kind of compliance
2 authority. I think it's important to have something in
3 writing 30 days before the NOV is issued. You're going
4 to give them a chance to comply. And giving them that
5 warning before the NOV comes out and then maybe down the
6 road the issue of trying to withdraw that NOV isn't such
7 a big deal because you already had the first warning to
8 begin with.

9 But I think the late fees, I don't think
10 that they need to hit that point until they are, like,
11 90 days late, like you were speaking of earlier. Then,
12 to me, it's like, okay, now you're in the NOV process.
13 So 30 days before the end of that 90, you kick them the
14 compliance one when you say it's going to go to NOV at
15 that point.

16 So I think the late fees can still go into
17 that process, just start out more formally. And having
18 some kind of compliance warning, saying yes, eventually
19 late fees will work into the process.

20 And as far as communication goes, I think
21 for my tribe every which possible way you can. God only
22 knows where that one fax is going to end up -- and if
23 the receptionist or secretary that received it made the
24 copies that should have been made to give all counsel or
25 all gaming commission or whoever.

1 CHAIRWOMAN STEVENS: Yes, sir.

2 COMMISSIONER DESROSIERS: Having firsthand
3 knowledge of the problems with faxes and e-mails with
4 the task force here in California, the one thing that's
5 not going to change is the office where the gaming
6 commission is located or the tribe is located, more
7 likely than not. And so that -- the tradition is the
8 best way to go, whether it's by certified mail, return
9 receipt requested, there is no question.

10 But we've gone through this for the last
11 four years in California and to the point where less and
12 less tribes are using faxes. There are tribes in some
13 remote areas of the state where the telephone
14 transmission lines are not really where they should be.
15 And, again, the same thing with the e-mail. It gets
16 caught with the spam filter, sitting in your out-box and
17 never really went, and you're relying on Microsoft to
18 make sure that the legal process has been completed.

19 So you really need to go, you know, with the
20 old way, and that's why I imagine when you're setting
21 your time limits for notice and response that you have
22 to take into account you need to be using snail mail.

23 I might add to that, I was surprised to hear
24 in our tribal court they cannot accept faxes or e-mails
25 of any documents or evidence or anything I want to

1 submit. I have to send everything through received
2 mail, either US or UPS or Fed Ex. I can't send them --
3 I was shocked.

4 And, likewise, they can't send me anything
5 either. By the time they send me their notice, I mean,
6 through the mail, I've lost 3 of my 10 days that I have
7 to respond to what I'm supposed to.

8 CHAIRWOMAN STEVENS: Yes.

9 COMMISSIONER RODRIGUEZ: As far as the mail or
10 e-mail or fax, I believe any of those -- like she said,
11 you know, we can do all three. But what I think is
12 important is that the gaming commissions, the tribal
13 gaming commissions, make sure that we get that. Because
14 sometimes it goes to tribal counsel and it doesn't go
15 any further. That doesn't help us. Being the primary
16 regulators of this state, we are the ones who are going
17 to make sure this gets done. It's important that we get
18 that information.

19 CHAIRWOMAN STEVENS: So it sounds like the
20 consensus is that when we're serving notice of an
21 action, we do it through either certified or return
22 receipt mail, snail mail basically, good old-fashioned
23 mail.

24 The other thing that we're trying to do from
25 our side of it as an agency is trying to receive

1 information in other ways besides snail mail. You know,
2 submitting information, not having it be restricted both
3 ways, but at least restricting -- it sounds like, you
4 know, the actual service of action be certified mail,
5 and then we can probably supplement that and hope that
6 it gets where it needs to go. But the actual document
7 will need to go by regular mail, certified somehow. But
8 we can receive information in a number of different
9 methods, whether it's fax, e-mail -- because we're
10 not -- our system does not necessarily allow that kind
11 of movement. We're hearing a lot of tribes wanting to
12 submit that way. Okay. That's the fun world of
13 enforcement actions and appeals.

14 COMMISSIONER BURRIS: Listening to my -- Tracy
15 Burris.

16 Listening to my lawyers, I notice the courts
17 are requiring most of them now to be sent by
18 electronically and not either mail or fax. That's an
19 interesting twist in terms of that. I'm just throwing
20 that out there.

21 CHAIRWOMAN STEVENS: Maybe to get away from
22 paper, removal of trees. So that's appeals and
23 enforcement.

24 Yes. Norm.

25 COMMISSIONER DESROSIERS: Well, I don't mean to

1 sound like I'm -- if you don't mind the trouble of
2 having agreements with multiple different options. You
3 know, if you and I agree that I'd like to receive stuff
4 by e-mail as long as you get an acknowledgment and
5 receipt, I don't have a problem with it. Probably most
6 tribes wouldn't. You know, we've worked hard with Eric
7 here to get set up where we submit our license
8 determinations electronically, and we love it, you know.
9 But each side gives, you know, acknowledgments of
10 receipt and whatever and we communicate that. If you
11 don't get my acknowledgment and receipt, then something
12 has gone sideways and then you have to mail it to me. I
13 think that would be our preference, but that might not
14 work for all tribes.

15 COMMISSIONER BURRIS: Just so -- in doing the
16 process, I think what John alluded to, I think what the
17 problem -- you'd have to change the reg -- the person
18 that's notified that's on that list, instead of it being
19 a person, the e-mail would be an account that would be
20 set up specifically for the Commission as a whole, you
21 know, for the commissioners or -- without a name of
22 someone that may not be there in two years and doesn't
23 get taken off the list. I think that's often a lot of
24 problems we have with e-mails is it's someone who is no
25 longer there, so it doesn't get received.

1 But what you're referring to now is the
2 process, not to a person, but to a specific department
3 or whatever, those could be set up. But I think you
4 have to change the reg, if I remember right, because the
5 deal says it has to be identified as a person who would
6 be responsible for seeing such notifications.

7 ATTORNEY ROBERTS: Yeah. I guess one way, maybe,
8 to address what everyone is saying is maybe after that
9 initial service where you know there's an issue, then
10 the parties can figure out how they want to be served
11 thereafter. Maybe the initial is certified mail and
12 then thereafter it's up to the parties on how they want
13 to effectuate service.

14 CHAIRWOMAN STEVENS: So if there are no other
15 comments on this exciting topic, we can take a break.
16 We actually made it all the way to the break. I wasn't
17 sure if this was going to be a topic that was not going
18 to be very exciting or at least garner a lot of
19 comments. So there are refreshments back there. Let's
20 take a 15- or 20-minute break, stretch our legs, and
21 we'll come back and talk about Group 4, which is more
22 interesting stuff on background investigation, key
23 employees, primary management officials, monitoring and
24 investigations, all that sort of background stuff.

25 (Recess taken from 2:40 to 3:19 p.m.)

1 CHAIRWOMAN STEVENS: I'm going to turn the
2 microphone over to Larry again for a quick overview of
3 what is in Group 4.

4 ATTORNEY ROBERTS: Okay. The parts that we're
5 going to discuss in this part of the consultation is
6 Parts 556, 558, dealing with background investigations
7 and gaming licenses, primarily the pilot program that
8 has been in place by NIGC and how we formalize that
9 pilot program in regulations if we move that route.

10 We're going to discuss 571, monitoring
11 investigations, Part 531, collateral agreements, and
12 Part 537, background investigations for persons or
13 entities having a financial interest or having
14 management responsibility in a management contract. And
15 then Part 502, definitions.

16 In terms of the pilot program under Part
17 556, the notice of inquiry requests a comment from
18 tribes in terms of whether we should promulgate
19 regulations to formalize the pilot program. We heard
20 very early on from staff that most tribes or the vast
21 majority of tribes are participating in NIGC's pilot
22 program.

23 And what the pilot program does is it
24 essentially allows tribes to submit a notice of results
25 to NIGC and to maintain the applications and the actual

1 investigative reports with the tribe.

2 In response to the NOI, the public supported
3 formalizing this program either through regulation or
4 policy. A couple of questions that we've been putting
5 forth in the consultations is: If the Commission goes
6 forward with formalizing the pilot program through
7 regulation, could that regulation change or impact
8 current ordinances and what impact would that have on
9 tribal gaming ordinances, if any?

10 And the second question is: How should
11 notice be sent to the NIGC? Right now, it provides for
12 two notifications to NIGC. The tribe notifies NIGC of
13 the background results and the tribe advises NIGC of the
14 issuance of a license.

15 Fingerprint processing. I know that this
16 has been a question or an issue for some time, that is,
17 whether NIGC should allow fingerprint processing for any
18 employee designated by the tribe regardless of the
19 position of that employee. Public comments on that have
20 generally supported NIGC allowing access to the
21 fingerprint processing for any employee that a tribe
22 designates.

23 Background investigations for persons or
24 entities with a financial interest in or having
25 management responsibility under a management contract.

1 The Commission asks in the NOI whether NIGC should
2 clarify that management contractors in Class II or
3 Class III facilities must have completed background
4 investigations.

5 Comments generally from the public were a
6 majority supported this clarification. We received some
7 comments that NIGC doesn't have any authority to approve
8 Class III management contracts or to require background
9 investigations. And some comments suggested that this
10 issue was already covered by tribal safety and compacts.

11 Some suggested revising the background
12 investigation process related to the approval of a
13 management contract. And I think some of the comments
14 that we're hoping to hear from all of you are how could
15 a process be streamlined while still maintaining the
16 integrity of the current process and what entities, if
17 any, would qualify for a streamlined process.

18 Collateral agreements. We had a question
19 during the break and then we can talk about this a
20 little bit more during our discussions, but, as most of
21 you know, NIGC has defined collateral agreements within
22 the regulations. And I'm just going to read it. There
23 seems to be some ambiguity, although I'm kind of
24 completely shocked that some folks don't know exactly
25 what this means.

1 Collateral agreement means any contract,
2 whether or not in writing, that is related either
3 directly or indirectly to a management contract or any
4 rights, duties or obligations created between the tribe
5 or any of its members, entities or organizations and a
6 management contractor or subcontractor or any person or
7 entity related to a management contractor or
8 subcontractor.

9 So I think we would like to hear more in
10 terms of what the tribes view as collateral agreements.
11 The majority of -- the NOI asks whether the regulations
12 should be revised to require both submission and
13 approval of collateral agreements, and the comments we
14 received from that are that there was support for
15 requiring the submission of collateral agreements.
16 There's disagreements about whether collateral
17 agreements should be approved by the NIGC or whether
18 NIGC is limited to just approving management contracts
19 and not collateral agreements. And then some comments
20 suggested that requiring actual NIGC approval of
21 collateral agreements would discourage private
22 investment.

23 We have heard that NIGC does not have the
24 authority to actually approve collateral agreements,
25 that these agreements are business decisions of tribes

1 and that they would eliminate NIGC's authority to manage
2 the contracts and that agreements other than a
3 management agreement should be left to the discretion of
4 a tribe.

5 Other tribes and the public weighed in
6 saying no, actually, NIGC should review and approve
7 collateral agreements, that NIGC has a trust
8 responsibility to do so, that approval of collateral
9 agreements and management contracts would protect a
10 tribe's sole proprietary interest in the gaming facility
11 and that approval of collateral agreements would
12 discourage any third parties from trying to take some
13 sort of nefarious advantage of a tribe and then that
14 approval would reduce -- of collateral agreements would
15 reduce any risks to both parties.

16 With regard to Part 571, monitoring
17 investigations, the notice of inquiry asks whether to
18 clarify -- whether the Commission should clarify NIGC's
19 access to papers, books and records where those papers,
20 books and records are stored offsite and maintained by
21 third parties.

22 Some comments basically said NIGC already
23 has this authority and we do not need to revise the regs
24 to make that clear. Others said that we should only
25 clarify that NIGC can access off-site locations

1 maintained by third parties and not make any other
2 changes to Part 571.

3 Some comments suggested that tribes should
4 be required to maintain all these documents on site and,
5 therefore, there would be no need to clarify access to
6 off-site locations. Comments suggested that NIGC only
7 request records within its statutory authority and that
8 any regulation that is amended should clarify or deny
9 NIGC authority to access Class III records.

10 Definitions. We would be interested in
11 comments on the definitions in general, any definitions
12 that you feel could be clarified or improved. The
13 notice of inquiry asks whether the definition of net
14 revenues for management fees should be revised and
15 incorporate GAAP. A number of comments supported this
16 revision, although some comments said, you know, you may
17 want to do that but GAAP may be inconsistent with IGRA's
18 definition of net revenues and you need to stay in
19 compliance with IGRA. And if the intent in moving
20 forward with changing the definition is to change the
21 calculation of management fees, then we should be using
22 some sort of different terminology. And that -- some
23 suggested that NIGC consider repealing the most recent
24 change to the definition because the definition right
25 now is not consistent with IGRA.

1 So general questions on net revenues is
2 whether the definition needs clarification, whether GAAP
3 would actually provide that clarification and whether
4 the definition can be improved upon while still
5 remaining consistent with IGRA's definition of net
6 revenues. And that is it for Group 4.

7 CHAIRWOMAN STEVENS: I apologize there for the
8 pause. I'm looking at my notes here.

9 In the background investigations and getting
10 licenses and the whole pilot program, most everybody is
11 on the pilot program. It's not really a pilot program
12 when it's been around about seven or eight years.
13 That's why we're addressing it.

14 We heard immediately that tribes said we
15 should just make the pilot program part of your
16 regulations in 506 and 558. So we're looking at
17 incorporating the pilot program into those parts.

18 One of the questions I have is we've
19 heard -- one is that I assume we're getting favorable
20 comments about that no matter where we go in trying to
21 maintain and, well, create some consistency across the
22 regions, because each region works with the tribes in
23 their area for the submission of new reports and
24 licenses and results. So we want to create some
25 consistency through the regulation once we draft this in

1 a way that incorporates the general provisions of the
2 pilot program.

3 But also, one of the things that we've heard
4 from tribes is that we should be -- in terms of those
5 background results, we should be helping tribes. If you
6 have people who are moving throughout the industry and a
7 background has already been done on them, some tribes
8 would like to have access to that information and that
9 they would like us to be -- in some way have a role in
10 that. How can we help inform a tribe's licensing
11 decision if work has already -- if someone has already
12 been licensed in another jurisdiction, another tribal
13 jurisdiction, then, you know, how can we help aid a
14 tribe in that licensing process for that person or
15 adding onto a current license history.

16 We've heard some mixed things about this
17 because some tribes who might have done the foot work
18 may not want to share some of this information. Yet we
19 hear from tribes, "We need you to help us so that we can
20 trim our costs. If we don't have to go through the
21 exercise of having to license somebody in another
22 jurisdiction that has already licensed them, if there is
23 new information since the last time they were licensed
24 from another jurisdiction, can't we just get that
25 information?"

1 There are some tribes who are not able to
2 have as hearty a licensing group address this. You
3 know, it's interesting because we've talked to some of
4 the other jurisdictions like Nevada and they -- you
5 know, a lot of folks go through Nevada and get
6 information about licensees that have been licensed in
7 their jurisdiction and they share that information as
8 long as the applicant has signed a release.

9 But, you know, I'd be interested in hearing
10 what you all think about what role the NIGC should have
11 in trying to be sort of a warehouse or at least a
12 conduit of licensing information. Since we have a lot
13 of regulators in the room, I thought that might be an
14 interesting question to ask to begin.

15 EXECUTIVE DIRECTOR SCHULTZE: Jerry Schultze from
16 Morongo. What's the TAP program for? Isn't that what
17 this is all about?

18 ATTORNEY ROBERTS: The TAP program, as it
19 currently stands, provides information about where that
20 person has been licensed before. Then my understanding
21 is that you need to reach out to that particular tribe
22 to get any information on the individual. All it shows
23 you is that they may have worked there or applied there.

24 And so I think the question from the
25 chairwoman is should we be enhancing that so that if

1 Tribe A has sent a notification of results, we can
2 provide that information directly to Tribe B, as opposed
3 to Tribe B having to track down all the different.

4 EXECUTIVE DIRECTOR SCHULTZE: But at what cost?
5 How many more employees, etc.? I mean, right now if we
6 find that someone works for another tribe, we get on the
7 phone, say, "Hey, we're going to send you a release"
8 and, boom, that helps the communication channels to help
9 us going with all the other commissions and something
10 like that. I think that's a good thing.

11 COMMISSIONER DESROSIERS: Norm DesRosiers,
12 San Manuel.

13 Actually, we're talking about two different
14 things. This pilot program is a whole separate issue
15 than TAP. The TAP, our feeling is -- and we had thought
16 that it would be the goal for that program to give more
17 information than this person had applied for a license
18 in this tribe. We had hoped -- and I don't see why it
19 can't be enhanced to say this person was licensed by
20 this tribe, this person was denied by this tribe, or
21 this person was suspended or revoked by this tribe.
22 That would be extremely helpful. And we don't need any
23 more than that. Then we can get the rest of the story,
24 if we need to, from the tribe. But to have the
25 information that they were suspended or revoked and run

1 that against what they've said on their application is
2 extremely valuable to us. But for you to get more
3 involved in the whys and the wherefors and all that, I
4 don't think you want to go there.

5 First of all, the one- or two-page summaries
6 that we give on our background results of suitability,
7 terminations, you know, for you to give a whole lot more
8 information, you're going to need a warehouse for all
9 the paper that went along with any subsequent actions
10 and denials and, you know, all the rest of the due
11 process and the hearings. So I don't think you need to
12 go there.

13 I think the -- the Tribal Access Portal
14 would be valuable if you just added those other three
15 categories rather than just saying, "Well, they've
16 applied for a license at this tribe or called in." I
17 think that's the consensus from everybody I've talked to
18 in tribal regulations.

19 Now, the pilot program, as you've said, I
20 mean, that -- there again, everybody -- the reason
21 everybody is on it is because if you didn't -- if NIGC
22 years ago didn't institute that program, they would need
23 to rent warehouses for all the submission requirements
24 for every license. I mean, the file for every applicant
25 would be that thick. That's why they went to it, and

1 it's worked beautifully. And so I don't think anybody
2 is objecting to formalizing that into a regulation.

3 CHAIRWOMAN STEVENS: And that's what we've heard
4 in regards to the pilot program. We will -- it's our
5 understanding that -- at least I'll say it's my
6 understanding that the same information is being pulled
7 from region to region that -- you said you worked with
8 Eric. We are all pulling the same information. I think
9 as we move forward and incorporate the pilot program
10 into the regulation, we're looking to create a
11 consistent process. And one of the things that we've
12 heard is, you know, go ahead and formalize the pilot
13 program but don't change the way I do this, from the
14 tribes. Don't -- and I guess -- I guess there is some
15 slight variation from region to region on how this
16 happens. The same information is being pulled. It
17 might look different if and when we get to a point where
18 we're formalizing this. But it's meant to create some
19 consistency from region to region in the process, to
20 pull the same information we're asking from you in
21 northwest as opposed to Oklahoma or down here in
22 California. So we do want to create some consistency.

23 The other thing I wanted to say about the
24 Tribal Access Portal, another area of improvement that
25 we're looking at is to make them a more useful tool for

1 tribes. What it was intended to be is not what I think
2 is happening today when you can only go in and see, you
3 know, John Doe, this tribe, and nothing else. It's
4 really not very helpful. We do have some technology
5 challenges right now, and we're looking to address that
6 and have the TAP be more useful than it is right now.

7 You know, now that we're talking about it,
8 are there any other suggested changes to the TAP portal,
9 the Tribal Access Portal? Any suggested changes aside
10 from what you've mentioned about whether they've been
11 licensed, denied, revoked, suspended? Any other changes
12 to that system?

13 Okay. So the Commission has a certain
14 amount of time after we receive some results and we have
15 a certain amount of time to object to the results.
16 Usually, it's my understanding that there -- tribes are
17 postponing issuing a license or they issue a temporary
18 license while that period is taking place. Or they just
19 don't have them work until they hear from us as to, you
20 know, let the objection time, which I think is 30
21 days -- 60 days to object -- for us to object.

22 If we get information, should we be sending
23 a letter back to the TGRA saying "We have no objection"?

24 And it doesn't necessarily mean that we're going to
25 wait out the 60 days. But as soon as we have

1 information, should we be just turning around and
2 telling you, "Hey, it's clear. We have no objection to
3 this licensee and you can move forward"? How does that
4 sound for an option so that the TGRA is not sitting and
5 waiting and the employee is not sitting and waiting?
6 Or, you know, if you've hired them and we've objected
7 but you don't hear about it for a while, that they go
8 through the process, your normal licensing revocation
9 process, would that be helpful to you as the ones who
10 are issuing the licenses, to have, as soon as we know
11 that we have no objection based on the information that
12 we have that there is no objection? Because if we don't
13 have a full licensing package, we'll call you and tell
14 you -- say "We're missing this information. The Social
15 Security number isn't clear." We do that right away.
16 But if we're clear, should we be telling you right away,
17 "Okay. This licensee is good and we have no objection"?

18 COMMISSIONER DESROSIERS: Norm DesRosiers.

19 Back in the old days, we used to issue
20 temporary licenses because it took the NIGC and the FBI
21 six months to get us criminal history results. Since
22 that has been digitized and automated and we get
23 generally the results back within a couple hours, we've
24 done away with temporary licensing. We can print them
25 out, the licensing, within 24 hours.

1 A long time ago -- and I'm aware some tribes
2 do wait for your objection period before they issue a
3 final. My process on that is to not do that. We will
4 issue the license, if you object sometime, we will then
5 suspend and go on with that process. But we're going to
6 issue a license and assume that you're not going to
7 object. And that's a pretty reasonable assumption, in
8 that in my 18 years of thousands -- I can't tell you how
9 many thousands of applicants it was, and I had one
10 objection. And even that, after we explained it, was
11 withdrawn. So I don't -- when I was in -- the regional
12 directors could tell you better than I, but I don't -- I
13 suspect it's less than 1 percent, you know of applicants
14 that are objected. So I wouldn't recommend that any
15 tribe go the temporary route waiting for objections
16 based on experience. Those are my comments.

17 CHAIRWOMAN STEVENS: The burden certainly would
18 be on us to go through the exercise at the time of
19 issuing the letter or some sort of response to you,
20 whether that's e-mail, to say, "Hey, you know, this list
21 of applicants, we have no objection based on the
22 information you've provided us." That certainly would
23 be on us to, you know -- that would be -- the amount of
24 work that would have to go into addressing each licensee
25 through we have no objection, we respond to enough as it

1 is right now that are incomplete, that this is assuming
2 that the information that we have is complete. We do
3 have quite a few of those still that we're not getting
4 all the information correctly or we have bad Social
5 Security numbers, bad date of the births.

6 So just wanted to clarify that. That would
7 be more of a notice on us to just say "Hey, we have no
8 objection. Move on." But we know -- we know that
9 tribes -- there are some tribes who are waiting for us
10 and won't bring the person on or they do so on a
11 temporary license situation until they hear from us or
12 until the 60 days has expired.

13 Part 571, same thing, no objection, similar
14 thread, I think. No objection.

15 What about investigations? We've heard from
16 tribes. I think where I heard most about this was in
17 Minnesota at Great Plains. Tribes are left hanging out
18 there. Kind of like the appeal process. There is no
19 time line. So they're sort of left in the appeal --
20 infinite appeal process. There is no deadline in there.

21 If there is no -- the same thing with the
22 objection letters. They're just waiting out the time
23 frame and it will be a courtesy for us to say "We have
24 no objection."

25 What about investigations? We've heard

1 tribes say "Could you tell us if you close this
2 investigation? Otherwise, it's sort of looming over us.
3 It's unfinished business. You were here investigating
4 it. You asked for records and nothing came of it. And
5 we don't know. Do we close it out ourselves internally?
6 We're going to put these records away."

7 You know, as far as tribes are concerned,
8 it's just sitting there. It's still looming. Is it
9 necessary for us to say, "Okay. We've closed this
10 investigation"? Would that be helpful to you, to know
11 that that -- of course, we would reserve our rights to
12 open it back up with new information, but at least let
13 the tribe know and the TGRAs and the operations know,
14 you know, we've -- for the time being, we've closed out
15 this investigation.

16 COMMISSIONER DESROSIERS: That seems like a
17 no-brainer. I think everybody would say, yeah, we'd
18 like to know if it's closed. And that's just courtesy
19 too. I mean, that's just a courteous way of doing
20 business and being professional. I can't imagine anyone
21 would not want to know the status of the investigation
22 that they're the subject of.

23 CHAIRWOMAN STEVENS: And the reason this has come
24 up is because tribes have brought it to our attention
25 from their own individual experiences with the NIGC and

1 said, "You know, you did this investigation like three
2 years ago, I'm not hearing anything back. We keep
3 asking you about it and we keep hearing that the
4 investigation is still open but we've not been asked for
5 new information."

6 That's the only reason this has come up.

7 MS. ANDREWS: I'm going to concur with that
8 gentleman. I think it's just common courtesy.

9 CHAIRWOMAN STEVENS: And tribes have expressed to
10 us that it feels like a hammer just kind of looming --
11 looming there, intentional or not. So . . .

12 The other thing that's part of
13 investigations is the NIGC's access to documents,
14 especially when a third party management company has
15 those records off site. I've heard different comments
16 about whether or not we even need to clarify this
17 because we do have the authority to access records. But
18 it's my understanding there has been some pushback,
19 which is what brought this up, whether it's the
20 management company and the tribe or us trying to get
21 access to records about a tribe but it's on third party
22 premise and just maybe clarifying it in part 571.

23 These are all some of those little tweaks
24 that they're not monumental but we want to talk about
25 them before we clarify these types of changes.

1 COMMISSIONER DESROSIERS: One thing you might
2 want to consider in that discussion that's just recently
3 been the topic of discussion in my jurisdiction is the
4 cloud, you know. These are now held in somebody else's
5 servers and god knows where in cyberspace, and we may or
6 may not -- you know, you may or may not be able to
7 access them. So I'm just bringing that up because it
8 might be worthy as part of this discussion because I've
9 been learning about it myself. It's way over my head
10 but . . .

11 CHAIRWOMAN STEVENS: That may be even more reason
12 for us to clarify.

13 ATTORNEY ROBERTS: In terms of records that are
14 held by third parties, how should NIGC or should NIGC
15 notify tribes when they're going to access those records
16 and how should that -- what process should we use?
17 Should that process be part of a regulation.

18 COMMISSIONER DESROSIERS: Well, we're going
19 through an audit next month or next week, actually, with
20 your folks, financial and MICS and the whole nine yards,
21 a week process. I thought the notification was fine.
22 The team gave us plenty of advance notice what kind of
23 records they need, what they would like to have
24 available to help expedite it. I think I thought at
25 that point fine, I don't know that it could be done any

1 better in a regulation. But I can see where you may
2 have investigations that might require access to records
3 other than a routine audit.

4 One of my nightmares when I was sitting in
5 D.C. was the revenue distribution audits where you've
6 got to get into maybe tribal records to find out if
7 they're complying with your -- their approved plan and
8 where are all those records kept, and that gets pretty
9 sticky. And there may be other investigations that
10 aren't necessarily audit related. So I -- but I don't
11 think notice requirements -- I mean, again, this
12 professional courtesy is, you know, send a letter to the
13 designated agent that's in New York saying "We need
14 access to these records, wherever they're kept," and the
15 best that you can -- sometimes you get into an
16 investigation you find out, wow, we need more records
17 that we didn't know we needed when we started. That
18 stuff naturally progresses throughout the course of the
19 investigation. I guess you understand -- you know, normally
20 you can't be expected to be able to identify every
21 record that you eventually might need to complete an
22 investigation. That's just how investigations go. But,
23 I mean, notice to the agent on record that you're going
24 to be conducting an investigation, the nature of it and
25 what that -- at least at that time anticipate those

1 records that you need to access, wherever they're
2 stored, I think is reasonable notice. And if you don't
3 have a regulation stating that, I don't think that would
4 be unreasonable to have one.

5 ATTORNEY SCHLICHTING: Good afternoon, everybody.
6 My name is Melissa Schlichting. I'm a staff attorney
7 for the National Indian Gaming Commission and I am
8 located in the D.C. office as are all staff attorneys.
9 And general counsel and the chairwoman have asked me to
10 talk to you today about collateral agreements and also
11 background investigations for personals with financial
12 interest. And I know everybody is so excited to talk
13 about collateral agreements today, just can't wait to
14 give their comments. But as Larry alluded to in the
15 PowerPoint presentation, we have received a couple
16 questions about what exactly collateral agreements are.
17 And after listening to the definition, I think the
18 better question is what isn't a collateral agreement?
19 Anything in writing. Anything verbal.

20 How do you know if something is collateral
21 or not? And that's a question that we have struggled
22 with for a long time and that's one of the reasons why
23 we are here, why it's -- and identify it as a priority
24 is for you to give us input and tell us what do you
25 think collateral agreements should be. Does it need to

1 be redefined? Should we be requiring that you submit
2 the collateral agreements for the chairwoman to approve?
3 Should they be required to be submitted for review of
4 management contracts, which they currently are? These
5 are all questions that we are looking to you to provide
6 us with your input and answers.

7 I think the first question that the notice
8 of inquiry and also our notice of regulatory review
9 talked about was whether or not the Commission should
10 consider and has the authority to approve the collateral
11 agreements.

12 Does anybody have any thoughts on whether or
13 not the Commission should approve collateral agreements?

14 COMMISSIONER BURRIS: Tracy Burris.

15 I'm of the opinion -- I mean, you generally
16 look at it and you would say that if there is no
17 managerial role in any collateral agreement to the
18 operation, in other words, influencing what's taking
19 place, whether it's the game activity or anything to
20 that event, then it would not fall under a management
21 contract, therefore, it would not be reviewed.

22 So there has to be -- besides the terms, I
23 mean, if you're going to talk about terms in terms of if
24 it's a financial agreement, the question is does it
25 influence the day-to-day operation of that facility. If

1 it doesn't impact the day-to-day operation, then I would
2 say no, it doesn't. It's not -- it's neither a
3 management contract or a collateral agreement. It's
4 just an agreement between the tribe, the business arm of
5 the tribe and whatever it is.

6 ATTORNEY SCHLICHTING: I think that's a good
7 point. It's getting harder and harder to draw the line
8 between what is or is not a management contract. I
9 don't know how many people here are aware of the pending
10 Seventh Circuit appeal, Wells Fargo versus Lake of
11 Torches, concerning a financing agreement that basically
12 a court said no, this is management. I don't buy that
13 it's just financing because there are certain provisions
14 in it that say that they get to manage. So that makes
15 it a management agreement.

16 And a lot of times we have, prior to that
17 decision and after that decision, received a lot of
18 requests from banks, from tribes, from everybody under
19 the sun for our opinion as to whether or not something
20 is or is not management, and we've been very careful
21 about issuing those types of opinions. But until the
22 Seventh Circuit rules, it's sort of still -- we have the
23 underlying court opinion, but we don't have any
24 appellate court decision. What we say today may change
25 tomorrow depending on what the court says. So it's

1 getting harder and harder to draw the line between what
2 is and is not a management contract. And a lot of times
3 you can look at any contract and it will say in it "This
4 is not a management contract." Well, that doesn't mean
5 it really isn't. It just means that there's a provision
6 in there or something in bold letters in all caps that
7 says it's not intended to be. But the practical effect
8 of it, it may be a management contract.

9 It gets even harder when you're looking at
10 one step removed from that is whether or not it's
11 collateral to a management agreement. So it's hard on
12 the firsthand to decide, well, whether or not something
13 is or is not a management agreement, first of all. It
14 gets even harder to decide, well, is it an agreement
15 collateral to that management contract.

16 So that's why it's a very relevant issue to
17 what we do on a day-to-day basis to provide guidance to
18 people. We look at lease agreements. We look at
19 employment contracts. We look at consulting agreements,
20 development agreements, the sky is falling agreements.
21 I mean, you name it, we have looked at anything and
22 everything that looks like a contract. And even the
23 definition of collateral agreement in our regulations
24 can include, you know, verbal or written. You know, the
25 definition of what is a contract or an agreement can

1 change depending on what state or jurisdiction you're
2 in, if you have a tribal court opinion or tribal law
3 that effects what is or is not a contract. I mean,
4 there are lawyers here who devote their whole lives on
5 litigating whether or not something or is not a contract
6 or whether or not something is or is not valid. And
7 they're tough issues. I don't know what the answer is.
8 And that's why we're here to talk to you and to get your
9 input on whether or not we should even be considering.

10 And so that's going back to the basic
11 question: What should our role in collateral agreements
12 be? Should it be anything in addition to what it
13 currently is, which is just submitting it with a
14 management contract for our review but not for our
15 approval.

16 MS. ANDREWS: I'm going to have agree with that
17 latter statement. I think NIGC is a good resource for
18 tribes. When I was looking at some of the PowerPoints
19 up there, I was thinking, "Why on earth would we need
20 that kind of protection?" You know, I saw the pros to
21 having NIGC approve those. I really don't think that
22 that's your guys' jurisdiction or authority. I think
23 your guys' hands are full with just trying to provide
24 with what's a management contract. Like you said, there
25 are all of those people trying to put those terms in a

1 contract and saying "This is not a management contract."

2 And I think with the Wells Fargo decision, that's going
3 to be even trickier.

4 So as far as collateral agreements, I just
5 don't see the need for NIGC to step in and say that we
6 have to approve all those, although I like the fact that
7 you guys are there to review as necessary when it's
8 submitted to you.

9 CHAIRWOMAN STEVENS: Just to give you some
10 background, and I was mentioning this to some other
11 people on the side is we have a range. This is not
12 unheard of in responses to this, where some tribes are
13 saying "Just stay out of it. These are our business
14 decisions. Collateral, there is no management." You
15 know, other tribes that come to us later and say whoops,
16 this collateral agreement had management provisions and
17 we're in it now and we need you to look at it. And
18 that's really how it's come up.

19 Most of these questions have come up from
20 tribes. And in the universe of Indian country, we have
21 this wide array of situations. Because I know I had
22 that initial response, "Why on earth would you want to
23 get into this?" Usually it's because a tribe has asked
24 us to. And various reasons, conditions that existed
25 that led them into that collateral agreement that they

1 now need help with. So . . .

2 MS. ANDREWS: I completely understand that.
3 Keeping the way it is now with that, they're sending the
4 collaterals with the management documents or otherwise
5 leaves that open for them, but it's not requiring the
6 tribes that are saying "We don't want to have to go
7 through that extra approval in these collaterals." And
8 it's keeping it open for them to not have to submit
9 collaterals.

10 So I think the way it is now works out
11 fairly well, still doing the research for the tribes
12 that need it. And I think for me I just am one of those
13 people who will jump through some extra hoops. And how
14 can I say that I'm a responsible leader, that we have a
15 responsible council, and we're sovereign if I'm
16 constantly going to someone else saying, "Is this okay?
17 Is this okay? Is this okay?"

18 CHAIRWOMAN STEVENS: Yes, Norm.

19 COMMISSIONER DESROSIERS: Well, it seems like,
20 again, it's two scenarios here. If a management
21 contract is submitted saying "This is a management
22 contract," then I think you have every right and should
23 as for every agreement that's associated with that
24 management contract. I mean, some of those collateral
25 agreements and management contracts can be crafty and

1 have drastic affects on net revenues and reimbursements
2 and percent, you know. So those certainly are part of
3 the package that I think requires it.

4 Now, if it's not a management contract or
5 not presented as one, I understand that dilemma and --
6 but given the litigation that was just cited, I don't
7 think any lender in their right mind or developer, for
8 that matter, who is going to want to put out any money
9 without getting some seal of approval from NIGC that
10 it's not a management contract. So they're probably
11 going to insist that the tribe put those agreements up
12 before you for review to ensure they're not management
13 contracts. I think -- but can you ---can you mandate
14 that all those agreements come before you? I guess in
15 the interest of tribal sovereignty, I would say I don't
16 think so.

17 And if I remember correctly, the original
18 NOI, what was going way down beyond that to like lease
19 participation agreements, slot machines, and that kind
20 of thing. I really don't think that's -- that's where
21 you want to go.

22 ATTORNEY ROBERTS: Is there anyone that thinks
23 that the current process and how we're handling
24 collateral agreements can be improved or changed? It
25 sounds like what I'm hearing is that the current process

1 is working to the extent that they're provided to us and
2 how NIGC has been addressing collateral agreement works.

3 Is there anyone who feels differently?

4 COMMISSIONER BURRIS: Tracy Burris here again.

5 My experience in the past, it's real simple.
6 That agency takes way too long. If it doesn't have the
7 expert on staff to be able to understand what a contract
8 is and, you know, it's just sort of -- it's sort of the
9 old fable of the complaints about management agreements
10 in the beginning and in the past and after 10 years
11 still you'd send it out and say it was approved or it
12 wasn't, send it in, and you ask for 10 more things. And
13 you send it back another six months later, you ask for
14 five more things.

15 I mean, there has to be the expertise to
16 look at a document, cite what additional information we
17 need. Once it's provided, review it and then get back
18 in a timely manner. And I think that's the key.

19 My experience 10 years ago dealing with that
20 was, we couldn't rely on that agency to give us back if
21 it's a collateral agreement in a timely manner and we
22 missed the deal. We missed an opportunity that goes
23 away. And I think that's the greatest concern that most
24 tribes have is if it's going to take two years to get
25 the financing, then we have to go to people that are

1 going to charge us 34 percent, 32 percent instead of
2 getting the good deals, if you will, because it's not
3 done in a timely manner.

4 So yeah, it's about getting it back in a
5 timely manner and not having 50 questions, 10 questions
6 and come back and still ask for another 10 questions.
7 And if it goes through 10 different hands at one time as
8 we've been told, maybe that's wrong. The process on the
9 agency's part needs to be, if you will, better qualified
10 contract specialist that understands that.

11 ATTORNEY ROBERTS: Thank you for that comment. I
12 think in terms of, as we've sort of discussed after the
13 Torches decision was issued by the district court, we
14 have received a number of requests from tribes to review
15 and issue legal opinions on whether a particular
16 financing document that the parties are in the process
17 of negotiating, whether there was a management contract
18 or not and recalling declaration letters. And what
19 we've been trying to do in terms of issuance of
20 declination letters is turning those around within a 4-
21 to 8-week time period. And what we're asking tribes to
22 do is, if you're going to submit financing agreements to
23 the council for review and for a declination letter,
24 start working early on in the process with our staff
25 attorneys so that we're up to speed -- I know that these

1 documents are being negotiated among the parties -- so
2 that we can turn around quickly when you have a closing
3 date that's set within a matter of days. And so we have
4 tried to when tribes send us that information and say,
5 "By the way, our closing date is in three weeks," to
6 accommodate that time frame so that tribes are able to
7 access that financing.

8 CHAIRWOMAN STEVENS: You've posed a really good
9 question, which I'm going to ask my chief of staff what
10 is the average length of time it takes a management
11 contract to get approved. I'm curious now. So more
12 information I need to have ready for the next.

13 COMMISSIONER BURRIS: Yeah. And I don't --
14 believe me, I don't mean any disrespect to the staff
15 attorneys, but if there is not a strength in
16 contracting, in contracts, then, you know, the
17 efficiency goes away. And that seems to be my past
18 experience and others that I have talked to over the
19 last 18 years dealing with the agency. And that has
20 been that experience. And at times a reluctance to move
21 because it -- you know, too many missed opportunities.
22 Then when the collateral agreements came about, it was
23 why do we want to go there? It may not have been a bad
24 thing in the beginning. It may have forecasted for some
25 bad things to come. But it -- taking too long is -- if

1 they didn't go through with it in the end, three years
2 later and it never got approved, then it might have been
3 a good thing. But at the time, it probably was, three
4 years previously. Does that make sense?

5 So if we don't get on it right away in a
6 timely manner, then it's a loss to the tribe.

7 ATTORNEY SCHLICHTING: Does anybody else have
8 anything on collateral agreements? If not, we can move
9 on to Part 537, which sort of ties into what Tracy was
10 saying with regard to speeding up the backgrounding
11 process for management contract approvals.

12 As everyone may or may not know, IGRA
13 requires a background of anyone with a financial
14 interest in a management contract. Persons with a
15 financial interest in a management contract have been
16 defined by IGRA regulations in detail.

17 But what we were -- what we are looking for
18 with regard to the notice of inquiry and our regulatory
19 review is really should we be also requiring Class III
20 management contractors only to submit background
21 information when a management contract approval is only
22 for Class III. So there is no Class II, there's only
23 Class III management contract that's pending before the
24 Commission. Should the Commission also require the
25 submission of background information for those with a

1 financial interest in that contract?

2 Does anyone have any thoughts on this?

3 How do you handle backgrounding within your
4 own tribal gaming regulatory agency for entities who may
5 have a financial interest? I know that the compacts
6 require -- or the compacts exempt financial sources from
7 being reviewed. And we are also looking at
8 incorporating some sort of streamlined process for those
9 persons who are maybe federally or state regulated
10 banks, financing institutions, other tribes, people who
11 might have provided financing for them to have a
12 separate process to go through rather than to have to go
13 through the reverse background investigation process.

14 But initially we were looking at whether or
15 not we should provide background information for the
16 approval of Class III gaming contracts, management
17 contracts.

18 Does anybody have any thoughts on that?

19 COMMISSIONER RODRIGUEZ: Sherry Rodriguez,
20 La Jolla Gaming Commission.

21 I'm going through this now, actually. We
22 also have CGCC-2 that we fill in with the requirements
23 that the people that aren't financial institutions, then
24 it falls back onto Tribal Gaming Commission to follow
25 that through, and then we can submit to CGCC for

1 extension for investment firms that are not actual banks
2 and so forth. But if we have adopted into our regs into
3 our ordinances NIGC regs, it would seem to me that we
4 would require the same thing. That's just for me.

5 EXECUTIVE DIRECTOR STANLEY: I waited all day for
6 this comment. Just kidding.

7 Actually, for Rincon, we ran into a little
8 issue because we do have a management contract with
9 Harrah's. We did have some institutional investors.
10 But, however, we kind of tackled the issue a little
11 differently because we looked at what these investors
12 were going to do, did they have any say in the company
13 or in the contract. So what we did is we adopted a new
14 regulation called "institutional investors." We
15 actually don't license those people. They do not have a
16 say in the overall business. So that was one of the
17 things we looked at is these institutional investors, if
18 they have the power, you know, to change structure
19 within the organization of, let's say, Harrah's, which,
20 if they don't, well, then we don't require them to be
21 background. We just put them under this investor, you
22 know, institution regulations. Just something to think
23 about in the future.

24 ATTORNEY SCHLICHTING: That's something that our
25 regulations currently provide is an abbreviated

1 background investigation for institutional investors.
2 There's a specific section in our regulations that allow
3 the chairwoman to reduce the scope of the background
4 investigation of someone who is -- or an entity that is
5 an institutional investor, which is like what you're
6 saying.

7 CHAIRWOMAN STEVENS: And Mr. Burris did also
8 bring up a question to me following your -- just a
9 question arises in my mind, how can we improve or can we
10 streamline the management contract approval process? If
11 you're telling me it's going to take more years than I'm
12 going to be in office, that's trouble.

13 And so what suggestions are out there that
14 we might be able to, you know, discuss that would
15 streamline how can we streamline this process from
16 taking as long and we do have an abbreviated process?
17 And maybe the way, fortunately, to get to that question
18 is what problems have you had? And you've already
19 shared some of those with us, which is, you know, we
20 have clarifying questions one month. Several months
21 later, more questions. You answer the questions. More
22 questions. You answer the questions. More questions.

23 I'm wondering what the nature of the
24 questions are. Are they consistently the same type of
25 questions? So I would be interested in knowing how we

1 could improve this process.

2 COMMISSIONER BURRIS: Madam Chairwoman, Tracy
3 Burris.

4 Again. In the past, it's often been
5 referred to is that, if you look at previous management
6 agreements, and a lot of people attempted to mirror
7 those in structuring. And also answering the
8 questionnaire is very thorough. It's very thorough. I
9 guess it boils down to the interpretation of the reader
10 at the agency. And I also know in the past from my
11 experience, and that is that it changed to multiple
12 hands at times to I had someone else review it. Well,
13 they come up with, you know, these more questions.
14 There's just got to be -- seems to be a way you can
15 streamline that to where once it's reviewed, then sent
16 back in and someone else reviews it, and then sent back,
17 you know, three months later for 10 more questions.
18 That seems to be the problem. So, in other words, if
19 the readers are going to reread it, if they're going to
20 have it reviewed by someone internally, I don't mean any
21 disrespect, by all means, but it has to be someone --
22 obviously, my experience has been that we've got very
23 good contract lawyers that, you know, those are
24 specialities and not what everyone does. That it's
25 going to require that kind of expertise to look at this.

1 Because it's all about the wording and the phrasing.
2 And I'm not a lawyer, by all means, but that's the
3 confusing part of it in the end in answering those
4 questionnaires and stuff when that final document comes
5 to life. And I've probably reviewed 20 of those over
6 the last 15 years just trying to figure it out, you
7 know. And that's -- that's the -- what it is is this is
8 the taste in the tribes' mouth about this experience
9 when dealing with the agency. And I realize the agency
10 was in a different stage, but sometimes whether or
11 not -- you know, I don't what the qualification would be
12 from the agency to have someone have that expertise.

13 CHAIRWOMAN STEVENS: Thank you. Yes, sir.

14 MR. QUIS QUIS: Justin Quis Quis, San Pasqual. I
15 guess just an observation is I'm not sure that -- I
16 would imagine now just that there's a lot more tribes
17 that are a little bit more self-sufficient and how many
18 management contracts do you have going now compared to
19 back in the day, you know, 15 years ago or 10 years ago.
20 I mean, I know when we had a management contract up at
21 Valley View, I mean, it did take a long time. There was
22 a lot of different interpretations. One, it was called
23 a consulting agreement. Then six months later it was
24 actually a management contract and that set us back too.

25 So I don't know, just as an observer, being

1 around for a little bit now, how many of these you're
2 really having to deal with. And maybe part of the
3 streamlining that's maybe going to help you streamline
4 is you just don't have as many of them. Just an
5 observation.

6 CHAIRWOMAN STEVENS: Well, I couldn't tell you
7 the number right off the top of my head. And I would
8 also assume the way you have, as the industry for Indian
9 gaming has matured and with the time limits that are set
10 out in IGRA regulations, many of those management
11 contracts you saw in the early days are now gone.
12 However, I do still see that we have an entire staff
13 that's dedicated to processing management contracts and
14 doing background investigations on key employees and
15 primary management officials, and I've approved a number
16 of management contracts. Are they in the same frequency
17 as they were 20 years ago, probably not. But we still
18 do see them. And now we're seeing more complex
19 instruments. Management and development and financing
20 and other types of collateral agreements are becoming
21 more sophisticated documents. So probably not as many,
22 but I know that I've approved a handful of them in the
23 time that I've been in office.

24 Another question here. I notice that these
25 regulations are -- they were put in place when the first

1 commission was put in office in 1993. These are the
2 management background investigation, one of our oldest
3 regs. Are parts of it still relevant? Are they still
4 necessary? Does it need change?

5 With that, we have one last topic, unless
6 anybody has a burning desire to continue to talk about
7 management agreements and background investigations,
8 contracts and tribal agreements. Gross gaming revenue
9 definitions. I think it's on the PowerPoint, what the
10 definition is as of now.

11 Net revenue means gross gaming revenues of
12 an Indian gaming activity, less amounts paid out as, or
13 paid for prizes and total operating expenses, excluding
14 management fees.

15 ATTORNEY ROBERTS: So I guess the general
16 questions are does the definition need clarification?
17 Has this definition been an issue for folks? Does it
18 need to be looked at by the Commission? Does it need to
19 be changed? Is this an issue for you all?

20 CHAIRWOMAN STEVENS: Again, these are issues
21 that -- you know, it wasn't because I couldn't sleep at
22 night and I thought of net revenue. Someone along the
23 lines came to us and talked to us about the definition
24 of net revenue.

25 ATTORNEY SCHLICHTING: We have had in the past

1 some questions about net revenue. How do you claim net
2 revenue as it's meant in IGRA and the definitions as to
3 accounting language. And I'm not an accountant, and I
4 don't understand GAAP at all. But it's something that
5 is sort of like an accountant's bible. This is what
6 they go to when they look for definitions of things.
7 And there is no easy way to equate net revenue as
8 defined in IGRA to an accounting definition. It's not
9 net income. It's not IBIDA. Everybody knows what that
10 is, if you're an accountant. If you've ever looked at
11 financial statement, you've probably had to look at
12 that.

13 So what is net revenue? What should it
14 include? And should we have a standardized definition
15 for what it is? Because without a standardized
16 definition, net revenue can be redefined.

17 Many of you have experienced or seen people
18 who try to redefine what net revenue is by contract,
19 either through your compact or through some other
20 agreement. They want you to agree that net revenues
21 from the casino means this. We're looking for a way to
22 sort of make it consistent what the definition of net
23 revenue is going to be, but maybe that's not what Indian
24 country wants. We'd like your input. Do we need to
25 have a consistent definition like that in GAAP for what

1 net revenue means or should it remain to be what it is
2 and have tribes define it?

3 COMMISSIONER DESROSIERS: Well, accounting is way
4 out of the my skill set too. But if I understand some
5 of the discussions going on especially in the state
6 compact revenue sharing and all the rest of that. The
7 question isn't so much the definition of net revenue,
8 it's the definition of operating expenses that's within
9 that definition, you know, and what's deductible, where
10 are participation fees, what are lease payments? It's
11 the operating expenses part of that definition, I think,
12 creates the issue, not the definition.

13 So maybe you need to define operating
14 expenses.

15 ATTORNEY SCHLICHTING: Well, in the most recent
16 changes to the definitions that were, I think,
17 implemented last year, the definition of net revenue was
18 changed to -- at least in the regulation, was changed to
19 specifically used as examples certain things as being
20 operating expenses like interest on loans. But the
21 principle on loans is not an operating expense.

22 It's not my area of expertise either. But
23 without there being some standard for it, I mean, most
24 people are creative in how they define what net revenues
25 are. And as everybody knows, it's the net revenues of

1 the casino that everybody looks to as far as your
2 budgeting, their planning, tribal government,
3 per capita. I mean, it's a very important aspect of
4 tribal gaming is defining and coming up with, well, what
5 are net revenues. They're very important in coming up
6 with how much you pay the state.

7 So this is -- unfortunately, when IGRA was
8 passed back in 1988, Congress used the term "net
9 revenue." Well, there really is no definition of net
10 revenue in accounting standards and it's really the
11 accountants who are doing all the auditing and trying to
12 find some standard way that they should look at things.
13 I know they have guided principles, they have generally
14 accepted accounting principles. Those change from time
15 to time. We and you don't have any influence over what
16 GAAP says. Some accounting group out there that gets
17 together and decides what their procedures or process or
18 what is generally accepted, and that can change from
19 time to time. But it has been an issue for some tribes
20 in trying to standardize from year to year from audit
21 firm to audit firm what is the calculation of our net
22 revenues. And would putting something in the
23 definition, like, making it similar to GAAP, would that
24 help or would it hurt?

25 CHAIRWOMAN STEVENS: Questions for you financial

1 folks. If you're not the financial people here, this
2 would be a good question to bring back to your CFO, your
3 comptroller, whatever you might have. This particular
4 question, I think, gross gaming, gross GGR came up
5 earlier today. Those questions -- please consider those
6 when you bring back information. I know many people are
7 sitting here and will be bringing back information to
8 their respective tribes for consideration. So certainly
9 bring that question back to your financial folks.

10 The only reason I think of it is I know that
11 there have been really creative ways how things -- how
12 that definition has been imposed upon tribes in and --
13 in a way that's not necessarily beneficial, doesn't
14 benefit the tribe but benefits the other party.

15 So that was our last question. You all
16 stuck it out the whole day because it was just so
17 thrilling to talk about all of these regulations. But,
18 you know, I know it can be very time consuming to talk
19 about all of these regulations, but this commission is
20 committed to having a transparent process and an open
21 dialogue, a conversation back and forth rather than
22 dictating to you what we think needs to be done, and
23 having an open conversation with you about how some of
24 these changes might affect you helps us make a
25 well-informed decision before we go into a more formal

1 process of rule making. It may sound good on our desk
2 in D.C., but when it hits your regulatory bodies and
3 your operations, it may not be so practical. And so
4 we're endeavoring to make the best decision we can by
5 having these conversations, even if the subject matter
6 is not the most thrilling in the world.

7 We appreciate everyone sticking it out with
8 us today. Please feel free to call if you have any
9 questions. The contact information is in your packets
10 here. If you have questions, clarifications you need or
11 if you just want to provide a comment, all of this
12 information is up on the NIGC website under the Tribal
13 Consultation tab that's on the left on the screen on the
14 main home page. Our schedule, all of the regs, the
15 groups, the transcript, written comments, it's all being
16 posted there. And as we come up with more discussions
17 drafts for each of those parts, we will be posting them,
18 distributing them. And as we did with -- like we did
19 earlier today with the facility licensing, we'll go over
20 them to initiate some conversation and get some
21 feedback. So you'll see more of these discussion drafts
22 before we get to a formal rule making process as time
23 goes by and as we have more of these consultations.

24 We will be continuing tomorrow on the ever
25 exciting minimum tournament control standards for

1 Class II gaming. Today was -- today was Class III and
2 Class III and the process of how we address it.
3 Tomorrow is minimum internal control standards just
4 generally for Class II and also 547, which is technical
5 standards for gaming equipment used in the Class II
6 games. So that's what all of tomorrow is dedicated to.

7 So we look forward to your participation.
8 We start tomorrow again at 9:00 a.m. And, again, I want
9 to thank the Rincon tribe for their hosting us and being
10 such gracious hosts.

11 So we will see you all, I hope, tomorrow.
12 And, meanwhile, you've all have a good evening. If you
13 have any questions, I'm sure we'll be around here over
14 the next few minutes. So we will see you tomorrow.
15 Have a good evening.

16 (The proceedings were concluded at 4:32 p.m.)

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REPORTER'S CERTIFICATION

I, Leslie Johnson, Registered Professional Reporter, California Certified Realtime Reporter, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing proceedings were reported stenographically by me and later transcribed through computer-aided transcription under my direction and supervision; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of July, 2011.

LESLIE JOHNSON, RPR, CCRR, CSR No. 11451

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