

1 NATIONAL INDIAN GAMING COMMISSION
2 REGULATORY REVIEW
3 TRIBAL CONSULTATION AGENDA - SEPTEMBER 16, 2011
4 COARSEGOLD, CA

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11 TRANSCRIPT OF PROCEEDINGS
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14
15 September 16, 2011

16 9:00 a.m.
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19 Coarsegold, California
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COARSEGOLD, CALIFORNIA

FRIDAY, SEPTEMBER 16, 2011; 9:00 A.M.

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PROCEEDINGS

MR. LITTLE: Good morning, everyone. We are going to get started here. If any tribal members or gaming commissioners or tribal designees want to come and take a seat at the table, we invite you to come up here.

I want to welcome everybody to the National Gaming Commission's Regulatory Review Consultation Session. I want to extend my gratitude to the Picayune Rancheria for hosting this event. And at this time I'm going to turnover to Picayune Counselor Hernandez to open up properly with some words here. So, I think he is a talking with the chairman.

Counsel, if you want to come to the mic or --

COUNSELOR HERNANDEZ: I can speak a loud.

MR. LITTLE: Okay. Fine.

COUNSELOR HERNANDEZ: Good morning, everyone. Good to see you. Get comfortable. I'm going to say a quick little brief words. I want to thank you for coming and making it here safely. We know we are taking

1 you away from the ones you love, your family and
2 friends. We just ask for you to be good to yourselves,
3 be good to your family and take care of each other. You
4 have a big responsibility. This is a huge, huge, agenda
5 you have on your table. And I just want to pray for you
6 that you guys are healthy and your minds are clear.

7
8 (Tribal prayer.)
9

10 MR. LITTLE: Chairman Lewis and Counselor
11 Hernandez, thank you very much for allowing the N.I.G.C.
12 to come on your land and provide us wonderful
13 hospitality. I had a great couple of nights in your
14 hotel and you have a wonderful facility and I'm sure
15 you're very proud of it. Thank you, once again.

16 Moving along. My name is Dan Little. I'm the
17 Associate Commissioner here with the N.I.G.C.. And on
18 behalf of Chairman Tracie Stevens and Vice Chairwoman
19 Steffani Cochran, I just want to welcome everybody for
20 coming here this morning. We are very grateful and
21 honored to address everyone and discuss these very
22 important issues contained in our Notice of Regulatory
23 Review.

24 Both Tracie and Steffani would like to be
25 here, but because of travel issues and other work on the

1 Commission, they are back in Washington. But they do
2 send their regards and they looking forward to reviewing
3 the transcript and reading all the comments made here
4 today.

5 But before I get started, I'd like to
6 introduce some N.I.G.C. staff that are here today. To
7 my left, we have our Sacramento Regional Director Eric
8 Schlanski. With him today is, also from our Sacramento
9 office is Allen Phillips, field investigator and our
10 training coordinator for this region. Jean Wagner,
11 she's from our audit division here in the audience.
12 John Hayne from our office of general counsel in
13 Washington, DC is here. And Leal Echo-Hawk who's
14 counsel to the chair is here. And she's going to be
15 making some remarks here very shortly.

16 I also want to, I guess, let everyone know
17 that this event is being transcribed and with us,
18 Charlene is here, and she will be transcribing the
19 meeting, so if you happen to step out or if you're not
20 here for the entire consultation, these will be made
21 available on line at nigc.gov.

22 But the next thing I want to do, I'd like to
23 go actually around the room and invite everybody to
24 introduce themselves. I don't know if we have a
25 cordless microphone. Maybe we can start over here to

1 the left, my left rather. And if we could just go
2 around and introduce yourself and the organization that
3 you're representing.

4 Mark Emerick, Executive Director for the
5 Picayune Rancheria of Chukchansi Indians.

6 Good morning, John G. Ross representing
7 Rincon. Scott Crowell up here today on behalf of
8 Rincon.

9 John Roberts, San Manuel Gaming Commission.
10 Stella Fuller, Pechanga Gaming Commissioner.

11 Shannon Williams, Picayune Ranch Gaming
12 Commissioner.

13 Angela Kars from Table Mountain, Legal
14 Counsel.

15 Jan De Paoli, Gaming Commissioner.

16 Corinna Raymond, General Manager Chicken
17 Ranch. Janet Costa, Tribal Administrator Chicken
18 Ranch.

19 Good morning everyone, Jason Andrews, Big
20 Sandy Rancheria and Tribal Gaming Commission.

21 Good morning. My name is Mark Pablo from the
22 Gaming Commission director of safety Rancheria Gaming
23 Commission.

24 Good morning. I'm Marlene Johnson with the
25 Big Sandy Ranch, Gaming Commissioner.

1 Terri Poust, attorney. I'm here on behalf of
2 several clients.

3 Joe Morego, Gaming Commissioner 49 Palms.
4 Norm Hansen 49 Palms Gaming Commissioner.

5 Karl Slagley, Agua Caliente Gaming
6 Commission. John Toro, Agua Caliente Gaming
7 Commission. Phillip Orosco, Agua Caliente Gaming
8 Commission.

9 Kathy Ogas, Lytton Rancheria.

10 Larry Red Owl, Bishop Tribe and Gaming
11 Commission.

12 MR. LITTLE: All right. And next to me is
13 Eric Schlanski, our regional director.

14 I always like to see former N.I.G.C.
15 commissioners, so I'll make a special welcome to former
16 Commissioner Terri Poust and Norm Des Rosiers for coming
17 here today.

18 As many of you know that I came on the
19 commission almost a year and a half ago. Originally,
20 I'm from Connecticut. Prior to joining the Commission,
21 I worked with the Mashantucket Pequot Tribe in Foxwoods
22 Resort Casino.

23 Prior to that, I worked for the Connecticut
24 State Assembly and I served for over ten years in the
25 United States Army.

1 Just a couple of things. The Commission is
2 committed to building meaningful government through work
3 and relationships with tribes, and respects you all as
4 the primary regulators of your operation.

5 We understand our responsibility of Federal --
6 just to let you know that tribes, state, and the
7 N.I.G.C. each have an important function in the
8 regulatory structure created by I.G.R.A.. We know this
9 industry is best protected when we all perform our roles
10 effectively.

11 Some regulations are an important tool to
12 ensuring the integrity -- to ensure this industry
13 remains high standards and public confidence. The
14 Regulatory Review Process gives the Commission
15 opportunity to hear first hand how the regulations are
16 working in your operation and learn about areas for
17 improvement.

18 I want to thank you again for attending today
19 and look forward to hearing your comments. I'm going to
20 turn the microphone over to Leal Echo-Hawk now and she's
21 going to run through a Power point presentation now that
22 will go through the agenda and then talk about the
23 process and how we got here. And then she's going to go
24 into the groups. And we'll do that as we get to the
25 groups, correct? So we are going to start with Group 1.

1 So, Leal.

2 MS. ECHO-HAWK: Good morning. Can you guys
3 hear okay? Is everyone good? Good. Everyone

4 As Dan mentioned, my name is Leal Echo-Hawk
5 and I'm a member of the Pawnee Nation of Oklahoma and
6 I'm currently counselor to Chairwoman Stevens at the
7 N.I.G.C.. My primary responsibility there has been the
8 regulatory review.

9 Before I get started and I'll say this again,
10 certainly, anyone who -- we are kind of lonely up here
11 at the table. So if you're too crowded in a booth back
12 there, then please feel free to come forward. And we
13 will be -- we do have a mic, so if you are making
14 comments and you're at those back tables, just wave your
15 hand and we'll make sure that a mic gets to you because
16 this is being transcribed and we do need your name and
17 your tribal -- who you're representing for the record.

18 Tribal consultation. Tribal consultation
19 meetings are between tribal governments and the federal
20 government. Only tribes and their designees can attend
21 and participate in these meetings. These meetings are
22 not open to the public.

23 We need to put that out there for all of you
24 and, you know, just to be clear that this is not a
25 meeting for the press or the public.

1 This series of consultation is followed up
2 with the Commission's commitment to the Executive Order
3 13,175. Particularly Section 3, C-3 which says,

4 In determining whether to establish Federal
5 standards, agencies will consult with tribal officials
6 as to the need for those standards.

7 So that's what we are doing today and we have
8 been doing over the past 12 meetings. We have been
9 taking about what regulations do we need and what should
10 those regulations look like and contain?

11 We developed this Regulatory Review Process.
12 We divided the regulations into five different groups.
13 These groups were formed by many factors. Group numbers
14 do not indicate their priority. But we looked at the
15 subject matter, at the amount of time that we estimated
16 and resources that we estimated it would take to review
17 those regulations and we came up with five different
18 groups.

19 We divided those groups into three phases. We
20 are currently in the preliminary drafting phase.

21 Very, very, quickly coming up on a Notice of
22 Proposed Rule phase.

23 And then finally, if those rules need to go
24 into a Final Rule, we'll go into that last phase here
25 over the next six months.

1 All the preliminary drafts that you see are in
2 your packet. If you are at a table and you don't have a
3 packet, we'll get you some. They are over here on this
4 table. But they have all the preliminary discussion
5 drafts. These are all initial working drafts.

6 All the consultations, like I said, are
7 transcribed. Written comments and the transcripts are
8 on the N.I.G.C. web site at nigc.gov.

9 On the nigc.gov web site there is a new
10 section. There is a link to tribal comments. There's
11 also a link to draft regulations. And you can go there
12 on this one page and download copies of these discussion
13 drafts if you need to.

14 The commitment from the Commission has been
15 that every comment will be reviewed and considered. Any
16 Proposed or Final Rule will include a summary of those
17 comments. And a discussion of those, of the reason why
18 we either accepted or did not accept that comment. And
19 very importantly, the Commission is committed to a clear
20 and transparent process. That's why we are transcribing
21 these proceedings. That's why all the comments are
22 going up on the web site. We think that everyone
23 involved should be able to see and hear what other
24 people are saying in regards to this subject matter.

25 So we've got five groups. I'm not going to

1 read through this list. It is in your handouts. It's
2 in your packet in the Power point.

3 And we are going to begin this morning with
4 Groups 1 and 2. Important to know, and this is in your
5 agenda, that Group 3, which now contains Class 2 Minimum
6 Internal Control Standards and Technical Standards, as
7 well as Part 542, which is Class 3 Minimum Internal
8 Control Standards. We have taken those out of these
9 meetings and we are going to focus on those in the
10 Tribal Advisory Committee that will begin meeting in
11 October, on October 20th in Connecticut.

12 So we are in the process of forming that
13 Tribal Advisory Committee. Today is the last day that
14 we are accepting Nominations. Currently, we've got
15 approximately 40 nominations in our office that will be
16 reviewed after we get back into the office next week.
17 So we will not be discussing these three issues or these
18 three regulations today.

19 So we've got Groups 4 and 5 that we'll be
20 discussing this afternoon.

21 So I'm going to begin with Group 1. Group 1
22 covers Part 514 which is the fee regs. Part 523 which
23 is appeals. Part 559 which is the facility license
24 regulation and then potentially the Buy regulation.

25 So we are very, very close to a Notice of

1 Opposed Rule on the fee reg and so this presentation
2 actually contains some updated information that you
3 haven't seen before.

4 The discussion draft does a number of things.
5 It changes the fee calculation to being based on the
6 gaming operation's fiscal year instead of the calendar
7 year. It creates a more accurate figure and we have
8 less fee audits that we need to do. The fee rate will
9 be published on March 1st instead of February 1st. The
10 preliminary rate will be published on March 1st instead
11 of February 1st. This gives the agency and the
12 Commission more time to review the numbers as they come
13 in and make them more accurate preliminary rate, set a
14 more accurate preliminary rate.

15 We've done things like change some -- remove
16 some terms that didn't fit with industry standards and
17 try to make the regulation a little more lay person
18 friendly.

19 Moving back again to quarterly payments. A
20 couple of years ago the Commission moved from quarterly
21 payments to semi annual payments. Unfortunately, that
22 was something that doesn't comply with the Act. The
23 statutory language requires quarterly payments. So
24 that's what we are going to. This doesn't mean that you
25 can't prepay because I know a number of tribes do

1 prepay, but we are going back to the requirement that if
2 you are not prepaying, then it will be a quarterly
3 payment. We've tried to put in some adjustment
4 periods. So if you go from a September 1 fiscal year to
5 a December 31st fiscal year, then there's a procedure
6 for how you notify the agency.

7 So the biggest changes that we've made, we've
8 added two sections. The first section is a late
9 payment -- it's sort of, we call it, internally we call
10 it a ticketing system or something similar to a
11 ticketing system. So if a tribe is late in making or
12 submitting your payments to the agency, basically, we
13 will, instead of issuing a Notice of Violation which
14 we've heard over and over again is much too punitive for
15 something as simple as submitting your fees late, the
16 agency would apply a sort of a late fee, a late charge.
17 I'm trying to think of a different word than fee because
18 we are not in the fee section, but it would be sort of
19 equivalent when you pay your parking ticket late and
20 there's an additional charge for that late payment.
21 That's what we've attempted to do in this section.

22 Currently, we are kicking around and this is
23 new information, a 10, so for payments that are one to
24 30 days late, a 10% fee, 31 to 60 days would be a 15%
25 fee, 61 to 90 days would be a 20% fee. And then after

1 that the chair has the discretion to issue a Notice of
2 Violation.

3 The second session that we've added is the
4 fingerprint processing fee. Which we're trying to
5 formalize that process. It just clarifies how we
6 collect the fees and when the fee amount will be
7 published. Not all tribes utilize this function. It's
8 nothing that you are mandated to do, but it is something
9 that we do and wanted to make it clear to tribes how we
10 actually do it, put it in a regulation so that it be
11 transparent and everyone knows what that rate is.

12 Parts 523, which was an obsolete regulation,
13 that will be issued in order to propose rule making
14 proposing to repeal that part very soon.

15 Part 559 is the facility license notification
16 renewals and submission regulation. We made some
17 changes to that as well. Internally, that haven't --
18 that came from the comments that we've seen from
19 discussion, after we released the discussion draft. And
20 one of the key concerns that we heard from tribes is
21 that we were creating a process that -- a process for
22 review of the land, of the legal description of the
23 lands to see if it was Indian land eligible for gaming.
24 And that was not our intent. There is currently no
25 requirement in the regs that the N.I.G.C. do that

1 determination before looking, while reviewing a facility
2 license. So we tweaked the language and you'll see it
3 soon in the notice of proposed rule that simply says
4 that the tribes can request an expedited review of that
5 land, legal description from the chair. The chair can
6 respond to that and the tribe can request a written
7 confirmation.

8 Our intent was to tell the tribes to tell the
9 N.I.G.C. if the tribes need a legal opinion from the
10 N.I.G.C. about the status of their land that we do it as
11 quickly as possible. And tribes don't have to sit
12 around and wait for us to kind of mosey through the work
13 that we do. If it's possible to make sure, to get that
14 information and that opinion to you quickly, then that's
15 what we want to do. So that was the intent. And we
16 tried to word smith the discussion draft and come up
17 with some other language, so hopefully this will work.

18 We also removed the renewal requirement from
19 the old -- from the current Part 559. New and newly
20 issued or renewed facility license just need to be sent
21 to the N.I.G.C. within 30 days. We just need to know if
22 the facility is open. Instead of requiring tribes to
23 send in an entire list of the laws and resolutions and
24 all of these things that were contained in the current
25 regs, the new regulation requires that the tribal

1 attestation for the construction and maintenance of the
2 facility and operation, if conducted in a manner which
3 adequately protects the environment and safety. That's
4 the ego *** language. So instead of requiring a bunch
5 of documents from you, we just need an attestation that
6 the safety requirements in the act. ***

7 Notice needs to be sent to the N.I.G.C. within 30
8 days when a license is terminated or expired or if a
9 facility closes permanently or if it closes for more
10 than a 180 days.

11 Notice is not required in this proposed draft
12 to be sent to the agency for seasonal closures. We want
13 it to be as flexible a possible, we just need to know,
14 our enforcement staff just needs to know when a facility
15 is open. So we are trying to figure out ways to do that
16 and be reasonable with the time so that you're not
17 sending information to us repeatedly in, over short time
18 frames.

19 And then the last proposed regulation in Group
20 1, is a potential by Indian regulations, tribes have
21 been supportive of this and I just want it reiterate
22 because with we do get confused on this issue sometimes.
23 This is a regulation that tells the N.I.G.C. what to do.
24 It tells the N.I.G.C. to buy, when you're buying goods
25 and services that we need, to, when possible, buy

1 Indian. It isn't telling tribes that they have to do
2 anything. This is just a direction to the N.I.G.C..
3 We've had a lot of support for this, but we are
4 internally trying to find out what our procurement
5 process is, how it works with the Federal Acquisitions
6 Regulation. And so it is something that we're still
7 working on internally. And so that's why there has not
8 been a proposed draft on that yet. And that is all of
9 Group 1.

10 MR. LITTLE: Thank you, Leal. As Leal said,
11 kind of a little housekeeping things. Once, again, it's
12 lonely up here. I invite you to come sit at the table
13 if you would like.

14 The second thing is, this meeting will be
15 transcribed, so when you do speak, please state your
16 name and your organization, that will help transcribing
17 your name easier.

18 We are scheduled on the agenda to go to
19 5:00 p.m. We may or may not reach that if we have
20 concluded the agenda. So if you've got comments, please
21 do them, you know, whenever you feel comfortable.

22 And like Leal said, this is government
23 consultation for tribal leaders and their
24 representatives. It's not open to the public or outside
25 media sources.

1 So the first thing I think I want to do,
2 because there could be some folks that do have time
3 restrictions here, if there's any tribes that have
4 opening remarks that may not particularly just pertain
5 to Group 1, you can come up and sit at the table and
6 make those statements at anytime. You don't have to
7 just talk about Group 1. So I invite you to do that if
8 your time dictates.

9 If there isn't anyone, I think we will get
10 started on the 1st agenda item in Group 1, which is Part
11 514 that's the fees.

12 As Leal talked about, the purpose of this
13 regulation is to basically set up a process for
14 collecting fees from the industry through our fee
15 assessments that, you know, establishes a formula to
16 calculate the correct fee payments and then it
17 establishes a process for processing non-compliance
18 issues.

19 During the Notice of Inquiry and through
20 subsequent consultation, I think we've done 12 so far,
21 this is something that's of a very big interest to
22 tribes. It's actually of interest to some of our
23 internal staff too, mainly our comptroller because there
24 has been some difficulty converting to the biannual
25 assessment as far as budgeting purposes and things like

1 that.

2 So if there's anyone that would like to
3 comment about moving back to the four times a year
4 assessment, will you please state so.

5 One of the other things we also heard at the
6 N.O.I. was, you know, folks like to talk about
7 calculating on a fiscal year. It's more accurate and
8 helps calculate fees better. So does anybody want to
9 start off with any comments or anything we've regarding
10 this?

11 MR. DES ROSIERS: Thank you. Norm Des
12 Rosiers. I don't know that the quarterly versus annual
13 is that big of a deal for any particular tribes,
14 especially when they have the option.

15 What we do have trouble with the clarity in
16 how you calculate a fee. And what I'm seeing and
17 hearing is that tribes are all over the map on
18 interpreting on how you calculate a fee. Some are
19 overpaying and are underpaying.

20 And it seems like -- you know, we just
21 experienced an audit, you know N.I.G.C. came out and
22 audited whether we are calculating right. And what we
23 are hearing is, you know, it's different for every tribe
24 and your interpretation and our interpretation aren't
25 quite the same. So all I'm asking, and we have

1 submitted some written comment, that that -- I don't
2 know, that formula, or maybe the definitions of net
3 revenues and all of this be clarified so that we are all
4 on the same page with the right definitions on how to
5 calculate those fees.

6 That's my comment.

7 MR. LITTLE: I appreciate that. Thank you.
8 Anybody else have any comments regarding that or what's
9 included in the discussion draft that was put out in
10 April of this year?

11 Some of the other things -- I'm not sure if
12 anyone has any comments regarding us moving the
13 preliminary fee rate announcement or termination from
14 the Commission to March 1st or February 1st. I do know
15 in this last year when we had to do it, it was -- there
16 was some challenges there for our comptroller. I think
17 it would be, it would make it, it would make our
18 decision, you know, more informed, like we all like to
19 do, especially me.

20 I'm not sure if anybody has any problems with
21 that. We normally talk about the quarterly fee payments
22 and, again, those points are well taken.

23 Does anybody have any comments on the, we've
24 kind of coined the term, "ticketing system" for late fee
25 payments? You know, in reviewing past notice

1 violations, we do see there was a considerable number of
2 late fees, N.O.V.'s, those consume a considerable amount
3 of time from our agency staff. They carry significant
4 repercussions for the tribes, you know, politically and
5 publicly, public relations wise.

6 I'm trying to find a balance here. We, you
7 know, this agency does not receive any federal
8 appropriations, so fee assessments are what funds this
9 organization. So they are critical and vital to our
10 operations and it's something that has to be dealt with
11 very, very seriously. However, is there a better way?

12 We've heard cases where you've had C.F.O.'s
13 that were sick or you've had, you know, different types
14 of issues, natural disasters that have come up where the
15 fees were submitted late. So we thought that maybe this
16 type of ticketing system could be a better way that we
17 are doing business. And that, you know, if tribes were
18 late, then they would know firsthand what the
19 consequences would be.

20 Now, Leal did point out that after the 90th
21 day, definitely the chair reserves its right to, you
22 know, issue a N.O.V. and issue a fine that is
23 appropriate. But up until that time, which I think the
24 majority would fall within if there's a process here.
25 And we did, we did say -- I think the suggestion that

1 the Commission come up with a 10, a 15, a 20. I think
2 some of the folks in the general counsel were talking
3 25, 50, and 75. I thought that was a little bit too
4 harsh and we negotiated that back down -- I'm only
5 kidding.

6 Does anybody have any comments on the
7 ticketing system? Is it something that you think would
8 work? You're going to be the blabber mouth today,
9 Norm.

10 MR. DES ROSIERS: I encourage everyone to say
11 their peace, but as you know, I usually have something
12 to say.

13 I haven't read the latest language, but in
14 previous consultations two issues -- first of all, I
15 encourage, I support the notion of late fees as opposed
16 to a N.O.V. I think that's a great option.

17 Were you its two questions as to rise that I
18 don't know that has been answered are really, isn't that
19 a fine? And if it is, the people are willing and
20 voluntarily paying. But if they don't pay it, if they
21 pay what their assessment is, they paid their fee, but
22 they don't want to pay the late fine, so to speak, then
23 what happens?

24 And I raised that question before, and I don't
25 know if -- the previous language didn't address that,

1 so. . .

2 MR. LITTLE: It's my understanding and I think
3 John or Leal can correct me, but the chairwoman always
4 reserves the right -- the chairwoman has the latitude to
5 either waive a fee or waive any -- I'm sorry, not a fee,
6 but waive a penalty or a fine, if she sees fit. Am I
7 correct?

8 MS. ECHO-HAWK: Yes. And the other thing is
9 that it is a fine, it does go to the treasury and not to
10 the agency. And if a tribe fails to pay that fee, we
11 just get a hold of the treasury and they send their
12 collection agency after it. They would use their
13 collection power under the regulations that we also have
14 within our section of the regs to enforce that.

15 MR. DES ROSIERS: But if it's a fine, then you
16 have a section of penal processes, penal fines that you
17 impose. Would it fall under that?

18 MS. ECHO-HAWK: The way that we've drafted it,
19 it would fall within the appeals.

20 MR. DES ROSIERS: It would not fall.

21 MS. ECHO-HAWK: No, it would.

22 MR. DES ROSIERS: Oh, it would fall. So if
23 I'm 60 days late, I would pay what my assessment fees
24 are, but choose not to pay the late fee, then that 60
25 day 15% is a fine and it would go through an appeal

1 process. But you can't come back and -- or can you come
2 back on top of that and fine me by \$25,000 a day for 60
3 days, and all of that?

4 MS. ECHO-HAWK: The Chairman could issue a
5 Notice of Violation, and so, yes, she could. So, yeah.

6 MR. DES ROSIERS: Well, I'm just suggesting if
7 those are the options, probably that language needs to
8 be clear in there, if that's what you potentially face.

9 MR. LITTLE: Yeah. The draft is on line,
10 actually, it's in the book here.

11 MS. ECHO-HAWK: It's in the book.

12 MR. LITTLE: It's in the book here. So
13 hopefully, that will answer any questions, but that's a
14 good point to raise and I appreciate that.

15 Thank you.

16 I didn't mean anything about the blabber
17 mouth, that was just for fun.

18 Does anyone else have any comments regarding
19 the ticketing system, the penalty process relating to
20 late fees?

21 The other item that Leal talked about was the
22 fingerprint processing fees. We just added a section to
23 clarify, you know, this process. And this isn't
24 utilized by all tribes. I know some tribes have this
25 included in their compacts, but a number of agencies

1 does utilize the agency to process their fingerprinting
2 cards. We just want to formalize the process, you know,
3 to just layout clearly how the fees will be assessed and
4 utilized.

5 Any other any questions on that or comments?

6 I guess I could go through the book here and
7 find some questions to ask. I hate to move onto the
8 next part without thoroughly kind of exhausting what
9 might be on your minds here.

10 I guess if there are no more comments, I guess
11 we'll move onto Part 523 and that is the Review and
12 Approval of Existing Ordinances and Resolutions.

13 Like Leal talked about, the purpose of this
14 regulation is, it addresses the ordinances or
15 resolutions that were enacted prior to 1993, but were
16 not approved by the N.I.G.C. chair. From our
17 understanding any tribes that have these in effect right
18 now, during the Notice of Inquiry and the consultation,
19 tribes told us these regulations were obsolete and
20 should be repealed, but it's also a low priority,
21 something that I'm not sure -- it's not a big deal for a
22 lot of tribes. We don't have any discussion draft out
23 on it because, obviously, it's just repealing case
24 ordinances.

25 A couple of other things. There's no impact

1 on your ordinance after 1993. Those ordinances are
2 subject to Part 522. So, I'm not sure if anyone has a
3 comment on Part 523.

4 Okay. Moving right along. Part 559. This is
5 the Facility License Notifications, Renewals and
6 Submissions.

7 We had a discussion draft that went out in May
8 of this year. I'm hoping a lot of you took a look at
9 that. The purpose of this regulation is to verify that
10 the Indian land, the Indian land status of each gaming
11 facility and ensures the construction and maintenance of
12 the facility are conducted in a manner that adequately
13 effects environmental public health and safety.

14 During the N.O.I. and subsequent consultations
15 tribes have told us that this regulation should be
16 revised. They didn't agree with the substance or the
17 process for adopting this regulation. We heard that the
18 N.I.G.C. exceeded its authority in promulgating this
19 regulation. Environmental, public health and safety
20 standards are implemented by tribal authorities. They
21 are, in many instances, requirement of tribal state
22 compacts and they are requirements of other federal
23 agencies such as O.S.H.A. and E.P.A. And these are
24 sufficient -- this is what we've heard in the N.O.I. --
25 we've heard this from tribes, that they are sufficient

1 with complying with the portion that requires that.

2 Like Leal said, in the discussion draft that
3 we have up on line, it's included in your packet, we
4 have made some changes which I think the biggest is
5 requiring tribes to an attestation that they are
6 certifying, they are compliant, that they have, you
7 know, environmental public health and safety standards
8 that, you know, comply with what is required in I.G.R.A.

9 And like Leal also said, the draft includes
10 the process for expedited review. It limits the
11 requirement that a facility license be renewed every
12 three years.

13 I know this was a contentious issue when I was
14 with the tribes. And judging by the comments that we've
15 received, it's of a big interest. So I want to make
16 sure that if you've got any comments or questions that,
17 you know, you can let us hear about them.

18 Does anybody want to start off and talk about
19 this regulation? Does anybody have any comments on --
20 yes, thank you.

21 MS. POUST: I'm Terri Poust, attorney. I have
22 just two quick questions on this.

23 The first one, you're anticipating publishing
24 a proposed rule soon? When would we be able to get
25 that?

1 MS. ECHO-HAWK: Right now, I would say my
2 goal, this is my personal goal because I can't say the
3 Commission's is to have the Notice of Proposed Rule out
4 before N.I.G.C. gets here. So before the 19th of
5 October is my goal to have a number of things out.

6 MS. POUST: Are you gonna be publishing them as
7 a group then?

8 MS. ECHO-HAWK: We are still working that
9 out. Some things have to go through the office -- this
10 particular draft, I'll just tell you, this may be beyond
11 that because it has to go to the office of management
12 and budget. They've got to take a look at it. And
13 they've got to send it out to other agencies for
14 comments because it does impact, you know, one of the
15 things that tribes are very clear about and we tried to
16 incorporate into the regs because a lot of this
17 especially health and safety are covered by other
18 agencies.

19 So O.M.B. is going to take this draft to those
20 other agencies and get their input on it. And once we
21 get that back, we'll publish it. So we're, we're right
22 before we send it to the O.M.B. I'm crossing my fingers
23 that the turn around will be short and then they will
24 publish it for comment from tribes.

25 And let me just say, we're going to have at

1 least a 60 day comment period, written comment period
2 and we're going to try to incorporate other consultation
3 meetings as well, which is why you've seen us recently
4 cancel a bunch of meetings, but we've kept meetings
5 through December. Those meetings are anticipated to
6 cover these topics. We've tried to -- we're trying to
7 coordinate them with the tribal advisory committee
8 meetings. So if you want to be at both you can.
9 They'll be at the same location, but that's all
10 coordination we are doing now.

11 So that's the goal. My goal is to have most
12 of this out before we roll into the T.A.C. in the big
13 staff. That's my dream.

14 MS. POUST: And my last question, the last line
15 on the slide, "no renewal requirement," I'm unclear. Is
16 that just referring to the one section 5592 A or would
17 this be the license as a whole; what is that?

18 MS. ECHO-HAWK: If you recall, the current
19 regulation requires the tribes to renew their facility
20 license every three years. I'm not sure why that would
21 be because if you have a facility, unless you close it,
22 you're not going to do much. You're not going to pick
23 it up and move it. So internally -- and I know when I
24 was at the tribes, this was something that we had some
25 concern about because we have a facility, we built it.

1 It costs millions and millions of dollars. We are not
2 going to move it somewhere else.

3 So this regulation eliminates that
4 requirement. So if a tribe issues a facility license,
5 it could be for 900 years. There's no requirement that
6 you have to renew it after a certain period of time.

7 You only have to -- if a tribe wants to renew
8 it, that's fine. But if you just have a facility
9 license and it's just a facility license with no time
10 lines on it, no time frames, then the only time we need
11 to know when that -- the only time you need to send
12 notice to us again is if you close a facility, you
13 reopen it, or we put in 180 days. That was what we
14 figured might work -- or six months. If you're going to
15 close your facility for more than six months, maybe you
16 should call us and let us know that. But that's outside
17 of a seasonal closure, because we do know that there are
18 some tribes that are open three months a year because of
19 their location.

20 MS. POUST: Thank you.

21 MR. LITTLE: Thank you, Terri.

22 MR. CROWELL: Scott Crowell from Rincon.

23 This is more kind of a record keeping thing.
24 I just want to make sure that our presence here today
25 and our silence on some of these, particularly Parts

1 one, two, and three should not be viewed as that we
2 don't have a view. We are submitting comments. Rincon
3 submitted comments on this before.

4 The reason I'm speaking up now is because this
5 one was near and dear to the tribe's heart, both in
6 terms of the Notice of Inquiry and the written comments
7 that we've submitted. This is one area the tribe was
8 very pleased with the preliminary draft as being a C
9 change from the prior commissions. And our concern that
10 the prior commissions were overreaching beyond what
11 there statutory authority is. Norm and I go back and
12 forth on the Class 3 mix, I'm not sure whether we
13 disagree on the facility licensing to where, you know --
14 the prior commissions had, through several failed
15 efforts, had tried to put themselves in a position of
16 literally second guessing and taking a very
17 paternalistic view in terms of being able to determine
18 what, what a tribe's -- whether a tribe's was lost or
19 adequate in a self government point of view. And Phil
20 Hogan's response was, trust me, I'm not going to do
21 that. Yet, he was drafting regulations that would put a
22 potentially hostile commission. We don't know what the
23 decomposition of the N.I.G.C. might look like, you know,
24 under a Paylin administration, for example. And that we
25 need to be very, very conscious at all points to make

1 sure that the regulatory authority granted by congress
2 is respected and the N.I.G.C. does not overreach.

3 And the preliminary draft represents, in my
4 point of view a C change from prior commissions and we
5 applaud that.

6 MR. LITTLE: All right. Thank you, Scott. I
7 to appreciate you making the comment about the lack
8 of -- the silence or the lack of comment not being
9 anything. We did receive your comments. I do
10 appreciate that. We do receive all of them. Leal has
11 been a stickler in making sure we review them, and read
12 them and go over them.

13 So we do get inundated with -- and gratefully
14 inundated with all of these comments. Actually, one of
15 the things I think was -- I really admire the tribal
16 community during this process here is, I recall during
17 my previous employment where we would take the generic
18 form letter that came out from one of the trade
19 associations and kind of put our stamp on it.

20 But I've been very impressed with the unique,
21 specific comments that were received from individual
22 tribes and organizations. I want to commend all of you
23 that these haven't been form letters. These have been
24 letters and comments that have been thought out and well
25 prepared. So I do appreciate that. Every comment is

1 reviewed and it is read and it is given effort. So I do
2 appreciate that.

3 Is there anyone else?

4 MR. DES ROSIERS: Just for the record, Scott
5 and I agree on this.

6 MR. LITTLE: Never doubted that.

7 MR. DES ROSIERS: It's not common, but we go
8 way back in history. When the last version was enacted,
9 I think my comments were very consistent with Scotts.
10 And I'm sorry to see you leave the table, because I'm
11 sure we haven't heard the last from you. Stay up here.

12 MR. LITTLE: Is there any other comments
13 regarding Part 559 or any comments from the previous
14 parts that we've raised that you might have just thought
15 about now?

16 MR. DES ROSIERS: Just one question. I notice
17 the time is left blank here. Is there any
18 contemplation, 559.5 when do you need to notify the
19 chair the license is terminated or expires and it's, you
20 know, left blank on the page.

21 Is there any contemplation as to what that
22 time periods will be?

23 MR. LITTLE: I'd like to know what your opinion
24 is. I think that's one of the points here. We want to
25 know what is a reasonable amount of time. If you have

1 some comments, what is a reasonable amount of time? Not
2 to put you on the spot here, you can comment on that
3 comment later on, but that is one that we are interested
4 in hearing from everyone. What is a reasonable amount
5 of time? And that is one reason why it was left blank.

6 MS. ECHO-HAWK: We have sort of internally
7 filled in the blank as working towards the new draft and
8 the new proposed rule and it's in the Power point. We
9 threw in 180 days. No rhyme or reason. We just figured
10 six months, you know, if you're closed more than six
11 months, tell us so that our enforcement guys aren't
12 there and see that it's all closed up and call us and we
13 send our S.W.A.T team and see what happened.

14 MR. LITTLE: Okay, then I guess moving along
15 on the agenda here. On Group 1, the last subject item
16 is the Buy Indian Act. And as Leal said, it's very
17 important and worth while to reiterate, this is not
18 something for the tribes. This is something for the
19 agency.

20 Like I said earlier, we are very cognizant of
21 the fact that our budget comes exclusively from the fee
22 assessment that you all provide. And it's, as other
23 federal agencies do utilize, a Buy Indian Act, you know,
24 this, this, proposed -- and we don't have a draft. I
25 guess we do have a draft. When did that come out?

1 MS. ECHO-HAWK: No, we don't.

2 MR. LITTLE: It didn't come out yet? Okay.
3 You know, what we are proposing is that, you know, issue
4 a requirement. I'm not sure if you want to do a
5 regulation or an internal policy to that would require
6 our staff to procure Native sources when they are out
7 looking for goods and services. When we do groups like
8 this, when we do training events.

9 If you were here yesterday, my remarks -- our
10 headquarters in Washington, DC will be relocating in --
11 potentially relocating in 2013. There's many, many
12 qualified native contractors out there. This is where
13 this probably would take place or be utilized.

14 It's not a requirement of the tribes or the
15 N.I.G.C. You know, what we've heard in the N.O.I. and in
16 consultations, tribes are very supportive of this. But
17 you know some of my kind of comments were and this is
18 no, this is actually, I guess, an indication of, you
19 know, grade strides that a lot of the tribes or
20 facilities have made, that when we go out to do
21 trainings or we do consultations, a lot of time the
22 tribal facility is not the cheapest. And, in fact,
23 sometimes they are a lot more expensive. I applaud
24 that, that's great news. They are obviously doing what
25 the market demands and that's something that I

1 definitely support.

2 However, are we, should we be required to
3 utilize that more expensive tribal facility when we
4 could go to a non-tribal facility that is less expensive
5 and save money? Those are some of the comments that I'm
6 interested in hearing. You know, if it would be
7 appropriate for us to spend more money in order for us
8 to utilize a native contractor.

9 Does anybody have any thoughts on this?

10 MS. POUST: Terri Poust again.

11 Just kind of piggy backing on something that
12 Scott said a few minutes ago, as well as what she just
13 said. The Commission is trying to decide whether or not
14 this should be a regulation or internal policy. I have
15 no doubt that this Commission would do what's right for
16 Indian country when it comes to looking at and evaluate
17 meetings and how they should acquire goods and
18 services.

19 A lot of these regulations, I'm looking at
20 them from the perspective of whose the next
21 commissioner. So in that regard, I would encourage you
22 to look at doing the regulation, not just an internal
23 policy. I think it would have a lot more teeth and it
24 would really work to ensure that not only that this
25 Commission does that and has followed a Buy Indian type

1 of policy, but also ensure that future commissions would
2 do the same thing.

3 MR. LITTLE: Good point. Thank you.

4 Does anybody else have any comments on this or
5 want to talk more? And everybody is generally in
6 support of us having a Buy Indian Act.

7 Lael, do you have anything you want to add?

8 MS. ECHO-HAWK: Good job.

9 MR. LITTLE: We have a break scheduled at
10 10:15. It's 10:00 o'clock. I think I'm inclined to
11 take a break now and then go into Group 2. Okay. We're
12 going to break until 10:15, okay.

13 (Whereupon, a brief recess was taken).

14 MR. LITTLE: All right everybody, I think we
15 are going to get started again.

16 And according to the agenda, we are going to
17 move to Group 2 and those includes Parts 573 Enforcement
18 and the Sub Chapter H, Proceedings Before the
19 Commission. So I'm going to turn the mic back over to
20 Lael Echo-Hawk to go through the Power point on Group 2.
21 So, Lael.

22 MS. ECHO-HAWK: Okay. So Group 2 covers part
23 573, which is the enforcement regulation and then the
24 regulations concerning proceedings or appeals before the
25 Commission, including these numbered parts. But as you

1 see in your handouts, we've taken those particular
2 parts, taken them apart and created a new sub chapter,
3 which we'll talk about here in a minute.

4 But first, Part 573, that's the enforcement
5 regulation. The discussion draft that you have in your
6 packet is also on line. As voluntary compliant is a
7 goal of the Commission, one of the concerns that we've
8 heard repeatedly from tribes is that Notices of
9 Violation would issue and they wouldn't have had any
10 notice or conversation or they would have had a very
11 preliminary conversation and then all the sudden the
12 Notice of Violation is issued and they didn't feel like
13 they had an opportunity to bring, to address the issues
14 that were raised or that were at issue in the Notice of
15 Violation.

16 So what we attempted to do is outline a
17 reenforcement action process. So I have received some
18 questions about whether or not this replaces the P, the
19 pre notice of violation, the process that happened, I
20 guess a while ago. I don't think many of those have
21 issued since. And it does.

22 We've created sort of two processes. This is
23 a -- we just had a meeting about this and the idea is
24 that this would be a graduated process. That ideally a
25 letter of concern about a particular issue would be sent

1 out by the N.I.G.C. staff, this is not coming from the
2 chairwoman. That this would be from the N.I.G.C. Staff,
3 that there is some kind of incident or something that
4 needs to be addressed. It could be a violation. We are
5 not saying that it is a violation, but that it could
6 potentially be one.

7 The other action that could also happen is a
8 non compliance notice. Now, we've been talking about
9 this internally and the term non compliance notice.
10 We've heard a lot of comments about that. So we are
11 considering changing that to a warning letter or
12 something else that basically confirms the assessment of
13 the matter, that says, okay, there is a violation. We
14 need to address it. It provides a clear time frame.
15 And the other thing that we are adding to the, to this
16 process is something that we didn't put in and it was
17 sort of an oversight because we thought it would be. I
18 guess, we thought it was a no brainer, that we needed to
19 build in some time from for the tribe to respond. So if
20 we issue one of these notices, that the tribes have an
21 opportunity to respond to that to dispute whatever,
22 perhaps arguing and saying, no, it isn't a violation for
23 these reasons. And this is all prior to a Notice of
24 Violation.

25 Now, while this is intended to be a graduated

1 process, this isn't a one, two kind of process. It's
2 not necessary -- they could be issued separately. A non
3 compliance notice or warning letter or whatever we term
4 it could be issued without a letter of concern going
5 out, depending on the circumstances.

6 So while the idea, the hope is that it's a
7 graduated process, so that we only have to issue a
8 letter of concern, if the issues on the letter of
9 concern are not met, then a non compliance notice or
10 warning letter would issued and then a Notice of
11 Violation. But they could also be issued independently
12 of one other, because this process does not -- it
13 doesn't limit the chair. The chair can still issue a
14 Notice of Violation if the circumstances require that.

15 One of the other issues that we have heard and
16 we are trying to address internally is making sure that
17 there's a time frame built into each of these letters or
18 notices. That a tribe knows they have X amount of time
19 to respond or come into compliance, so that it's not
20 something that's out there pending. That there isn't
21 this sort of limbo land where tribes, you know, don't
22 know, don't respond or think don't know they have to
23 respond within a certain amount of time. Just to be
24 very clear on what the issue is and what the time frames
25 are for correcting or responding lines.

1 If the recommended corrective action is not
2 completed, then further action maybe taken. And like I
3 mentioned before, this doesn't limit the chair's
4 decision to issue a Notice of Violation when the
5 circumstance demands that. So that's Part 573. Again,
6 we are trying to refine it. Currently, we are working
7 on that, based on the comments that we've received from
8 tribes.

9 Then the proceedings before the Commission and
10 we've heard a lot about this and it's something that we
11 are going to actually define, what is a proceeding
12 before the Commission? In this context, it is an appeal
13 of an ordinance of disapproval of a management contract
14 approval or disapproval or an appeal of Notice of
15 Violation to bring closure order or to find dual fine
16 assessment.

17 All of these different kinds of proceedings
18 were sort of, kind of hodge podged, placed throughout
19 the regulation. So when we took a step back and we
20 began thing about how would this look holistically? How
21 could we make that easier to find, easier to navigate?
22 We came across a section of the regulation which is sub
23 chapter H, which is after the enforcement provision or
24 after the enforcement sub chapter. And it made sense to
25 us to kind of put all of these proceedings in that sub

1 chapter. So they are all in one place. They are easy
2 to find. They are not sort of scattered throughout one
3 of the regulations. So if you're in the middle of one
4 of these issues, you can go straight to that sub chapter
5 and you'll find the information that you need.

6 You do have in your packet, you do have the
7 regulations. You also have the Power point, but what
8 this does, what we've tried to do is break it out into
9 each discrete section. So Parts 582 to 585 all deal
10 with specific proceedings.

11 Parts 580 is the rules of general application
12 in these proceedings. It will contain things like
13 definitions. When rules can be suspended or waived.
14 Who can appear. Service requirements. Definition of ex
15 parte communication. Those type of things, things that
16 apply throughout this whole sub chapter.

17 Part 580.1 covers all the motions that can
18 happen in these kind of proceedings and what the process
19 is for filing motions, for limited opinions,
20 intervention, motions on appeal when it's just based on
21 written submissions to the commission, filing a motion
22 et cetera.

23 One thing that we did add was a provision for
24 filing a motion for reconsideration. And I apologize to
25 all of you non lawyers in the room who don't care about

1 this stuff. I don't blame you. But the lawyers in our
2 office were really excited about this and how we can
3 refine these particular regulations.

4 One of the issues we came across was that
5 sometimes tribes, sometimes tribes file a Motion For
6 Reconsideration, sometimes they didn't. There was a
7 practice in our office that if a tribe did file a Motion
8 For Reconsideration that they would be considered.

9 However, there was nothing in the regulations that said
10 a tribe could. The only way a tribe would know about
11 that was if their attorney had previously worked on one
12 or was very diligent and researched our web site in the
13 various appellate decisions to see that another tribe
14 had done it and so they figured we can do it too.

15 We wanted to formalize this. We wanted to
16 make sure that everyone knew there was a process for
17 reconsideration. And so that process was included in
18 Part 580.1.

19 Then Part 580.2, governs our potential appeals
20 of disapproval of gaming ordinances or amendments.

21 One of the comments that we received, that a
22 lot of the information that's contained in Parts 582 to
23 585 are repetitive. And it's true, but it's for a
24 reason. If you're simply filing an appeal of a
25 disapproval of a gaming ordinance, then you shouldn't

1 have to go and see what happens when you file it. It
2 should just be contained in that same section and you
3 shouldn't have to go somewhere else to look for it.

4 So while it is repetitive, and you'll see that
5 particular section repeated throughout 582, 583, '84,
6 '85. It's because if you are utilizing that section,
7 Part 582, we don't want you to have to look at 852, 585
8 to find the information that you need. It all needs to
9 be in one place.

10 580.3 is the process for appealing an approval
11 or disapproval of management contracts or amendments to
12 management contracts. Who can file those approvals.
13 How to appeal. You know, the process, late filing.
14 What happens? Motions. Who can be a limited
15 participant, what the standard review was, et cetera.

16 And we had the question come up, well, why
17 would you appeal the approval of a management contract?
18 We thought about this and we left it in because we have
19 had instances where tribes, for example, the governing
20 counsel presented the governing contract to the
21 commission and it was appealed. Then the legislature
22 appealed it because they didn't want that particular
23 management contractor.

24 So if you have a question, if you were
25 wondering why that is, that's why that was left in.

1 So Parts 584 and 585 were all included
2 previously in Part 577. So if you have been issued a
3 Notice of Violation, temporary closure orders, or civil
4 fine assessment, or the chair has decided to void or
5 modify a contract, this is the notice of late fee,
6 assessment fee, if you come across any of these things,
7 you can choose as a tribe to go one or two routes.

8 You can choose to have an actual formal
9 hearing were you present information, you do discovery,
10 you can take witnesses. Or you can choose to just file
11 your appeal just through written documents and it goes
12 straight to the Commission.

13 Part 584 is that hearing process. And it goes
14 before a presiding official, sort of an administrative
15 law judge. There is a hearing held, it's very
16 adversarial. You have attorneys on both sides
17 presenting evidence and making arguments.

18 The presiding official then issues a
19 recommendation to the Commission on the decision. And
20 then the Commission adopts or modifies that official's
21 decision.

22 On the other hand, you can go straight to an
23 appeal directly before the Commission. And when you do
24 that, you don't have a hearing, you just file the
25 paperwork.

1 And so there's the two routes that you can go
2 and we tried to lay that clearly out in those different
3 sections.

4 There are some comments on the web site on
5 these, so if you're interested in hearing what other
6 tribes have to say, it's there. And I think with that,
7 I'll turn it back over to Dan.

8 MR. LITTLE: Okay. Thank you, Lael.

9 We're going to move on, up to Part 573,
10 Enforcement Regulation. As many of you know, the
11 purpose of this regulation is to set up the general
12 rules for the Commission to follow when taking
13 enforcement action. And this includes the process for
14 when a N.O.V. can be issued or a process when the chair
15 my issue a temporary closure and it provides a form for
16 that review process.

17 So during the N.O.I. and consultations, we
18 heard from tribes that our enforcement policy should
19 reflect a civil regulatory team rather than a punitive
20 criminal one. We also heard that the N.I.G.C. should
21 stop the voluntary compliant, which we have in our
22 draft. That we should adopt a process whereby a N.O.V.
23 is not surprised. And I think we've don that also by
24 creating some steps and that our regulation should focus
25 on prevention and not on -- the prevention of a N.O.V.

1 And like we talked about earlier are, we all
2 are cognizant of the fact that an N.O.V. can have a very
3 serious economic impact. And the goal of this
4 commission is to maintain compliance, not issue
5 N.O.V.'s.

6 So in June, we issued a discussion draft.
7 Like Lael said, we did add a voluntary compliance
8 statement. And where it allows our staff to issue
9 letters of concern of non compliance. And then the
10 draft also specifies when a N.O.V. becomes a final
11 agency action.

12 So does anybody want to start off with some
13 comments regarding the discussion draft or any topics
14 that have not been covered, have not been raised by the
15 commission in any of the previous consultations here
16 today?

17 MS. POUST: Hi, Terri Poust, again.

18 I really appreciate what the commission is
19 talking about doing with coming up with this graduate
20 approach to enforcement, rather than just going to a
21 straight N.O.V. I think we have all seen situations in
22 the past where that has happened and not really
23 justified. So I really appreciate the intent of the
24 commission to kind of formulate this graduate approach.

25 My question though is really, and, again,

1 looking at future commissions and how do you ensure that
2 that happens all the time? Because I noticed that the
3 way the language is, the chair still may issue an N.O.V.
4 You talk about if the circumstances warrant that. Are
5 you going to define that in anyway? And I know that
6 that may be difficult, but my fear is that if you lie
7 out this kind of graduated approach, but then still say,
8 but the chair can issue an N.O.V. if circumstances
9 warrant it.

10 Is that going to open the door to future
11 commissioners just to go back to, you know, what they've
12 been doing, which is, you know, you pay your fee two
13 days late, so we are just going to issue a N.O.V. So is
14 there some kind of a standard that's going to be set up
15 in regulation to, I guess, try and really spell out what
16 the circumstances would warrant those records from
17 N.O.V. versus the graduated approach?

18 MR. LITTLE: I think the pre enforcement
19 actions or the process is for staff to work with and
20 mainly, you know, our field staff to work with the
21 tribes to, you know, maintain compliance or when they
22 identified compliance issues to bring them up to the
23 standards. I think, you know, I mean, the commission
24 has to always reserve the right for the chair to enact a
25 N.O.V., you know, if, you know, he or she seems fit at

1 the time. So, you know, I think we are very interested
2 in maintaining the authority of the chair, but trying to
3 create a process where the staff will work better with
4 the tribes.

5 Lael.

6 MS. ECHO-HAWK: That's been one of the
7 comments we've seen consistently in consultation and in
8 the letters that we've received. It's very difficult to
9 define and we've toyed around with some language. We've
10 thought about what we can do with the preamble language,
11 so we're thinking about it. If you've got some ideas
12 we'd love to see it, because it is -- we need to walk
13 that fine line, we need to know if there's someone in
14 there who's, you know, illegally managing or managing
15 without a contract or if there's some major issues going
16 on and we need to immediately -- the chair needs to take
17 immediate action. Then she needs to have that
18 authority.

19 On the other hand, you're right, the whole
20 reason we are going the route with the fees and with
21 this pre enforcement of the, this voluntary compliant
22 pre enforcement type proceeding is because the
23 commission has done that in the past. So we are really
24 trying to figure out how to work it. How do you put
25 that in regulations? It's very difficult. So if you

1 have some suggestions, we'd like it to see it, but we
2 are playing with language and talking about what we can
3 include in the preamble, perhaps give guidance to future
4 application of that particular regulation.

5 MR. LITTLE: Thank you, Terri. We appreciate
6 that.

7 Are there any other comments regarding the
8 enforcement regulation or any of the voluntary
9 compliance process we're looking at trying to implement?

10 I guess we'll move onto the proceedings before
11 the commission. And that's, you know, Lael, pointed out
12 this is kind of a major kind of overhaul of this issue.
13 I know as an associate commissioner when I came onto,
14 came to the N.I.G.C. I was, I kind of felt that there
15 was an area, a need to better spell out the appeals
16 process so that there's a better understanding of, you
17 know, your rights under I.G.R.A and regulations. So I
18 think we've tried to make the process easier.

19 During the N.O.I. We did hear this, you know,
20 numerous times that the tribes were concerned about due
21 process, you know. I think in regards to timelines they
22 had before the commission, you know, that tribes felt
23 there was no finality when it comes to written appeals
24 and there's a sense that they are kind of hanging out
25 there.

1 So we are looking to -- like Lael said,
2 looking to consolidate Parts 519, 524, 539 and 577 into
3 a new sub chapter. And we're proposing that to be Parts
4 580 to 585. And when I go through all the steps that
5 Lael had talked about or what each part does.

6 But does anyone have any comments or concerns
7 on, you know, and your reasons not to consolidate these
8 all into one part of the regulations? Any areas where
9 folks have had difficulties in the past from a
10 misunderstanding or lack of understanding of it. Is
11 there anything we need to clarify? Norm, do you have a
12 comment?

13 MR. DES ROSIERS: Yes, thank you. And I've
14 submitted nothing, so I wanted to make a comment on
15 this. Norman Des Rosiers, San Manuel.

16 But the one thing that jumps out at me and
17 I've been thinking a lot of the non lawyers, we have a
18 problem and I urge you to consider in your definition
19 section actually defining what "file" means. We talk
20 about filing briefs, filing motion, filing appeals, but
21 nowhere in here was I able to figure out just exactly
22 how that's done. What does file mean? Does that mean
23 submitting a document? Does that mean -- and who do I
24 submit it to and how do I submit it, electronically, by
25 mail? None of that filing stuff is defined in here.

1 How that is actually done. Everything else is he pretty
2 clear, you know, what a brief must contain, what a
3 motion must contain, when to do it, but not what does
4 file really mean? Do I submit it to the office of
5 general counsel? Do I send it to the Chairman? That's
6 not in here or at least I didn't see it in here.

7 MS. ECHO-HAWK: Lawyers make very basic
8 assumptions, so if we can clarify that, we will. There
9 is in the service section.

10 MR. LITTLE: 519.

11 MS. ECHO-HAWK: Well, yeah, five, but it's now
12 580.4 Page 3 in the handout. It says, copies of the
13 appeal and appeal brief should be filed personally. So,
14 yeah, we are working on definitions for this section
15 too, and so I'll add that to my list to maybe make it a
16 little more clear.

17 MR. LITTLE: Thank you. Does anyone have any
18 other comments? I mean, this is a huge undertaking here
19 and I think something that is so important as, you know,
20 your right to appeal. Any of the major issues that
21 N.I.G.C. undertakes, whether it be an approval of a
22 management contract or, you know, this is a big section
23 here. And it's a big change.

24 Does anybody have any other comments,
25 suggestions, clarifications.

1 I guess moving right along, in the general an
2 I guess we'll start of on Group 4. And that includes
3 Parts 556 and 558, background investigations for
4 management officials and key employees.

5 Part 571, the monitoring and investigations
6 and Part 537 on background investigations.

7 So Lael.

8 MS. ECHO-HAWK: Okay. So Group 4, Dan just
9 went over what that contains. Also, we do have, you do
10 have drafts in your packet. Part 556 and 558 formalize
11 what is commonly referred to as the pilot program,
12 that's been going on for some 10 years. So we didn't
13 think it was so much a pilot program anymore and maybe
14 we should actually change the regulation to, say, adjust
15 what we are actually doing.

16 Tribes were very supportive of this. Just
17 quickly the pilot program allows tribes to submit a
18 notice of results of background investigations that they
19 set. Then the tribe maintains all the documents and all
20 the reports. They just send us a notice of results and
21 basically a little more streamline and somewhat more
22 efficient. So that's what we intend to do.

23 Now, Part 556 includes all the procedures. We
24 tried to divide it up. Part 556 provides all the
25 procedures before a license is issued.

1 And 558 includes the procedures after a
2 license has been issued. So tribes seeking to license a
3 key employee or primary management official have to
4 notify the agency of the background results no later
5 than 60 days after the applicant begins work.

6 Now, we know that there is a number of tribes
7 that have, you know, temporary licenses and those kinds
8 of things. So it's after the applicant begins work is
9 the way that the regulation reads.

10 We also tried to allow, we're trying to
11 streamline things and not make tribes duplicate
12 information, duplicate efforts.

13 So if a tribe, if one tribe had access to
14 information on a particular applicant, background
15 information, an investigative report, they can get that
16 background information from that tribe and simply update
17 it and then send us that updated notice of results.

18 That way tribes aren't, you know, if you have
19 a tribe who, you know, from here, say, who's going to a
20 tribe, you know, down the road and your gaming agency
21 talks to each other, you can obtain that information.
22 Then it's just a matter of updating and not recreating
23 the entire file.

24 Part 558, as you move along includes all the
25 procedures after the gaming license has been issued.

1 Now, there is something that is a little bit different
2 about this, about the regulations than what's been
3 common practice in the pilot program. And that is that
4 a tribe has to provide us with a Notice of Results of
5 the background information and then they have to provide
6 us a notice of the license, that they've actually
7 licensed the individual. This is different than what
8 was going on for the most part, in the pilot program.
9 And it's a statutory requirement. It is an additional
10 step. We've had some concerns, tribes saying, oh,
11 you're making an additional step that's different than
12 what we are doing. But it's statutory and it's
13 something that we need to do.

14 We are trying to move ourselves into the
15 beginning of the 20th century. You know, or maybe the
16 end, I don't know, in our electronic submissions and our
17 I.T. We are working very hard to make sure that whatever
18 you submit to us it, doesn't take a lot of work. We are
19 not losing things on fax machines. We can actually
20 utilize a scanner and email address and those kinds of
21 things. So we're working on that internally.

22 Now, upon receipt of the Notice of Results,
23 the N.I.G.C. has an opportunity of 30 days to look at
24 that information and then either -- we are also trying
25 to formalize a process, you know, every region is doing

1 this differently. Some regions were very, very good,
2 very quick and other regions didn't do this at all.
3 That is to issue a Letter of No Objection. We don't
4 object to this person obtaining a license. However, the
5 N.I.G.C., if it does issue a contend, it can either
6 object to the individual, it cannot issue a license to
7 that individual or it can request additional information
8 from the tribe.

9 Now, here's where it gets a little bit sticky
10 and it's something we've mentioned to tribes and we just
11 want to point out again, if the N.I.G.C. has an
12 objection within that 30 days and the tribe has already
13 issued the license to that applicant, once that license
14 is issued, along with it comes rights to a hearing and
15 due process proceedings. So if the individual has been
16 issued a license and the N.I.G.C. says, whoa, we've got
17 some issues to this particular applicant and this
18 licensee, then the tribe has to hold a hearing, suspend
19 the license, hold a hearing and then later provide the
20 N.I.G.C. notice of whatever the results were from that
21 hearing.

22 And again, future ordinances have to comply.
23 If the ordinance doesn't comply with us now, don't worry
24 about sending us an ordinance amendment until you are
25 actually doing that and then at that time make sure your

1 ordinance submissions comply with this provision.

2 So the other things that were in Group 4 had
3 to do now -- and I just want to point out, we've pulled
4 a couple of thing from the discussion because the
5 commission's made the decision that we are not going to
6 be talking about them. That we are not going to go
7 forward with the amendment to this. One of those issues
8 was a Class 2 program. If you look in the draft, it's
9 on Part 537 at the very top of the 1st page. There was
10 an addition that said, "Including a management contract
11 that provides for management of both Class 2 and Class 3
12 gaming."

13 When we first started this process there was a
14 thought and there was a suggestion from our office that
15 we needed to clarify that management contractors of
16 these hybrid facilities that are of Class 2 and Class 3
17 facilities owned by one tribe needed to submit
18 background investigation. As we moved along in the
19 process we realized, perhaps that's not the
20 clarification we need. The commission has decided that
21 it's not and that's not something we are going to be
22 discussing or making an amendment on.

23 What we are still considering adding is Part
24 537.1 which allows the chair to exercise discretion and
25 reduce the background information requirements that need

1 to be conducted on certain entities, such as a tribal
2 N.S.D., a national day, institutional investigator,
3 somebody that's already federally regulated. Now,
4 again, this is at the discretion of the chair, but it's
5 something that tribes suggested to us and it seems like
6 a reasonable amendment to make.

7 Then moving on into 571. Again, we had
8 included in a discussion draft a section where we talked
9 about an access to off site records, books, those kinds
10 of things. And as we've gone through the consultations,
11 we've heard over and over again that you can do it, but
12 you don't really need to do it because you have subpoena
13 authority. So what's the point, I mean, you can, but
14 it's not a necessary amendment.

15 The commission listened to that and has
16 decided that that's not an amendment that we are
17 considering at this time. It's not necessary. And so
18 the only amendment that we are currently looking at in
19 571 is the investigation preclusion letter. Now, this
20 is where the N.I.G.C. has begun an investigation and
21 concluded it. We've heard numerous times that tribes
22 have been notified we have done an investigation and it
23 was five years ago. Well, they never received any
24 notice that the investigation was closed. They didn't
25 receive a Notice of Violation. They are sort of out

1 there in purgatory, like limbo. They don't know what's
2 happening with this investigation, but they have to
3 notify if they are bond holders or banks or other sort
4 of regulatory entities that they are still understand
5 investigation. So this allows the N.I.G.C. to advise
6 the party that the investigation has been concluded.
7 This doesn't say that the chair couldn't issue a Notice
8 of Violation or that there has been no violation. It's
9 just saying that the investigation is concluded. So
10 there is some peace of mind provided to the tribes.

11 And so that is what we've got for Group 4.

12 MR. LITTLE: Okay. Thank you, Lael.

13 So we are going to start off with Parts 556
14 and 558. We're going to kind of do it together with
15 that for background investigation for primary management
16 and key employees.

17 Part 556 in the discussion draft is basically
18 all the procedures that occur before a license is
19 issued. And then Part 558 is all the proceedings after
20 a license is issued.

21 As you all notice, the purpose of these
22 regulations is to weed out, you know, bad influences and
23 during the N.O.I, as Lael pointed out, we heard from the
24 tribes that a pilot program can't be going on for 10
25 years. It's no longer a pilot program. So, it's

1 worked, it's worked well. And it's probably something
2 that should be formalized into a regulation, which we
3 have done in the discussion draft.

4 Is there any comments if favor of that or
5 maybe not in favor of formalizing the pilot program into
6 a regulation? Scott, go ahead.

7 MR. CROWELL: Scott Crowell on behalf of the
8 Rincon Band. Dan, I have with me today a copy of the
9 formal statement that has been approved by the tribal
10 counsel, similar to previous comments that we've
11 submitted. On Group 4, we've already submitted
12 comments, but since that time the preliminary drafts on
13 556 and 558 come out and the counsel has a couple of
14 comments that if you'll bear with me, I'll simply read
15 from the statement.

16 Since our last submission, N.I.G.C. has
17 circulated preliminary drafts on Parts 556 and 558, our
18 initial review is favorable and supportive with two
19 exceptions.

20 First, we agree that the tribe should be able
21 to turn to the N.I.G.C. for assistance to conduct
22 background investigations on any employee or entity for
23 which the T.G.A. seeks assistance. Being able to turn
24 to the N.I.G.C. to process fingerprint cards beyond
25 primary management officials and key employees enables

1 tribes to make better informed and faster decisions.
2 This is particularly important because many states deny
3 or severely restrict tribes from a states database or
4 resources.

5 The cost of processing fingerprint cards,
6 however, should be borne by the participating tribes and
7 not out of fees paid by other tribes, who restrict
8 N.I.G.C. assistance to key employees and primary
9 management officials.

10 Second, the revision to 558.2 highlights a
11 provision that considers requiring notification to
12 N.I.G.C. of determinations of unsuitability in license
13 denials. We suspect this is highlighted because
14 I.G.R.A. requires that a tribe notify the N.I.G.C. of
15 licenses issued, but is silent on notifying N.I.G.C. Of
16 licenses denied. 25 U.S.C. 2710 sub two sub F sub two
17 sub one. The crux of the a abuses of the Hogan
18 commissions were the result of an agency culture that
19 believed it could fiat authority on the grounds that it
20 was a good idea, without regard to I.G.R.A.'s limits on
21 that authority. Class three M.I.C.S. facility licenses,
22 et cetera. Although, the proposed requirement to notify
23 N.I.G.C. of licenses denied is a good one, and improves
24 the data base on which all tribes can make better, more
25 informed licensing decisions, it falls outside the of

1 the N.I.G.C.'s parameters of authority set forth by
2 I.G.R.A. and perpetuates the culture that lead to past
3 abuses. Accordingly, Rincon endorses the word "may" and
4 opposes using the word "shall." We do believe that a
5 tribe can compel its T.G.A. to submit such information
6 to the N.I.G.C. in its context of the tribal gaming
7 ordinance, but this is properly a matter of tribal self-
8 governance.

9 Finally, the preliminary draft appear to make
10 the quote pilot program permanent. We applaud this
11 change. It has been a farse to call it a pilot program
12 when it is older that most tribal gaming facilities.

13 MR. LITTLE: All right. Thank you for those
14 comments. Will we get a copy of that for the record?

15 MR. CROWELL: Yes.

16 MR. LITTLE: All right, thank you.

17 Does anyone have other comments you want to
18 add about the pilot program, formalizing it? Does
19 anybody have any comments about how by formalizing it,
20 it could effect any current ordinances? Does anyone
21 have any comments how we can improve the process
22 providing access or background information, whether it
23 be like Lael talked about, better communications or
24 sharing information or -- Lael?

25 MS. ECHO-HAWK: Just to kind of follow-up with

1 the question Dan just asked and what Rincon's comments.

2 One of the issues that we've heard repeatedly
3 is a tribes would like to have access to a database that
4 means something, that you can actually see a person has
5 been licensed by X tribes for X long.

6 One of the concerns that we've had with this
7 particular section is, does that also mean that tribes
8 have access to individuals who have not been licensed?
9 And that if they had not been licensed, do we provide
10 the information for why or why not?

11 And in 556 and in 558, if you look at 556, one
12 of the requirements for an individual who's submitting
13 an application is that they provide notice of anytime
14 that they have not been licensed. Well, we, you know,
15 internally, we are like, well, why would that be?
16 There's a lot of reasons why an individual may not be
17 licensed. I remember when I was working for a tribe,
18 sometimes it took forever to get the person in the door
19 and ready for employment and they had already applied
20 for a gaming license, but by the time the operation got
21 around to hiring them, it was too late, they had got
22 another job and didn't need the license. But we've
23 heard stories of individuals who anecdotally didn't put
24 on their -- they applied for a license, but hadn't been
25 issued a license. They weren't considered unsuitable

1 for the other tribe because they had not included that.
2 They had just forgotten that they had applied for the
3 job and at the same time they applied for a job they
4 applied for a gaming license. So you have that
5 instance.

6 And then you have instances where individuals
7 have submitted background information and they are
8 unsuitable for a number of reasons. We receive the
9 information on that, but if you don't submit the
10 background's investigative reports, we don't know why.
11 So when someone accesses the database like that, we need
12 to figure out what information is suitable for occlusion
13 in that kind of database. How do we get that
14 information if we are formalizing this Notice of Results
15 and then how can tribes actually use it in a meaningful
16 way.

17 So it's a dilemma we are facing internally.
18 If you have some thoughts about that, we'd love to hear.

19 MR. LITTLE: Thank you, Lael.

20 MR. ANDREWS: Jason Andrews, Big Sandy.

21 One of the questions I had and I was speaking
22 with Melissa over here, who's the licensed manager for
23 another tribes.

24 Is, as it is right now, I don't believe the
25 tribes are sending in authorizations to N.I.G.C., so I

1 think there could be or may be an issue maybe internally
2 with the tribes to the applicant as far as putting on
3 that information. One suggestion could be that the
4 database just include the tribes that they were denied
5 by. And then some contact information or something of
6 the sort where now as a licensing investigator can
7 contact that tribe, send them the authorization and
8 release information and then they could communicate
9 tribe to tribe. Just an idea.

10 MR. LITTLE: Great. Thank you. Good point.

11 Was there any other comments? Norm.

12 MR. DES ROSIERS: Thank you. Well, I jokingly
13 asked Scott if he had read my submitted written comments
14 before he submitted his, because they were almost
15 identical. And, you know, the notion of a database and
16 access to people, you know, who have had a license and
17 had them denied or revoked or whatever, it's good. I
18 don't know of any tribe that wouldn't want access to
19 that kind of information.

20 However, as Scott pointed out and as I pointed
21 out if my written comments, I really firmly believe that
22 it must be voluntary. I don't think I.G.R.A. gives
23 N.I.G.C. the authority to manage. Well, I don't know.
24 And, again, I can't imagine -- maybe there's exceptions
25 to everything, but why a tribe wouldn't want to

1 voluntary submit that. I mean, I do. And I've done it
2 for years, but it's been voluntary.

3 MR. LITTLE: That's a good point. Thank you,
4 Norm. Is there my other comments, any other comments on
5 556 and 558?

6 MR. CROWELL: If I could, I appreciate the
7 issues that you have to struggle with in terms of the
8 database being available without having a consistent or
9 uniform standard of, you know, whether tribes are
10 submitting their denial information and the background
11 basis on whether it's simply, you know, didn't get
12 around to it or if it was a negative termination
13 suitability. I would not -- I encourage you to develop
14 and make that database available, even though those
15 problems persist. I think, you know, every tribal
16 gaming commission that I've had the pleasure of working
17 with, you know, is able to discern, you know, the
18 reliability and the detail of information. And that
19 database would be additional information that the
20 tribes, that the tribes could use and, certainly, if
21 there's unanswered questions on the reason for denial,
22 short of a negative termination, suitability, et cetera,
23 then that's something that, that T.G.A. could follow-up
24 with the applicant or licensee and ask them to provide
25 additional information.

1 The more information the T.G.A. has, the
2 better informed decision that can be made. So even
3 though there are problems with consistency and
4 verifiability of the information in that kind of
5 database, I don't think that outweighs the value that
6 the database would provide.

7 MR. LITTLE: Thank you. Let's move onto -- if
8 no one has any additional comments, we'll move onto Part
9 571. Monitoring Investigations.

10 And I think as Lael had discussed, the purpose
11 of the regulation spells out procedures used by the
12 commission to monitor gaming and conduct
13 investigations. In a discussion draft that was put out
14 in June, I think that the area we are going to focus on
15 is basically when an investigation is terminated. I
16 know we've been kind of toying with the terminology
17 there, not to say an investigation closure, because it
18 sounds like a closure of a facility, but the
19 investigation notification termination process. So in
20 the discussion draft and I'm hoping, I'm sure most of
21 you have had a chance to review it, it basically
22 provides a process that the N.I.G.C. would utilize to
23 notify a tribe that its investigation has been closed.
24 But it does not mean that an investigation cannot be
25 reopened at a later time or that there was no sufficient

1 evidence that a violation has not occurred. It just
2 means that the investigation has concluded.

3 Does anyone have any comments regarding this,
4 you know, this draft proposed changed. Good things, bad
5 things?

6 We are breezing right through this agenda
7 here. We won't have anything to do after lunch.

8 MR. DES ROSIERS: That's the idea.

9 MR. LITTLE: I hate to move along if folks
10 have something to add. I guess we could talk about
11 Parts 537 Background Investigation of Management
12 Contracts.

13 This part just specifies what must be included
14 in a management contract for it to be approved. During
15 the N.O.I. and the consultations, you know, we heard
16 that the commission should streamline this process.

17 Does anybody have any comments regarding Part
18 537? I think one of the issues that was raised was when
19 a management contractor has multiple operations, do they
20 need to go through the same process, entire process for
21 back grounding if they work with a number of tribes?

22 So the discussion draft, it basically gives
23 the chair some discretion. Does anybody have any
24 comments regarding that, is that good, bad, helpful? No
25 comments? Everybody speak at once here.

1 Well, I think that's the end of Group 4. I
2 guess we could go onto Group 5 or do you have anything,
3 Lael, that you want to add?

4 MS. ECHO-HAWK: So everyone is comfortable
5 with the issues that we've decided to take off the
6 table, I'm assuming, or we would have heard about them.
7 Thank you all so much. I mean, I just want to just
8 really extend my gratitude. The comments that have come
9 in have been so excellent. And they really have
10 provided a lot of guidance. So when we present these
11 issues and say, you know, to the commission, who do read
12 the comments, that overwhelming a tribe is not necessary
13 in the interest of time and money and tribal resources,
14 so you're not still spinning your wheels on issues that
15 we are not talking about anymore. I really appreciate
16 the comments have been great. The commission has been
17 super acceptive. So, hopefully, this helps us move this
18 process along.

19 So part, Group 5 -- you know what, I
20 overlooked two things in Group 4 because I forgot we
21 pulled them off the table and those were the discussion
22 about collateral agreement. If you remember, we've been
23 considering defining what collateral agreements are and
24 refining that and overwhelmingly, the response of
25 tribes -- well, not overwhelmingly, there's been a

1 little debate it may be useful, but don't touch it.
2 And, you know, given some useful court opinions, that
3 that particular issue has also -- we are not considering
4 a regulation or doing anything with that, anything with
5 that particular definition.

6 Likewise, we were talking about the definition
7 that revenues overwhelmingly we heard there's a
8 statutory definition for net revenues. You can't really
9 do anything about it. So we are not going to do
10 anything with that definition as well.

11 So those are no longer issues that we are
12 considering internally or spending our time and
13 resources on developing any kind of regulation or
14 definition. Is everyone okay with that? So Group 5
15 contains -- and you'll notice that we, Group 5, Group 1
16 and Group 5 both contain a section identified for a
17 Class 3 mix. We've again have taken that issue off the
18 table. We are going to be talking about that with the
19 tribal advisory committee in the meetings that we've
20 planned beginning in October.

21 So Group 5 covers Part 518, self regulation
22 and Class 2 gaming and self proprietary interest. The
23 most recent discussion draft that you've seen and in
24 fact comments closed on Saturday, I don't know why on
25 Saturday. That's when the date calculator says. I

1 apologize. So it closes tomorrow actually if you have
2 comments.

3 So that's the most recent discussion draft
4 that's in your handout. So we asked whether or not the
5 commission should review the Class 2 self regulation
6 certification. We heard back an overwhelmingly yes,
7 please do. You know out of 240 gaming tribes, 400 and
8 some operations, we had two tribes that are self
9 regulating. So obviously this regulation is not doing
10 what congress intended, it's not doing its job. It's a
11 very old regulation. It was written back in the late
12 1990's before we had M.I.C.S. So as we were going
13 through it we were saying, because we didn't even have
14 this other regulation at the time. So we looked at it,
15 we tried to reduce duplicative and burdensome
16 information, you know, things that were already sent to
17 the N.I.G.C. we already have from a management contract,
18 or gaming ordinance commission or facility licensing
19 commission or whatever it was. We didn't want to make
20 tribes submit that again. It seems duplicative on our
21 heads as well as yours.

22 But we did hear that the high standards did
23 need to be maintained and that is really a tribal
24 sovereignty issue. So we shift the focus from the
25 gaming operation, it was odd because if you look at the

1 regulations, it fixated on the gaming operation and not
2 on regulation on the tribal regulatory side, which is
3 really what this is about. It's about the tribe
4 regulating itself. So we need to talk about how does a
5 tribe do that?

6 So if you look in your draft, and we've
7 reduced the submission requirements to make, you know,
8 not to reduce the information we have, but to eliminate
9 some of the duplicative things that were contained in
10 and to really focus again on tribal gaming regulatory
11 agency and not on the operation. So it contains things
12 like board charts, employment criteria, so we know
13 people are getting back grounded, funding descriptions,
14 we wanted to make sure there was adequate funding for
15 the regulatory agency. Who the regulators or, you know,
16 description of accounting systems, internal controls,
17 record keeping systems for investigation. Copies of
18 facility licensing, tribal regulations, if not included
19 with the ordinance. Now, I know that a number of tribes
20 include their regulations inside their ordinance, so we
21 would have that information. But I also know that there
22 are tribes that have regulations built outside of the
23 ordinance so they can amend them as needed without
24 having to seek the approval of the N.I.G.C. So I think
25 those tribal regulations were not included in the

1 ordinance then you send them to us, but otherwise if we
2 already have them, no need. Okay.

3 So, then we identified some criteria that best
4 need certificate of self regulation. Some of this we
5 just couldn't change because it's language straight out
6 of the act, including this effective, honest accounting,
7 reputation for safe, fair and honest -- all this stuff
8 in the first bullet there, that's statutory language.
9 And we need to make sure that it's being conducted with
10 I.G.R.A., N.I.G.C. regs, and the tribal gaming ordinance
11 and regulations. A tribe has to have an adequate
12 system, you know, stuff that we know as tribes have
13 developed, you have this stuff. Adoption of and
14 implementation of M.I.C.S., M.I.C.S. adequate dispute
15 regulations processes for employees and customers, a
16 gaming regulatory body that monitors compliance,
17 monitors effectiveness of the accounting systems, does
18 audits, Class 2 gaming activities and receives that
19 information so they are able to conduct those audits
20 from the operation. Inspect the -- I.G.R.A has access
21 to inspection and access to books and papers related to
22 the Class 2 gaming activities. It was very important
23 for us to make sure, especially the chairwoman, she
24 comes from the northwest, those tribes are pretty
25 independent, we wanted to make clear this was about

1 Class 2 gaming activities. We are not talking about
2 access to Class 2 and Class 3, you know tribes get to
3 decide how their gaming regulatory operations, but this
4 is a regulation that's focused on Class 2 because that's
5 what the statute said. We also took out some reference
6 to independent language, independent tribal regulatory
7 agency and while I know that commonly people say that's
8 what you need to have is an independent tribal
9 regulatory agency and not -- but the statute itself
10 doesn't require that. In fact, the tribal counsel can
11 be the tribal regulatory agency. So we wanted to make
12 sure that a tribe decides how they establish the
13 regulatory agency, their regulatory body. We don't
14 mandate something that's not required by statute, but,
15 again, giving tribes the opportunity to set regulatory
16 body structure up however they choose.

17 So, again, tribes can illustrate they have met
18 this criteria by doing so many of the things that you
19 already do, establish post game rules, have systems for
20 violation investigation, take enforcement action. All
21 of those things. Funding is something that we needed to
22 make sure was included in there. That a tribe is
23 adequately funding the agency. That we know that the
24 investigators are wanting to be paid, so they can
25 continue doing their jobs by the regulating agency and

1 the gaming operation.

2 The tribe has to demonstrate the operation is
3 financially stable. We had a lot of comments about
4 that, I agree. However, this is language that come out
5 of the act. How you decide that, I think can be a
6 little -- we might have some issues with that, but it is
7 within the act, so we needed to leave it in, it's
8 regulation. So for the process to review petitions, you
9 are very lucky because today you do have the official of
10 self regulation here with you. Commissioner Little is
11 the office of self regulation. He's the one that signs
12 the certificates. So, again, it's a very daunting task
13 for him right now.

14 So within 120 days of receipt of a complete
15 petition, the office of regulation makes an initial
16 finding, issues a report. Either issues a certificate
17 or tells the tribe, you know, they didn't meet their
18 requirements. And then there's an opportunity for the
19 tribe to respond and include additional information or
20 request a hearing. If after, if the decision is that
21 the tribe is not eligible for a certificate of self
22 regulation, that decision can be appealed to the full
23 commission. And then we reference the new appeals
24 process. So it would go through Part 585, the appeal
25 process. Part 584 or 585.

1 So annual reporting requirements. This was a
2 big issue too because out of our two tribes that have
3 certificates of self regulation, they submit wildly
4 different reports. One is much more summary. The other
5 is comprehensive. And there wasn't much -- I mean,
6 there was a reporting requirement, but it wasn't, it
7 seems burdensome, that's what we heard from the tribes.
8 That the burden for that was higher than, in fact,
9 having to his submit three reports. Essentially, it was
10 higher than the tribes that were not self regulating.
11 The access says that the tribe has to submit an
12 independent annual audit, which tribes do as matter of
13 course anyway. And submit a complete resume for all
14 employees hired after the receiving a certificate of
15 self regulation. That's what the act says.

16 So in the reg, we tried to finesse the
17 definition of employee by defining employee as primary
18 management or upper key employees. It still is pretty
19 heavy. I know that especially on operations say this
20 size or larger operations who hire thousands of
21 employees, it would be kind of a burdensome thing. And
22 we received a comments which we are considering -- we
23 received it recently, it's on the web site, and I forget
24 which tribe it was, but they mentioned that since we are
25 assisting our focus to the gaming and regulatory agency,

1 then perhaps we should define employee not as key
2 employee or primary management official, but as a new
3 employee resume for the employees hired at the
4 regulatory agency.

5 So if you have an opinion on that, please let
6 us know, because I know this can be a very substantial
7 requirement. And then the tribe can have a continuing
8 duty to inform the commission of any change in
9 circumstances that might affect your certification
10 eligibility. This was an issue that was -- in fact John
11 Day back there, waive your hand, John, he helped work on
12 this draft and Sabella in our office and one of the
13 things that came across in the current reg, it doesn't
14 say what the statute says. And that is, these following
15 investigative enforcement powers are limited when a
16 tribe has a certificate of self regulation. And so we
17 included that in 518.9. And, again, this is statutory
18 language. The commission retains all of their
19 investigative enforcement powers, as well. And then the
20 power to investigate enforcement actions to violations.
21 But we wanted to make sure that we identified those
22 particular powers that the N.I.G.C. does not have during
23 the time that the tribe has a certificate of self
24 regulation. The comment period on this ends tomorrow.
25 We'd love to see your comments on this.

1 MS. OGAS: Kathy Ogas, Lytton Rancheria of
2 California. We are going to submit written comments to
3 you tomorrow, but I do have a couple of comments at the
4 end. I notice that we have the hearing process for
5 denials or removals of certificate or maybe it's just
6 for removals. And then you have the more informal that
7 you can just request reconsideration of the commission.
8 And the way that they are kind of written right now
9 seems like you can only do one or the other. Is the
10 intent that you can do one and then do the other? So I
11 think the time lines don't work together.

12 MS. ECHO-HAWK: Yeah. The intent is that you
13 can basically ask Commissioner Little to basically
14 reconsider his decision. And if it's denial, then you
15 can go to a formal hearing. So thank you for that.

16 MS. OGAS: And then another one was just a
17 small one, the part about providing a list of internal
18 controls, are you just wanting like a list, we've got it
19 for accounting.

20 MS. ECHO-HAWK: Yes.

21 MS. OGAS: Okay. Thank you.

22 MR. LITTLE: Did you want to continue with
23 your Power point, Lael?

24 MR. DES ROSIERS: The part on the annual
25 reports or whatever have to be submitted, what I found

1 real bothersome and I think I submitted my written
2 copies, this complete resume of the employees. First of
3 all, I don't know what resume, what that includes, that
4 probably should be defined. But more importantly, that
5 requirement, what I'd like to see and I don't think you
6 can do it statutorily, that's more burdensome than what
7 we do without being self regulated. I mean, under the
8 pilot project that's now being formulated, we don't have
9 to submit anything but a N.O.R., but we have to keep all
10 of that stuff and you have access to it any time you
11 want, anytime you look at those licensing files, that
12 include more than a private resume.

13 I'm suggesting if it can be done, that the
14 pilot program kind of mentality be part of that self
15 regulation instead of having to submit those resumes or
16 whatever that is, that we keep them on file. You can
17 have access to them.

18 MR. LITTLE: Good point. Thank you.

19 MS. ECHO-HAWK: And I would -- we need to
20 finesse the definition of resume, complete a employee
21 because that is statutory. We're trying to find out how
22 to make it reasonable. And we've thought about the
23 definition of resume. And I think you guys were maybe
24 the ones that suggested maybe it be the resume and then
25 the tribal gaming agency. Was that your comment? But

1 that might be one way to do it because oftentimes the
2 regulatory agency employee number of employees is much
3 smaller. I think we received another comment that
4 perhaps we define it as maybe a commissioner's resume
5 or, you know, like director or whatever. But we are
6 trying to finesse that. And so we are open to
7 suggestions and I know that you -- but it's statutory,
8 so we are trying to figure out how to work it.

9 MS. POUST: Hi, Terri Poust. I have a couple
10 of differ comments on this. First, I greatly appreciate
11 again just reevaluating Part 518. It's long over due.
12 I'm very glad that you're doing that.

13 One, I'm very thankful that you are scaling
14 back some of the requirements. Some of the items the
15 commission is going to be looking at with regards to
16 whether or not a tribe, the regulatory system is deemed
17 worthy of status of self regulation.

18 My one concern though is that in scaling some
19 of those back, it seems like the requirements are
20 becoming more subjective. For example, the use of you
21 know adequate systems. You were just talking about
22 definitions. I know it's difficult to define a word
23 like adequate. But my concern begin, is not necessarily
24 with this commission, but with the next and with the
25 future commissions. What exactly is adequate? The

1 review process becomes so much more subjective. And in
2 a way, by scaling back kind of specific requirements,
3 you are setting the bar even higher, depending on, you
4 know, the perception of the person that's looking at
5 this. Adequate, well I don't think it's adequate. It's
6 just not good enough. Instead of trying to come up with
7 very specific, you've got to do this, you know, and,
8 again, it becomes a little bit difficult to try and
9 articulate those, but I really would suggest that the
10 commission look at that and try to come up with, you
11 know, maybe bullet points, this, this, and this, versus
12 just have to be adequate, because it becomes a little
13 more problematic.

14 Another concern that I have is the
15 requirements of operating Class 2 games for a period of
16 3 years before you can even apply for this. And I think
17 this actually touches upon what you were talking about
18 as taking the focus off of operations and putting it on
19 the regulatory structure. Particularly, here in
20 California, unfortunately there's a lot of gamesmanship
21 that goes on between state, local government and
22 tribes. Sometimes you have to discontinue operation of
23 Class 2 games for a period of time, otherwise risk, you
24 know, your entire compact. So in some instances, you
25 know, holding not in control of the tribes, they are not

1 going to be able to operate Class 2 games for a three
2 year consecutive period, you know, based on the local
3 process. And who's governor at the particular time and
4 allegations of those are not just Class 2 games, they
5 are Class 3. You are not paying revenues on them. Or
6 you are outside of your cap.

7 So, again, I think focusing in on the
8 regulatory structure of the tribe, has the tribe been
9 operating in gaming for three years, that's -- but I
10 think in narrowing it down to Class 2 versus Class 3
11 really jeopardizes the ability for some tribes to be
12 able to apply for this when they have a fantastic
13 regulatory structure.

14 So that's just something I'd like for you it
15 consider.

16 MR. LITTLE: Those are very helpful
17 suggestions and especially, you know, clarifying some
18 definitions. That's the purpose of these consultations
19 and getting this information out to you in as much time
20 as possible because, you know, having other eyes look at
21 these things can raise these issues to a point that we
22 can clarify them before the wheels are set in place and
23 that provides clarity down the road.

24 And that's a very good point about the
25 continuous operation for three years. The Class 2 or

1 Class 3. I'm glad we came out here to California
2 because we probably wouldn't have heard that in other
3 parts of the country. So I appreciate that. Thank
4 you.

5 Does anybody, while we are still taking about
6 518 self regulation want to -- sir.

7 MR. EMERICK: Mark Emerick, Picayune
8 Rancheria.

9 When you're asking for the tribe's current set
10 of gaming regulations, are those going to be for public
11 knowledge such as the ordinances that are on the
12 N.I.G.C. web site?

13 MR. LITTLE: Do we publish those out?

14 MS. ECHO-HAWK: We do publish the ordinances.

15 We've been talking about what is foible and
16 what is not foible. And if you have a comment about
17 whether or not we should be publishing tribal
18 regulations on line, we'd be happy to hear them.

19 We've been -- I don't know where we came down
20 on the petition. Of course, all the private information
21 and all of that is not foible, but I don't know where we
22 came down with some of the other information that could
23 be submitted. If you have some concerns about that,
24 please let us know so that we can try to address it.

25 MR. EMERICK: Thank you.

1 MR. LITTLE: Was there another comment over
2 here?

3 MR. ANDREWS: Jason Andrews, Big Sandy.

4 I think one of the concerns about, like you
5 said, the propriety information, there's also
6 information in there as far as, not necessarily
7 procedures, but how some of the gaming operations are
8 going to operate. Times we are open or closed, but more
9 importantly, gaming days information, so some type of
10 new regulation, which I know some tribes like to keep
11 for themselves because if the general public has
12 knowledge of your gaming day, they can also figure out
13 if I game so much this day, I can game so much that day,
14 they are not subject to Title 31. So that's just an
15 idea off the top of my head.

16 MR. LITTLE: Those are good ideas. Thank you.

17 Does anyone else want to add? You know, when
18 I first came on the commission, I think my first
19 official outing, Jeffrey, he told me this better be a
20 priority for you guys. So, we are really interested.
21 Not just because Jeff Green, who I admire, but because
22 this is what congress intended and what we should be
23 doing. And, you know, the fact that Lael pointed out
24 that there was 240 plus tribes. And only two of them
25 had achieved this status, that means it's something we

1 need to work on. And it's not necessarily a tribal
2 issue. It could be a problem with the regulations just
3 not working. So we are very, very interested in, you
4 know, in making this more accessible because it's the
5 right thing to do. And it was the intent of congress.

6 Does anyone else have any of their comments.

7 MS. OGAS: Kathryn Ogas. I just want to agree
8 with you totally on that. And the reason tribes aren't
9 doing it is because it's just too onerous right now. I
10 think we have lots of tribes that would like to do it
11 and are capable, but it's just impossible to manifest.

12 MR. LITTLE: Okay. Thank you.

13 If there's no additional comments. I think
14 I'll turn the mic back over to Lael to finish the last
15 session of Group 5.

16 MS. ECHO-HAWK: So the last issue that we have
17 today is Sole Proprietary Interest is obviously a big
18 issue. This is an issue that comes up frequently, most
19 often in the context of management contracts, but not
20 exclusively. Some of you know about the recent decision
21 of Notice of Violation that was issued by the chairwoman
22 about two months ago. And this was significant
23 discussion in that and about what sole proprietary
24 interest, how these agreements violated the sole
25 propriety issues of the act. So we asked in November

1 whether or not the commission should consider regulation
2 defining sole proprietary interest and provide a process
3 by which a tribes can request review outside of simply
4 saying a management contract.

5 We received wildly different comments. We
6 received comments that the commission should promulgate
7 a regulation that provided a review, but only at the
8 request of a tribe, but that the percentages contained
9 in I.G.R.A. also define what percentages would violate
10 the proprietary interest requirement. We've heard that
11 sole propriety interest, if that's defined then so
12 should primary beneficiary. We've heard two different
13 things. If you define it, that it's going to limit
14 assets to capital or if you define it, it may provide
15 stability to financing. Again, our comments have ranged
16 completely. Determination of self proprietary issues
17 should be left to the courts. So far we've seen, I
18 think, we've got one or two court cases that talk about
19 it, but nothing clear on point.

20 So you haven't seen a regulation issued from
21 us yet. We're still debating internally if that's
22 something we want to do, if it's something we need to
23 issue guidance on. We went through our files and we had
24 92, I think, different either management contract
25 approvals that contained some language about sole

1 propriety interest and whether or not it was violated.
2 And they all, every issue is so fact specific. Every
3 time we get one of these requests, it's incredibly fact
4 specific. And it's very daunting. We've been talking
5 about how difficult it is to write a regulation to
6 define what a resume is. Imagine sole propriety
7 interest and all the variations of agreements that can
8 come before the commission.

9 So we haven't drafted a regulation yet and we
10 are still considering which direction that we should
11 go.

12 So that's the last issue on the agenda today.

13 MR. LITTLE: Okay. Sole propriety interest,
14 like Lael said, it's controversial. It's not without
15 different opinions. We do not have a discussion draft
16 because we are still trying to obtain information.

17 Does anybody want to start off with some
18 comments? Scott.

19 MR. CROWELL: Yes. What I'd like to do is
20 read the formal comments approved by the Rincon
21 counselor -- Scott Crowell, by the way -- and then speak
22 informally about an anecdote that I think highlights the
23 council's concerns.

24 In response to the N.I.G.C.'s initial Notice
25 of Inquiry for regulatory review, which preceded the

1 current consultations, the Rincon Band recognized the
2 importance of the issue of sole propriety interest.

3 It is with grave concern that Rincon observes
4 the trends around the country wherein large portions of
5 tribal gaming revenue are sliced off and handed to state
6 treasuries, state agencies and local governments.

7 I.G.R.A's primary beneficiary rule also is triggered
8 when such large portions of tribal gaming revenue are
9 exported to state and local governments.

10 We express great caution, however, as whether
11 these issues can be properly addressed in the context of
12 N.I.G.C. regulations. We are not objecting to the
13 effort, but we are skeptical that regulations are the
14 appropriate means to address the issue. The existing
15 approach of opinion letters posted on the N.I.G.C.
16 web site creates a better means to at least get our
17 hands around the issue.

18 Certainly, any approach requires a look to the
19 aggregate impact on tribal gaming revenue, taking into
20 account all development and finance costs, management
21 fees, compact taxes, mitigation fees, et cetera. Terms
22 for one tribe in one location wholly unworkable for a
23 different tribe in a different location. The analysis
24 is necessarily very fact specific.

25 If the N.I.G.C. Does promulgate regulations,

1 we believe that the very recent opinion issued in
2 connection with N.O.V. 11 dash 02 regarding the
3 agreement between the City of Duluth, Minnesota and the
4 Fond du lac band of Lake Superior Chippewa provides a
5 proper framework for the regulations. Required criteria
6 should be addressed and includes, one, the term of the
7 relationship. Two, the amount of revenue paid to the
8 third parties and, three, provided control over the
9 gaming activity provided to the third party. That is
10 taken out of the your Fond du Lac opinion.

11 Rincon notes that the N.I.G.C., in addressing
12 the second criteria in the context of Fond du Lac
13 opinion, focused on whether amounts received by the city
14 were commensurate with the services provided. Rincon
15 believes that goes to the crux of the issue. If the
16 entity is being paid more than the worth of the services
17 provided, then the excess is properly considered an
18 illegal propriety interest in the tribe's gaming
19 operation. Any regulation should expressly incorporate
20 that analysis. At a minimum, the second criteria should
21 be amended to read quote The amount of revenue paid to
22 third parties can commensurate to the services provided,
23 closed quote.

24 Rincon proposes a fourth criteria, aggregation
25 with other agreements. Many tribes are found to be

1 whip-sawed from several fronts, where fees are paid out
2 to the state, on top of fees paid to the county and
3 local government pursuant to M.O.U.'s on top of
4 expensive financing and management fees, such that the
5 tribe is the last in line to receive the benefits of a
6 success of a successful casino, and the first in line to
7 absorb the burdens of an unsuccessful casino.

8 If the N.I.G.C. Proposes a preliminary draft
9 regulation, we will supplement our comments at that
10 time.

11 I'm not speaking hypothetically, there's at
12 least one tribe here in California that after the
13 millions of dollars that are paid to the state, paid to
14 the county, paid to the bond holders, paid to the
15 management company, the tribe has received nothing. I
16 mean, it's a very successful operation and the tribe
17 receives nothing.

18 So I applaud bringing attention to the sole
19 propriety issues. Something needs to be done about
20 these untenable situations. I think I shared the
21 comments that Lael had earlier, I'm not quite sure -- I
22 agree that a problem exists and I'm not quite sure how
23 to address it. But it's a problem that's got to get
24 stopped. It's a problem that's going the wrong way and
25 the problem that I have with looking at, you know, I'm

1 probably guilty myself, I have to go back and look at it
2 whether you write into a management agreement, oh, this
3 doesn't violate the sole propriety interest requirement
4 of I.G.R.A. Well, you can't look at these things in
5 isolation. You've got to look at them in the aggregate
6 because this pining on that occurs to where you've got
7 these, you know, what's becoming standard now is this
8 waterfall buckets where the tribe's the last recipient
9 of the waterfall. That's got to get changed.

10 MR. LITTLE: I do appreciate you raising that
11 point. That's something that I've toyed with or, you
12 know, thought internally about is a culmination of all
13 of these contracts and bond holders and payments, and
14 you do wind up the tribe is not the primary beneficiary
15 of the gaming operation. So I do appreciate those
16 comments and thank you.

17 Does anyone else have any other comments on
18 sole propriety interest? Like Lael said, we are still
19 discussing this internally. You know, when, you know,
20 through the consultations we've heard a lot of different
21 opinions as far as some folks even saying that we
22 can't -- it's nearly impossible to, you know, even to
23 solve this, you know, to, yes, there's definitely a need
24 for the commission to do something about this. We're
25 differently interested in hearing any ideas that you

1 might have. In moving forward with it, Scott.

2 MR. CROWELL: Case in point in terms of the
3 way to accomplish it where the facts are clearly, you
4 know, compel something being done, I applaud. It was,
5 you know, for those people in the room that don't
6 understand the significance, you know, the N.I.G.C.
7 issued the N.O.V. telling the Fond de Loc Band that they
8 cannot continue to pay the City of Deluth the ridiculous
9 fees that they were owing under the agreement between
10 the city and the tribe and I applaud that. I think
11 N.O.V.'S in situations that clearly step over the line
12 is one way that send a message, not just to a city like
13 Deluth, but the counties when they are thinking, I've,
14 got a provision in my compact. That gives me a sledge
15 hammer. You can't game unless you pay the piper or the
16 county. States can say, if you want to get around the
17 11th immunity, pay us 25% of your gross gaming revenue.
18 You know, those types of things. The N.I.G.C. stepped
19 up and sent the message that in and of itself creates a
20 chilling effect on those state and local governments to
21 look to overreach the negotiation table. I say keep
22 doing it more.

23 MR. LITTLE: Thank you. I appreciate that.
24 Are there any other comments that you might have on this
25 issue or any included in Group 5.

1 Lael, is there anything else that you want to
2 cover on this?

3 MS. ECHO-HAWK: No.

4 MR. LITTLE: I think, and Scott, your point is
5 well taken. I think we are trying to find a necessary
6 balance in how do we not stop tribes accessing capital
7 if it becomes an issue were, you know, the bonding
8 market or the banks feel that, you know, they can't move
9 forward, and by us doing something will this limit, you
10 know, future funding or stop funding streams for
11 tribes? So it's not necessarily something you need to
12 comment on, but something that we are just thinking
13 about that we don't want to do anything to jeopardize
14 your ability to access capital for future projects, but
15 it's an issue that should be looked at.

16 MR. CROWELL: I guess that triggers -- the
17 thing is, yeah, it's different in the management of the
18 financing context. But if the overreaching of state and
19 local government is tackled, it's going to be easy for
20 tribes to get financing.

21 It's difficult for tribes to get financing
22 when 30% off the top, you know, is being paid to the
23 state and local treasuries and not for services being
24 provided to the tribe, but simply because they can.
25 And, you know, the N.I.G.C. took a bold move with Fond

1 de Loc and you're going to see if you go after state and
2 local governments and I understand, you know, that there
3 are management agreements and bond financing
4 arrangements out there a might violate sole propriety
5 interest rule as well.

6 But the focus seems to be historically because
7 you have lawyers writing legal opinions and say this
8 isn't a management contract and this doesn't violate
9 self proprietary interest and et cetera. That you've got
10 all this body of discussion over here, but the real
11 problem is the overreaching in state and local
12 government and if you attack that, you're not going to
13 hinder financing, you're going to enhance financing as a
14 result to tribes.

15 MR. LITTLE: I appreciate that comment.

16 Is there any others. Is there any other
17 comments anyone wants to make about any of the other
18 groups? Norm, did you want to add something?

19 MR. DES ROSIERS: Yeah, I wanted to make a
20 general comment about the whole process here. First of
21 all, I commend the commission for this process. I think
22 it's worked quite well. I'd like the opportunity -- I'm
23 sure that most tribes like to comment on the discussion
24 draft.

25 The part of the process where I'm experiencing

1 a little frustration -- I don't know if it's just me or
2 like I said I'd like to know if anybody else experienced
3 the same thing.

4 The notification of when a discussion draft
5 appears. I mean, there is no notification. And if I
6 don't remember every week or two to get on your web site
7 and nose around, I don't know there's a discussion draft
8 out there. So, I mean, maybe it's just me and I got
9 left off your mailing list. I don't know. But I'd like
10 to, I wish there could be some notification.

11 MR. LITTLE: That's a really good point and
12 we'll work on that.

13 MS. ECHO-HAWK: There's supposed to be a
14 process. So I'm sorry that it's not working. So we'll
15 work on the process.

16 The next thing that will go out will likely be
17 in the federal register, but we are working, you know,
18 it's kind of funny because we've heard tribes say, and I
19 think our staff maybe has cut and I just, I don't know,
20 have gotten sick of people saying, quit spamming us. So
21 they quit spamming you, because we were get being a lot
22 of complaints from people saying there's too much
23 communication, too much communication.

24 And so I don't know if that might have slowed
25 things down because we are really working hard to make

1 sure that everything gets out. So, yeah, we'll work on
2 that, on fixing that again.

3 MS. OLGAS: I completely concur with Norm. I've
4 had to make myself a task because I completely forget
5 about it. So if I don't do it when a task comes up, I
6 will completely forget. I know you will be putting more
7 things so, we can watch up with them, but it would be
8 nice if we had a better system for the drafts.

9 MR. LITTLE: We'll definitely work on this and
10 we will get this out like Lael said. I think what
11 you're going to see from here on out is our Notice of
12 Proposed Rules, which will not be in the general
13 register. And I know you are very diligent in searching
14 that everyday. So we'll try to get that out too.

15 I mean there's loads of information on our
16 web site. We've overloaded our staff who operate our
17 web site. And I'm still situating for the day that they
18 say our web site is shut down. I know they can no
19 longer handle any more information. So that's a guide
20 point.

21 Any other general comments about the process
22 here? It's always good to get and feed back. Know that
23 these are tough to attends these events it's very
24 important to us that we get out here, get out to some of
25 the non traditional locations within the country. I

1 love going to Southern California area, but it's very
2 nice coming up here also.

3 Notification, we will work on that. We've got
4 a T.A.C. that's going to be having there inaugural
5 meeting next month. Today is the deadline if you
6 haven't submitted your nomination application. The fax
7 machine works well if you want to get that in.

8 You know, that's going to -- as we went
9 through the process for, you know, like Lael said the
10 Class 2 and the Class 3 M.I.C.S., Technical Standards
11 were included in Part 3 and the Class 3 was included in
12 one of five, but clearly when you go around the country
13 and I think that's one of the benefits of these
14 consultations throughout the country. That is very
15 different opinions on how we should tackle this issue,
16 you know, how do we reach some kind of resolve?
17 Traveling advisory committees have worked well in the
18 past. You know, I think we are going to try a little
19 different process here although recent different process
20 where we are going to utilize a facilitators. That
21 will, you know, hopefully really, bring out some good
22 discussions, keep the group on task and get a good work
23 product here in a very short time frame.

24 Six meetings, six large group meetings. There
25 will be some smaller subcommittee meetings, but six

1 meetings including the end of March with hopefully
2 something ready to go for a rule to be promulgated by
3 early summer of next year.

4 We are coming up on an legislation year, we
5 want you to be can cognizant of that fact. That
6 regulation sometimes get slowed down, not halted around
7 that time. We want to be cognizant of that and
8 hopefully get everything done and hopefully come to a
9 good work product of this committee that everybody can
10 be comfortable with and we can move forward with.

11 Do you have anything you want to add, Lael
12 about the T.A.C.?

13 I think we have gotten about 40 nomination
14 applications. I'm very, very impressed with the caliber
15 of folk that are coming in. Once again, it's just, you
16 know, it's a testament to where this industry has gone
17 and how it's matured and how, you know, the high caliber
18 of employees that Indian gaming produces. So I'm very
19 impressed.

20 I'm really looking forward to next week of
21 starting to go through the nomination applications and
22 looking for a good group of folks that represents the
23 country geographically by the size of your operation,
24 types of gaming that you all do, so I'm really looking
25 forward to that.

1 MS. ECHO-HAWK: Just that the inaugural
2 meeting will be the 20th and 21st. You are all welcome
3 to attend that meeting. That meeting will be setting up
4 the ground rules. We will identify the members of the
5 committee right around the week of G2E. And then from
6 that point -- so that we will, that will be the initial
7 meeting will be setting up the ground rules. We'll
8 being talking about and working with the issue of how to
9 do we incorporate the experts in the industry, the
10 gaming manufactures, the lawyers, people who might not
11 be on the committee, but are attending the committee,
12 how do we incorporate their opinions?

13 So we are going to be working on this, but
14 we'll also be discussing all of those things. We'll
15 also be sending out the schedule for the next five
16 meetings, identifying the sections of the M.I.C.S. that
17 we are going to be going over, in what order,
18 categories, talking about using breakout groups, the
19 breakout groups. All of that is going to happen in
20 those two days. So it's a really, really important
21 meeting. If you have opinions about that, please slow
22 up because after the 21st, we hit the ground and we go.
23 And we have to go really, really fast.

24 MR. LITTLE: Is there any other comments about
25 T.A.C., about process, about any of the groups?

1 I'm inclined to end this. However, and I'm
2 sure the staff is not going to be happy -- we are going
3 to come back after lunch in case there were any folks
4 that were scheduled to be here. We were scheduled to go
5 through 1:30 to 5:00. We'll be here at 1:30. We are
6 going to reopen the meeting, if there's any other
7 comments we'll go over them. If not, we'll probably
8 end.

9 FEMALE VOICE: I'm sorry. How many are you
10 picking for the T.A.C., if you have 40 applicants, how
11 many are you picking?

12 COMMISSIONER LITTLE: I don't think we've
13 decided yet. I don't want to just state a number,
14 because as we go through the application, we want to
15 make sure that we get a good representation of the
16 industry. And by setting an arbitrary number right now,
17 I think we'd be limiting ourselves. I would imagine
18 it's going to be over 10, but less than 20.

19 MS. ECHO-HAWK: I think, yeah, I know the
20 chairwoman is talking about it. And I think even
21 Commissioner Little, over 20 gets very unwieldy. Under
22 10, we might not have all the expertise that we need.

23 But, you know, yesterday we had between 35 and
24 40. And all day today, I've been seeing emails come in
25 with additional nominations. So the commission is going

1 to have quite a chore next week to go through these.

2 COMMISSIONER LITTLE: Okay. If there's no
3 other comments, we are going to break for lunch. We'll
4 be back here at 1:30 if there's no additional comments
5 we will probably conclude at that time.

6 Thank you all.

7 (WHEREUPON, A LUNCH RECESS WAS TAKEN).

8 COMMISSIONER LITTLE: All right. We are going
9 to be bringing this meeting back to order for the
10 N.I.G.C. consultation for the Sacramento Region on
11 Groups 1, 2, 4, and 5.

12 Are there my additional comments regarding any
13 of the topics that we discussed this morning? Leal, do
14 have any closing comments?

15 MS. ECHO-HAWK: Nope.

16 MR. LITTLE: If not, I'm going to call this
17 meeting to a close and thank the individual that's still
18 here for coming back for the afternoon meeting. All
19 right. Safer travels.

20 (WHEREUPON, THE MEETING WAS CONCLUDED AT THE
21 HOUR OF 1:35 p.m.)

22

23

24

25

1 STATE OF CALIFORNIA)
)
2 COUNTY OF FRESNO)
3

4 I, LILLY WHITE-RESENDEZ, Certified
5 Shorthand Reporter, do hereby certify:

6 That said proceedings were taken before me at
7 the time and place therein set forth and were taken down
8 by me in shorthand and thereafter transcribed into
9 typewriting under my direction and supervision;

10 I further certify that I am neither counsel
11 for, nor related to, any party to said proceedings, not
12 in anywise interested in the outcome thereof.

13 IN WITNESS WHEREOF, I have hereunto subscribed
14 my name.

15 Dated: November 2, 2011
16
17

18 _____
Lilly White-Resendez
19 CSR No. 10354
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21
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23
24
25

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