

TRANSCRIPT OF CONSULTATION MEETING
NATIONAL INDIAN GAMING COMMISSION
REGULATORY REVIEW CONSULTATION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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INDEX

APPEARANCES:

TRACIE STEVENS, NIGC Chairwoman Presiding

MELISSA SCHLICHTING, NIGC Staff Attorney

LAWRENCE S. ROBERTS, NIGC General Counsel

1 Portland, Oregon, Thursday, November 3, 2011

2
3 MS. KENNEDY: Good morning everyone. Again, my
4 name is Cheryl Kennedy. I'm the Chairwoman for the
5 Confederated Tribes of the Grand Ronde. The land you are
6 in right now are the homelands, ancestral homelands, of
7 the Confederated Tribes of the Grand Ronde. It's truly a
8 wonderful event whereby tribes from all over the nation
9 can gather together to formulate their directions as well
10 as to establish relationships into networks. So I
11 appreciate the National Indian Gaming Commission coming to
12 NCAI to make sure that comments are heard from tribal
13 leaders.

14 I know that throughout your tenure here, Tracie,
15 you've made a great effort coming to tribes and listening
16 not only with the intelligence that you and your body
17 possess, but also with your heart, and to assist in
18 demonstrating that some of the roadblocks that are there,
19 that you put forth the effort to remove them and to listen
20 to tribes. So I want to thank you for doing that and for
21 your staff being there to help organize that and carry out
22 those thoughts.

23 I don't know if anyone else faced this, but it
24 seems appropriate that the meeting open with a prayer or a
25 blessing of some kind. And I don't know if you selected

1 anyone to do that.

2 CHAIRWOMAN STEVENS: We hadn't. We usually come
3 to the territory and allow the tribes to direct that.

4 MS. KENNEDY: Well, why don't you stand, and I
5 invite my tribal councilwoman, Kathy Tom, to provide an
6 invocation.

7 (Invocation given.)

8 MS. KENNEDY: Thank you, Kathy. I do want to
9 also at this time acknowledge, besides our tribal
10 councilwoman, we do have some of our gaming commissioners
11 who are here with us. Denise Harvey is the chair of our
12 gaming commission. Ralph Baker and Jerri Schmidt, I am
13 pleased that they could join us today. We also have staff
14 from the Confederated Tribes of the Grand Ronde, our legal
15 department, Rob Greene and Deneen Aubertin Keller.

16 Well, we have provided comments throughout the
17 years, and so this is kind of a summary of what we have
18 been doing. We have submitted and provided written
19 testimonies, many of these consultations. We're thankful
20 that consultation occurs and that there is a great effort
21 put forward to make sure that the voice of the tribes are
22 heard. We're grateful for that.

23 Grand Ronde is a self-regulating tribe. We took
24 that matter on early when we opened up our gaming
25 establishment, and it takes a lot of hard work, for those

1 tribes who may not have taken a look at the process. It's
2 pretty daunting. And it's -- the other piece of it is
3 transparency, to be able to demonstrate that the tribe not
4 only has the capabilities, the management controls, the
5 internal controls, but also transparency so that we're
6 able to demonstrate that as a self-regulating tribe we
7 take care of the issues that are before us and that we
8 determine where we go in the future.

9 I guess on the other hand, when we look at it, I
10 mean, it's a big, big achievement to achieve that status.
11 We are on (inaudible) Confederated Tribes of the Grand
12 Ronde (inaudible) terminated in 1954 during the
13 Termination Act. An act of Congress came in and said that
14 it was a good policy to mainstream tribes in the United
15 States, so they issued a blanket act. It was called
16 Western Oregon Termination Act. So all of the tribes in
17 western Oregon, which is this area right here as well,
18 were terminated. We no longer were recognized as an
19 Indian nation, and that as Indian people we no longer were
20 recognized by the United States as being Indian. That
21 didn't matter. We're still Indians. We were then and we
22 still are and we will continue to be. But we sought
23 restoration and achieved that in 1983.

24 So when we looked at provisions and for
25 opportunities, we certainly looked at self-regulating.

1 And we knew, if we have the federal government to look out
2 after us, they're not going to do it. We were terminated.
3 So we knew we're not going to put our future in their
4 hands to take care of us or to look out for us. Bad
5 things happen when you do that. And so we took on
6 self-regulation. And we went through all of the hoops
7 that had to be jumped through to establish and get
8 straight that we were capable of regulating our own
9 operation. We achieved that, but as a self-regulating
10 tribe among all those others, the majority -- there is
11 only one other tribe that might be self-regulating in the
12 whole United States. There's not a whole lot of benefits
13 for doing all of that work. But for us, it's worth it.

14 (Mr. Boyce entered the room.)

15 Good morning. This is our executive director,
16 Mr. Boyce.

17 It was worth it to us to put in all the effort,
18 the time, and to learn what we needed to do. So we are
19 self-regulating. We would hope that there would be more
20 benefit or allowances provided to tribes to go through
21 that process, and that's part of the comments we've
22 printed in earlier testimony. Some benefits would include
23 exempting self-regulating tribes from continued MICS
24 audits, providing exceptions related to facility license
25 regulations, and consulting directly with self-regulated

1 tribes on proposed regulations and guidelines.

2 We're hoping that that will come forward with
3 some of the changes that occur. We also believe we -- we
4 do not believe that NIGC should impose mandatory class III
5 MICS on tribes but, instead, recommended guidelines would
6 be more appropriate. Tribes could adopt the recommended
7 guidelines as their own tribal class III MICS if that is
8 what the tribe deems appropriate. If mandatory class III
9 MICS are required, then there should be a class III
10 self-regulation certificate similar to the class II
11 certificate and clear benefits for obtaining
12 self-regulation reflecting the tribe's exemplary standards
13 and ability.

14 So again, we thank you for coming to Portland,
15 Oregon, and those conclude my remarks.

16 CHAIRWOMAN STEVENS: Thank you, Cheryl Kennedy.
17 And thank you to everyone who is represented here from
18 Grand Ronde. We appreciate all of you attending this
19 morning, providing an opening invocation, and giving us
20 your much valued input, not just here but in many of the
21 other consultations which you have participated. So thank
22 you to all of you for attending.

23 What I'd like to do now is, if there are any
24 tribal leaders, we certainly like to have the tribal
25 leaders come to the table. We reserve the table for

1 tribal leaders or elected officials, or whoever you deem
2 appropriate to sit with you. So I want to mention that to
3 anyone who is sitting in the audience who might be a
4 tribal leader. But what I would like to do now is go
5 around the room, if we could, and get introductions from
6 everyone. And I will go to the left here and start around
7 and we'll get introductions and then move into the
8 audience.

9 MR. DAVID: My name is Billy David. I'm the
10 Chairman of The Klamath Tribes Gaming Commission.

11 MS. NELSON: Is this on (tapping microphone)?
12 Actually, I probably don't need it. My name is Charlene
13 Nelson. I'm the Shaolwater Bay Chairwoman, and happy to
14 be here to listen.

15 MR. MATHERLY: Andrew Matherly, Chairman Spokane
16 Gaming Commission. I'm sitting in on behalf of Spokane
17 tribal leaders.

18 MS. TOM: Kathy Tom, Tribal Council of the
19 Confederated Tribes of the Grand Ronde.

20 CHAIRWOMAN STEVENS: Thank you. Do we have the
21 microphone that we can move around the room?

22 MR. TRACHSEL: Trevor Trachsel with the Siletz
23 Tribal Gaming Commission.

24 MS. SIMMONS: Allison Simmons with the Siletz
25 Gaming Commission.

1 MS. GRAY: Shanna Gray, Siletz Tribal Gaming
2 Commission.

3 MR. MARTIN: Abe Martin, Siletz Tribal Gaming
4 Commission.

5 MS. HUGHES: I'm Jennifer Hughes, Hobbs,
6 Strauss, Dean & Walker, here with the Seminole Tribe.

7 MS. BRUNER: Lawana Bruner here with the
8 Stillaguamish Tribe. Good morning everyone.

9 MR. GREENE: Robert Greene, tribal attorney for
10 Grand Ronde.

11 MS. KELLER: Dee Deneen Keller, attorney with
12 Grand Ronde.

13 MS. HARVEY: Denise Harvey, Chairwoman for the
14 Grand Ronde Gaming Commission.

15 MR. BOYCE: Mike Boyce, Executive Director Grand
16 Ronde Gaming Commission.

17 MS. SCHMIDT: Jerri Schmidt, Grand Ronde Gaming
18 Commission.

19 MR. BAKER: Ralph Baker, Grand Ronde Gaming
20 Commission.

21 CHAIRWOMAN STEVENS: Thank you, Mark, for moving
22 that microphone around, and thank you everyone for
23 introducing yourselves. I would like to take a moment to
24 introduce all of the staff that we have here from NIGC.
25 And if we can have everyone stand, though I think we still

1 have people outside. But just to point out to you, and
2 you all may be familiar with our staff, in case you need
3 to talk to them about any matter that you might have, or
4 just to say hello and thank you, because we cannot put
5 these consultations together without our staff. So I'd
6 like to also take a moment to recognize our regional
7 staff, because they do an outstanding job in helping us
8 prepare for these consultations and having open dialogues
9 with tribes.

10 So Mark Phillips is our regional director.
11 Steve Steiner is right over here. Vida Bishop, I think
12 she's outside right now. Rayanne Morris. I think she is
13 also outside. Gary Peterson, right over here, from our
14 audit division. Nicole Aspa, also from our audit
15 division. At the end here is Melissa Schlichting. She is
16 from our D.C. staff and our general counsel's office. And
17 Larry Roberts, who is our general counsel from D.C.
18 Lastly, I want to recognize that we do have a
19 transcriptionist here. So this conversation and this
20 consultation is being transcribed and will be published on
21 the Web site once we have the record. Our
22 transcriptionist today is Heather Summers. She's right
23 over here. So she may be asking us repeatedly to speak
24 up, identify who we are and where we're from.

25 Going along on the agenda -- sorry. So improper

1 of me. My name is Tracie Stevens, and I'm a member of the
2 Tulalip Tribes. I'm Chairwoman of the National Gaming
3 Commission. It is certainly an honor to be back to what
4 is fairly close to home for me. It is always a pleasure
5 to be back and smell what air is supposed to smell like.
6 Rain, rain and cedar. So it's always a pleasure to be
7 back here. I look forward to your comments today.

8 Our commissioners are rotating doing these
9 consultations, and also our staff. So if any of you have
10 been to any of these, you will see different versions of
11 this just because we're sharing the workload and trying to
12 minimize how many folks that we bring with us at any one
13 time, just bring the necessary people. But Vice
14 Chairwoman Stephanie Cochran and Associate Commissioner
15 Dan Little are sorry they're not able to be here. They're
16 back at the office working on lots of other things we have
17 going on. But again, you may see some other version of
18 this and see them at some future point.

19 Going over the agenda -- you should have a
20 two-sided agenda, and I just want to explain how we have
21 done this. We have tried to break this up into manageable
22 pieces during the day. As many of you know, we have
23 done -- I think we're at 16 consultations just since
24 April, I want to say, trying to go around to different
25 parts of the country where we know that tribes are going

1 to be gathering, like NCAI or NIGC or other regional
2 meetings, so that we can capitalize on tribal presence and
3 reduce everybody's having to expend more on their training
4 budgets or travel budgets. So this is like number 16
5 since April talking about groups of regulations that were
6 drawn upon from our discussions from tribes and of
7 priorities. So they're broken into manageable pieces
8 throughout the morning, and some of these have been
9 published in a Notice of Proposed Rule form. Some of them
10 are still in discussion draft. Some of them don't have
11 discussion drafts yet, but we are continuing to talk to
12 tribes about the subject. So we do have existing regs,
13 proposed regs, and just conceptual regs.

14 One thing I do want to note, because there are a
15 number of other things going on here today with this
16 conference that's going on, and we also recognize that as
17 tribal leaders there's many, many things that you have to
18 do besides gaming, there are a number of issues you have
19 to take care of in your community. So what we have done
20 is, before we begin any group, we like to just open it up,
21 as Chairwoman Kennedy has done, and give you an
22 opportunity to make any statements. If any of you are
23 pressed for time, you have other conflicting schedule
24 issues, we open the floor for any prepared statements or
25 any comments on any party's agenda. Once we've done that,

1 we'll go back to the agenda and go through each of the
2 regs that we're going to talk about today. So that's how
3 we're structured, so that we have enough flexibility to
4 honor everybody's time and other commitments but try to
5 keep some sense of order throughout the day.

6 So with that, what I'd like to do is, if there
7 are any tribes that have come with prepared statements and
8 have to leave because of scheduling purposes, I open up
9 the floor for anybody who needs to just put their comments
10 in for the record.

11 MS. NELSON: Madam Chair, I do not have a
12 written statement or prepared statement to present this
13 morning. I would like to take this time to mention that
14 the elections are at 10:00 this morning for NCAI. I'm not
15 sure whether anyone else here would like to go at that
16 time. It is always a very exciting time. I notice your
17 break is at 10:15. So anyway, that is my comment.

18 CHAIRWOMAN STEVENS: Okay. We understand. We
19 did our best to schedule as we could with other
20 organizations, and we also understand if there are some
21 individuals -- Chairwoman Nelson, if you have to leave and
22 participate in other activities, we understand. We're
23 going to be here the whole day, and just because we might
24 be on another subject doesn't mean that you can't come
25 back in when you're able to and speak to any portion of

1 the agenda. So I appreciate you bringing that to our
2 attention and certainly understand if individuals have to
3 leave.

4 If there are no other statements, then what I'd
5 like to do right now is turn it over to Larry Roberts, our
6 general counsel, and we're going to be going over Group 1
7 on the agenda here. You'll see it on Part 514, 523, and
8 559. So Larry.

9 MR. ROBERTS: Good morning everyone. My name is
10 Larry Roberts. I'm a member of the Oneida Nation of
11 Wisconsin, and I'm going to walk us through the PowerPoint
12 together. I know that attorneys and PowerPoints can be a
13 dangerous combination, so this will hit the highlights,
14 and then hopefully we can have some discussions on the
15 regulations for this morning.

16 We make a point starting every consultation with
17 letting folks know that these are not open meetings.
18 These are meetings between the federal government and
19 tribal governments and their designees. So if there is
20 anyone here from the public, we ask that you leave because
21 this is government-to-government consultation.

22 Along those lines of government-to-government
23 consultation, this Commission has committed to follow
24 Executive Order 13,175, and part of Executive Order 13,175
25 talks about federal agencies working with tribes during

1 consultation to identify any alternatives that would limit
2 the scope of federal standards or otherwise preserve the
3 prerogatives and authority of Indian Tribes when
4 determining whether to establish federal standards. And
5 so part of this consultation is to get feedback directly
6 from tribal governments as to how we can shape our
7 regulations or whether we need to establish federal
8 standards or whether there are alternatives to that.

9 As the Chairwoman explained, we have five
10 regulatory groups through this regulatory review process.
11 We started this process some time ago. The regulatory
12 groups -- the group numbers are not indicated by priority.
13 They're purely put together on subject matter, based on
14 comments we have received from tribes in our Notice of
15 Inquiry and the estimated time and resources it would take
16 for each of these groups.

17 As the Chairwoman mentioned, we have three
18 phases of this consultation. So we have issued
19 preliminary drafts for discussion purposes. As the
20 Chairwoman mentioned, we have now moved into a second
21 phase for some of the rules, and we've actually published
22 proposed rules in the Federal Register, which we're
23 seeking comment on now. And then if the Commission
24 decides to go forward with the proposed rule, they'll
25 issue a final rule. As the Chairwoman mentioned, all

1 consultations are transcribed, and written comments from
2 the public, as well as transcripts of each consultation,
3 are on the Web site. So if you can't make a particular
4 consultation but are interested in what other tribes are
5 saying about proposed changes to regulations, those are
6 readily available on our Web site.

7 The Commission has committed to tribes that
8 every comment we receive from the public will be reviewed
9 and considered. Our proposed and final rules will have a
10 summary of comments, and the Commission is committed to a
11 clear and transparent process.

12 This is a brief overview of our regulatory
13 agenda and the various parts of the regulations contained
14 in each group. For Group 1 today we will be talking about
15 514, fees; Part 523; Part 559, for facility license
16 notifications, renewals; and Buy Indian regulation. As
17 many of you are aware, the Commission has decided to put
18 Group 3 to the side for the moment. They've formed a
19 Tribal Advisory Committee to facilitate the Commission's
20 review of those parts of the MICS and technical standards.
21 And once that tribal advisory process is completed, then
22 the Commission will consult with tribes on any proposed
23 changes to the regulations.

24 This is Group 4, which we'll talk about today
25 after lunch. And Group 5 is talking about 518,

1 self-regulation and potential regulation on sole
2 proprietary interest.

3 So for Part 514, everyone should have in their
4 materials a copy of the Federal Register notice that was
5 issued on October 11th, 2011. You should also have in
6 your materials a proposed rule on Part 523, which proposes
7 to rescind Part 523. You should also have a discussion
8 draft of the Part 559, the facility license notifications.
9 And we do not have a discussion draft on the Buy Indian
10 regulation. We are still discussing that with tribes and
11 evaluating comments. We also have a Notice of No Action
12 that should be in your materials that we'll talk about
13 later today during the consultation.

14 So for Part 514 on fees, what we've proposed in
15 our proposed rule is for the fee calculation to be based
16 on a gaming operation's fiscal year rather than a calendar
17 year. Tribes, if they choose, can keep it -- they don't
18 need to make a change to their year, but if they want to
19 change it to their gaming operations fiscal year, they can
20 do that. The fee rate will be published on March 1st.
21 Hopefully, that will give NIGC additional time to have a
22 more precise establishment of the fee rate for that year.
23 And we've also removed the term "amortization" from 514.1
24 to reflect existing practices.

25 The proposed rule addresses -- changes it from

1 biannual payments to quarterly payments. In our
2 consultations we've heard from some tribes. Some tribes
3 actually pay NIGC annually. They prepay their fees. This
4 proposed change in rule wouldn't prohibit a tribe from
5 doing that, but the quarterly fee calculations would still
6 need to be submitted to NIGC. And then there's a
7 provision in here for providing for notification if a
8 gaming operation does change its fiscal year.

9 One of the larger changes that is part of 514 is
10 a new section providing for late payments prior to
11 proceeding to a Notice of Violation. So it basically
12 establishes a late payment system. If a tribe pays a fee
13 within 90 days of when they were due, there would be a
14 late payment assessment. In the past, the Commission has
15 issued a number of notices of violations just for late
16 payments. And so this sets forth a graduated process
17 where, if a tribe submits a late fee for whatever reason,
18 there is an assessment of 10, 15, or 20 percent, depending
19 on where it falls within the 90 days. And then after 90
20 days, the nonpayment would then constitute a failure to
21 pay a fee, which could result in a Notice of Violation.

22 And finally, the proposed rule clarifies the
23 process by which NIGC will assess and collect processing
24 fees for fingerprint processing. Those processing fees,
25 as many of you are aware, are basically the costs charged

1 by the FBI and the cost to the agency for processing
2 those. And so we would publish whatever our costs are on
3 a biannual basis. As I mentioned, the proposed rule was
4 published on October 11th, and the comment period on the
5 proposed rule closes December 12th.

6 So we're going to stop here for the moment on
7 514, and if anyone has any comments or questions about the
8 proposed rule, we'd be happy to discuss them.

9 MR. BOYCE: This is Mike Boyce from Grand Ronde.
10 Did you say you are going to quarterly payments, because
11 it doubles the work for us and it doubles the work for you
12 if you go from biannual to quarterly payments?

13 MR. ROBERTS: We are. Tribes have commented
14 favorable on the quarterly process. It provides for --
15 basically the agency on a semiannual basis, if that's how
16 fees are assessed, has to carry that much more forward.
17 So by quarterly, it's easier to have the calculation of
18 fees, and it's easier -- there's less amount of carryover.
19 Also quarterly is in the statute itself, that we assess
20 fees quarterly. We've heard from a lot of tribes that the
21 Commission had recently changed the biannual process, and
22 they actually prefer the quarterly process.

23 CHAIRWOMAN STEVENS: I don't really have
24 anything more to add except that, you know, primarily it's
25 in the statute. It's like Larry said. The majority of

1 the tribes, you know, didn't -- the previous change that
2 made them biannual actually was more problematic for the
3 majority of the tribes that we heard from and had been on
4 a quarterly payment system. But again, some tribes pay in
5 advance, but they're still using their quarterly
6 calculations to us.

7 Do we have any other comments on fees? Any
8 comments on the late payment system? We've put that in
9 place because we recognize that there were a lot of NOV's
10 as we got to examining them more closely, the history of
11 NOV's with NIGC, and that two-thirds of the NOV's were for
12 late payments, anywhere from one day late to a year late.
13 But the majority -- and just speaking to our comptroller,
14 most of the late payments were not, in time, substantially
15 late. And that there were some circumstances that
16 surrounded the reason for the late payment, like --
17 usually transition in changing of staff or the
18 unavailability of somebody who normally did them due to
19 illness or some change in their system. But it was not a
20 deliberate, you know, effort to skirt the payment.

21 And so we built this in to provide some
22 flexibility for that rather than go straight to really
23 what is a black mark for a tribe on a NOV for a late
24 payment for, you know, five days. So we built this sort
25 of ticketing system in. So we'd love to hear any comments

1 about that.

2 MR. DAVID: Joe Billy David, Klamath Tribe. I
3 don't know if I have a comment or more of a question. If
4 you're going to assess fees, a late fee, what happens to
5 those funds?

6 MR. ROBERTS: Those go to Treasury.

7 MR. DAVID: Will they be used to offset your
8 budget down the road?

9 MR. ROBERTS: No.

10 CHAIRWOMAN STEVENS: By law, we can't. Again,
11 it's a government agency. Because of conflict of
12 interest, so all fees -- civil fines or fees that we
13 impose have to go to Treasury.

14 MS. KENNEDY: You use the phrase "a black mark."
15 So if the tribe receives the lowest violation, then what
16 would the black mark mean?

17 MR. ROBERTS: We've heard from some tribes that
18 Notices of Violation -- for example, if the tribe is going
19 through, say, a refinancing and they receive a Notice of
20 Violation from a federal agency, that that could affect
21 their financing. And so the process here is to make it
22 more of a ticket system, a late payment system, really
23 calling it what it is as opposed to -- you know, if the
24 tribes are not going to pay their fees after 90 days, that
25 is more of a serious issue. It could escalate to a Notice

1 of Violation.

2 MS. KENNEDY: Thank you.

3 MS. ASPA: Chairwoman, may I ask a question?

4 CHAIRWOMAN STEVENS: No. This is for tribes.

5 If there are no other comments on 514 -- this is
6 actually well-trod ground because we have been talking
7 about this for a while. I know many of you have seen the
8 discussion. Many of you have been at one or more of our
9 consultations. So I know a lot of folks have already
10 talked about it, but we're trying to be as transparent as
11 we can, as inclusive as we can as we go through the
12 process. And we're in the proposed rule right now, and a
13 lot of tribes are participating in writing, which has been
14 very helpful. So we certainly understand that we may hear
15 from your tribe in writing. If not, I'll turn it back
16 over to Larry for Part 523. It should be pretty quick,
17 actually.

18 MR. ROBERTS: So Part 523 basically covers -- it
19 applies to the review and approval of tribal ordinances
20 enacted prior to January 22nd, 1993, and have not yet been
21 submitted to NIGC. And so as part of our consultation
22 process, we have asked tribes whether there are any tribal
23 ordinances out there yet that have been enacted prior to
24 1993 that haven't already been approved. We haven't heard
25 from any tribes that this part has any application to

1 those ordinances. And so the proposed rulemaking
2 published on October 12th, actually, proposes to rescind
3 this part as obsolete.

4 And so during this comment period, it would be
5 helpful if tribes have comments or have concerns about
6 rescinding this part that we hear about that during this
7 process.

8 Moving on to Part 559 concerning facility
9 license notifications, renewals and submissions, you
10 should have in your materials a discussion draft that we
11 circulated. The discussion draft itself provides for a
12 process where a tribe can request written confirmation
13 from the chair to -- that they've received the materials
14 and that our review under 559 is complete. This happens
15 from time to time where tribes say we're opening a
16 facility, here are the materials; can you please let us
17 know if you have any concerns. And we have issued letters
18 letting them know that we have received all the materials
19 and that they're in compliance with this part and that
20 they can open early. And so this discussion draft tries
21 to embody that process.

22 The discussion draft also provides for licenses
23 to be -- newly issued or renewed facility licenses to be
24 sent to NIGC within 30 days of issuance. One of the -- I
25 guess one of the other changes in this Part 559 is the

1 existing regulation provides for tribes to submit
2 information regarding that the construction, maintenance,
3 operation of the facility, that it adequately protects the
4 environment. This proposed discussion draft, rather than
5 submitting all of that information, provides for the tribe
6 to make an attestation that as a government they've looked
7 at and decided that their facility is both constructed and
8 operated in a manner that adequately protects the
9 environment, public health, and safety.

10 The discussion draft also provides for a notice
11 to NIGC within 30 days when a facility license is
12 terminated or expired or if a facility closes permanently
13 or if a facility is going to be closed for more than 180
14 days. But that notice is not required to be sent for
15 seasonal closures. So the whole idea is that NIGC is
16 aware and has information as to which facilities are open
17 and which facilities are closed.

18 Section 559 of the discussion draft provides for
19 additional information to be provided to NIGC if
20 requested. It makes clear that electronic submissions are
21 accepted. The comment period on the discussion draft
22 closed in June of this year. We're working on evaluating
23 all of those comments and putting together materials for
24 the Commission's review if they decide to move forward
25 with the proposed rule.

1 I'd be happy to open up now for any comments on
2 the facility license, the discussion draft, or the
3 regulations themselves, what's working well for tribes,
4 how it could be improved.

5 MR. MATHERLY: Andrew Matherly, Spokane Tribe.
6 I just have a question on the 559 as it applies to the
7 occasional charitable events. It discusses lasting more
8 than a week. Is that a week throughout the year or the
9 whole facility license? In our tribes we have engaged
10 with nonprofit charitable organizations with our own
11 rules. And if they want to do like charitable bingo,
12 something like that, in a facility and they want to do
13 certain sessions or once a month, is that going to be
14 outside the parameter from the once a week -- that is
15 lasting more than a week?

16 MR. ROBERTS: I'm trying to find what section
17 you're looking at.

18 MR. MATHERLY: I'm looking at 559.2(c).

19 MR. ROBERTS: So basically you're asking for the
20 definition of a week?

21 MR. MATHERLY: Yes.

22 MR. ROBERTS: And that's something we can look
23 at. That hasn't been brought to our attention before, but
24 I think it is a fair comment and something that we will
25 have to consider to clarify. And so if I understand what

1 you're saying correctly, there may be situations where you
2 allow for charitable gaming maybe once a month, but maybe
3 only six months out of the year?

4 MR. MATHERLY: Yeah.

5 MR. ROBERTS: And so would that fall within this
6 exception?

7 MR. MATHERLY: Yes. Thank you.

8 MR. ROBERTS: Okay.

9 CHAIRWOMAN STEVENS: Before you move on, if you
10 look at the draft under 559.5, there is a blank on the
11 numbers. It says, "Temporary closures with a duration of
12 less than" blank "days." And as we have gone around in
13 consultation, we're asking tribes what would be a good
14 time. Sometimes there are seasonal closures, and I know
15 like Spokane has seasonal closures in one of their
16 facilities. Other tribes do the same thing, either shut
17 down during the winter or during the summer, whatever
18 might be their situation. The other thing is a temporary
19 closure.

20 You know, this last year really of just
21 history-making weather, unfortunately some tribes
22 experienced, you know, the bad side of that with tornadoes
23 or floods or, you know, a fire, something that happens
24 that is outside of their control that makes them have to
25 close down. So we're looking for input on what would be

1 considered temporary. What's temporary? Because it can't
2 be so long that it's an unreasonable amount of time. You
3 know, should it be three months? Six months? Or if
4 you're doing a remodel -- and of course we all know
5 remodels take longer than they say they're going to take,
6 or building due to expansion or something. So we will be
7 really interested in your input on what would be
8 determined to be a temporary closure. We're hearing a lot
9 of six months. And some tribes may not have to deal with
10 this at all. But this is important because it will affect
11 the licensing situation if it goes beyond that, and they
12 will have to go through that process again. So we may not
13 have answers today, but that is something we would like to
14 highlight that we would like you all to consider.

15 If not, we can talk about Buy Indian
16 regulations.

17 MR. ROBERTS: The last potential regulation for
18 this group is the Buy Indian regulation which we have been
19 discussing at various consultations. We do not have a
20 discussion draft on the Buy Indian regulation as of yet,
21 but basically for those -- for anyone who's unfamiliar
22 with the Buy Indian Act, basically it would apply to NIGC,
23 this regulation would, and require NIGC, for whatever
24 products and services it purchases, that it attempt to buy
25 Indian.

1 We've had some comments during the consultations
2 whether this was going to be a requirement that we would
3 have in our regulations that would be imposed on tribes,
4 and that's not how the Commission is thinking or
5 approaching this. It would be a regulation that would
6 apply to NIGC's purchasing. We've heard from some tribes
7 throughout the consultation process that perhaps a
8 regulation is inappropriate, perhaps it should be guidance
9 or guidelines, internal policies of the agency. So we
10 would be interested in hearing your thoughts on that. And
11 we're pointing out that under IGRA it provides the
12 Commission with broad authority to contract with tribes,
13 states, other governments, and other individual entities.
14 So if there are any comments on how the Commission should
15 proceed with the Buy Indian regulation, we would be happy
16 to hear that.

17 CHAIRWOMAN STEVENS: And I do just want to say,
18 the things that we have heard in the past six months have
19 been really about whether it should be a regulation or
20 whether it should just be an internal policy. Certainly a
21 regulation is more binding upon NIGC and a policy isn't.
22 So if anyone has any thoughts on that, we would like to
23 hear that, but we have made our intentions very clear that
24 we want to -- you know, we certainly have authority in a
25 number of places. So we just want to honor what the

1 policy of IGRA is, which is to help with the
2 diversification and Indian economies.

3 MR. DAVID: Billy David. I believe our position
4 would be to support it either way. It's just maybe a
5 little disheartening it's taking this long for a stance to
6 be made. But if a regulation would make it more
7 sustainable, I think we would support that even more.

8 CHAIRWOMAN STEVENS: Thank you.

9 MS. KENNEDY: We support Buy Indian. I think
10 it's a good regulation that tribes and Native Americans
11 across the country look for businesses, and this is an
12 Indian body. We support it.

13 CHAIRWOMAN STEVENS: Okay. Thank you. We're a
14 little early. We can either take a break now, or we can
15 do at least one portion of Group 2. We certainly
16 understand that some of you may have to leave to
17 participate in NCAI. Can we get through 573? The reason
18 I'm thinking about maybe doing 573 first is because once
19 we get into the exciting world of service appeals, then
20 that is quite a bit of ground to cover, once we get into
21 appeals. But we might be able to talk about 573,
22 especially if we have a lot of regulators here right now,
23 because it does talk about how we proceed in enforcement
24 matters.

25 So if you look in your packet under the red

1 section, there is a draft, a discussion draft. And we can
2 jump into at least talking about this enforcement section
3 that you might be interested in. Larry.

4 MR. ROBERTS: Sure. So a couple of primary
5 changes in this. The discussion draft itself reflects
6 this Commission's policy that a Notice of Violation should
7 never come as a surprise to the tribe, and that there
8 should be a dialogue, that there should be a graduated
9 process where the Commission is providing, in a number of
10 circumstances, technical assistance, compliance
11 assistance, and then moving to enforcement if that doesn't
12 work. So what this provides is, in addition in 573.1, to
13 underscore that voluntary compliance is the goal of the
14 Commission. And as part of that goal, what 573.2 sets out
15 is a process whereby NIGC staff could issue first a letter
16 of concern, which basically sets forth very clearly what
17 facts and information an agency has that they have a
18 concern about and engaging in a dialogue with tribes on
19 that.

20 So the next level of approach would be a
21 noncompliance notice, which basically is the next step.
22 Where NIGC would say, Okay, we have received more
23 information. This is our concern, and we're -- we want to
24 work with the tribe, and states forth what corrective
25 action needs to be taken. This would all be before the

1 Notice of Violation. Now, so that lays out this process.

2 The discussion draft also makes clear that while
3 this is the general process that the NIGC would try to
4 follow, that it doesn't restrict the Chair's authority to
5 take immediate action on an NOV if the circumstances are
6 warranted. So it doesn't limit the Chair's discretion to
7 act quickly if needed.

8 Neither these letters of concern, these
9 noncompliance notices, these aren't final agency action.
10 Either action may provide a time period for voluntary
11 compliance. And if the corrective action isn't completed,
12 then, like I said, we would move -- the Chair would
13 consider whether to move forward with the next step in
14 enforcement. Those are the major changes embodied in the
15 Part 573.

16 CHAIRWOMAN STEVENS: This, I think Larry had
17 said, had been brought to our attention where tribes had
18 said, you know, going right into an NOV, or at least not
19 having some other steps outlined in some formal way, it --
20 tribes didn't want to be surprised. And again,
21 reinforcing this Commission's approach is compliance
22 based. Our goal is to bring tribes into compliance,
23 whether that's through, you know, a suggested process like
24 this or through training or technical assistance; you
25 know, individual site visits that include technical

1 assistance on site.

2 So the goal is not to be as punitive but to
3 identify with the tribe what the issue is, help get the
4 tribe into compliance, and keep them in compliance and, in
5 the end, stop the problem from continuing to happen and
6 have the tribe be in a place where they can maintain their
7 own compliance. Again, these steps were some -- we had
8 heard from tribes that a graduated process would help
9 tribes identify what the compliance issues are and help
10 get them there.

11 Especially since we have regulators in the room,
12 I know some tribes do this through their own ordinance and
13 their own controlled incremental process. So, you know,
14 we wanted to put this in some sort of a written fashion
15 that you can identify and that would be clear, that we're
16 working with the tribes to bring them into compliance.

17 Okay. Again, I realize that we have been
18 talking about these quite a bit, but, you know, I want to
19 be as inclusive and transparent as we can as we go through
20 the process. What we can do right now, if everybody
21 doesn't mind, we can take a quick break before we get into
22 this, because this is the really sexy stuff with the
23 attorneys. We have attorneys in the room. It actually
24 is. The next part is really important for tribes and for
25 us to understand and make clear what our appeal process

1 is.

2 So we'll take a 15-minute break, and we'll be
3 back at 10:20.

4 (A recess was taken.)

5 CHAIRWOMAN STEVENS: We're in the Part 573,
6 Subchapter H, proceeding before the commission. That's
7 going to cover a number of regulations. And I'll go ahead
8 and turn it over to Larry so that we can talk about what
9 we have here in front of you.

10 MR. ROBERTS: Okay. So as the Chairwoman
11 mentioned, what we circulated is a discussion draft that
12 basically organizes -- reorganizes the process that NIGC
13 will use in service, appeals of gaming ordinances, appeals
14 of management contracts, and just general appeals before
15 the Commission. And so the idea is that these were all
16 contained in different parts spread across our
17 regulations. And so the idea is to consolidate it under a
18 new subchapter.

19 So in your discussion draft we have a number of
20 different parts, and I'm going to run through it. Again,
21 this is all process related. So there's part 580, which
22 discusses just rules of general application for all
23 proceedings before the Commission. There's motions,
24 practice and appellant proceedings before the Commission.
25 Part 582 discusses appeals of disapprovals for gaming

1 ordinances. Part 583 addresses appeals for approvals or
2 disapprovals of management contracts and amendments
3 thereto. Part 584 sets forth the rules regarding appeals
4 before a presiding official for notices of violation. So
5 fine assessments, orders of temporary closure, the
6 decision to void or modify a management contract. And
7 then Part 585 provides the process rules for appeals
8 before the Commission on written submissions.

9 So Part 580 is basically the general rules of
10 general application. So definitions; how is "a day"
11 defined, for example. I don't know that we have "week"
12 here, but it wouldn't fit in this part anyway. You know,
13 what are the standards for ex parte -- how are ex parte
14 communications defined, how are suspension or waiver of
15 the rules, how are those addressed, who may appear before
16 the Commission, how services can be effectuated. As the
17 Chairwoman mentioned, these are all things that probably
18 only a lawyer would love.

19 Part 581 discusses the motion practice and
20 appellate proceedings before the Commission. So motions
21 for participation in the ordinance appeals, motions to
22 intervene in appeals before a presiding official, motions
23 in an appeal on written submissions, rules regarding
24 filing a motion before a presiding official, motions to
25 supplement the record, motions for reconsideration. And

1 these are all issues that, while they may not seem like
2 they're changes -- that these are game changes rules, but
3 it is more to provide clarity for when entities are making
4 appeals before the Commission.

5 So often I think in the past the Commission has
6 addressed this on sort of a case-by-case basis, or you'd
7 have to pick up the phone and call someone at NIGC and
8 say, "Well, how is this handled" or "How is that handled?"
9 And so the idea is to put this -- to provide clarity to
10 everyone that is going to file an appeal before the
11 Commission.

12 So Part 582 sets forth who may appeal the
13 disapproval of a gaming ordinance, how the appeal of the
14 disapproval of the gaming ordinance would move forward,
15 rules regarding the late filing or failure to file, the
16 motions practice, motions for limited participation, the
17 standard of review that applies to disapprovals of gaming
18 ordinances, the decision, and then defining sort of final
19 agency action.

20 583, again, covers management contracts,
21 amendments to management contract. Again, laying forth
22 clearly who may appeal the approval or disapproval, how
23 those appeals are going to be considered by the
24 Commission. Again, rules for late filing, motions,
25 motions for limited participation. Again, the standard of

1 review and the decision and final agency action, what the
2 decision will contain.

3 584 defines a process for appeals. If there is
4 an appeal filed, a party can ask for an appeal before a
5 presiding official for notices of violation, for proposed
6 civil fines, temporary closure. And so Part 584 is really
7 set forth to address those circumstances where a party
8 seeks to have their appeal moved before a presiding
9 official in the first instance.

10 Part 584 sort of lays out, because we're going
11 to -- you know, not someone before the Commission -- more
12 of an outside entity, clarifies when the hearing will be
13 held, the burdens and standards of review, burdens of
14 proof, the hearing process itself to provide some clarity
15 to the presiding official and the parties, and then again
16 the decision and how final agency action is effectuated.

17 And then finally, Part 585 addresses appeals to
18 the Commission based on written submissions, where there's
19 not a hearing, and how they are addressed for notices of
20 violation and civil fine assessments. And, you know, a
21 lot of our appeals are decided based on the written
22 submissions of the parties and are not before a presiding
23 official. And so Part 585 is meant to address that
24 process.

25 So at this point, I'll open it up for any

1 comments. We can go through this line by line if you
2 prefer.

3 CHAIRWOMAN STEVENS: He's joking.

4 MR. ROBERTS: That was a little bit of
5 tongue-in-cheek, but if there are any comments or
6 suggestions for improvements or areas that were not
7 captured in this discussion draft, we would greatly
8 appreciate any comment. I know that, for example, we have
9 received quite a bit of comment on how the Commission will
10 handle ex parte communications. And so if there are
11 comments on that, we would appreciate that as well.

12 CHAIRWOMAN STEVENS: We assume that, like the
13 fees section, many tribes take portions that their
14 particular experts at their tribes will be interested in.
15 So auditors or financial people may be interested in the
16 fees section. You know, your tribal regulators may be
17 interested in the enforcement section, or your licensing
18 people will be interested in the ex parte we're going to
19 discuss. This one is for the attorneys or the people who
20 handle your proceedings before the NIGC. If you have not
21 had --

22 You may not have had to really entertain this
23 section if you're going through ordinances and management
24 contracts where you're just following the regulations and
25 you get approvals or you've not received an NOV. But

1 certainly if you don't have your people that manage
2 your -- like how they represent you, certainly take this
3 draft to them and discuss this. Again, as Larry was
4 saying, we're trying to streamline this process, make it
5 clearer because, in fact, there are actually tribes that
6 don't have legal counsel. Or, you know, if they do,
7 they're probably managing other parts of the tribe's legal
8 activities. And so we're trying to provide clarity. And
9 not just to tribes and anybody who might be interested in
10 a proceeding or triggering any of these parts, but also to
11 the presiding official and putting these in one place,
12 because I think previously they were all over the place.
13 So we need it to be clear to tribes, or anybody who is a
14 party to a matter, clear what the NIGC appeals process is
15 and clearer to presiding officials so that everybody knows
16 the rules of the road.

17 MS. KENNEDY: Well, I appreciate especially the
18 last comment. I guess my question or concern would be, as
19 a regulating body, when there are -- there's probably a
20 lot of discretion -- I don't know -- that the Commission
21 may have, but it seems like part of the history of tribes,
22 not just with this Commission, but, for example, with the
23 Department of Interior and sometimes the Indian Health
24 Service, there has been a practice that was in place
25 whereby tribes who could lobby effectively or could

1 influence got different treatment than other tribes. And
2 now it's -- in the days of self-governance they pretty
3 much had to put all the funds on the table and all the
4 shares were divided up. And that resulted in, you know,
5 seemingly some tribes felt like there was inequity because
6 they got reduced amounts over what they used to have
7 because the historical practices were really those who
8 were first at the well got the lion's share.

9 And so I guess my question to the Commission is,
10 in terms of management contracts, that they -- whether or
11 not they're dealt with all alike, or is there discretion?
12 And I guess in the regulations, maybe -- I don't see
13 anything like that in here, but it's concerning.

14 CHAIRWOMAN STEVENS: Right now we're talking
15 about what happens if we disapprove or approve a
16 management contract. But we actually have heard concerns
17 throughout our process by which we address management
18 contracts that are put in front of us; and primarily time,
19 how long it takes.

20 We will be talking about Part 537, background
21 investigations, but we certainly would want to hear, you
22 know, if you have further concerns, additional concerns
23 that maybe I'm not capturing based on what you've said.
24 We want to have a process that is clear to everybody,
25 whether that's in the appeal process or whether that's

1 where you're going through management contract approvals
2 or ordinance approvals. We're trying to create some
3 consistency, I think it's safe to say, looking at the
4 general counsel's office, on most of what passes through,
5 and create not -- if there are what appears to be
6 advantages or disadvantages for certain tribes, we want to
7 create a clear, consistent practice for all of our actions
8 at the NIGC, and much of which you'll see addressed in
9 these regulatory proposals so that everybody knows what
10 the rules of the road are. Because it's only fair that
11 everybody -- all tribes, interested parties, we know, the
12 public knows -- what the process is.

13 I don't know if you wanted to add anything,
14 Larry.

15 MR. ROBERTS: Not really. I mean, if you're --
16 it sounds, Chairwoman, like your comment is addressed to
17 what is the process for approval or disapproval of a
18 management contract itself and how can that process be
19 more effective. If your comment is -- and I think the
20 Commission is open to hearing suggestions on how that
21 process could be improved, because as the Chairwoman said,
22 we have heard from tribes at consultations that the
23 management contract appeals process takes too long and
24 that it should be streamlined. The process here that
25 we're talking about is, you know, after -- once we get

1 past that process of approval or disapproval of a
2 management contract, how is that approval or disapproval
3 appealed.

4 CHAIRWOMAN STEVENS: Cheryl, thank you for your
5 comments. We certainly will take them to heart.

6 If there are no other comments in the exciting
7 world of proceedings, we can move on to 556 and 558, which
8 is another area that as regulators -- we have lots of
9 regulators in the room -- you will be interested in,
10 because we're addressing what would be a seven-year-old
11 pilot program that is no longer a pilot program. The
12 majority of the tribes are participating in it and
13 bringing the parts of it to before and after licensing.
14 So let's move on to 556 and 558.

15 MR. ROBERTS: Okay. So as the Chairwoman
16 mentioned, early on in this process of regulatory review,
17 the Commission asked through its Notice of Inquiry how the
18 Commission should prioritize our existing regulations to
19 formalize what the Commission has been acting under as a
20 pilot program. And most tribes are already participating
21 in the pilot program itself. And so the discussion draft
22 that we've circulated is meant to formalize that process.

23 So what the pilot program does for tribes who
24 are not part of it yet is it provides for those tribes to
25 submit a Notice of Results to NIGC, which is a summary,

1 and then the tribe maintains for its files the
2 applications and its investigative reports. And when the
3 Commission received comments on the NOI, it was roundly
4 supportive of formalizing this program, this pilot
5 program, either through regulation or policy.

6 So what the discussion draft attempts to do is
7 formalize the pilot program, and Part 556 is the process
8 and the procedures that govern the pilot program before a
9 gaming license is issued. So we've basically tried to
10 amend 556 and 558. So 556 clearly addresses everything
11 before a gaming license is permanently issued, and 558
12 addresses everything after a license is issued. So Part
13 556 provides in the discussion draft for a tribe seeking
14 to license either a key employee or a primary management
15 official to notify NIGC of the background results within
16 60 days of that person starting work. The discussion
17 draft also provides that if a tribe has access to prior
18 investigative materials from another tribe, that it can
19 simply update those materials rather than starting from
20 scratch.

21 Part 558 includes all the procedures after the
22 gaming license has been issued. And so after the Notice
23 of Results is provided to NIGC, the tribe may license that
24 jey employee or primary management official. The tribe
25 notifies NIGC within 30 days of the issuance of that

1 license, and NIGC then has 30 days to request additional
2 information from the tribe. And then NIGC notifies the
3 tribe of any concerns within 30 days of receiving the
4 Notification of Results. And if a license is issued prior
5 to NIGC's objection, then the licensee has rights to a
6 Notice in Hearing. The regulations provide for the tribe
7 to suspend the license until that hearing has been held
8 for the licensee. And then following the tribe holding
9 that hearing, the tribe notifies NIGC of the tribe's
10 decision on whether to license that primary management
11 official or key employee.

12 So that's the general overview of the pilot
13 program itself. And our understanding is that, again,
14 these regulations, the changes that we're making, is
15 intended to embody the pilot program as it has been
16 working. We've heard from some tribes that the pilot
17 program was incorporated a little bit differently region
18 to region. So if any of this seems new or different to
19 you, we'd like to hear that and any other comments you
20 have on this preliminary discussion draft.

21 CHAIRWOMAN STEVENS: And I want to reiterate
22 what Larry has said, a few things. We have broken these
23 into the before and after. Before licensing and what
24 happens after licensing, to make it clearer the steps that
25 need to be taken and what's to be expected. But, more

1 importantly, all the regions have been gathering the same
2 types of information under the pilot program now. The
3 manner in which they do that is different, or can be
4 different, across the country. So while it might appear
5 like we're asking for something different, the content of
6 what we're asking for is not different. It's going to be
7 the process.

8 And, you know, if we get to a point where we
9 finalize this, or at least go forward with the Notice of
10 Proposed Rule, and if this does become a regulation, we
11 are going to standardize our process across all of our
12 regions so that we're using the same sort of internal
13 process, the same documents, the same mechanisms in every
14 region so that it's just consistent, one. But, two,
15 should a region -- say Sacramento may need the help of,
16 you know, someone in Minneapolis because maybe there's a
17 new facility opening. We can shift those over to get help
18 and that there is a consistent practice that's being put
19 in place. But that's really incumbent upon us, and I just
20 want to stress that. If you are having, you know, any
21 issues around that, we would like to know if you're not --
22 if you're seeing something here that you think is really
23 different. It's our understanding the content of what
24 we're asking for is the same.

25 And it will be so nice to get this done, because

1 then it's not a pilot any more just by definition. And
2 again, this may just be well-covered ground because we
3 have been talking about it for about six months.

4 MR. MATHERLY: Andrew Matherly, Spokane Tribe.
5 In the 556, on the issuance of license, it doesn't discuss
6 anything there on the temporary license. I know like most
7 of the tribal ordinances, they issue a temporary license
8 results (inaudible) or Notice of Results within the 90
9 days.

10 Like with the Spokane Tribe, in our compact --
11 we're one of three tribes out of 28 compact tribes that do
12 the eligibility for ourselves. We have five days. The
13 same -- the results are the same as far as 556 language,
14 as far as what is on the application, what is submitted,
15 the fingerprints, and we run that kind of parallel. We
16 base everything on a classification. And then once the
17 temporary is issued within five days, and the NOR is
18 completed within -- actually, our state compact gives us
19 60 days. NIGC rules give us 90 days. So we are roughly
20 around 45 days of completing those. And then our
21 investigative department, I guess, hits the magic button
22 and send them off to NIGC and the state at the same time.
23 There is nothing that -- I haven't found in here, I guess
24 I'm just reading briefly, on the temporary license. So as
25 long as there is no objection with the tribes still

1 continuing with the temporary process, and then you guys
2 start the final process.

3 MS. SCHLICHTING: That is the intent. Part of
4 the redrafting of 556.6(b)(ii) allows for submission of
5 Notification of Results so the applicant background
6 investigation results (inaudible) NOV's no later than 60
7 days after applicant begins work. So we have
8 contemplated -- some tribes do issue temporary licenses,
9 allowing you 60 days in which you can have that applicant
10 be at work.

11 MR. MATHERLY: Okay.

12 CHAIRWOMAN STEVENS: Some tribes do it
13 differently. Some don't issue temporary licenses because
14 they don't want to go through a process should there be an
15 objection. Or if you do find something, either the tribe
16 does or we do, and we object, and now you have to go
17 through the hearing process. Some tribes choose not to do
18 that and they wait out the time. Other tribes go ahead
19 and issue a temporary license. So we're trying to be
20 mindful of either of those, but it is really up to the
21 tribe if they want to issue that temporary license or not
22 and go through the processes required once you have a
23 license, even temporarily. Does that help, Matt, to know
24 exactly where that is?

25 MR. MATHERLY: Thank you.

1 CHAIRWOMAN STEVENS: Any other comments on the
2 556, 558 licensing process?

3 Okay. If not, we can move on to 571.

4 MR. ROBERTS: Part 571 governs monitoring and
5 investigations, and we've issued a proposed rule that
6 would amend Part 571. We issued it on October 12th, 2011.
7 And the comment period on this ends, I believe,
8 December 12th. But basically how this proposed rule came
9 into being is that it's a little bit like the facility
10 license regulation changes where we've heard from tribes
11 that, you know, they've had some interaction with NIGC --
12 so, for example, at facility licensing: We've sent our
13 materials to NIGC. We haven't heard everything back from
14 you. You know, do you have anything you need? We're
15 scheduled to open in 30 days. Can you send us a letter?

16 This is along those lines in the sense that what
17 we've heard from tribes is that NIGC has at times opened
18 investigations, and the tribe is aware of it, and says,
19 You know, an investigation has been opened for six years.
20 What's going on with that?

21 And regional staff may say, Well, we've ended
22 that investigation. We're not recommending at this time
23 any further action.

24 And so, again, tribes have asked for a process
25 from NIGC to issue those similar to, you know, what other

1 agencies might do. When they're not actively pursuing an
2 investigation, it provides for this process. So it
3 provides for NIGC staff to advise a tribe by letter that
4 the investigation has been completed. And again, this
5 would be important, for example, if an investigation has
6 been open for some time and, to use the example we used
7 earlier today, perhaps a tribe is seeking refinancing and
8 has to disclose that an investigation is open as part of
9 that refinancing. This would provide a process whereby
10 NIGC, if that investigation has been completed, they can
11 provide a letter for the tribe's files.

12 It's important to note that while this letter
13 would let tribes know that an investigation has been
14 closed, there is no finding of whether there was a
15 violation or not, whether a violation, in fact, occurred.
16 And the Chair would still have discretion to move forward
17 with an enforcement action at some future point in time.
18 But it's meant as a process to provide some response back
19 to tribes after a period of time of an investigation.

20 Everyone should have this in their packet,
21 right? It is a two-page double-sided (indicating) --
22 yeah. Okay.

23 CHAIRWOMAN STEVENS: And just to reiterate, you
24 know, we've heard from tribes on the front end of an
25 investigation on, "Could you give us an opportunity to

1 comply before straight NOV?" And then on the back end,
2 you know, of an investigation, "What's happening? It's
3 been sitting there. We don't know. What's going on?"
4 And it just sort of looms over the tribe and nothing
5 happens. And for a number of reasons tribes may want that
6 just off their plate and know that we're done with that
7 investigation.

8 It's not unusual, like we were looking at some
9 other independent federal regulatory agencies, civil
10 regulatory agencies, and they do something very similar,
11 where they let the party know we're done with that for
12 now. And so we were trying to be mindful of what we heard
13 from tribal leaders, tribes on the front end of an
14 investigation and on the back end of an investigation.
15 Again, it shouldn't be a surprise. NOV shouldn't be a
16 surprise.

17 If not, I think the next part --

18 MR. ROBERTS: 537.

19 CHAIRWOMAN STEVENS: 537.

20 MR. ROBERTS: So Part 537, as the Chairwoman
21 mentioned earlier, involves background investigation for
22 persons or entities having a financial interest in or
23 management responsibility for a management contract. And
24 what we've heard from tribes in the public as part of our
25 regulatory review is that there are -- there's existing

1 within this process an opportunity to reduce the scope of
2 a background investigation for -- our existing regulations
3 provide for investors, financial investors. So what
4 you'll see in 537.1(4)(d) on the discussion draft, which
5 is on page 4, this provides the Chair discretion to reduce
6 the scope of background investigations and information to
7 be furnished for any tribe, any wholly owned tribal
8 entity, a national bank, or an institutional investor that
9 is already federally regulated or it's required to undergo
10 a background investigation and licensure by a state or
11 tribe pursuant to a tribal-state compact. So it is
12 intended to, if a tribe or other entity, like a national
13 bank, is already regulated and is already undergoing
14 background investigation and licensure, that this would
15 provide the Chair with the discretion to streamline the
16 process for approval of a management contract in these
17 situations.

18 And this discussion draft was -- the written
19 comment period on this closed August 9th, and so the
20 Commission is moving forward in considering comments that
21 the public and tribes have already submitted on this
22 discussion draft, and hopefully will be able to move
23 forward on this shortly.

24 CHAIRWOMAN STEVENS: Do we have any tribes that
25 need to make any statement? We still have the same people

1 in the room, but I want to make sure in case there is some
2 ground we want to be over. There is a lot of material
3 here, but we have been talking about it for a long time in
4 various different versions of drafts that you see here or
5 rules that are proposed. I'm actually really excited
6 because we've got some of these things into the Register
7 now and have been very -- what I believe to be very
8 inclusive of tribes by talking before we draft.

9 And so having a rule published is -- I think we
10 had some people doing a dance once we got it to the
11 Register because we have -- getting to a formal
12 publication process after a change in practice within the
13 Commission to talk first, then draft, and then once we
14 draft, we talk some more and consult and have that
15 discussion draft affect the proposed rule -- some of the
16 proposed rules that you see here today that are in the
17 Register and open for comment. And then consulting on
18 this, getting comments in writing. We'll take those into
19 consideration if and when we get to final rule.

20 So there's still time with the Federal Register
21 to review the drafts that are there in the Register for
22 comment right now on any of these. And if not, if there's
23 nobody who wants to talk about any of the ground -- we've
24 covered a lot of ground this morning -- we'll go ahead and
25 talk about a Notice of No Action.

1 MR. ROBERTS: So as part of the regulatory
2 review process, the Commission identified a couple of
3 issues that they would seek comment on and consultation on
4 with tribes, one of which was collateral agreements and
5 whether to approval collateral agreements, and the other
6 one was definition of "net revenues." We had heard from
7 tribes that -- some tribes had suggested that NIGC
8 actually approve collateral agreements to a management
9 contract. And we've heard from some tribes that thought
10 that the definition of net revenues in IGRA should be
11 changed to be consistent with GAAP.

12 And so the Notice of No Action that was issued
13 on October 12th essentially summarizes the process that
14 the Commission went through in deciding not to move
15 forward with any changes affecting collateral agreements
16 or net revenues. And so the Commission agreed with the
17 comments that they've received on whether to promulgate a
18 regulation requiring NIGC approval of collateral
19 agreements and basically setting forth that IGRA
20 doesn't -- IGRA provides for the approval of management
21 contracts; it doesn't require the approval of agreements
22 collateral to a management contract. But the Commission
23 also made clear that the decision for no action not to
24 move forward on collateral agreements doesn't prevent
25 tribes from submitting any agreement to NIGC for review to

1 determine whether the agreement constitutes management or
2 a management contract.

3 The other issue with regard to net revenues,
4 there were some comments that the definition of "net
5 revenues" should be consistent with GAAP. And what the
6 Commission concluded was that changing the definition to
7 be consistent with GAAP, based on our review, that that
8 could result actually in a definition that is inconsistent
9 with the definition actually contained in the IGRA itself.
10 So the Commission decided not to move forward with that.
11 So that was issued on October 12th, and I think that that
12 summarizes the two issues of no action.

13 CHAIRWOMAN STEVENS: We started really broad in
14 November of last year, and with your help we've narrowed
15 the field, and this is part of that narrowing. Should we
16 talk about this? Everybody said no. But, you know, we
17 still have an hour for lunch, and at the rate we're going,
18 we could repeat this whole process after lunch for those
19 people who might show up, you know, new, fresh faces.

20 But let's move on to self-regulation of class II
21 gaming and a discussion on sole proprietary interest. So
22 there should be a discussion draft in your group, under
23 Group 5, 518, the self-regulation regulation. And I'll
24 have, again, Larry take over and review the changes that
25 were made or have been suggested in the discussion draft.

1 MR. ROBERTS: Okay. So part of the 518 process,
2 in reviewing 518, the Commission asked in its Notice of
3 Inquiry very early on whether the Commission should review
4 this process for obtaining class II self-regulation
5 certification. And what we heard from the comments
6 received from tribes and the public are some of the things
7 that we have already heard this morning as well; and that
8 is that, you know, there is quite a bit to receiving a
9 certificate of self-regulation and that there should be
10 commensurate benefits with that. And so some tribes have
11 said that the actual administrative burden of going
12 through the process outweighs the benefits.

13 We have heard that some of the submission
14 requirements are duplicative and overly burdensome, that
15 the annual reporting requirement after receiving a
16 certificate of self-regulation actually undermines the
17 whole purpose of certification. We've heard from tribes
18 that self-regulation standards are high and they should
19 remain that way. And also that, as we heard earlier this
20 morning, self-regulation is a hallmark of tribal
21 sovereignty itself and, you know, it's tribal governments
22 having that control, regulatory control, over their
23 resources.

24 So the discussion draft that was circulated,
25 what it attempts to do is the current regulation focuses

1 quite a bit on the gaming operation itself. And so what
2 the discussion draft tries to do is shift that focus not
3 so much from the operation but what regulatory
4 responsibilities and authorities and capabilities does the
5 tribal gaming regulatory agency have. It also attempts to
6 reduce the submission of any duplicative information,
7 streamline that, and trying to figure out and address an
8 appropriate certification process where all tribes can see
9 benefits to receiving a self-regulation certification and
10 making that process assessable.

11 So since IGRA was passed in 1988, only two
12 tribes have received certificates of self-regulation. And
13 so we're looking to see how this regulation can be
14 improved for all tribes. So in the discussion draft
15 itself, you'll see that there are quite a bit of
16 streamlining and revisions in this discussion draft, but
17 518.3 sets forth the submission requirements that a tribe
18 would provide, history of gaming operations, the
19 organizational chart of the regulatory body, employment
20 criteria for those regulators, description of funding, the
21 list of the current regulators, and a description of the
22 gaming operations accounting system. Also, a listing of
23 the internal controls, the description of the
24 recordkeeping system, a copy of the facility license, and
25 any other additional relevant tribal gaming regulations.

1 518.4(a) then lays out the criteria that must be
2 met by a tribe, and this comes from the statute:

3 Effective and honest accounting revenues; reputation for
4 safe, fair, and honest operation; a fiscally and
5 economically sound basis, and generally free of criminal
6 and/or dishonest activity; and that class II gaming has
7 been conducted in compliance with federal and tribal law.

8 So for 518.4(a) criteria that must be met: The
9 tribe has adequate systems for accounting revenues;
10 investigation, licensing and monitoring; investigation
11 enforcement and prosecution of violations; MICS at least
12 as stringent at the class II MICS; and adequate system for
13 accounting of gaming revenues.

14 Tribes can illustrate that those factors, those
15 criteria, are met by providing this information:
16 Providing information that the tribe has an adequate
17 dispute resolution process for the gaming operation, its
18 employees and customers; the tribe can also demonstrate
19 that it -- or address the factors for approval by showing
20 that the tribal gaming regulatory body monitors compliance
21 with the laws and regulations, including class II MICS;
22 that it monitors the effectiveness of the revenue
23 accounting system; that it audits the class II gaming
24 activities, and that it reviews the accounting information
25 from the operations itself.

1 Again, other criteria -- not criteria, but other
2 factors that the tribe can show to illustrate that it
3 meets the criteria is showing that the regulatory body
4 itself maintains access to all records, as well as class
5 II gaming activities; that it has adequate investigating,
6 licensing and monitoring systems; and that it has
7 established standards for vendors. That the gaming
8 regulatory body establishes and posts class II gaming
9 rules, maintains a system for investigations, takes
10 appropriate enforcement action, and takes testimony,
11 conducts hearings, and that the tribe adequately
12 permanently funds the regulatory body itself. So the
13 tribe also can demonstrate those factors by demonstrating
14 that the operation itself is financially stable, that it
15 has an adequate system for prosecution of gaming
16 violations, and that it's conducted in a manner that
17 adequately protects the environment and public health and
18 safety.

19 Part 518.5 sets forth the process that NIGC will
20 use to review petitions for self-regulation. And so the
21 Office of Self-Regulation, which is a commissioner, makes
22 an initial determination within 120 days on the materials
23 and reports its findings, and will either issue a
24 certificate of self-regulation or notify the tribe that it
25 does not meet one or more of the criteria for

1 self-regulation. And if a tribe gets that initial
2 response from the Office of Self-Regulation that it
3 doesn't satisfy one of the criteria, the tribe can then
4 respond and provide additional information. It can
5 request a hearing. The Office of Self-Regulation then
6 issues a discussion, and the decision to deny a
7 certificate of self-regulation is then appealable to the
8 full commission.

9 518.7, annual reporting requirements. You'll
10 see some changes are made here as well. And this really
11 tracks the language of IGRA itself providing for an
12 independent audit and a complete resume of all prior
13 management officials and key employees. We've heard from
14 tribes about the complete resume, that that seems, for
15 primary management officials and gaming employees, seems
16 to be overly restrictive, but it is something that comes
17 out of the statute itself. And then a tribe under 518.8
18 has a continuing duty to report to the Commission any
19 material change in circumstances with regard to the
20 approval criteria.

21 And for 518.9, the following powers are limited
22 during a certificate of self-regulation: The monitoring
23 of class II gaming -- this is also right from IGRA
24 itself -- the inspection and examination where solely
25 class II gaming activities are conducted; conducting of

1 background investigation; and access and inspection of
2 records respecting class II gross gaming revenues. 518.9
3 sets forth that the Commission retains all of the powers
4 and retains the power to investigate and bring enforcement
5 actions for violations of IGRA or tribal gaming ordinances
6 or NIGC regulations.

7 As you'll see, there's quite a bit of editing
8 and changes to 518 in this preliminary discussion draft.
9 The comment period on the preliminary discussion draft
10 closed in September. We're working through, at a staff
11 level, evaluating all of the comments we've received on
12 this part before the Commission moves forward to decide
13 how it wants to move forward with Part 518.

14 CHAIRWOMAN STEVENS: I just want to note to
15 everyone that there's two versions of the same document
16 here; one that has bubbles, because we still have
17 Microsoft 2003 in our office, which I will fix, and
18 another in the back section is the insertion
19 strike-throughs, which might be easier on the eyes. We do
20 both because sometimes we'll put a comment in the bubble
21 that we can't make just stand on its own without having to
22 delete a section also bubbled. But it might be a little
23 easier on the eyes to read. You can see what was put in,
24 what was struck through. And again, we wanted to -- you
25 know, we heard a lot about this when this Commission first

1 came into office and the interest of tribes to become
2 class II self-regulated. And again, I want to reemphasize
3 that this is for class II only. And that, you know,
4 there's still -- even if the cost is not as great as some
5 tribes would like, the simple fact of being a tribe that
6 has a self-regulatory certificate, self-regulation
7 certificate is, in some tribes' eyes, the exercise of its
8 sovereignty.

9 And so taking the focus away from the operations
10 and emphasizing what regulatory framework does the tribe
11 have, is it a solid regulatory body with its history, with
12 its funding, with how it handles its regulatory
13 authorities, that there's evidence of controls in place
14 for a number of aspects. And, you know, this is all in
15 response to what we've heard from tribes. So we, again,
16 are taking comments on this. We're working through some
17 of the comments that we have received thus far, but we
18 certainly will take more comments today if there are any.
19 If you have already submitted written comments to the
20 discussion draft, I'm sure we have those on record or are
21 currently considering those as we move forward.

22 MS. KENNEDY: We have a comment or question, and
23 Dee Deneen will ask the question.

24 MS. DENEEN: The question is under 519 --
25 518.9(b). And it is talking about the enforcement powers

1 of the Commission that are not applicable during the
2 certificate of self-regulation period, and it says that
3 "The power to inspect and examine all premises located on
4 Indian lands on which solely class II gaming is
5 conducted." So if it's a facility that has class II and
6 class III, would NIGC then retain the power then, even
7 though you're not regulating class III?

8 MR. ROBERTS: That's a good question. It's
9 something that we -- we have in our draft, "solely class
10 II gaming is conducted." We do know that obviously there
11 are mixed facilities. Most facilities are either all
12 class III or mixed, and so it is something that we are
13 looking at in terms of the statutory structure itself and
14 how it speaks to the class II. So they'll have to -- this
15 discussion draft is limited just to class II only
16 facilities, for limiting that. But it is something we can
17 look at how to address. It is going to be something that
18 the Commission is going to have to look at if they are
19 going to move forward with the proposed rule.

20 MS. DENEEN: Okay. Thank you.

21 CHAIRWOMAN STEVENS: There's actually -- not to
22 open a can of worms here, but there are tribes that give
23 NIGC class III authority in their ordinances, and in some
24 cases we're monitoring that, and in some cases we're not,
25 depending on what -- you know, what their setup is.

1 There's a lot here. Again, we've been chatting about this
2 for a few months now and have received a number of
3 comments that we're reviewing now as we move forward and
4 are addressing the concerns or suggestions that may be
5 given to us in the written submissions on the discussion
6 draft.

7 MR. BOYCE: Mike Boyce. Just a procedural
8 point. On 518.7(a), the independent audit to be filed to
9 the Commission on April 15th, if that was consistent with
10 the independent audits that just had to be submitted
11 anyway, that would be 120 days from January 1st. Because
12 what's going to happen here on April 15th of this year
13 when I submit my self-regulation report, I'm going to
14 resend you the 2010 independent audits that you've already
15 had for 11 months and 2 weeks because I don't get the 2011
16 independent audit until about April 20th. So if you just
17 make that language consistent, that the independent audits
18 have to be 120 days from January 1st, you would have an
19 independent audit consistent with the rest of the
20 self-regulation report, which basically talks about 2011.

21 MR. ROBERTS: Thank you.

22 CHAIRWOMAN STEVENS: This is good to know,
23 because Grand Ronde is one of -- we have three tribes.
24 One is Choctaw, and that's by legislation that they're
25 self-regulation (inaudible). The other two are certified

1 through our office, which is Grand Ronde and Menominee.
2 So your comments are helpful on the actual practice of
3 self-regulating and reporting.

4 Certainly take the time to review the discussion
5 draft. And the last thing we can talk about before lunch
6 is sole proprietary interest. And there's currently no
7 regulation for this, but I'll have Larry explain further
8 about why this has come up.

9 MR. ROBERTS: So I think the definition of "sole
10 proprietary interest" has been, obviously, something
11 before the agency for some time. And what the Notice of
12 Inquiry asked was whether the Commission should basically
13 promulgate a regulation that would define the sole
14 proprietary interest requirement within IGRA. And the
15 comments we received in response to that Notice of Inquiry
16 were sort of across the board. Some tribes and the public
17 suggested that we should promulgate a regulation and that
18 the regulation should provide a process by which NIGC
19 could review a matter only at the request of a particular
20 tribe for sole proprietary interest concerns or
21 violations. Some comments suggested that the percentages
22 contained in IGRA for a management contract or
23 independently owned gaming license by the tribe, that
24 those percentages might help define what is meant by the
25 sole proprietary interest provision.

1 Some comments suggested that if the Commission
2 is going to go forward with the regulation of defining
3 "sole proprietary interest" that the Commission should
4 also define what "primary beneficiary" means in the
5 purposes of the act. Some comments suggested that a clear
6 definition by regulation of "sole proprietary interests"
7 would help tribes, would provide clarity, would provide
8 easier access to financing because there would be that
9 guidance out there through regulation.

10 And there were other comments that suggested
11 just the opposite, that a definition of sole proprietary
12 interest would actually limit a tribe's access to capital.
13 And then we received some comments that basically said the
14 agency should not try to define this through regulation
15 but that the courts should decide what sole proprietary
16 interest means. So as the Chairwoman stated, we haven't
17 moved forward with a discussion draft. I think part of
18 that is because we have heard such a wide diversity of
19 opinions from tribes moving forward with this. And so we
20 are interested in comments from tribes as we move forward
21 in evaluating how to proceed on this particular issue.

22 CHAIRWOMAN STEVENS: I'm just going to ask a
23 question and look at the attorneys over here. When do you
24 usually see this come up? In terms of an investigation
25 or, is it more in terms of upfront when we're seeing

1 contracts or financing? Or is it a variety of ways that
2 we see this?

3 MR. ROBERTS: It generally comes to the agency
4 in a variety of contexts. So it can be an enforcement
5 action where a third-party is receiving a substantial
6 amount of revenue from the facility, and the Commission
7 has issued notices of violation for violation of the sole
8 proprietary interests. It's also comes up in just review
9 of agreement and other contracts that tribes have, where
10 tribes may submit contracts or agreements for us to
11 review. And basically those contracts may provide for
12 substantial control of the facility and substantial sum of
13 the gaming revenues itself.

14 CHAIRWOMAN STEVENS: This is sort of an
15 interesting topic because we have some tribes -- as you
16 can see up there, based on what we have seen -- that say
17 don't do it. Others who do come to us and say we need
18 help. And sometimes they're not management agreements.
19 They may be just some other agreement that may be focused
20 on a particular portion of the facility, like off-track
21 betting.

22 And we're just interested in what your
23 perspectives are on, you know, if we move forward with a
24 regulation because right now there's -- you know, we don't
25 have a draft. It's very case specific. That's sort of

1 the problem here, is that every circumstance with a tribe
2 is very individual to that tribe and, you know, what other
3 agreements they have in place. So there's not -- I think
4 we're not getting a clear message from tribes about how to
5 move forward with this. And it may not affect your tribe
6 at all if you don't have these kinds of issues. It may be
7 just for a smaller sector of tribes. Are there any
8 questions that you might have of us about how this has
9 come up and what are we looking for?

10 No?

11 Okay. Well, we've run through the whole day,
12 and we certainly are going to be back here after lunch at
13 1:30. We do look forward -- if you have not made any
14 comments yet in writing, we would like you to if you can,
15 or make them on the record when we return. You know,
16 we're getting to a place where we're starting to put
17 Notice of Process out. We have been discussing sort of
18 the same topics again and again, and as we move forward in
19 an informal process, you will see more proposals coming
20 out. And we will discuss those and how they came into the
21 form they did based on comments that we have received
22 during the discussion, draft consultation periods.

23 So we'll be back here at 1:30 for anyone who is
24 going to return. Yes, ma'am.

25 MS. KENNEDY: I have a question on the TAC that

1 was put in place and the work they are doing. And I think
2 it was -- I don't remember the number. I think it was 15
3 that you were putting in place. And so it sounds like it
4 was representative of the various areas of the United
5 States. And who is the representative for this area?

6 CHAIRWOMAN STEVENS: We had 56 nominees. We
7 read every one of the resumes and nomination forms. And
8 what we have done is try to strike a balance regionally.
9 So we have seven regions, and we have tried to strike a
10 balance between regulators and operators, technical
11 experts, class II, class III, a mix of facilities. And
12 what we've done is I think we've boiled it down to just
13 about -- I can't think of how many. It must be like two
14 per region. So the representative from Warm Springs --
15 her name -- I can see her face.

16 MR. PHILLIPS: Michele Stacona.

17 CHAIRWOMAN STEVENS: Michele Stacona from Warm
18 Springs, and then there are representatives --

19 MR. PHILLIPS: Jeff Wheatley.

20 CHAIRWOMAN STEVENS: Jeff Wheatley from
21 Stillaguamish and Leo Culloo from Port Gamble. You know,
22 we had so many from certain areas that we could choose
23 from. Depending on the number of nominees we got from a
24 area, we picked as many as we could based on balancing
25 their backgrounds. So from Oregon, it is -- well, Michele

1 Stacona from Warm Springs. I think she's been a regulator
2 for some time and has been in other regions of the
3 country. But we have on our Web site the press release
4 and the names oif all the individuals. We can get that
5 information to you if you would like, Cheryl.

6 MS. KENNEDY: Okay. You said Stillaguamish,
7 Warm Springs, and who else?

8 CHAIRWOMAN STEVENS: Port Gamble.

9 MS. KENNEDY: And I have another question. Were
10 any of the self-regulated tribes selected for a nominee?

11 CHAIRWOMAN STEVENS: The Menominee didn't
12 nominate. Neither did Choctaw, I don't think.

13 MR. ROBERTS: And I guess the other important
14 point to note about the Tribal Advisory Committee is that
15 all of the dates for the Tribal Advisory Committee are up
16 on our Web site, and those Tribal Advisory Committee
17 meetings are open to the public, and there are public
18 comment sections; therefore, participation from the
19 public. So even if a particular tribe wasn't selected to
20 be on the TAC itself, there is a process in place for the
21 public to participate in the TAC process.

22 CHAIRWOMAN STEVENS: And just to summarize the
23 TAC, the TAC is a 15-member committee that is comprised of
24 authorized tribal representatives from the tribes'
25 governing body, and the NIGC is not part of that. And we

1 are giving them an alternative standard that has been
2 proposed to us. Under the Executive Order 13175, tribes
3 can submit an alternative in lieu of federal standard.
4 And Poarch Band of Creek and other tribes have done that.

5 So we are set to go work on reviewing those
6 recommendations for class II minimal internal control
7 standards and class -- the technical standards for class
8 II machine play. And they are working as a group to
9 provide recommendations on those standards, alternative
10 standards. And so we're going to take those
11 recommendations, and they're going to have their own
12 process they're going to go through. This is not an
13 NIGC-controlled committee. We're sponsoring the
14 committee. So their job is to give us recommendations on
15 the variety of backgrounds they all bring to the table and
16 suggest -- you know, give us their recommendation based on
17 these alternative standards that we have received.

18 Once we take those in and their work is done --
19 it should be done at the end of March -- we're going to
20 take that into consideration as we move forward and
21 determine how we're going to proceed with those minimal
22 control standards and technical standards. And from
23 there, we will consult with tribes based on what we've
24 heard so far and any drafts that we might have out at that
25 time.

1 In no way does the Tribal Advisory Committee
2 substitute for consultation that we will have with all
3 tribes. They are identified as a group of experts with
4 certain -- you know, bringing to the table certain
5 backgrounds that are meant to help inform us in our
6 decision-making process. Once we make those decisions, we
7 will share those with all the tribes, and all the tribes
8 will have an opportunity to comment through the
9 consultation process.

10 It was becoming clear to us as we moved forward
11 talking about, as you all know, highly technical, detailed
12 standards for MICS and technical standards, that we were
13 not going to continue -- we weren't going to be able to in
14 a timely way get through those in this bigger consultation
15 fashion. So there will be opportunity for tribes to weigh
16 in, and there actually has been on the alternative
17 standards. We publish in the Federal Register. We
18 solicited from tribes their recommendations on those
19 alternative standards. So the advisory committee could
20 also review those based on what tribes -- you know, all
21 tribes, if they wanted to comment on the Poarch Creek's
22 alternative standards could submit those, and those
23 certainly would be considered as we move forward.

24 So again I want to reiterate what Larry said.
25 Those are all published dates, they are open to the

1 public, and there is opportunity to -- we have gone out of
2 our way to stay within the bounds of the law -- I look at
3 the attorneys -- to provide mechanisms for people to
4 participate in the advisory committee process. And, you
5 know, the members of the board -- member of the Committee
6 and the public who might be listening in, they will have
7 their own way to deal with technical experts as well.

8 Because, as you know, some of these, especially the
9 technical standards, unless you are an IT guru or a slot
10 machine or machine genius, or just working with them all
11 the time, you know, we do need to turn to some folks who
12 have expertise in that area. So there are many mechanisms
13 that are built in for participation to speak to that
14 committee and get your recommendations in. And then
15 again, I want to say we will be consulting more after that
16 Committee is done with its work. But you can go to our
17 Web site and you will see the press release and all the
18 names of the individuals. And those individuals only
19 represent their tribe. They certainly wouldn't represent
20 a particular region because they're not really able to.
21 They can only speak for their tribe.

22 But with that, we will be back at 1:30. I
23 appreciate that question and look forward to your
24 comments. If you have any questions, there is contact
25 information, and we look forward to continuing our

1 discussion. Have a good lunch.

2 (Proceedings adjourned at 11:39 a.m.)

3 (Proceedings concluded with no remarks after lunch.)

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C E R T I F I C A T E

I, Heather A. Summers, Certified Shorthand Reporter, do hereby certify that the above-named proceedings was by me taken in shorthand and thereafter transcribed; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

Witness my hand at Portland, Oregon, this 14th day of November, 2011.

Heather A. Summers

RPR Certificate No. 801810

Oregon CSR Certificate No. 92-0246

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1	4 16:24 50:4,5	583 34:1 35:20	actively 48:1
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