

1 NATIONAL INDIAN GAMING COMMISSION  
2 REGULATORY REVIEW  
3 TRIBAL CONSULTATION  
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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 Palm Springs, California

17 Monday, January 30, 2012

18 Volume I  
19  
20

21 Reported by:

JACQUELINE R. GRENACHE

22 CSR NO. 4631  
23

24 Job No. NJ371982

25 PAGES 1 - 79

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15 Reporter's Transcript of Proceedings, Spa Resort  
16 Casino, 100 North Indian Canyon Drive, Palm Springs,  
17 California, beginning at 8:44 a.m. and ending at 11:20 a.m.  
18 on Monday, January 30, 2012, before Jacqueline R. Grenache,  
19 C.S.R. No. 4631.  
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1     ATTENDEES:  
2     Tracie Stevens, Chairwoman  
3     Steffani Cochran, Vice-Chairwoman  
4     John Hay, Attorney NIGC  
5     Eric Schalansky, Regional Director, California & Northern  
6     Nevada  
7     Richard Armstrong  
8     Russell Attebery  
9     Dora Bernal  
10    Heidi Bogda  
11    Janice Boswell  
12    Tracy Burris  
13    Laurel Burton  
14    Michelle Carr  
15    Chevers Heap of Birds  
16    James DelaCruz  
17    Norm DesRosiers  
18    Dyann Eckstein  
19    Lael Ecohawk  
20    Jack Giffen, Jr.  
21    Robert Goodwin  
22    Rob Green  
23    Norm Hansen  
24    Rebecca Harteis  
25    Kelly Hause

1 ATTENDEES (CONTINUED)

2 Denise Harvey

3 Ida Hoffman

4 Celeste Hughes

5 Angela Karst

6 Richard Little

7 Jason Maldonado

8 Ed Mazzetti

9 Joe Murillo

10 Philip Orosco

11 David Palomares

12 Jerry Peebles

13 Teri Poust

14 Michael Prieto

15 Dean Primmer

16 Edward Roybal

17 Joseph Salgado

18 Karl Slagley

19 Les Stanley

20 John Tahsuda

21 Jon Toro

22 Joyce Wood

23

24 ATTACHMENT:

25 Comments from Rincon Band of Luiseno Indians

1 PALM SPRINGS, CALIFORNIA, MONDAY, JANUARY 30, 2012

2 8:44 A.M.

3  
4 VICE-CHAIRWOMAN COCHRAN: My name is -- can you hear  
5 me. My name is Steffani Cochran and I'm the Vice-Chairman  
6 of the National Indian Gaming Commission, and I want to  
7 welcome you this morning to our consultation as part of our  
8 regulatory review.

9 I am a member of the Chickasaw Nation, I was born  
10 and raised in Oklahoma, although Santa Fe is actually home  
11 for me now, so being in DC is quite different for me these  
12 last couple of years. I was appointed in October of  
13 2010 -- excuse me -- commissioned January 4, 2010, so I'm  
14 down to the last 11 months of my term, and it's really kind  
15 of time for me because --

16 (Interruption in proceedings.)

17 VICE-CHAIRWOMAN COCHRAN: So what we'll be doing this  
18 last part of my term is really bringing to conclusion a lot  
19 of the things that we've had in the hopper since the  
20 Chairwoman came on board. We officially had a three member  
21 Commission. The Chairwoman is late this morning, and so  
22 she asked me to go ahead and get started with the  
23 introductions and the welcoming, and so I'm happy to do  
24 that, and I'm happy that you're here with us this morning.

25 I do want to turn it over, because we've asked

1 the Commission Chairman, Michael Prieto, from --

2 MR. PRIETO: Agua Caliente.

3 VICE-CHAIRWOMAN COCHRAN: Thank you. (Continuing) to  
4 come and make introductions for us this morning. And so  
5 I'm going to ask him to bless us and to welcome us and  
6 thank you for having us.

7 MR. PRIETO: Good morning, everyone. On behalf of  
8 the Agua Caliente Tribal Council and Agua Caliente Gaming  
9 Commission, good morning and welcome to the Spa Hotel. And  
10 I just want to give a little brief background on myself.

11 As far as Commission Chairman, I've been Chairman  
12 now for one year. Prior to that I was with the Aqua  
13 Caliente Casino and Spa Resort Casino for the past 15 years  
14 in surveillance, and before that I'd like to, I guess, put  
15 a little pat on the back for myself as far as I was one of  
16 the original commissioners for the tribe when we started  
17 gaming in 1995. So, with that I welcome you to the Spa  
18 Hotel, and we'll start this off. Thank you.

19 VICE-CHAIRWOMAN COCHRAN: Thank you for that.

20 I would like to go around the table. I know we  
21 have some tribal leaderships with us, and I know we have  
22 some regulatory leadership with us, and ask you to  
23 introduce yourself for the record.

24 We do have a transcriptionist with us this  
25 morning who is going to be with us all day today to

1 transcribe the meeting notes and they will be eventually  
2 put on the website so anybody who's not present today can  
3 see happened, can read about what happened and know who was  
4 present today, so I'm going to start this way.

5 MR. HANSEN: Norm Hansen, 29 Palms Commission  
6 chairman.

7 MR. DES ROSIERS: Norm DesRosiers, Commissioner for  
8 San Manuel Band.

9 MS. BURTON: Laurel Burton, Commissioner for Rincon.

10 MS. HUGHES: Celeste Hughes of Soboba Tribal Gaming  
11 Commission, Chairwoman.

12 MR. BURRIS: Tracy Burris, Gaming Commissioner of  
13 Viejas.

14 VICE-CHAIRWOMAN COCHRAN: Go to the back, please.

15 MR. SLAGLEY: Good morning. Karl Slagley, Executive  
16 Director of Agua Caliente Gaming Commission.

17 MR. TORO: John Toro, Vice-Chairman, Gaming  
18 Commission Agua Caliente.

19 MS. HAUSE: Good morning. Kelly Welmas Hause, Agua  
20 Caliente Gaming Commission.

21 MR. OROSCO: Philip Orosco, Regulatory Director, Agua  
22 Caliente Gaming Commission.

23 MR. GREEN: Good morning. Rob Green, Tribal  
24 Attorney, Grand Ronde.

25 MR. GIFFEN, JR.: Jack Giffen, Junior, Tribal

1 Council, Grand Ronde.

2 MS. HARVEY: Denise Harvey, Chairwoman for the Grand  
3 Ronde Gaming Commission.

4 MR. STANLEY: Les Stanley, Executive Director, Rincon  
5 Gaming Commission.

6 MR. MAZZETTI: Ed Mazzetti, Commissioner of Rincon  
7 Gaming.

8 MS. HARTEIS: Rebecca Harteis, Backgrounds Manager,  
9 Rincon Gaming.

10 MS. KARST: Angela Karst, Legal Counsel for Picayune  
11 Rancheria.

12 MR. LITTLE: Richard Little, Director of Internal  
13 Audit, Agua Caliente Gaming Commission.

14 MR. PALOMARES: David Palomares, Backgrounds and  
15 Licensing Director for Agua Caliente Gaming Commission.

16 MR. PRIMMER: Dean Primmer, Augustine Gaming  
17 Commission.

18 MS. ECOHAWK: Good morning. Lael Ecohawk, Attorney  
19 for Rincon.

20 MR. PEBBLES: Jerry Peebles, Gaming Commissioner,  
21 Soboba.

22 MR. MURILLO: Joe Murillo, 29 Palms Gaming  
23 Commissioner.

24 MS. POUST: Teri Poust, Attorney.

25 MS. BERNAL: Dora Bernal, Council Member for the Herb



1 Tribe.

2 MR. ROYBAL: Edward Roybal, Attorney.

3 MR. TSHUDA: John Tshsuda, Attorney.

4 MR. ATTEBERY: How are you. Buster Attebery, Cahoot  
5 Tribe.

6 MR GOODWIN: I'm Bob Goodwin, the self governance  
7 coordinator for the Cahoot Tribe. And Buster is the  
8 Chairman also for the Cahoot Tribe.

9 MR. SALGADO: Joseph Salgado, Cahuilla Tribal Gaming  
10 Agency.

11 MS. BOSWELL: Janice Boswell, Cheyenne and Arapaho  
12 Tribes Governor.

13 MS. HOFFMAN: Ida Hoffman, Chief of Staff, Cheyenne  
14 Arapaho Tribes.

15 MS. WOOD: Joyce Wood, Executive Assistant, Cheyenne  
16 and Arapaho Tribes.

17 MR. HEAP OF BIRDS: Cheevers Heap of Birds, the  
18 Legislator for the Cheyenne and Arapaho Tribes. Good  
19 morning.

20 MR. DELACRUZ: James DelaCruz, Councilman for  
21 Quinault Nation.

22 VICE-CHAIRWOMAN COCHRAN: Is that everybody?

23 (No response.)

24 VICE-CHAIRWOMAN COCHRAN: Why don't -- we also have a  
25 staff from NIGC with us today, and it's through their hard

1 work that makes these come together for us, allows us to do  
2 our work, so I'm going to have them introduce themselves as  
3 well.

4 MR. HAY: John Hay, from the Office of General  
5 Counsel.

6 MR. SCHALANSKY: Eric Schalansky, Regional Director.

7 VICE-CHAIRWOMAN COCHRAN: Eric, who's with you  
8 outside?

9 MR. SCHALANSKY: Kim Khuu, Administrative Assistant.

10 VICE-CHAIRWOMAN COCHRAN: The staff spends a great  
11 deal of time helping us formulate how we want to keep our  
12 consultations moving forward, in what order, what makes  
13 sense. And also spends a great deal of time answering  
14 questions and working with us on a policy level with these  
15 sets of regulations that we were working on, so the work is  
16 greatly appreciated and I know they spend a great deal of  
17 time.

18 There are going to be some missing tribal leaders  
19 at the table. I know there's some tribal leadership and  
20 others sitting out there. If you'd like to come forward,  
21 please do. We certainly welcome you to the table if you  
22 want to come up.

23 I'm going to run real quickly through the agenda.  
24 I'm not going for spend a great deal of time on it because  
25 we do have a PowerPoint that's going to run us through more

1 of the details. But I want to note that we are going to  
2 start out in our Group 1. And if any of you, by any  
3 chance, happen to not be familiar with how we've done this,  
4 we've put out the Notice of Regulatory Review, we set it up  
5 into groups, kind of grouping regulations that seem to make  
6 sense. And this was done back in November of 2010. And  
7 that formulated a set of groups that we've run through  
8 since through -- good morning.

9           Would you -- we've got some new people joining  
10 us. I could ask that you identify yourself for the court  
11 reporter.

12           MS. BOGDA: Heidi Bogda.

13           MS. CARR: Michelle Carr, general counsel to the  
14 Picayune Rancheria Chukchansi Indians.

15           MR. ARMSTRONG: Richard Armstrong, legal counsel to  
16 the Picayune Rancheria Tribal Gaming Commission. And also  
17 here with Shingle Springs Tribal Gaming Commission.

18           VICE-CHAIRWOMAN COCHRAN: Good morning.

19           So, the groups that we're here today to consult  
20 on are groups 1, 2, 4 and 5, and the first group would  
21 include the facility license notifications, renewals and  
22 submissions. The second group includes Part 574, which is  
23 our enforcement; Part 502, which includes a definitional  
24 change; Part 519, 524 our appeals, 539, and Part 577,  
25 appeals before the commission, which have now all been

1 grouped into a new Part, Part 518.

2 And we'll discuss this from 8:45 to 10:15, and  
3 we'll take a short break, and then at 10:30 regroup to  
4 discuss Group 4, which includes part 556: Background  
5 investigations for primary management officials and key  
6 employees, which is primarily -- this Part relates to the  
7 pilot program. Part 558, gaming licenses for key employees  
8 and primary management officials. Again the pilot program.  
9 Part 537, background investigations for persons or entities  
10 with a financial interest in, or having management  
11 responsibility for, a management. And then finally, the  
12 fifth group, which includes Part 518, self-regulation of  
13 Class II gaming.

14 So that what we've put on the agenda to discuss  
15 with you, and I think we're going to go through a  
16 PowerPoint that's going to lay forth some more details to  
17 stimulate conversation with you.

18 There -- I know many of you have extremely busy  
19 schedules, and if there's anyone who may need to leave  
20 during this, if you want to make a statement for the  
21 record, now is the time to do it, please. We want to make  
22 sure that you're allowed to do that. Given an opportunity  
23 to do that. And I want to make sure -- yes, please.

24 MS. BURTON: I just am here representing Rincon Band  
25 and we have some written statements we would like to have

1 included in the record.

2 VICE-CHAIRWOMAN COCHRAN: Did you want to read them  
3 in or just -- we can -- we can give them to the  
4 transcriptionist, ask her to include it.

5 MS. BURTON: Thank you.

6 VICE-CHAIRWOMAN COCHRAN: I'm looking at my own --  
7 she's on the wrong side of the table. I'm not used to  
8 looking directly at her, I'm used to today looking at the  
9 side of her. It's nice to see so many familiar faces.

10 I'm going to start off -- normally, the  
11 Chairwoman discusses a consultation as far as our  
12 priorities for this Commission go is the priority of her  
13 doing, primarily. She's very interested and spends a lot  
14 of time on her consultation policies.

15 And we do want to remind you that the meetings  
16 are between tribal government and the federal government.  
17 Only tribes and their designees can attend and participate  
18 in these meetings; they are not open to the general public.  
19 So, anyone who may not be here on behalf of a tribe as a  
20 delegate or a representative of a tribe, we do ask that you  
21 not participate, to keep these within our consultation  
22 framework.

23 And this isn't -- we believe a policy that's in  
24 line with Executive Order 13,175, which does -- and is the  
25 primary reason why we've been on the road so much

1 consulting. It does obligate federal agencies, including  
2 the National Indian Gaming Commission, to consult with  
3 tribes on matters that directly impact their interests.  
4 And this does include consulting when we are going to  
5 determine or establish federal standards such as what we're  
6 doing here with these regulations.

7 We have spent a great deal of time not only  
8 talking to tribes about what regulations needed revisions,  
9 but also once that was determined we came in and talked  
10 about what changes tribes would like to see. We put out  
11 drafts in advance of our notice of proposed rule-making so  
12 that, again, we could get input of the tribes and have a  
13 dialogue so that the -- anything that would go out in a  
14 proposed rule form hopefully reflected the interest of both  
15 the tribes and the Agency. And so we believe that  
16 consultations is a very, very important part of this  
17 process.

18 And all of our consultations are transcribed, and  
19 as I said earlier, the -- they're put up on the website.  
20 Some of these can be extremely long. I know one of them  
21 was 642 pages or something. But it's there. And if you  
22 want to go in and read and you want to review what was  
23 said, then it's there for you to do so.

24 We also do put the written comments up, and these  
25 do include any written comments like what was submitted

1 this morning. This does include any letters that come in.  
2 Usually they're from attorneys that will come in and  
3 comment on a particular rule. Those are put up on the  
4 website as well and -- in an effort to get as much  
5 information throughout the gaming industry as we can and  
6 throughout Indian country so that the views are shared and  
7 people have access to them.

8 We do review, and we've made a firm commitment to  
9 review, every comment that is submitted. I have read the  
10 vast majority of them. It's usually bedside reading  
11 material for me, but I do read them. And I know the  
12 Chairwoman also reads them as well. And then, of course,  
13 when we break them down into groups, they're read again by  
14 the attorneys.

15 Any proposed or final rule will include a summary  
16 of the comments. This is, again, an area that we spent a  
17 great deal of time with our attorneys on to make sure that  
18 they covered comments not only that they believe have  
19 particular involvement to the discussion but also comments  
20 that we as the Commission believe were relevant to the  
21 discussion.

22 I'm going to turn it over now to John Hay, and  
23 I'm going to let him run through the PowerPoint to set up  
24 the first set of discussions for Group 1 and Group 2.

25 MR. HAY: I wanted to go through some of the

1 deadlines that have past and are coming up on some of our  
2 rules that we've been working on.

3           The Part 514, the fee rule, was one of the first  
4 ones that we kind of put out there for discussion, mainly  
5 in part because it's what we need to operate, and so  
6 funding us to do what we do on a daily basis is of big  
7 importance to us, and so we want to get those changes out  
8 there as quickly as we could.

9           The proposed rule was published on October 11th  
10 of last year and the comment period closed on December 12th  
11 of last year. And just recently, January 25th, there was a  
12 public meeting and the Commission approved a final rule,  
13 and that final rule should be published -- I'm not sure if  
14 we have a deadline on that, but it won't be in the too far  
15 distant future.

16           The final rule, as Steffani indicated, will  
17 include all the comments that we receive as well as the  
18 Commission's response to each of those comments.

19           We also anticipate, since these can be somewhat  
20 of a complicated matter, not only for our own internal  
21 staff but for tribes and figuring them out, we're probably  
22 going to be out there with some training and technical  
23 support.

24           What exactly that training and technical support  
25 will include, I'm not sure at this point. It will probably



1 be a combination of things. There could be a bulletin put  
2 out, there could be training sessions with our field staff  
3 as well as our audit staff out there. I'm sure there will  
4 be lots of questions, and hopefully we can answer all of  
5 them to help you move in line with the new rule.

6 Part 523 was the review and approval of existing  
7 ordinances. We felt that we didn't need this part anymore,  
8 that all of them had been updated, and so we put out the  
9 proposed rule in October of 2201.

10 The comment period again closed in December 12th,  
11 and at the last public meeting they voted for a final rule,  
12 so we anticipate that that would be out in the Federal  
13 Register in the not too distant future.

14 Do you know, Steffani, if we have a deadline for  
15 the Federal Register yet with Part 523 rule? I'm not sure  
16 they've given us one.

17 VICE-CHAIRWOMAN COCHRAN: No.

18 MR. HAY: Okay. The next one is Part 559. These are  
19 the facility license notifications, renewals and  
20 submissions, and that proposed rule is going to be  
21 published tomorrow, I believe. And that comment period  
22 will close on April 2nd. I believe we have included copies  
23 of that rule in your packets today in 559.

24 The Federal Register puts them out early for  
25 people to view them online. And so I think we have copies

1 of that in all of your packets.

2 And so I'd like to start off with 559, and  
3 hopefully you can all follow along on the PowerPoint, or in  
4 the rule itself.

5 This was one where a lot of people had some  
6 strong feelings about. This is the rule which basically  
7 gives NIGC notice that a new facility will be opening, or  
8 that a facility license has been issued, and it also  
9 requires tribes to certify that the facility is operated in  
10 a manner that protects the public health, safety and  
11 welfare. Okay.

12 The prior rule that's in existence today required  
13 tribes to submit to NIGC a list of all their laws that  
14 govern the environment, health and safety. The proposed  
15 rule eliminates that requirement, so you're no longer  
16 submitting lists of laws to us, you're simply certifying  
17 that the tribe is protecting these areas. And we offer,  
18 you know, guidance on what that means.

19 But one thing we heard loud and clear during the  
20 consultation process is that this was an area which tribes  
21 already were heavily interested in and that other federal  
22 agencies were governing, and so we didn't want to duplicate  
23 those efforts in an area that was probably outside of our  
24 expertise and so we changed that to address a lot of those  
25 concerns.

1           We also received a lot of comments during this  
2 process that the NIGC is not required to do Indian lands  
3 opinion under the Indian Gaming Regulatory Act, and that's  
4 correct, we agree with that 100 percent. And so the  
5 facility licensing, while sometimes they do trigger Indian  
6 lands determination, it doesn't happen automatically. So  
7 when you submit a license to us, that's not the same as  
8 asking us to do an Indian lands opinion. Okay.

9           Oftentimes those take quite a bit of time and we  
10 would need a lot of information to do them. In certain  
11 instances tribes want those opinions; in others they don't,  
12 it's not necessary. And so it's really on a case-by-case  
13 basis as to when we do Indian lands opinions.

14           In this case, what would happen would be within  
15 120 days of the opening of a new facility the tribe would  
16 submit notice to us that it was opening a new facility.  
17 They can also request expedited review, which means that  
18 within 60 days we would send you a confirmation letter.

19           That was one of the complaints in the past with  
20 tribes is that they would send us these facility licensing  
21 notifications and then nothing would happen and they didn't  
22 know if there was an issue with them or there wasn't an  
23 issue with them.

24           From our standpoint, when we -- when these were  
25 first enacted, they were really a way for us to know that a

1 new facility was opening. We didn't want to be caught off  
2 guard when someone called us up and said, "You know, a new  
3 casino is opening tomorrow?"

4 "No, we didn't know anything about it."

5 So we thought, since we have a role in the  
6 regulation of casinos, that we should know about it, and  
7 that will continue in the regulation as it's proposed.

8 One of the comments that we received was that we  
9 should clarify that tribes are the ones who issue the  
10 facility licensing, not the NIGC.

11 I think there's a misconception out there that  
12 NIGC licensing -- licenses gaming facilities, and we  
13 don't -- we're not in that business. And so the preamble  
14 in this case would make that clear, that tribes are the  
15 licensing authority for the tribal gaming.

16 Once a facility license is issued, the tribe  
17 would have 30 days to submit those to us. Okay. We really  
18 didn't receive any comments on that point. I think  
19 everyone thought that was a reasonable amount of time. The  
20 tribe had already issued the license and it's simply a  
21 matter of putting it in the mail to us and nothing special  
22 needs to be done with it.

23 As I mentioned before, one of the big changes was  
24 that tribes were no longer required to submit a list of  
25 their laws dealing with the environment or public health

1 and safety, and all that was required is a certification  
2 that the tribe has determined that the construction and  
3 maintenance of the facility and operation is conducted in a  
4 manner which adequately protects environment, public health  
5 and safety.

6 We received a lot of support for this approach,  
7 and we're well aware that other federal agencies and tribal  
8 agencies regulate a lot of areas which had previously been  
9 of concern in the regulations and that were listed in  
10 regulations, and so that's probably the biggest change.

11 It's also a change to the Definitions. We've  
12 moved the definition of construction maintenance of a  
13 facility and operation as conducted in a manner which  
14 adequately protects the environment, public health and  
15 safety into the actual regulations in 559. Before they  
16 were in a Definitions section and we thought it would be a  
17 lot clearer if they were actually moved in the actual  
18 regulation.

19 We also would receive notice of a closing of a  
20 facility. Again, that would be 30 days from the time of  
21 when a license was terminated or expired. Notice is not  
22 required if it's just a seasonal closure. So if you are  
23 closed for less than 180 days, you do not need to give us  
24 notice of that closure.

25 All of the submissions to NIGC can be done

1 electronically. We're trying to get up to speed on all of  
2 that to make it easier for tribes to submit those to us,  
3 and so we have a mechanism in place for handling that. The  
4 comment period on this closes on April 2nd of this year.

5 Now I'd like to turn it over to the audience, if  
6 there's anyone who has any comments on this area, right  
7 now.

8 (No response.)

9 VICE-CHAIRWOMAN COCHRAN: The Commission, when we sat  
10 down and looked at this rule, the main objective for us  
11 really had to do with bringing the Agency back in its own  
12 lane to get us doing what we have statutory authorization  
13 to do and get us out of doing what we do not have the  
14 authority to do. And the one place that we could obviously  
15 do that had to do the environmental health and safety side  
16 of things. So we really did work hard to bring a stack in  
17 our lane to get us in alliance with IGRA.

18 And we also wanted to place an obligation on the  
19 Commission and on the Agency to respond in a timely manner,  
20 and that is what we've done with the 30-day response times.

21 And then the other thing that was important for  
22 us was to deal with issues of seasonal closures or  
23 temporary closures to not place additional paperwork burden  
24 on the tribe for those types of activities where we have  
25 some areas of the country where they may very well be

1 closed every year at the same time due to weather or  
2 various issues. So it really was an effort to reduce some  
3 of the paperwork, reduce some of the burden on the tribes.  
4 Especially the smaller tribes who really do need to have  
5 fair guidance and less paperwork placed on them.

6 And then finally, the electronic submissions are  
7 another important part. The Administration has spoken to  
8 this and been very clear with agencies about doing things  
9 electronically, again to get out of the paperwork business  
10 where we can, where it makes sense to do so. So we're  
11 hoping -- and this Commission is a particularly technology  
12 focused Commission -- that we can do better in that area  
13 for tribes, where they have the ability to do that.

14 So, that's my policy recount.

15 Anything that we missed, or anything you think we  
16 should do better?

17 MR. BURRIS: Tracy Burris. Question on the  
18 electronic filing: Do you foresee that as going -- an  
19 e-mail going directly to a department, an individual, or  
20 how is it going to be -- making sure that we know it got  
21 there, you know, electronically?

22 VICE-CHAIRWOMAN COCHRAN: That's what we need to work  
23 out. I imagine -- I envision it probably will go to a  
24 particular area of the Agency. What that is, I don't know.

25 Our technology, Tracy, is just behind, and we're

1 having to play catch-up.

2 MR. BURRIS: Well, I assumed -- I noticed that when  
3 we were just like setting up the meeting and the review and  
4 stuff, there was keywords. I'm just curious whether it  
5 would maybe be called facility licensing dot com in getting  
6 up to speed, something like that, and that way we get some  
7 kind of notice that we did submit that in the proper time  
8 frame.

9 VICE-CHAIRWOMAN COCHRAN: Okay. Thank you.

10 MR. HAY: If we don't have any more questions on  
11 that, I think we'll move on to Part 573, Enforcement.

12 There was some related definitions for this in  
13 Part 502, and they were published on December 27th of last  
14 year, and the comment period will close on February 27th of  
15 this year.

16 One thing that the Commission has strived to the  
17 tribes is that their number one goal is voluntary  
18 compliance. I know that this Commission hopes that they  
19 would never have to do an enforcement action; that if any  
20 issues were identified, we can just leave it to the tribes  
21 to correct the problem, and the changes to Part 573 reflect  
22 that.

23 One, there is a statement that voluntary  
24 compliance is the goal with the Commission. We've also set  
25 up an approach that would give prenotification of any



1 potential areas of concern for us, and they would come in  
2 the form of either a letter of concern or of a warning  
3 letter.

4 Oftentimes we will receive information either  
5 from Tribal Gaming Commissions or from employees, from  
6 members of the public, saying "Hey, there's something going  
7 on here, this happened, someone should do something about  
8 it."

9 Oftentimes the information is somewhat lacking in  
10 some structure, also lacking in some substance, and so in  
11 that instance we would send out a letter to the tribe of  
12 concern asking for more information, or is there something  
13 we don't know about, this is the information that we have  
14 received. That would be one indicator to the tribe there  
15 was an issue. We would give them the opportunity to  
16 respond to us and to provide us with more information.

17 There's also warning letters, which would  
18 probably be the next step. This is where the Commission  
19 has a lot more information available to us and we have  
20 identified that in our minds a violation has occurred, and  
21 this would be an opportunity for the tribe to correct that  
22 violation.

23 And, again, these are all steps before a formal  
24 notice of violation, so that way there's a paper trail both  
25 for the Commission and for tribes on this issue, and it

1 will allow us to open up a dialogue with tribes so that we  
2 can gain voluntary compliance.

3 I don't want to move on from that just quite yet.  
4 Our Chairwoman has arrived, so I'd like to allow her to say  
5 hello.

6 CHAIRWOMAN STEVENS: Good morning. My apologies.  
7 I -- we took the scenic route here. That's all I can say.  
8 So I appreciate everybody waiting and for the staff getting  
9 started, because we all know that you have schedules as  
10 well. So again, my apologies. And invariably my GPS sends  
11 me off in the wrong direction.

12 So, anyhow, I don't want to delay. Welcome  
13 everybody to our -- a different phase of our regulatory  
14 review, and we look forward to your comments, so let's --  
15 also, just so you know, we have our Deputy Chief of Staff  
16 here, Dawn Howe, just so you all know who she is, and I'm  
17 sure we've introduced all of our other staff, so with that  
18 I will let you go ahead and proceed.

19 Thanks, John.

20 MR. HAY: Both of these letters that I've mentioned,  
21 both the letter of concern or the warning letter, are not  
22 official Agency action. Okay. And what does that mean, it  
23 being not official Agency action or not final action?

24 That means that if that letter is issued to you,  
25 it doesn't trigger some sort of appeal or some sort of

1 formal process, and it doesn't allow you to go to federal  
2 court to say "No, NIGC, you're wrong."

3           These are all preliminary steps before a formal  
4 enforcement action, and the hope is that whatever the  
5 violation is, it will be corrected; or if the information  
6 that we have received is just flat-out wrong, it will give  
7 the tribe the opportunity to correct that information so  
8 that we can resolve the issue.

9           In the past we've -- sometimes we've heard from  
10 tribes, "You know, we had no idea until we received the  
11 notice of violation that anything was wrong," and so  
12 hopefully by issuing these two types of letters we can open  
13 up the dialogue between tribal -- earlier in the process so  
14 that a NOV doesn't have to be issued.

15           Now, having said that, neither of these letters  
16 would preclude the Chair from issuing an NOV. If the Chair  
17 finds a violation, she is free to issue that NOV at any  
18 point. So that wouldn't stop her from doing that. Okay.  
19 It's just -- it is a practice that we had been doing for  
20 sometime and we just wanted to formalize that practice a  
21 little more in the regulations, not only for our field  
22 staff but for tribes to know what -- what was meant when we  
23 sent out a warning letter or a notice of concern letter.

24           I know over the years our field staff has sent  
25 these out and they've been called different things and had

1 different meanings, and so this is a way to standardize  
2 that approach.

3 Are there any questions or comments on those  
4 letters -- on the issue of those letters?

5 (No response.)

6 MR. HAY: As part of this -- even though it's not in  
7 Part 573, Part 502 is our Definition section, and we never  
8 had a definition of enforcement action. Okay. And so we  
9 have put that in there now. We now have a definition of  
10 what enforcement action is. And I have it up here on the  
11 screen.

12 An "Enforcement Action is defined as any action  
13 taken by the Chair under 25 U.S.C. 2713 against any person  
14 engaged in gaming, for a violation of any provision of  
15 IGRA, the regulations of this chapter, or tribal  
16 regulations, ordinances or resolutions approved under 25  
17 U.S.C. 2710 or 2712 of IGRA, including, but not limited to,  
18 the following: a notice of violation, a civil fine  
19 assessment, or an order of temporary closure."

20 Those are the three things that most everyone is  
21 familiar with as being an enforcement action. So we just  
22 wanted to differentiate between those types of actions and  
23 anything else that was going on as to what is an  
24 enforcement action. So hopefully that definition change  
25 will provide some clarity. And the comment period for both

1 of these sections closes on February 27th of this year.

2 Do you have any comments or questions about  
3 enforcement?

4 (No response.)

5 CHAIRWOMAN STEVENS: The changes that we made in this  
6 particular part are very crucial, I think, to, again, the  
7 overall policy objective of the Commission, which is to  
8 allow the opportunity for dialogue between the Agency and  
9 the tribe to correct what we believe to be problems with  
10 compliance.

11 And it also falls in line with -- the  
12 Chairwoman's come up with an acronym of ACE, which is  
13 assistance in compliance enforcement, so that when the  
14 Agency comes to a point where we take enforcement action  
15 and bring out kind of a big hammer, if you will, because  
16 it's one of the few hammers -- or few -- excuse me -- tools  
17 that we have in our toolbox, that we've done so after we've  
18 exhausted every other opportunity within reason to bring  
19 the issue to resolution. So this is designed to meet that  
20 objective.

21 We did get a comment at our last meeting at  
22 Seminole last week, and I'll bring it out to your attention  
23 because I thought it was a good comment. It stuck out to  
24 me.

25 One of the tribes pointed out that we described

1 the warning letter as providing notice to the tribe that we  
2 believe an actual -- we believe an actual violation of IGRA  
3 and NIGC regulations where the tribe's approved gaming  
4 ordinance has occurred or is occurring.

5 They felt like this language can trigger some  
6 other issues for them, that it didn't seem to be -- or it  
7 seemed to be a little more final than what we intended it  
8 to be, and they were concerned that we maybe review that  
9 again in terms of if it were to be put out to the public,  
10 what might it mean for the tribe with that type of  
11 language. So I thought that was an interesting comment. I  
12 wanted to bring that to your attention.

13 And I know I did talk to our staff about maybe  
14 looking at it again, talked to the Chairwoman as well about  
15 our wording there.

16 MR. HAY: Any comments? Tracy?

17 MR. BURRIS: I do have a question. Tracy Burris.

18 In reading this -- as a regulator I understand it  
19 and I get it, to a point. I often ask myself where does it  
20 lead, what have we not covered, where would RAPs fall under  
21 this? Because it could be perceived as not -- you know,  
22 it's required to do it -- where would that fall under who's  
23 going to audit that? Because I believe there is no  
24 authority for the NIGC to do that.

25 Now, that would be my opinion. But if I go

1 through this process, if I didn't allow or unknowingly  
2 submit or mislead, it's going to trigger all this process,  
3 which I don't know if that's something that would fall  
4 under -- you know, we're talking about ordinance reg --

5 CHAIRWOMAN STEVENS: Well -- thanks, Tracy. Well, I  
6 think there's a number of things that we can speculate  
7 might happen, and the statute says that the tribes have to  
8 have a RAP. And that's all the statute says about RAPs.  
9 They have to have a RAP, it has to be approved by Interior.

10 Our regulations nowhere address that. And not  
11 only would how the RAPs -- whether they're being followed  
12 or not, I don't believe we've ever taken action.

13 MR. HAY: You know, when we look at these things, and  
14 I think a lot of people get confused by the terminology of  
15 what we're doing when we're talking about RAPs. Okay.  
16 Nowhere in IGRA or our regulations does it talk about NIGC  
17 enforcing RAPs. All we have authority for is enforcing  
18 ordinances which often refer to RAPs, and so we could -- if  
19 a ordinance specifically addresses the RAP and how it shall  
20 be handled, and if that's a violation -- that would be a  
21 violation of the ordinance, which would give us authority.  
22 Or, more often than not, it's authority over of the use of  
23 revenues.

24 And so if you're using revenues that differs from  
25 one of the five areas laid out under the Regulatory Act, or

1 if you're -- say you're distributing per caps without a  
2 RAP, then that would trigger enforcement by us.

3 But without a specific -- I don't know if I could  
4 answer the question about what the specific -- there could  
5 be any number of issues out there, and it would differ  
6 depending on what the tribe's ordinance says whether or not  
7 we would have a role.

8 I don't think that answers your question, right?

9 CHAIRWOMAN STEVENS: It's sort of in the abstract,  
10 Tracy.

11 MR. BURRIS: Well, yes and no. The Commission has in  
12 the past wanted to audit RAPs, and it's that opinion  
13 whether or not they had that authority, and that's the  
14 tribe's premise on that portion of that.

15 CHAIRWOMAN STEVENS: Have we been doing it lately?

16 MR. BURRIS: Not lately. I'm just saying in the past  
17 it has been done. I'm just worried, you know, about the  
18 future, too. Because just -- the way I do read this could  
19 be interpreted that -- that's the only thing that comes to  
20 my mind that could be addressed in that, but I think being  
21 in California it should be a concern to many of the tribes  
22 here in this region.

23 CHAIRWOMAN STEVENS: Well, we'll certainly take that  
24 into consideration when we look at these definitions.

25 Thanks, Tracy.



1 MR. HAY: Do we have any other comments or questions  
2 before we move on?

3 (No response.)

4 MR. HAY: The next section we're going to talk about  
5 is the Appeals section. Okay. Anyone who has ever had any  
6 sort of practice before the NIGC would probably be somewhat  
7 confused by our regulations now in that the appeals  
8 sections are spread throughout our regulations, they're not  
9 in one place. There is a separate process for enforcement  
10 actions, management contracts, ordinances. All three of  
11 them have their own distinct process and are in different  
12 areas.

13 What the Commission has strived to do is to have  
14 one chapter for all of our field regulations. And so all  
15 of them -- and this is pretty much a complete rewrite --  
16 will be in subchapter H now. And so what we'll be  
17 repealing is Part 519, 524, 539 and 577. Okay.

18 And this notice of proposed rule making is going  
19 to be published tomorrow. Although you should have a copy  
20 of it today in your packet of information. And this  
21 comment period goes until April 2nd of this year.

22 So what we would have is Part 580, 581, 83, 83  
23 and 84, and each of these would outline for you what the  
24 process is for appealing either disapproval of the gaming  
25 ordinance, the approval or disapproval of a management

1 contract, appeals for written submissions -- I mean appeals  
2 for notices of violations and closure orders and civil  
3 fines, and also provides a mechanism for appeals based  
4 solely on written submissions and so that there wouldn't be  
5 a hearing before a presiding official.

6 We're hoping that by laying all these rules out  
7 that it will be easier for tribes and tribal attorneys to  
8 navigate the process and know what options are available to  
9 them.

10 One of the areas that was of somewhat concern in  
11 the past is what motions could be made during an appeal.  
12 You know, what were your rights. And the regulations as  
13 drafted really didn't address what you could do, and so it  
14 was up to the discretion of the presiding official or of  
15 the Commission. And so unless you had practiced before the  
16 Commission before and know you could file motions, you were  
17 at somewhat of a disadvantage because you just didn't know.  
18 And unless you tried it, you could read the regulations and  
19 say, "I don't think we can do that. It doesn't say  
20 anywhere we can do that."

21 And motions can be a pretty wide range of things  
22 from either asking for more time, for evidentiary rulings  
23 asking to submit evidence. There's a pretty wide range of  
24 the types of motions you can make. And so hopefully we've  
25 made it clear now in the regulation rewrite that you can

1 file these types of motions before the Commission.

2 Part 580. This covers all the definitions that  
3 will be used in the Appeals section. It talks about who  
4 may appear before the Commission, it talks about what is  
5 proper service, including what are the timing deadlines --  
6 you know, whether or not we count holidays and weekends for  
7 filing of appeals -- who can -- who can file an appeal on  
8 behalf of a tribe, what is the standard review that the  
9 Commission will use for appeals, when decisions will be  
10 final -- there are strict deadlines in there for when the  
11 Commission must issue a decision -- what happens after that  
12 decision is issued, what are your rights then, what happens  
13 if there isn't a majority decision if we only have two  
14 commissioners present or only one commissioner present.  
15 And what happens when an appeal is filed. Okay. Does it  
16 stay everything that's happened or does the Chairman's  
17 decision -- the Chairwoman's decision become final until  
18 the appeals is decided. So all of these areas are  
19 addressed in part 580.

20 We received a lot of comments on these sections.  
21 I think it was of interest, and it was an area that hadn't  
22 been addressed by the Commission in many years. One of the  
23 comments -- or several comments suggested that we were  
24 being too restrictive in who can appear before the  
25 Commission. Okay.

1            Oftentimes, simply because one tribe is appealing  
2            an action, there are issues being raised that could affect  
3            all tribes out in Indian country, or people other than  
4            tribes. It could affect manufacturers or operators. And  
5            so this will provide an opportunity for those individuals  
6            to weigh in on the process and on the substance of it. And  
7            hopefully we'll get more comments from you on that area.

8            I know that there are a lot of interested parties  
9            who sometimes feel that issues are being decided without  
10           them. And I think it will benefit the Commission to have  
11           all of those views heard.

12           Another area of concern for us was ex parte  
13           communications. You know, if an appeal is going on, can a  
14           tribe meet with the Commission and talk about the issue or  
15           do they have to have anyone involved, say a management  
16           contractor involved.

17           This was an area that we struggled with because  
18           it sometimes conflicts with our consultation policy. We  
19           want to have an open dialogue with tribes, but if we're in  
20           some sort of appeals stage, how can we have that without  
21           violating some rules. And at this point we're not sure  
22           what the answer is.

23           And so you will notice in the notice of proposed  
24           rule making that we're asking for your views on how we can  
25           handle ex parte communications. We're asking you to be

1 creative and to come up with novel ideas for us. So  
2 hopefully you'll pay attention to that and give us your  
3 views.

4 As I mentioned before, you know, does the filing  
5 of an appeal stay an action? For instance, if there is a  
6 closure order, if you file an appeal could you stay open?  
7 The answer would be would be no, the Chair's decision  
8 stands until that appeal is decided.

9 Another area of concern was the actual record.  
10 You know, if you're going to file an appeal, you may need  
11 the actual record on which our decision was made so that  
12 you can adequately address it, or point out areas where we  
13 have wrong information, where we have applied that  
14 information and the law in a manner that you don't think  
15 was appropriate. So now there are provisions for you to --  
16 to provide the record to you.

17 As I mentioned before, we're also setting out a  
18 motions practice rule. This means our motions for limited  
19 participation -- and what I mean by "limited  
20 participation" -- those are instances where suppose a  
21 tribe's ordinance was disapproved and another party had an  
22 interest in that ordinance, they could petition to be  
23 involved in those proceedings as well as the tribe whose  
24 ordinance was disapproved.

25 Again, there's motions that intervene. Okay.

1 That's for a third party to get involved if they state that  
2 they have some sort of interest in the outcome. And there  
3 are also motions before the presiding official.

4 Typically, in our enforcement actions what will  
5 happen is if an appeal is filed we will immediately contact  
6 the Department Interior's Office of Appeals and ask them to  
7 assign an administrative law judge to serve as a presiding  
8 official.

9 Now, the term "presiding official" is somewhat  
10 broad. We don't have to do that; we could -- the Chair  
11 could assign someone within the Agency to serve as the  
12 presiding official. I think in some instances we can  
13 probably go outside of the Agency and hire someone to do  
14 that. But in years past the easiest way is to just go to  
15 Interior and to use one of their administrative law judges.

16 Motions to supplement the record. If you feel  
17 that there are documents missing from our record that  
18 support your theory, you can -- can file a motion to have  
19 those come before the Commission or the presiding official.

20 And finally, motions for reconsideration. Okay.  
21 So if you think a motion was decided wrongly, you could ask  
22 us, "Hey, can you take a second look at this?"

23 We've put in these draft regulations time periods  
24 for filing of motions and time periods for the Commission  
25 to review these motions, and we've received a lot of

1 comments about, you know, possibly these time periods being  
2 too short or how you calculate those time periods. So,  
3 hopefully in the notice that will be published tomorrow  
4 we'll address those to your satisfaction as to how we're  
5 calculating them and that there is truly enough time for  
6 proper responses.

7 Part 582 is a section for Appeals of Ordinances.  
8 Disapprovals of Ordinances. And again you will see  
9 throughout this entire section the same issues coming up  
10 addressing who may appeal the disapprovals, how to appeal  
11 them, how to file motions, how you receive a copy of the  
12 record, and when decisions will be issued.

13 We didn't receive a lot of comments on this area,  
14 so hopefully now that we have a notice of proposed rule out  
15 there, we'll receive a lot more.

16 People wanted clarity on limited participation.  
17 You know, how does someone become a limited participation,  
18 do they automatically become entered into the appeal or do  
19 they have to wait and have someone decide whether or not  
20 they can enter into the appeal, and what the timeline for  
21 that is. So hopefully we've addressed those issues in the  
22 preamble.

23 Part 583 is for approvals or disapprovals of  
24 management contracts. And again we see the same areas of  
25 who may appeal, how to appeal, motions practiced, copies of

1 the records and timing.

2 We also received a comment, or question, if you  
3 will, as to why anyone would appeal an approval of a  
4 management contract. it seems odd that if both parties  
5 have submitted them to us that someone would want to appeal  
6 that. And we've had instances -- at least one instance  
7 where that has happened where there was -- there were  
8 factions within the tribe and one tribal faction challenged  
9 whether or not the council had authority to approve the  
10 contract. And so that's one instance. We wanted to leave  
11 that out there and open just in case there were any  
12 situations which we hadn't thought of, so that way they'd  
13 be addressed.

14 Part 584 deals with proceedings before a  
15 presiding official, and that's to differentiate between  
16 appeals that are handled simply on written submission,  
17 which would be part 585. And, again, we have the same  
18 areas addressed here: Who may appeal and how to appeal,  
19 you know, when the hearings will be held, how you will  
20 receive a copy of the record, how the presiding official  
21 will handle confidential information, how the presiding  
22 official will handle objections to the recommended  
23 decision, do they have any role at all, and when the  
24 Commission will issue its decision.

25 Some of the comments requested clarification on



1 the role of the presiding official, so the proposed rule  
2 hopefully provides additional clarification of that  
3 process.

4 You know, we also received comments on whether or  
5 not if someone is denied limited intervention whether or  
6 not they could simply submit a brief -- an amicus brief, if  
7 you will -- as information. Okay.

8 And so the proposed rule eliminates limited  
9 intervention, but still allows tribes to submit a brief,  
10 amicus brief, at the discretion of the presiding official.

11 We received lots of comments on closure orders  
12 and whether or not 30 days was enough time to decide  
13 whether or not to make that permanent.

14 The proposed rule provides for a hearing within  
15 30 days unless waived by the appellant, which would be the  
16 tribe, and then the Commission must issue a decision within  
17 30 days of receiving the recommended decision from the  
18 presiding official.

19 For those of you that have never dealt with this  
20 before, what would happen would be once an appeal is filed  
21 and there has been a request for an oral hearing, a  
22 presiding official would be assigned. That presiding  
23 official would hear evidence from the parties. The tribe  
24 would be represented, the Commission would be  
25 represented -- or, rather, the Chairwoman would be

1 represented, and then the presiding official would issue a  
2 recommended decision.

3 That recommended decision would go before the  
4 full Commission and the full Commission would decide  
5 whether or not to adopt it in whole, adopt it in part, or  
6 decide that the presiding official just got it wrong and  
7 they're going to issue their own decision.

8 There was also comments received about the  
9 handling of confidential information. Oftentimes the  
10 tribes will submit information as part of these appeals and  
11 they want it to be handled in a confidential manner. It  
12 could include financial information or information about  
13 individuals within the tribe. And so the proposed rule is  
14 address confidentiality.

15 As I mentioned, that section was on appeals  
16 before a presiding official. There is a section on appeals  
17 that are done simply on written submissions to the  
18 Commission. And so you would take out the presiding  
19 official and they would go directly to the Commission.

20 Oftentimes parties will want that to speed up the  
21 process or -- as a way of saving money. You know, we know  
22 travel expenses can be expensive and so there may be  
23 instances where a party feels they don't need an oral  
24 hearing, that the record is clear enough and that it should  
25 go directly to the Commission. So you have that option of

1 skipping a presiding official.

2 We've also addressed situations where one party  
3 requested a presiding official and the other party requests  
4 a hearing on written submission. We've also addressed  
5 comments on whether or not closure orders should be made  
6 permanent and when they should be made permanent, the  
7 timing of it. And we've also addressed comments on who may  
8 appeal. You know, who the tribe can designate to represent  
9 them in an appeal.

10 So, that goes through our whole Appeals section.  
11 It's a lot of reading. I know it took a long time for us  
12 to put them together, and it's complicated. We went back  
13 and forth on -- on, one, wanting it to be clear to everyone  
14 how the process works, but also wanting it to be a fair  
15 process for both of us, because it's not only the tribes  
16 that have to follow this process, the Commission itself  
17 that has to follow this process, and there are real  
18 consequences. And we think that the proposed rule  
19 clarifies a lot of these areas.

20 The rule as enacted now leaves a lot of  
21 discretion out there, and when there's a lot of discretion  
22 out there that is unknowns for the Commission, there are  
23 unknowns for tribes, as I explained before, as to what  
24 rights you have available to you, what is the standards  
25 that we'll be using, what are the deadlines. So hopefully

1 this will make the process a whole lot easier for everyone.

2 Do we have any comments or questions on that  
3 area?

4 CHAIRWOMAN STEVENS: I just want to say that our  
5 Vice-Chairwoman, Steffani Cochran, has been the lead on  
6 this particular reg and several other regs, but -- and I'll  
7 have her talk to this in just a moment -- but, you know,  
8 one of the things that we wanted to do when we came in as a  
9 Commission was to create some consistency and have these  
10 unknowns become knowns.

11 These are sections that only attorneys would  
12 really love and -- but they're important. It tells the  
13 tribes and the person appealing, or the body -- or the  
14 party appealing, how things work; tells the presiding  
15 official, which is even more important, you know, what  
16 happens and how it happens and in what process and what's  
17 allowable, what's not allowable. And it tells us what we  
18 need to be doing with some definite timeframes so that  
19 everybody knows what the rules of the road are when you're  
20 trying to appeal an action of the Agency.

21 And I do want to give credit to our staff in our  
22 general counsel's office. They were really, really excited  
23 about doing this. I think it's been something that has  
24 been on their wish list for a few years, because they're  
25 really the ones who have to handle appeals on behalf of the

1 Commission, and they have done a really great job, and  
2 we've gotten really great comments and have been able to  
3 incorporate them into this.

4 But I do want to hand it over to Vice-Chairwoman  
5 Cochran to make any comments about this particular section  
6 specifically.

7 VICE-CHAIRWOMAN COCHRAN: Well, one of the things I  
8 didn't mention when I introduced myself is I'm a lawyer --  
9 my trade, that's my profession -- and I've represented many  
10 pueblos -- either as a judge or as an attorney -- and my  
11 experience in the southwest, and of course my experience  
12 with tribes in the Oklahoma region, has to do with them  
13 bringing in house counsel, using general counsel services  
14 through their in-house attorneys, to be the  
15 Jack-of-all-Trades. They're expecting their lawyers to be  
16 able to handle housing, water, taxes, gaming.

17 And while I spend a great deal of time around  
18 attorneys very well-versed in gaming law, and some very  
19 excellent attorneys in this area, I do know that there is a  
20 large portion of tribes out there who just can't afford  
21 that type of expertise.

22 And when I looked at the appeals rules and I  
23 couldn't navigate them, it really became important to me to  
24 work on this particular area to make sure that a general  
25 counsel sitting out there without a whole lot of gaming

1 experience could have access to the experienced gaming  
2 attorneys available through the Agency. And it had been a  
3 long time since these issues had been touched. So it was  
4 very important to me.

5 We're not all blessed with the ability to have  
6 expertise in every area that tribes touch, and so the  
7 staff, as the Chairwoman has noted, the office of general  
8 counsel, worked extremely hard, put up with a lot of my  
9 questions and lot of my prodding to get a product out there  
10 which makes sense and put some of our practices into a  
11 written form available and accessible to anyone. And  
12 they've done a great job. And the comments that came in  
13 made sense.

14 The only thing we couldn't really resolve was the  
15 ex parte communications. The way it was written, there was  
16 a lot of concern, and understandably so, so we've taken it  
17 out of this draft so we can move forward with the rest of  
18 the rules. But it is something we do need to go back and  
19 to continue to work on and hopefully get some feedback  
20 during this proposed rule making, the comment period.

21 So, that's kind of the genesis of this. And the  
22 intent is to, again, bring clarity, even the playing field,  
23 and to make a fair process, because the appeals can be so  
24 incredibly important for the tribes, and we understand  
25 that.

1 MR. HAY: Any comments or questions on the Appeals  
2 section?

3 MR. BURRIS: Tracy Burris again.

4 Just -- on the servicing part, you talk about  
5 Saturday, Sunday, federal and legal holidays. What about  
6 travel days? There is some of those that the federal  
7 government shut down for -- sometimes on a Thursday and  
8 Friday to go into an event that is very -- people that do  
9 all this under the government portion. It's something to  
10 consider.

11 CHAIRWOMAN STEVENS: Well, I appreciate that, and  
12 we'll have to think about that because could mean 240  
13 different types of holidays, and we have to think about how  
14 this, for like general rules, you know, what normally would  
15 happen. But so -- I don't know that we've thought of that  
16 yet. So we'll have to take that into consideration.

17 VICE-CHAIRWOMAN COCHRAN: Tracy, if you want to  
18 submit some language that would make -- I like the idea, I  
19 absolutely agree if we can make it happen we should make it  
20 happen without bringing confusion in. But there should be  
21 a way. And I think it's a great idea because, again, where  
22 I come from, a tribe can be closed for ceremonies for up to  
23 a week. And so there is -- there's a lot of validity to it  
24 if we can make it make sense.

25 CHAIRWOMAN STEVENS: I won't make any promises,

1     though. We'll have to take a look to see what's suggested  
2     and what's potentially out there and what that could mean.

3             MR. BURRIS: I'm just asking it be considered.

4             CHAIRWOMAN STEVENS: I appreciate that. Thanks.

5             MR. HAY: Looking at our agenda, we've finished the  
6     first part of it rather quickly, and so maybe we should  
7     take our break right now. Our morning break.

8                     (Recess taken.)

9             CHAIRWOMAN STEVENS: Having had our morning break,  
10    according to our agenda we are going to go into Group 4.  
11    all of which should be in your packet.

12                    These are regulations that are currently in the  
13    Federal Register open for comment as notices of proposed  
14    rule, so I'll turn it over to John.

15                    Oh. Do we have some new people here that didn't  
16    get to do an introduction? I see some folks here. If can  
17    move the microphone around. Do we have a mobile  
18    microphone?

19             MR. HAY: We do.

20             CHAIRWOMAN STEVENS: For those folks that came in and  
21    didn't have an opportunity to introduce yourself, we're  
22    going to start left and move around this way.

23             MR. MC AGEE: Ray MaGee, Commission Chairman Cahuilla  
24    Tribal Gaming Agency.

25             MR. MALDONADO: Jason Maldonado, Commission Chair,



1 Pechanga Gaming Commission.

2 MS. ECKSTEIN: Good morning. Dyann Eckstein,  
3 Chairwoman for Picayune Rancheria Tribal Gaming Commission.

4 MR. VARGAS: Robert Vargas, Pechanga Gaming  
5 Commission.

6 MR. RAMOS: Willie Ramos, Pechanga Gaming Commission.

7 MS. SULLIVAN: Good morning. I'm Jan Sullivan with  
8 the Cabazon Tribal Gaming Commission.

9 MS. TAYLOR: Leslie Taylor, Delano (phonetically)  
10 Nation.

11 MS. FISHMAN: Connie Fishman, Picayune Rancheria  
12 Gaming Commission.

13 CHAIRWOMAN STEVENS: Welcome everyone. I appreciate  
14 you all attending.

15 At this point we'll go ahead and continue on  
16 Group 4. And we'll be talking about 556 and 558 first.  
17 John.

18 MR. HAY: Okay. 556 are our background  
19 investigations for PMOs and key employees, and 558 are  
20 gaming licenses for key employees and primary management  
21 officials. Part 537 are background investigations for  
22 persons or entities with a financial interest in, or having  
23 management responsibility for, a management contract.

24 All these were published in December of last  
25 year. And the comment period closes on February 21st.

1 I'm sure many of you are familiar with our pilot  
2 program. This was started many, many years ago, and the  
3 goal was to cut down on the amount of paperwork that was  
4 submitted to NIGC when you made your licensing decisions.

5 What we have hoped to do with our regulations is  
6 to formalize this pilot program, and so part 556 includes  
7 all the procedures before a gaming license is issued.  
8 Okay. So what that entails are the Gaming Commission's and  
9 Gaming Regulators submitting your background results to  
10 NIGC within 60 days of the individual starting work -- the  
11 licensee starting work. Okay.

12 It also allows tribes with access to provide  
13 prior investigative materials to another tribe so the NIGC  
14 may update those materials as well. Okay.

15 And 558 would include everything -- all the  
16 procedures after the gaming license is issued. Okay. So  
17 that is the notice of results of NOR, which is what would  
18 be submitted to NIGC. That was part of the pilot program,  
19 was the initiation of the NOR. That allowed you to simply  
20 submit to us the results rather than the full investigative  
21 packet. And I think that's worked well. I think most  
22 tribes -- and Eric can correct me -- in California have  
23 been on the pilot program. Is that accurate?

24 MR. SCHALANSKY: Yes.

25 MR. HAY: And generally, most of the comments we have

1 received on this have been favorable. The changes make it  
2 a lot easier for tribes to submit this material, a lot less  
3 burdensome, and I think it's a lot clearer.

4 The NIGC receive notification within 30 days of  
5 receiving an NOR. Okay. If a license is issued prior to  
6 objection, the licensee has the right to a notice and a  
7 hearing. The tribe must suspend the license until the  
8 hearing. Following the hearing, the tribe notify the NIGC  
9 of the decision. Okay. If the tribe does not license the  
10 applicant, they must notify the NIGC and provide a copy of  
11 the eligibility determination and the investigative report.

12 Are there any comments on any of this before I  
13 move on to the next section? Norm?

14 MR. DES ROSIERS: Yes. Thank you. Norm DesRosiers,  
15 San Manuel. And I've submitted these comments in writing,  
16 but I'd like an opportunity to maybe expand on them a  
17 little.

18 5 -- let's see. First of all, in your published  
19 proposed rule, in the beginning of the section you ask for  
20 comments or opinions on whether or not an application  
21 should require an applicant to list all associations they  
22 belong to and pay dues to, and I'd like to weigh in on that  
23 and say no, I don't think that should be there.

24 You know, one could belong to any number of  
25 clubs, associations, personal or professional, with or

1 without dues required, and if someone forgets to list one  
2 of those then they could easily be in violation of the  
3 application or the regulation.

4           You know, I just -- I don't think we need to go  
5 there. I think the -- I don't think the value of that  
6 information really -- really outweighs the trouble. So  
7 that's all I have to say on that.

8           When you published the draft, before it was a  
9 proposal, I made this comment, and I have to make it again.  
10 Part 556.4, paragraph C, mandates the tribal investigator  
11 shall keep confidential the identity of each person  
12 interviewed in the course of a background investigation.  
13 That's troublesome for -- certainly for my agency, and it  
14 should be, I think, for a lot of other agencies.

15           First of all, you know, we -- we provide you the  
16 steps taken in an investigation, and NIGC has never  
17 dictated to us what steps those have to be. Let me give  
18 you the results of that. One of the steps, of course, is  
19 going to be interviewing people. It might be former  
20 employers, it might be a former spouse, former associates,  
21 coworkers. It could be any number of people.

22           The problem we encounter, if we're mandated to  
23 keep it all confidential, is that if I -- if I make a  
24 licensing decision relying on information that I got from a  
25 particular person, and in my due process -- and I suspect

1 most due process systems in most jurisdictions -- allow for  
2 that license applicant to appeal a denial, and if in the  
3 course of that appeal hearing they're denied the  
4 opportunity of who gave witness about something that I've  
5 relied upon as finding them unsuitable, it just denies  
6 fairness in the process.

7 So, you know, I -- the response to my previous  
8 comment on this was, "Well, it's always been there in the  
9 regulation and we're not going to change it."

10 Now, you know, my policy, or Pechanga's policy,  
11 or anybody else's policy, on confidentiality should be our  
12 policy, and our due process should be our due process, and  
13 it shouldn't be hindered by a mandate that we cannot, you  
14 know, reveal the identity of who we're relying on to build  
15 a determination.

16 I won't beat this to death anymore, but I  
17 respectfully request that the NIGC eliminate that  
18 paragraph. It's not needed. Thank you.

19 MR. HAY: Thank you.

20 MR. DES ROSIERS: Did we get to 558? Okay.

21 558.3, paragraph C. I think I know the intent  
22 here. It says -- states in part: If a tribe does not  
23 license an applicant, the tribe shall notify the Commission  
24 and shall forward copies of its eligibility determination.

25 I point out to you that -- that you may want to

1 rethink or reword that because there are many reason why we  
2 may not issue a license to an applicant. Collectively, I  
3 would imagine thousands of applicants around the country,  
4 withdraw -- like they do in our jurisdiction -- withdraw  
5 their application because it took too long, they got  
6 another job, they moved, they relocated out of the area.  
7 There may be any number of legitimate reasons why a license  
8 is not issued to an applicant, and I don't think you really  
9 want to know all those.

10 I think what you want to know is why a license is  
11 denied to an applicant. So you might want to consider  
12 changing that language: If a license is denied, you know,  
13 let us know, give us the reasons. But not simply if a  
14 license isn't issued -- the license isn't issued.

15 On those two parts, that's all I have.

16 MR. HAY: Anyone else have comment?

17 (No response.)

18 MR. HAY: Then we're going to move on to Part 537,  
19 which are background investigations for persons or entities  
20 with a financial interest in, or having management  
21 responsibility for, a management contract.

22 The change that we are proposing would give the  
23 Chair the discretion to reduce the scope of background  
24 investigation information that was furnished by a tribe or  
25 tribally-owned entities or national banks or institutional

1 investors that are federally regulated. So that way if  
2 there is information that someone has already reviewed,  
3 they thought it would streamline the process if we weren't  
4 duplicating that review.

5 And obviously this is within the discretion of  
6 the Chair, and so what would happen is parties would write  
7 into the Chair requesting a waiver for some of these  
8 requirements.

9 You know, the purpose behind this is for us to  
10 judge whether or not these individuals are suitable, and if  
11 they are a national bank that's already regulated by a  
12 different agency who was probably made a similar  
13 determination, then our thoughts are maybe we don't have to  
14 look at those individuals as closely as others.

15 Are there any comments on that? It's a short  
16 change. And I'm going to say that the deadline for  
17 comments is February 21st.

18 This was published in the Federal Register on  
19 December 22nd. I think we received entirely favorable  
20 comments on this issue, if we received any comments at all.  
21 I don't remember anyone objecting to the change.

22 MR. DES ROSIERS: I have -- on 537 its entirety?

23 MR. HAY: Yes.

24 MR. DES ROSIERS: Paragraph 537.3(d), as in David, I  
25 just -- and I'm just suggesting some -- a language change

1 for clarification. Again, I think I know what you mean  
2 here, but -- it states: The deposit will be returned to  
3 the management contractor when all the bills have been paid  
4 and the investigation's complete.

5 I think that implies when or however the bills  
6 are paid, the investigation is complete, they're going to  
7 get their whole deposit back. And I think maybe it would  
8 read clearer is -- something to the effect of, you know,  
9 any remaining balance of the deposit would be returned  
10 after deducting costs and all that, instead of the deposit.  
11 That's all I'm saying.

12 MR. HAY: So that people aren't confused thinking the  
13 deposit is fully refundable after the fact and will be  
14 working through it?

15 MR. DES ROSIERS: Right. That's all I have on that.

16 VICE-CHAIRWOMAN COCHRAN: Thank you, Norm.

17 MR. HAY: Any other comments?

18 (No response.)

19 MR. HAY: Okay. We're down to the last section that  
20 we're looking at today, and it's a big one, it's 518, which  
21 are the self-regulation of Class II Gaming.

22 I worked on these changes, and I know that we  
23 have done a lot in terms of revising the entire process. I  
24 was very happy to see that there is actually a  
25 self-regulated tribe here. There are only two out there,



1 and Grand Ronde is here with us today, and we appreciate  
2 all the help that they've given us with their comments on  
3 this issue.

4           You know, we always received many comments that  
5 the process of becoming self-regulated was burdensome and  
6 was too burdensome for the benefits that were received.  
7 And so when we put this out to comment we were asking for,  
8 you know, what do you mean by it's burdensome. You know,  
9 we wanted to drill down to find out, you know, what were  
10 the problem areas. Was it just that the standard was too  
11 hard, or was it that the process was confusing or  
12 duplicative of other processes, or whatever problems there  
13 were in that process.

14           And we received a lot of great comments. And we  
15 looked through it and we ourselves felt that it was a  
16 confusing process for tribes who wanted to apply. It was a  
17 long process, a ton of information needed to be submitted  
18 to us, and as many tribes pointed out, it was information  
19 that we already had in our possession and so why are we  
20 asking for it twice.

21           And so we started thinking about those types of  
22 changes: You know, how do we make the process clearer, how  
23 do we make it easier. And during that there is one thing  
24 that we -- that we kept coming back to, and that the  
25 regulation as they were written now are looking at, for the

1 most part, how the tribe operates its gaming facility, when  
2 really the focus here should be how the tribe regulates its  
3 gaming.

4           You know, we shouldn't be focusing on the  
5 operation, we should be focusing on the regulation. So we  
6 did an entire rewrite of the regulations. One, to clarify  
7 the process, the standards that we'll be reviewing, and  
8 also to clarify that the focus should be on the regulation  
9 of the gaming and not on the actual operation. And we  
10 received lots of comments from tribes.

11           We have gotten rid of the requirements that  
12 tribes submit information that has already been submitted  
13 to us. And I think that we have done all of this without  
14 lowering the standards.

15           You know, a lot of -- well, the two tribes that  
16 are self-regulated have said to us, you know,  
17 "We're very proud that we're self-regulated, you know.  
18 This shouldn't be something that everyone out there can  
19 attain, you know, without even thinking, it should be  
20 something special out there."

21           And I think we have maintained that while making  
22 the process clearer so that more tribes when looking at the  
23 regulations won't say, "Well, we couldn't possibly achieve  
24 this." It's clear now that they can achieve it. And we're  
25 hoping that when it's all said and done that more tribes

1 will apply for self-regulation.

2 We've also changed the focus internally in that  
3 prior -- prior to these drafts a lot of focus was placed on  
4 the Office of Self-Regulation, in particular the one  
5 commissioner who would be appointed that position. And so  
6 we wanted this to be something that was before the entire  
7 Commission from the start so that they were in on the  
8 process.

9 And I think that our draft achieved that goal of  
10 bringing them in early in the process and having tribes --  
11 giving tribes the opportunity to interact with the  
12 Commission when problems do arise.

13 We've given tribes the opportunity to withdraw  
14 their petition at any time before acceptance or denial of  
15 it. We've also given them an interim period where we  
16 identified problems with their application and they have  
17 the opportunity to respond before a decision has been made.  
18 And so hopefully that collaborative process will allow  
19 tribes to feel more comfortable about starting this.

20 Because I know if you just read the regulations,  
21 it's kind of daunting everything that's required. And a  
22 lot of these regulations, and -- in particular were done  
23 before MICS were done, and so they include a lot of things  
24 that would already be included in MICS now and would  
25 already be required. And so by taking those out and saying

1 that it's not a separate requirement, it's all part of the  
2 same thing, we hope that makes it easier on tribes.

3 This will be published tomorrow, and the comments  
4 deadline goes to April 2nd. We received a lot of comments  
5 in the past, I hope we receive a lot on this draft. I know  
6 a lot of people in our office have worked very hard on it  
7 and I know our Commissioners have spent a lot of time with  
8 it, and hopefully it's something that you'll view eagerly  
9 as something that your tribe could benefit from.

10 Are there any comments on this?

11 MS. HARVEY: Denise Harvey, Chairwoman for the Grand  
12 Ronde Gaming Commission.

13 I was just wondering -- we provided comments on a  
14 couple of different issues, and I know that you have  
15 another comment period April 2nd, but we were wondering  
16 what the schedule is after that.

17 VICE-CHAIRWOMAN COCHRAN: Well, after that -- after  
18 the next set of comments come in, then it will go out again  
19 one more time for consultation before the final rule comes  
20 out. So this is the second bite at the apple. So if  
21 there's additional comments -- if you want to reiterate,  
22 like Norm has done on behalf of San Manuel, if you want to  
23 reiterate comments to us based on the notice proposes we're  
24 making, then we certainly welcome them.

25 The first set of comments that came out on it

1 were on a discussion round.

2 MS. HARVEY: So when -- will we have a timeline of  
3 when that will be completed?

4 VICE-CHAIRWOMAN COCHRAN: No, not -- let's see.  
5 April -- no. I don't -- as far as it making it to final  
6 rule? No. Most of them we're getting back out as soon  
7 as -- once they go out in the notice proposal, we're  
8 making -- the attorneys and the staff will spend some time  
9 looking at the comments, preparing revisions, meeting with  
10 us to see what our policy cuts are to make sure that those  
11 are included in the discussion, then it will be republished  
12 again.

13 And that process is taking a couple of weeks  
14 right now in between the cutoff date once the comment  
15 period closes and then us getting it back into the Federal  
16 Register.

17 MS. HARVEY: Thank you.

18 MR. HAY: I'd like to go through how we kind of  
19 structured this. As I mentioned before, we wanted the  
20 focus to be on the regulatory aspects and not on the  
21 operational aspects, and so 518.4 includes submission  
22 requirements.

23 So, what we'll be looking at, what the Commission  
24 will be looking at, is the history of the gaming  
25 operations. You know, we'd like an organizational chart

1 for your regulatory body. We want to look at the  
2 experience of your regulators, we want to look at the  
3 funding of the regulation, we want to look at who your  
4 current regulators are, and we want to look at, you know,  
5 what kind of accounting system the gaming operation is  
6 using. Okay. Those are kind of some core areas that we  
7 think are important to the regulation of the gaming.

8 And so what we envision happening is the tribe  
9 will submit this to us and then within the Agency the  
10 Chairwoman will appoint a commissioner to oversee the  
11 review of this material, and that commissioner will pick a  
12 team out of our staff to review the information, and as  
13 well as to possibly perform a site visit to gather more  
14 information, and those will be the kind of point of contact  
15 for the tribe in dealing with this whole process and going  
16 through it. And so it's -- it's one of those processes  
17 where we envision a ton of interaction between staff and  
18 the tribal regulators.

19 518 includes more of the submission requirements.  
20 There are internal controls that need to be submitted.  
21 Your recordkeeping system for investigations. You know, if  
22 you do your own investigations, how do you maintain your  
23 records, are they -- are they secure, do you hold on to  
24 them for a period of years?

25 And we're not -- we haven't put out there any

1 specific mandates in this area saying you have to do it in  
2 this fashion, or this is what we're looking for. These are  
3 just areas that we want to look at to see what type of  
4 regulatory structure you have in place and how you operate  
5 on a daily basis.

6 We want a copy of your current tribal gaming  
7 regulations -- sometimes tribes submit those to us with  
8 their ordinance -- so we would have them on record, but  
9 otherwise we'd like to take a look at them.

10 And we've also received a lot comments from  
11 tribes asking us to not ask for information they have  
12 already submitted to us. So if they submitted information  
13 to us such as an ordinance, if they submitted other  
14 information to BIA, then we shouldn't ask for it twice.

15 We're in the federal government, we should have  
16 access to it, so that would cut down on some of the  
17 submissions to us.

18 518.5 looks at what criteria the tribe must meet.  
19 And they're fairly straightforward: Effective and honest  
20 accounting of revenues, reputation for safe, fair and  
21 honest operation; physically and economically sound basis,  
22 and operation generally free of criminal or dishonest  
23 activity. And, most importantly, that the gaming has been  
24 conducted in compliance with federal and tribal  
25 regulations.

1           We're also looking at what types of systems the  
2           tribe has put in place, you know, for accounting of  
3           revenues, for investigation, licensing, monitoring of  
4           gaming employees, as well as their investigation,  
5           enforcement and prosecution of violations.

6           I know some people have questions about the word  
7           "prosecution." We use that just to mirror some of language  
8           that tribes themselves use within their codes. All of you  
9           may not have that, but I believe some tribes do use that  
10          language.

11          518.5 lists examples of how a tribe may  
12          illustrate it has met the criteria. Okay. These are just  
13          examples, they're not exhaustive. The Tribal Gaming  
14          Regulatory Body monitors compliance with applicable laws  
15          and regulations including MICS, monitors effectiveness of  
16          revenue accounting system, audits Class II gaming  
17          activities, and reviews accounting information from the  
18          operation.

19          We have also changed the process hopefully to  
20          streamline it and to set out some clear deadlines. Okay.  
21          As I mentioned, the Office of Self-Regulation is the office  
22          within the Agency that would be conducting the review.  
23          Okay.

24          So they receive your petition and within 30 days  
25          they will notify you as to whether or not it is complete or



1 its incomplete. Okay. Within 120 days of receiving that  
2 application, or that complete application, the Office of  
3 Self-Regulation would provide a recommendation report to  
4 the Commission and the tribe. Okay.

5 So what will happen in that 120 days is our staff  
6 will be reviewing everything that has been submitted to us,  
7 as well as performing any site visits that are needed.  
8 they will put together a report which will include a  
9 recommendation whether or not they think that the tribe's  
10 petition should be granted or denied, that will go to the  
11 tribe and to the Commission. Okay.

12 That provides the tribe an opportunity at that  
13 point to respond to that report and so they can lay out  
14 basically anything they want. It's pretty wide open. You  
15 can say, one, NIGC, you're reviewing this information  
16 incorrectly; NIGC, you don't have all of the information,  
17 or, hey, you know, we looked at that, you're right and we  
18 want to change it. So basically it's pretty open-ended as  
19 to how the tribe can respond. Okay.

20 The Commission will then issue its preliminary  
21 findings. Okay. And after that the tribe may request a  
22 hearing after receiving the preliminary findings. So again  
23 that's another opportunity for the tribe in the process  
24 before a final decision is made. Okay.

25 A hearing can take place, and it's 30 days after

1 that hearing that the Commission will issue its decision.  
2 Now, obviously if everything is positive along the way, the  
3 tribe won't want to request a hearing, most likely, and so  
4 the -- there won't be any problems and the process will be  
5 a little shorter at that point. And the tribe can withdraw  
6 the petition any time prior to the final decision.

7 As I said, we received a lot of comments on this  
8 area. One of the biggest one is that the process was  
9 unclear and needed to clarify. So hopefully we've done  
10 that.

11 Again, the comment said the Commission should  
12 consider all the submission requirements and not just the  
13 Office of Self-Regulation, and so that's why we included  
14 that extra tier of review for the Commission to be involved  
15 and to interact with the tribe.

16 And, you know, the process should involve our  
17 staff working with the tribes. And hopefully the time  
18 periods that we've allowed within the draft regulation will  
19 allow us to do that. So it is an open dialogue and it's  
20 not simply "here's our packet" and the next thing you hear  
21 from us is either a thumbs up or a thumbs down.

22 There are annual reporting requirements. Okay.  
23 They are an independent audit and a complete résumé for all  
24 employees of tribal regulatory body prior to license by the  
25 tribe after receiving a certificate of self-regulation.

1 Okay. That language comes directly from the statute and so  
2 it is mirrored in the regulation.

3 518.11. The tribe has a continuing duty to  
4 inform the Commission of changes in circumstance material  
5 to approval of this Part. For instance, if you submit an  
6 application to us and we go through the entire process and  
7 we approve your application, and then six months later the  
8 tribe cuts regulatory funding by 75 percent, we would  
9 consider that something that was material to the approval  
10 and we would want to look at it and you would have to  
11 supply us with that information.

12 Comments suggested that the Commission define  
13 tribal regulator. The Commission decided not to do that  
14 just because so many tribes use different titles for their  
15 regulatory body, so we've left that open.

16 Section 518.12 provides a reference to IGRA, NIGC  
17 powers limited during self-regulation. I know we received  
18 a lot of comments here during the process. A lot of  
19 individuals who said, "Why do you even have this section at  
20 all? Do you even need it? All you're simply doing is  
21 reiterating what the statute says."

22 You know, yes, it's superfluous, the statute  
23 already says it, we don't have to say it; but, on the other  
24 hand, it provides clarity to tribes. So that's obviously  
25 out there for comment.

1           And that was probably the biggest comment there  
2 as to -- on that section, was whether or not we needed to  
3 continually restate what IGRA said.

4           We've gone back and forth on this. Most of the  
5 time when we do include statutory language in the  
6 regulations it's because we want to provide clarity so that  
7 tribes have a roadmap for the process.

8           I think we've covered all the sections today. Do  
9 we have any more comments on self-regulation? Or if anyone  
10 wants to go back to any of the other areas that we've  
11 covered?

12           MR. DES ROSIERS: Thank you, John. Norm DesRosiers,  
13 San Manuel. A few comments.

14           I can see the benefit of asking for an org chart.  
15 I don't see the benefit in needing to know the name of  
16 every employee of the Agency, and that can change by the  
17 day. You know, I mean, I've got 125 people including  
18 surveillance, so what -- why is there a need for that?

19           MR. HAY: Well, I think when we were looking at this  
20 we just didn't know where to cut it off. You know,  
21 which -- how far down the levels of employees within the  
22 Gaming Commission we had to look at. Obviously we don't  
23 care about your janitors, but we may care about some of  
24 your administrative staff depending on what their functions  
25 are, what their responsibilities are. And so maybe --

1 MR. DES ROSIERS: I understand that. But an org  
2 chart, maybe -- maybe job descriptions or the positions on  
3 that org chart would give you all that. Why do you need  
4 the name of every individual employee?

5 VICE-CHAIRWOMAN COCHRAN: Actually, Norm, IGRA  
6 requires the name for every employee of the tribe. What  
7 we've done here is to -- even to set -- administratively  
8 interpret that only to apply to the regulatory body. And  
9 that's been part of the problem with compliance -- and  
10 granted Dawn Unger (phonetically) can speak to this --  
11 listing out complete résumés for every employee of the  
12 tribe, obviously is extensively burdensome. So that's  
13 where this comes from.

14 MR. DES ROSIERS: Well, like I said, it's not very  
15 practical. I mean, it's -- by the time I submit that list  
16 of names to you, by the time you get out and start doing a  
17 review, it could change and change, you know, two weeks  
18 when you're done with your review. You know, that list of  
19 names changes constantly, and I don't know -- it doesn't  
20 make sense.

21 VICE-CHAIRWOMAN COCHRAN: Thank you.

22 MR. DES ROSIERS: The list of the internal controls.  
23 Here again, if our outside independent audit each year  
24 is -- you know, that we send you is accompanied with an  
25 AUP, agreed upon procedures, document that the outside

1 auditor has attested that our internal controls meet or  
2 exceed NIGC's, I'm just wondering why you need another list  
3 of all the controls.

4 MR. HAY: I think that was -- a lot of the  
5 information that we requested is to help our field staff  
6 when they actually go out and look at these things to  
7 verify it so that, you know, they can go down and create  
8 their own checklist to make sure that those systems are be  
9 used and independently verify that.

10 MR. DES ROSIERS: Okay. And my last comment is this.  
11 And I understand that there's a legitimate need or reason  
12 why you would want to ensure that the tribe is complying  
13 with all applicable laws and regulations. I mean, if  
14 they're not, then they shouldn't be self-regulated,  
15 obviously.

16 But it raises a couple of questions: How far  
17 does that go? Because are you going to do a compact  
18 compliance review? There's a whole bunch of stuff we need  
19 to comply with there that, you know -- but it's not Class  
20 II, so -- I don't know where that stops.

21 My other comment is -- IGRA obviously is an  
22 applicable law, and this goes kind of back to what Tracy  
23 brought up earlier. The use of revenues is often rolled  
24 into one of those uses as revenue allocation plans, and  
25 you've got to have one and you're supposed to comply with

1 it. And so is that part of self-regulating, to ensure that  
2 you have a plan if you're making distributions and  
3 complying with that plan.

4 I mention that for a couple of reasons: One, in  
5 my experience, NIGC -- maybe you haven't had this in recent  
6 years, but in years past there were a number of tribes with  
7 a lot of internal political problems and accusations coming  
8 to NIGC that their tribe was not complying with the revenue  
9 allocation plan, they were was misspending, and there was  
10 all kinds of stuff that were kind of forcing us to have to  
11 take a look at things to see if they're complying with  
12 IGRA, the use of revenue. That's one concern.

13 The other is -- in fact, I have submitted -- many  
14 years ago when I was at Viejas -- a petition for  
15 self-regulation review, and because of some glitches with  
16 the RAP I had to withdraw that because of the -- the  
17 allocation plan was in transition and being revised and all  
18 that, and so we never went back and finished.

19 So, anyway, that RAP is an issue. Or is it? It  
20 seems to me that if you're looking at compliance with  
21 applicable laws and regulations that -- I'm wondering is  
22 that an issue.

23 MR. HAY: I can't recall us ever discussing it in  
24 terms of a Compact, to answer your first question. You  
25 know, that's between the tribe and the state. So, granted

1 IGRA gives us some ability to give notice of violation also  
2 or Compact violations, but this is Class II, and so I think  
3 that that would not be the focus of anything that we would  
4 be doing in terms of this.

5 As for RAPs, you know, we didn't specifically  
6 discuss that when we were reviewing it, and none of the  
7 comments that we received to date raised that as an issue.  
8 But it would be something, you know, that we have to -- to  
9 answer your concern there.

10 CHAIRWOMAN STEVENS: I think our bigger concern is  
11 if, you know, a tribe applies for a certificate of  
12 self-regulation and they're giving out per capita from  
13 gaming revenue without a RAP, that might be a problem. I  
14 think that's probably a bigger concern.

15 The specificity of whether the tribe is following  
16 the RAP, which has been brought up, it sounds like at least  
17 twice this morning, we hadn't talked about specifically,  
18 but it certainly can give us something to think about when  
19 we're looking at the regs and what do we mean by "all  
20 applicable laws."

21 MR. BURRIS: Question: John, you said to help your  
22 field people to put forward a checklist, if you will. Do  
23 you perceive you guys making -- creating a checklist off of  
24 this? And I realize it's additional work. But that would  
25 clarify some of these areas of where you may go or not go



1 and how you're going to interpret it.

2 CHAIRWOMAN STEVENS: That's a really good point,  
3 Tracy. And I appreciate your bringing that up.

4 One of the things we are trying to do is create  
5 consistency across the Agency, so you saw that in the  
6 appeals -- you know, you see when you submit an ordinance  
7 we have a checklist for the ordinance. You know, when  
8 we're doing -- when we're talking about 556 and 558, not  
9 only are we looking at creating some consistency there, but  
10 we're also going to look at -- when we implement these,  
11 we're going to be looking at how internally we're going to  
12 adjust to this so that there is consistency across the  
13 region.

14 Because we don't want one region with a checklist  
15 when doing a self-regulation review, and another region  
16 with a different checklist, because that's mayhem making.  
17 We don't want that, that sends the wrong message and it's  
18 confusing to everyone.

19 So yes, we would be looking at -- not only just  
20 for this reg, but all the regs -- how we're going to go  
21 about this process and let tribes know what those internal  
22 processes are so they know what to expect.

23 MR. HAY: Any other comments?

24 MR. BURRIS: John, I do, and it's just -- I'm going  
25 to go back to 556.4 on the background investigations,

1 number 3. It's listing for personal references.

2 Is there any way in the world we could strike  
3 that and get rid of those? Because they serve no purpose.  
4 I have probably done 15- or 16,000 background license  
5 checks, and only probably five or six times have I ever got  
6 a bad one.

7 My thought would be is that we use personal --  
8 those are individuals that are at work during the time our  
9 investigators or background people are working in the  
10 normal day, so we're sitting here until the evening time  
11 trying to tie those people down.

12 You know, people can give us 10 references and we  
13 may only get a handful of three of them if we're lucky. So I  
14 think, on average, everyone would tell you that we're lucky  
15 to get two of the three.

16 But we spend so much time on leaving this  
17 document open, because we spend a day on it, then we have  
18 to balance a week because we got so many to do. This is  
19 just a time management thing. And I don't know of anywhere  
20 in the Act itself that requires a personal reference.

21 And I just personally think it's a waste of time,  
22 a waste of manpower, and -- and these other companies and  
23 sources that we use are working during business times, so  
24 I'm trying to float people to stay until 7:00 o'clock at  
25 night trying to catch people at dinnertime that don't want

1 to give a personal reference. So it's just very difficult,  
2 and to me it has no merit personally.

3 CHAIRWOMAN STEVENS: Okay. Well, thanks for bringing  
4 that up, and we'll have to take a look at it.

5 I'm just thinking about other processes that  
6 require those kinds of references and during a certain time  
7 frame. We'll have to think about how that might work.

8 MR. BURRIS: We spend hours and hours trying to track  
9 down to get someone to say something that 99 percent of the  
10 time they'll say "Oh, they're great. Fine. Yeah. Sure  
11 yes, I wish I had hired them." But that's another story.

12 MR. HAY: We've covered everything on the agenda --

13 MR. DES ROSIERS: Well, I have to -- Tracy's right,  
14 you know. And I've done I don't know how many tens of  
15 thousand of background; if you want to dig up dirt on  
16 somebody, you ask former spouses and former business  
17 partners and that kind of thing.

18 CHAIRWOMAN STEVENS: I know I've gone through a  
19 pretty extensive background check to sit here. But we'll  
20 have to take a look at that and see.

21 MR. BURRIS: I think in this time and age it's -- and  
22 I've always thought it was -- it was a difference of how  
23 many -- you know, you get a large amount of number of  
24 employees and renewing every two years, plus what you're  
25 doing, and you're checking those personal references, it's

1 just -- it's not very good efficient time management.

2 CHAIRWOMAN STEVENS: And I bet you can probably find  
3 out a lot even if you Google somebody.

4 But we'll take a look at that, and maybe see what  
5 the origins of this was -- this particular requirement and,  
6 you know, what usefulness it had at the time that we looked  
7 at it.

8 And even in the pilot program -- I'm sure this is  
9 where it originated -- and I could swear when I was first  
10 licensed by my facility, you know, asking -- they asked for  
11 that and, you know, maybe it's a question of is it still  
12 relevant. So thanks, Tracy.

13 Any others?

14 CHAIRWOMAN STEVENS: Okay. Well, I appreciate  
15 everybody attending. I know that a number of these aren't  
16 even in the Federal Register yet, but we have 60 day  
17 comment period which will end April 2nd on many of these.

18 As pointed out in the public -- in the copies you  
19 have, some of them are February 21st and 27, and we will  
20 continue to have consultations. So given that you might  
21 not have had an opportunity to read some of these, you do  
22 have 60 days to comment and provide written comments to  
23 that address, or you can mail them in.

24 So, again, I appreciate everybody's time. Did  
25 you want to wrap anything up?

1           VICE-CHAIRWOMAN COCHRAN: I just will re-echo the  
2 Chairwoman. Thank you so much for your time. We know that  
3 you're extremely busy, and we appreciate it when you come  
4 to sit with us and talk about these things, and we look  
5 forward to the next set of consultations and the next set  
6 of groups that we'll cover. And I wish you safe travels  
7 back to your home.

8           CHAIRWOMAN STEVENS: Okay. Our next consultation  
9 will happen at Shelton, Washington, immediately following  
10 the Affiliated Tribes of North. After that we'll --  
11 February 22nd we'll be in Albuquerque, New Mexico, Isleta  
12 Hard Rock.

13                   And then we're working on some other dates so  
14 that we cover the entire period of the comment period. But  
15 those are up in the air right now, so we'll be sure to let  
16 you know what we're looking at until we can confirm those  
17 dates, but we're looking at times in March to go to  
18 different parts of the country. We're trying to reach all  
19 the regions as we go, and try to keep in mind winter  
20 conditions as well. So, as we confirm more dates in March,  
21 we will put out that information on our website and send  
22 them to your tribes. We put them -- we put all the  
23 information out there and we'll let you know.

24                   So, again, thank you very much, and safe travels  
25 to you all. And thank you for coming quite a distance.

1 Thank you again.

2 (Adjourned 11:20 a.m.)

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1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken before  
4 me at the time and place herein set forth; that any  
5 witnesses in the foregoing proceedings, prior to  
6 testifying, were placed under oath; that a record of the  
7 proceedings was made by me using machine shorthand which  
8 was thereafter transcribed under my direction; further,  
9 that the foregoing is an accurate transcription thereof.

10 I further certify that I am neither financially  
11 interested in the action nor a relative or employee of any  
12 attorney or any of the parties.

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

15  
16 Dated: \_\_\_\_\_  
17

18 \_\_\_\_\_  
19 JACQUELINE R. GRENACHE CSR. No. 4631  
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