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NRRA CONSULTATION MEETING
COVERING GROUPS ONE, TWO, FOUR AND FIVE
REGULATIONS

November 14, 2011

Job No. NJ369178

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A P P E A R A N C E S :

Bickerstaff, Robert
Master Cage Cashier
Santee Sioux Nation

Cook, Vince
Executive Director
Little Traverse Bay Bands

Deeny, Teena
Cage Cashier Supervisor
Santee Sioux Nation

Good Crow, Phillip
President Assistant
Oglala Sioux Tribe

Hento, Jon
Controller
Yankton Sioux Tribe

Her Many Horses, Danielle
Legislative Director
National Indian Gaming Association

Miller, Antoinette
Commissioner
Rosebud Sioux Tribe

Provost, Irving
Council Manager
Oglala Sioux Tribe

Redlightning, Mike
General Manager
Yankton Sioux Tribe

1 Sandcrane, Alec
TGRA Chairman
2 Northern Cheyenne
3

4 Thomas, Christinia
Executive Director
Mille Lacs Gaming Commission
5

6 Thomas, Thelma
Manager
7 Santee Sioux Nation
8

9 Two Lance, Wilson "Buzi"
Executive Secretary
Oglala Sioux Tribe
10

11 Whipple, Janelle
Finance Clerk
12 Santee Sioux Nation
13

14 Whipple, Robert
Commissioner
Santee Sioux Gaming Commission
15

16 Wolf, Marion
Executive Director
17 Three Affiliated Tribes
18

19 Yellow Bird Steele, John
President
Oglala Sioux Tribe
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1 CHAIRWOMAN: Okay we'll go ahead and
2 get started again. And I forgot
3 (indiscernible), I just saw that we were
4 at break time so I wanted to stop and
5 take a break and let everybody make some
6 phone calls, stretch, get some fresh
7 coffee.

8 Right now, we don't have anything in
9 place formally for the NIGC and the NIGC
10 only procure goods and service from
11 Indian country. Given that the policy
12 under IGRA is to promote economic
13 development and tribal self governance,
14 we thought that we should look at
15 something formal. We -- under IGRA,
16 under 25 U.S.C. 2706(a)(6),(7) there
17 is -- (6) and (7), we do have the
18 authority to contract with tribes.

19 And so I want to be clear that
20 anything that we would put in place would
21 be a requirement on the agency when we
22 procure goods and services from tribal
23 businesses.

24 We try, when we can, based on cost,
25 for example when we do consultations we

1 try to have them in places 1) where
2 tribes can -- as many tribes can reach us
3 as possible, and we bring ourselves out
4 to tribes; 2) we prefer to go to tribal
5 facilities when we are able to, based on
6 availability and also cost.

7 So that's an example of something
8 that will be on, you know, a requirement
9 upon us when we're moving forward,
10 whether we're doing consultations and we
11 need rooms, meeting room space, or if we
12 need paper to -- if there are tribal
13 businesses out there, we should be as an
14 agency, and Indian agency, procuring
15 those goods and services from Indian
16 businesses.

17 Now this is not something that would
18 be a regulation to impose on tribes. I
19 want to be very clear about that. There
20 has been some confusion in the past that
21 what we're suggesting is that we impose
22 this on tribes, and we would not do that
23 because we don't have jurisdiction to do
24 that. But that's something that each
25 tribe can decide on their own, out of our

1 bailiwick, but we just thought as an
2 Indian agency that's something in place
3 that would require the agency to go
4 through a buy-Indian type of process.

5 We're still formulating this because
6 we're looking at two paths we could take,
7 whether it's going to be a regulation,
8 whether it's going to be an internal
9 policy. But also, which statute are we
10 going to use, whether it's IGRA or the
11 Buy Indian Act.

12 So we're still considering that. If
13 we do put something out, we certainly
14 will post it as we have with other
15 discussion facts. I'm not sure if
16 anybody has any comments on this. We've
17 been talking about it for a while but we
18 don't have the discussion wrapped. If
19 anybody has any views on whether it
20 should be a regulation, which is very
21 formal, carries the weight of the law;
22 and then there's internal policies.

23 We have a number of internal
24 policies that operate our agency but
25 that's significantly different than a

1 regulation. So if anyone has any
2 comments about which way to go on that
3 (indiscernible).

4 There's been a number of comments --
5 there are a number of comments that we've
6 received with preference towards
7 regulation because it's a little -- it's
8 more enforceable on agencies, but then
9 it's not very flexible. Some prefer
10 internal policy; it might be quicker to
11 put in place.

12 If not, we don't really have more to
13 say on this than just that, but you know,
14 we do, without that, given our authority
15 to contract under the Act, do try to
16 currently purchase goods and services
17 from Indian country when we're able to,
18 but we do want to formalize that in some
19 way to move forward.

20 So Group 2 will be talking about
21 enforcement and then talking about
22 regulations put before the Commission.
23 Do we have any attorneys here, besides
24 our attorney? Yeah, (indiscernible).
25 This will be a section that it's about a

1 process before the Commission that many
2 attorneys weigh in on, although you're a
3 commissioner, you're probably familiar
4 with this process. Or if you haven't had
5 to appeal anything, you might not be,
6 whether it's a management contract, an
7 ordinance, and NOV. If you've not had to
8 go through the appeal process it might
9 not be right up front on your radar.

10 So 573, enforcement, our goal is
11 voluntary compliance. One of the
12 philosophies of this Commission is that
13 we should be helping tribes to come into
14 compliance and stay in compliance. We
15 call this principle ACE, A-C-E
16 (indiscernible) first then get them into
17 compliance, then if those two things
18 don't work then we need to go into
19 enforcement.

20 Anything that we do with regard to
21 enforcement actions, it should not
22 necessarily be a surprise to tribes.
23 There are times where we may need to take
24 immediate action, depending on
25 circumstances, but in most of what we do

1 the tribe knows that we're looking into
2 matters; that we're working with their
3 tribal gaming regulatory body or their
4 operations, depending on what's going on;
5 but that we should at least make every
6 effort to bring the tribe into compliance
7 before we issue an NOV.

8 So this new draft outlines a pre-
9 enforcement action process. First there
10 would be a letter of concern or non-
11 compliance notice provided to the tribe
12 or the respondent. A letter of concern
13 indicates an incident or a condition that
14 may be a violation. And a non-compliance
15 notice confirms an assessment of the
16 matter and states necessary corrective
17 action.

18 So there's the concern that there
19 may be something happening that might be
20 a violation and then the other action
21 would be yes, this is a non-compliance
22 issue, and that there needs to be certain
23 steps taken in order to come to
24 compliance.

25 We heard from tribes that they would

1 prefer some process before going straight
2 to an NOV so that they could at least
3 make an effort to comply first. And so
4 that's what this would do. It would
5 track the desire tribes to have an
6 incremental process in place before going
7 straight to an NOV.

8 We understand that an NOV is a
9 serious black mark on a tribe's record,
10 especially when tribes are looking for
11 partners, looking for financing, or just
12 generally trying to keep their record
13 clean.

14 Further, neither the letter of
15 concern or non-compliance notice is an
16 agency action. Agency action is
17 something -- it's a statement of despair
18 and this would -- these letters would be
19 most likely coming from our regional
20 offices.

21 Either action may provide a time
22 period for respondent to come into
23 voluntary compliance. If recommended
24 corrective action is not completed,
25 enforcement action may be taken.

1 The pre-enforcement action process
2 does not limit or constrain the Chair's
3 discretion to issue a NOV.

4 Prior to outcome is that we go
5 through letters of concern or notices of
6 non-compliance and we help tribes come
7 into compliance, whether that's through
8 training, technical assistance, and then
9 having the tribe self correct the problem
10 and stay in compliance.

11 However, again there are instances
12 where the Chair may need to take
13 immediate action, depending on
14 circumstances, and that could be very
15 situation specific. And so that is
16 preserved in this proposed draft.

17 I know we have a number of
18 Commissioners here or regulators. Does
19 anyone have any comments on those
20 concepts outlining the pre-enforcement
21 actions? I know that a number of tribes
22 actually see this is in their own
23 ordinances and their own controls. This
24 may not be new to you.

25 It's also something similar to other

1 federal civil regulatory bodies like the
2 FCC, because similar processes are in
3 place that are more informal before final
4 agency action is taken.

5 You're free to make any comments,
6 either here or in writing. We hope to
7 get more notices of proposed rules out
8 soon, so there will be another
9 opportunity to make a comment on 573, and
10 what we've proposed so far.

11 So the proceeding before the
12 Commission, it would repeal Part 519
13 service, Part 524 appeals, Part 539
14 appeals, and Part 577 appeals before the
15 Commission and would create a new
16 Subchapter H for all proceedings before
17 the Commission.

18 As you can see, the appeals is
19 pending on what action has been taken,
20 whether it's an ordinance approval, a
21 management contract, or an NOV are
22 separated currently in different parts.
23 This would put all the parts under
24 Subchapter H.

25 We're doing this because we did hear

1 from tribes and their attorneys, their
2 commissioners that they wanted to see
3 more -- in finding what steps they should
4 take and make it clearer and more
5 consistent, rather than having to jump
6 from part to part. But also, if we have
7 a presiding officer, we need to make it
8 clear to the presiding officer in any of
9 these actions what part they should be
10 following, and try to remove any
11 confusion.

12 So we'll be -- the proceedings will
13 fall into these subsections: 580 will be
14 general rules of application; 581 motions
15 in appellate proceedings; 582 the appeals
16 of disapprovals of gaming ordinances,
17 resolutions, and amendments; Part 583
18 appeals for approvals or disapprovals of
19 management contracts -- as you can see
20 they're different sections; appeals
21 before the presiding official, notices of
22 violation; fine assessments, temporary
23 closures, management contract late fees
24 and late fee assessments. And 585 is
25 appeal to the Commission on written

1 submission of notices of violation,
2 proposed civil fine assessments, orders
3 of temporary closure, the Chair's
4 decision to void or modify a management
5 contract, and notices of late fees and
6 late fee assessments.

7 All process -- this is an all
8 process, that's why I'm surprised there
9 aren't more lawyers here, but we've heard
10 a lot of comments so far in what we have
11 been proposing and you know, this is
12 going to assist not just tribes and what
13 steps they need to take in these
14 proceedings, but it also clarifies what
15 the agency will be doing and hopefully
16 make the process simpler.

17 So on 580, the rules of general
18 application, there will be definitions:
19 Suspension, revocation, amendment, or
20 waivers to the rules, who may appear,
21 services, and ex parte communications.

22 581, motions in appellate
23 proceedings; motions for limited
24 participation; ordinance appeals; motions
25 to intervene in appeals; or writing

1 official motion in an appeal on written
2 submission before the Commission; the
3 filing of motions before the presiding
4 officials to supplement the record, or
5 for reconsideration.

6 These are all sort of rules of the
7 road for those tribes that may be going
8 through an appeal process.

9 582, appeals of disapprovals of
10 ordinances, resolution, or amendments; it
11 talks about who can appeal the
12 disapproval of a gaming ordinance; how to
13 appeal the disapproval; late filing or
14 failure to file an appeal; how to go
15 through motions; motions for limited
16 participation; standards of review;
17 decisions; the timing of the decisions;
18 the content; and the effective date of
19 the decision; and then what constitutes
20 final agency action in that process.

21 583 has to do with management
22 contract appeals; approval or
23 disapproval. It talks about who could
24 appeal; how to appeal; filing or failure
25 to file an appeal; motions generally, and

1 then motions for limited participation;
2 standards of review; decisions; timing,
3 content; and effective date, and then
4 final agency actions. You see, we're
5 trying to create some consistency in all
6 of the processes.

7 584 is appeals before a presiding
8 official on NOV's; civil fine assessments;
9 temporary closures; the Chair's decision
10 to void or modify a contract; a
11 management contract; (indiscernible).
12 Again who could appeal; how to appeal;
13 filing and failure to file motions;
14 motions for limited participation; and it
15 lists burdens of proof and standards of
16 review; and when the hearing will be
17 held.

18 584 continues of course the hearing
19 process; the decision; what's included in
20 the decision; and final agency action
21 with regard to appeal; appeals to the
22 Commission on written submissions of
23 NOV's; fine assessments; similar to the
24 last one but this is all written
25 submissions.

1 It's my understanding that most of
2 what we do is on written submission when
3 we go through an appeal process, so this
4 part in particular is important.

5 UNIDENTIFIED FEMALE SPEAKER:

6 (indiscernible)

7 CHAIRWOMAN: That's true, but a
8 respondent, either a tribe or another
9 party gets to choose how they want appeal
10 a matter that the Chair's made a decision
11 on. So they get to decide whether they
12 would like a more expedited process that
13 does not require a hearing and it's just
14 before the Commission on written paper as
15 to whether they want to have an
16 administrative hearing before an
17 administrative law judge to decide
18 (indiscernible).

19 We're clarifying two processes here,
20 and again we'll be looking at who can
21 appeal, how to appeal, late filing,
22 motions, standards of review,
23 (indiscernible) and then final agency
24 action with regard to an appeal.

25 So that all seems really sort of

1 integral (ph.) but I know that our
2 attorneys in our general counsel's office
3 and many of the attorneys that represent
4 tribes, and commissioners -- sometimes
5 commissioners have to follow these
6 without an attorney (indiscernible).

7 What we're hearing back is a lot of
8 positive responses that we're modifying
9 and clearing up and making plain these
10 processes because the rules of the road
11 are really important, especially when a
12 tribe is appealing an action by the
13 agency.

14 And so in our effort to be
15 transparent, and clear, consistent,
16 there's a lot that goes with these
17 regulations, this particular subchapter
18 that we're proposing, so I encourage you
19 all to take a look at them or have your
20 counsel, legal counsel take a look at
21 these. If there are any questions or
22 concerns or comments that you have on how
23 we could improve what we've proposed, we
24 certainly are open to hearing those.

25 I always tease the attorneys because

1 everybody gets so excited about this
2 part, as they're truly regulations that
3 only an attorney could love, and you know
4 we've heard from folks that folks wanted
5 more details. So that's what we've tried
6 to provide here for different type of
7 appeal.

8 That takes up about half your
9 packet, legal process. But again, our
10 effort is to make sure that we're clear,
11 that tribes are clear in what -- how to
12 proceed.

13 That would be exciting while we're
14 proceeding (indiscernible). If we're all
15 okay with this I'd like to move onto
16 Group 4, which is in the afternoon
17 session. This may be something more
18 relevant, especially if we have
19 commissioners here going through
20 licensing, monitoring, and
21 investigations, background
22 investigations. If that's okay with the
23 group we could go ahead and move on to
24 Group 4.

25 Many of you may be participating in

1 the pilot program, which is not really a
2 pilot program because it's been around
3 for a while. I know almost every tribe
4 is using it. Or a considerable number of
5 tribes is using it. So it doesn't really
6 qualify as a pilot. So this is our
7 effort to formalize the pilot program
8 that has to do with licensing,
9 (indiscernible) to background
10 investigations and licensing.

11 So we'll talk about that in 556 and
12 558. We'll also talk about 571 and 537;
13 571 being monitoring and investigations,
14 and then 537 background investigations
15 for persons or entities with financial
16 interest or have management
17 responsibilities or management contract.

18 Those are really long titles, I
19 know. But we've broken up 556 and 558
20 into what we like to think of as before
21 licensing and what you need to do, and
22 after -- what happens after than has
23 taken place and you've submitted --
24 whether you had to submit and what
25 happens after that, so 556 and 558.

1 So in the Notice of Inquiry that
2 published last November, we requested
3 comment on the priority of amending
4 regulations to formalize the pilot
5 program that's in place now.

6 The pilot program allows tribes to
7 submit notices of results and maintain an
8 application, applications investigations
9 and investigative reports. So it's the
10 work that the tribe does. And you submit
11 that usually to the regional office.

12 All commenters supported formalizing
13 this program into a regulation or a
14 policy. So in the discussion draft,
15 we're not to a point of Notice of
16 Proposed Rule on this yet but in the
17 draft we're formalizing the pilot program
18 and Part 556 includes (indiscernible)
19 before the gaming license is issued.

20 So a tribe that seeks to license a
21 key employee or primary management
22 official notifies NIGC of background
23 results within sixty days of that
24 individual starting work.

25 Tribes with access to prior

1 investigative materials from another
2 tribe may update the materials so that
3 we're not reinventing the wheel. It may
4 be that you -- and I'm sure you all are
5 aware of this if you have somebody who
6 has worked in a facility and has gone
7 through this process -- you may just need
8 to update what we already have or what
9 you already have, or they've been through
10 it before. (indiscernible).

11 558 includes all the procedures
12 after the license is issued. So after
13 notice, an NOR, Notice of Results, the
14 tribe may license the key employee or the
15 primary management official.

16 The tribe must notify the NIGC
17 within thirty days of that license, and
18 NIGC has thirty days to request
19 additional information from the time of
20 complete submission of the material.

21 More on 558, the NIGC notification
22 within thirty days of receiving Notice of
23 Results, if the license is issued prior
24 to any objection that the NIGC may have,
25 licensee has a right to notice and

1 hearing. The tribe must suspend a
2 license until after the hearing or until
3 the hearing, and following the hearing
4 the tribe notifies NIGC of its
5 (indiscernible).

6 So within the thirty days the NIGC
7 may object, there may be some findings
8 that we have. Some tribes temporarily
9 license their employees before the
10 results. NIGC would have a certain
11 amount of time, and there is an
12 objection, that employee would have to
13 stop working. You'd have to suspend that
14 license until there's a hearing,
15 depending on material or the information
16 based on the employee's information. And
17 then the tribe would have to notify the
18 NIGC of their decision on the material or
19 the objection that we had.

20 Again, it's different for different
21 tribes. Some tribes don't have the
22 employees start working until they know
23 that there's no objection. And that way
24 they don't have to go through the process
25 of a hearing once the employee starts

1 working. Other tribes go ahead and issue
2 temporary licenses and have no issue with
3 going through a hearing process should
4 something come up in the employee's
5 background. Again this is for key
6 employees and primary management
7 officials only.

8 Just so you all know, if we get to a
9 point in finalizing this, we will make
10 every effort to make consistent our
11 processes across our regions. We're
12 asking for the same information through
13 all of the regions, but I think each
14 region might have a different format by
15 which they gather this information. But
16 we plan on working with our regions to
17 standardize our process so that every
18 tribe in every part of the country is
19 following the same process.

20 We'll be asking the same information
21 but we want to make sure that our process
22 is consistent all across the country.
23 This is helpful in case one region is
24 getting a lot of work, that they can
25 shift some of the work to another region,

1 and we'll have the same processes in
2 place. I only bring that up because some
3 tribes have mentioned that the form might
4 have looked different or the process
5 looked a little differently than what
6 they were accustomed when another region
7 was helping out, or that they talked to
8 another tribe from another region.

9 And so just so you know, we'll be
10 asking for the same information for 556
11 and 558, we'll standardize the
12 information based on the law that we'll
13 be asking for, and internally we will
14 develop standard operating procedures,
15 basically, on how we're going to move the
16 information through the agency. So that
17 might be the only change that you see but
18 it won't be a change in the content that
19 we'll be changing, if any, the form that
20 information takes.

21 Do you have any questions on 556 or
22 558? Yes, do you need a microphone?
23 Yes, do you need a microphone?

24 UNIDENTIFIED MALE SPEAKER: One of
25 the things that we have built into our

1 compact with the State of Michigan is for
2 certain offenses the tribe has the right
3 to do a waiver for tribal citizens. In
4 those cases they can waive certain
5 offenses, obviously a felony can't.
6 There's some things that they can never
7 be licensed for. There are some things
8 that they can be licensed for and what do
9 is we hold a hearing for those
10 individuals before we notify NIGC because
11 our Commission can state that we're not
12 going to license these individuals based
13 on their criminal history, or something
14 from their background.

15 I guess my question would be with
16 the situation that we have built in we've
17 already done a hearing and the Commission
18 has determined that they are licensable.
19 Would we still be required to do another
20 hearing if NIGC has an objection?

21 CHAIRWOMAN: Under our regulations
22 yes. If they have been licensed already
23 they need to suspend the license
24 (indiscernible). But you all have the
25 ultimate say in regard to license.

1 UNIDENTIFIED MALE SPEAKER: Well
2 that's kind of why I was asking that
3 question. It's primarily just for tribal
4 citizens, not for non-tribal citizen
5 (indiscernible). They've already gone
6 through -- held their hearing to
7 determine is the individual suitable, and
8 the language in the compact is are they
9 likely to reoffend and if the Commission
10 makes that determination as to whether or
11 not they feel they're likely to reoffend,
12 when we do submit our NOR, we do advise
13 in there that they were initially denied,
14 but there was a hearing held and kind of
15 state the process so that job staff --
16 that we've done our due diligence on our
17 own.

18 CHAIRWOMAN: And that may be -- that
19 sounds like a good process because you're
20 getting ahead of what could potentially
21 be an objection, and that may allow John
22 and others to be able to reconsider an
23 objection if you've already dealt with it
24 through process.

25 UNIDENTIFIED MALE SPEAKER 1: That's

1 exactly what would happen. We ask if you
2 issue a waiver for something that you put
3 that notice in NOR because that which is
4 objectionable to me, if you've already
5 addressed it, a lot of times that's my
6 only concern, that you're aware of it,
7 that you have seen what the problem is.
8 So I'm sure that's exactly correct.

9 CHAIRWOMAN: Again, this is for key
10 employees and primary management
11 officials. And you know there's
12 definitions for that. It does not
13 necessary your maintenance people, just
14 certain employees.

15 Part 571 monitoring and
16 investigations, the Notice of Proposed
17 Rule, this just deals with the conclusion
18 of an investigation, some formal process
19 that will advise the tribe that an
20 investigation has concluded.

21 Authorized NIGC staff may advise
22 party by letter that the investigation
23 has been completed, and that that
24 notification is not claiming that no
25 violation of IGRA or the NIGC regulation

1 or that it proved perhaps gaming
2 ordinance occurred. It doesn't preclude
3 necessarily the Chair's authority to act
4 in the future.

5 But the reason this came up, we had
6 heard from many tribes that there was an
7 investigation that was taking place and
8 had happened over a certain amount of
9 time in the past, but they had never
10 heard what the outcome was. And to the
11 tribe it seemed like a hammer that was
12 always ready to fall. They had no idea
13 what had come of the investigation, what
14 they were supposed to be doing, and it
15 sort of left them in limbo.

16 And so we -- you know, that was
17 something that we had heard from tribes
18 early on, and just like on the frontend
19 of a potential enforcement action where
20 we go through the letter of concern and
21 notice of non-compliance; there should be
22 something at the tail end that says okay,
23 we're closing out this investigation.
24 And it helps the tribe move on but also
25 in what's in the proposed rule preserves

1 the authority of the Chair to revisit it
2 if it continues to (indiscernible).

3 Again we looked around at other
4 federal regulatory -- civil regulatory
5 agencies that regulated industry and
6 something similar that we saw in other
7 regulatory bodies to let the party know
8 we've closed out this investigation.

9 So this again was published on
10 October 12th, and the comment period
11 closes on December 12th, and you should
12 have this in your packet as well.

13 537, background investigation to
14 persons or entities with a financial
15 interest in, or having management
16 responsibility for a management contract;
17 long title again, has to do with
18 management contracts.

19 In the discussion draft that should
20 be in your packet under 537, right after
21 the section we just went over, the
22 discussion draft states that the Chairman
23 reduce the scope of the background
24 investigation and information to be
25 furnished for any tribe, the tribal-owned

1 entity, national bank, or institutional
2 investor that is federally regulated or
3 is required to undergo a background
4 investigation by a licensor, by a state
5 or tribe, pursuant to a tribal state
6 compact.

7 In effort to not reinvent the
8 wheels, because they are already going
9 through another process that is federally
10 regulated, or through a state compact,
11 this is something that the tribes brought
12 to our attention as well. They're doing
13 it duplicative in some instances, and so
14 we wanted to address it here.

15 It also clarifies there's really
16 just two changes in this particular
17 draft. One is in the frontend, first
18 part of it, including management for both
19 Class II and Class III facilities, hybrid
20 facilities. And the second one is
21 this one here towards the end of the
22 draft.

23 We don't see as many management
24 contracts as we probably did in the early
25 days. But we do still see them.

1 UNIDENTIFIED MALE SPEAKER:

2 (indiscernible)

3 CHAIRWOMAN: Bear with me, I lost
4 connectivity.

5 We also have in the packet a Notice
6 of No Action. Initially when we started
7 the Notice of Inquiry last year, we
8 talked about collateral agreements,
9 should we consider, how would we
10 consider, what is a collateral agreement
11 for management contracts. We talked
12 about it in the Notice of Inquiry. We
13 talked about it over the past six months
14 during these consultations.

15 We also discussed the definition of
16 net revenues, and in response to what
17 we've heard from tribes during this past
18 year, primarily these last six months,
19 we've decided to take no action on the
20 discussion items on collateral
21 agreements, or the definition of net
22 revenues. We think the definition of net
23 revenues is (indiscernible) and it's very
24 specific, so we don't want to modify that
25 because we don't think we can.

1 So there is a Notice of Proposed
2 Rule in here that states that we're not
3 going to take action on these two items.
4 These are now off of our slate of things
5 to do in terms of reviewing regulations.

6 And again, that was published on
7 October 12th with a comment period on
8 December 12th, so if you don't believe
9 that we should not take action on those,
10 or if you have comments about the no
11 action process, we certainly can provide
12 comment on the notice of no action.

13 We have one section left and it's
14 actually -- it's something we can cover
15 before lunch. Would the group like to
16 talk about self regulation? We do have a
17 discussion draft out right now that
18 changes the self-regulation regulation.
19 I'm not stuttering, it's actually the
20 self-regulation regulation for Class II,
21 and we could talk about sole-proprietary
22 interest before the lunch break if a
23 group of you so desire. Okay.

24 UNIDENTIFIED MALE SPEAKER 2: We've
25 got little bingo. It's not a big bingo

1 like you see at one of these larger
2 casinos. We're just community bingos.
3 One of our attorneys says that we -- the
4 attorney's opinion that bingo callers
5 have to be licensed and to keep the guys
6 off the street that come in. It's just
7 charitable bingos. We disagree with our
8 attorney.

9 CHAIRWOMAN: Is this your own
10 facility?

11 UNIDENTIFIED MALE SPEAKER 2: No.

12 CHAIRWOMAN: Okay -- these are --

13 UNIDENTIFIED MALE SPEAKER 2: It's a
14 community facility out across the
15 reservation.

16 CHAIRWOMAN: Off the reservation?

17 UNIDENTIFIED MALE SPEAKER 2: No, on
18 the reservation, but we've got a large
19 reservation, they have little community
20 bingos. And it's more of a hassle to try
21 even to understand where does the bingo
22 happen. Then trying to regulate the
23 bingo caller -- some are prize bingos and
24 some are bingos for money. More than one
25 of them are charitable fundraiser bingos

1 and we don't think that we need to do
 2 that. We say why aren't DAVs or Knights
 3 of Columbus have to license their bingo
 4 callers?

5 CHAIRWOMAN: Even though they're
 6 Class II (indiscernible).

7 UNIDENTIFIED MALE SPEAKER 2: Yes,
 8 but these are so small, so minimal.

9 CHAIRWOMAN: Sounds to me like your
 10 attorney is trying to figure out whether
 11 the bingo caller qualifies as a key
 12 employee under our regulations.

13 UNIDENTIFIED MALE SPEAKER 2: It's
 14 not even employees, they're sort of --
 15 some of them are volunteers.

16 CHAIRWOMAN: Well then we can
 17 certainly talk about this with you
 18 specifically offline so we could get some
 19 more detail. It sounds very specific to
 20 your situation.

21 UNIDENTIFIED MALE SPEAKER 2: Right,
 22 my gaming commissioner (indiscernible),
 23 and we can follow up on that.

24 CHAIRWOMAN: Okay, we certainly can
 25 chat with about that and get more

1 information on what the situation is and
2 what would or wouldn't be required by us.

3 UNIDENTIFIED MALE SPEAKER 2: We
4 think this is going a little too far
5 regulating on the little bingos.

6 CHAIRWOMAN: Okay.

7 UNIDENTIFIED MALE SPEAKER 3: Just a
8 couple of words to clarify what he's
9 talking about. I know under -- being a
10 bingo caller is one of the key employees,
11 but this is talking about charitable
12 bingos. We have some bingos out there,
13 like St. Agnes Bingo (indiscernible)
14 they'd have maybe once a month, twice a
15 month private bingos and stuff. And
16 their attorneys say no, we have to start
17 regulating them and they have to start
18 being licensed, background, and then
19 seventy percent has to come through your
20 tribe. It's a bit extreme.

21 I'm telling these people who are
22 calling me (ph.) Fourth of July, make
23 about seven thousand a year to help with
24 the pow-wow. (indiscernible) figure
25 percent to the tribe, following the

1 regulation, it's not that much money to
2 operate on. So it's a question about
3 charitable bingo.

4 CHAIRWOMAN: We can get you during
5 the break and if it's not a discussion
6 we're able to finish today or if we want
7 more information we can contact you
8 directly and get more information about
9 what's happening out there.

10 So if everybody's up for talking
11 about self regulation, we can do that.
12 There is a draft -- I think there's two
13 versions of the same draft in here in two
14 different forms. And they're the last
15 section that has the red -- the red ink
16 before the last Federal Register notice
17 that's in here.

18 You'll see two copies. One copy has
19 the deletions in the margins and the
20 second copy has the deletions as strike-
21 throughs. Whichever is easier to read
22 for you, there are two versions of the
23 same draft discussion here.

24 So as part of the Notice of Inquiry
25 that we did last year, we asked whether

1 the Commission should review the Class II
2 self regulation certification process.
3 The comments that we received, some of
4 the comments we received said it was an
5 administrative -- that the administrative
6 burden of becoming certified as a Class
7 II self-regulatory body outweighed the
8 benefits that were obtained, the decrease
9 of the fees.

10 The submission requirements we
11 duplicative and they were burdensome.
12 The (indiscernible) and annual reporting
13 requirement undermine the purpose of the
14 certification. There was a lot of
15 information that was being asked, not
16 just of the regulatory body but also the
17 operations.

18 We also though heard from some
19 tribes. We have two tribes -- there's
20 technically three tribes that are self-
21 regulatory -- self-regulation tribes, one
22 by statute, which is Choctaw. And the
23 other two are Menominee (ph.) and Grand
24 Lot (ph.) so we have three tribes that
25 have a certification for self reg.

1 Now one of these tribes suggests
2 that we maintain high standards for when
3 we review the self regulation, and self
4 regulation even though the benefits don't
5 really outweigh the process -- or the
6 burden in the process, we don't
7 (indiscernible) self-regulated is a
8 hallmark of tribal sovereignty.

9 In the discussion (indiscernible) we
10 attempted to shift the focus from the
11 gaming operation to the Tribal Gaming
12 Regulatory Authority because that's who's
13 getting the certification. The tribe is
14 getting the certification stating their
15 regulatory body is in a position to
16 regulate itself by meeting certain
17 criteria that a regulatory body should
18 meet.

19 We attempt to reduce the submission
20 of duplicative information and make this
21 certification accessible to all tribes.
22 I want to clarify this is for Class II
23 only. It's not for Class III, that would
24 be something that our -- under the
25 statute that we could achieve, but it is

1 only for Class II. And also Class II are
2 hybrid facilities.

3 Actually Grand Ron (ph.) is a hybrid
4 facility and they still self regulate for
5 Class II their other facilities that had
6 standalone Class II operations that are
7 seeking to become self regulated for that
8 standalone Class II facility.

9 UNIDENTIFIED MALE SPEAKER: That was
10 going to be my question. We are
11 primarily Class III, possibly
12 (indiscernible) Class II, we're already
13 primarily regulating ourselves as it is
14 in that we have to apply for a
15 certificate of self regulation for the
16 Class II machines.

17 CHAIRWOMAN: Yeah, if you wanted to
18 do Class II, you would still do Class II
19 certification, self-reg certification,
20 you would have to go through this process
21 for Class II, and just for your Class II
22 only.

23 I think that it's possible. I think
24 Grand Ron, they've got a hybrid facility
25 so I'm not sure what their exercise is to

1 delineate between their Class II and
2 Class III revenues in games. It's
3 possible.

4 UNIDENTIFIED MALE SPEAKER: Okay.

5 PRESIDENT STEELE: (indiscernible)
6 what you referred to as a hybrid, that's
7 a Class II (indiscernible). Like I say,
8 we may -- we don't know if we're going to
9 go Class II in Martin (ph.), our dealings
10 with the governor, we'll be putting Class
11 III in there. But although we'll have
12 two sites it'll just be one operation.
13 The general manager will operate our main
14 site which is very, very, very small in
15 your eyes. But we may have a smaller
16 one, the same umbrella, the same
17 management, the same --

18 CHAIRWOMAN: I think that's
19 something that we've considered in the
20 draft, how we're looking more I think at
21 the Class II portion rather than the
22 number of facilities. Just the Class II,
23 regardless of the --

24 PRESIDENT STEELE: We may get Class
25 III machines from the governor. He's a

1 new governor and we're expecting a
2 different relationship with the state,
3 and so it may be Class III also.

4 CHAIRWOMAN: Again, certification
5 won't cover Class III but it would cover
6 Class II.

7 So in going through the draft, the
8 submission requirements under 518.3,
9 we're requesting history of the issuing
10 operations and it addresses that. The
11 TGRA's organizational chart, employment
12 criteria for TGRA, these are things that
13 you need to submit to us, not that we're
14 telling you what they should be, but you
15 need to submit them to us. TGRA funding
16 description, how is the TGRA funded; list
17 the current TGRA regulators; description
18 of the gaming operation accounting
19 system; list of the internal controls;
20 description of the record-keeping system
21 for investigations, (indiscernible)
22 actions, and prosecution. Again, just a
23 description of those systems; a copy of
24 the facility license the tribe has issued
25 to the facility; any additional tribal

1 gaming regulations outside of the
2 internal controls.

3 There's criteria that must be met.
4 The tribe -- and this is straight from
5 the Act if I'm not mistaken -- the tribe
6 maintains the effective and honest
7 accounting of revenues; has a reputation
8 for safe, fair, and honest operations;
9 fiscally and economically sound basis;
10 and operation generally free of criminal
11 and dishonest activity.

12 So we will want to look at the
13 funding source of the gaming regulatory
14 body over time, so that we can see that
15 it is maintained and can be kept
16 substantially, and looking at sort of the
17 history of the operation and the
18 regulatory body and how it's been
19 conducting itself. And that Class II has
20 been conducted in compliance with federal
21 or tribal laws and regulations.

22 In terms of the adequate systems,
23 we're talking about -- we're talking
24 about accounting of revenues;
25 investigation; licensing and monitoring

1 of gaming employees; investigation
2 enforcement and prosecution of
3 violations.

4 And the tribe -- further in that
5 section -- they illustrate that they've
6 met the criteria by addressing factors
7 like having minimal internal controls as
8 stringent and as you see that they're
9 adequate systems for accounting of gaming
10 revenues; adequate dispute resolution and
11 process for gaming operation employees
12 and customers; monitors in compliance
13 with (indiscernible); and regulations
14 including (indiscernible) the gaming
15 regulatory body has done this; monitor's
16 effectiveness of the revenue accounting
17 system.

18 It's not just having the system, but
19 how the body, the regulatory body is
20 monitoring those systems audits Class II
21 gaming activities the gaming regulatory
22 body does and that the gaming regulatory
23 body reviews accounting information from
24 the operation.

25 So again, the emphasis here for this

1 section is on the gaming regulatory body,
2 the TGRA.

3 Further, that the tribal gaming
4 regulatory body maintains access to all
5 records to gaming operation in Class II
6 gaming activity; adequate investigating
7 licensing and monitoring of gaming
8 employees; and establishes standards for
9 vendors. Something we're looking for
10 from the gaming regulatory body itself.

11 That the gaming regulatory body
12 establishes and proposes Class II game
13 rules; maintains systems for
14 investigations; takes appropriate
15 enforcement action and takes testimony
16 and conducts hearings.

17 Again, as I mentioned, we want to
18 make sure that the tribe adequately,
19 permanently funds the tribal regulatory
20 body. It's not something that can come
21 and go, that it must be maintained
22 somehow financially.

23 Again, going back to what the tribe
24 must demonstrate, not specifically the
25 gaming regulatory body, that the

1 operation is financially stable and we
2 certainly want to hear your comments on
3 what does that mean, what does
4 financially stable mean; has adopted a
5 system for adequate prosecution of gaming
6 violations and that may be through their
7 gaming ordinance or to their regulatory
8 body; demonstrates that operations
9 conducted in a manner that protects the
10 environment, public, healthy, and safety.
11 Again, that may be something that's
12 evident in your license -- in your
13 facility licensing.

14 So that's the criteria, submission
15 requirements, and how a tribe might be
16 able to achieve -- illustrate that they
17 can comply.

18 The next section talks about how we
19 would review the petition. The NIGC has
20 an office of self regulation and it would
21 make initial determination in 120 days.
22 The office of self regulation would be
23 material in gathering information from
24 the tribe, and right now we have one
25 commissioner that is assigned to the

1 office of self regulation, and right now
2 that is our Vice-Chairwoman Steffani
3 Cochran.

4 Office of self regulation would
5 report its findings and the full
6 Commission actually is the body that
7 would make the determination on whether
8 it would be issued for self regulation or
9 notify the tribe that it doesn't meet
10 self regulation.

11 If the tribe doesn't meet the
12 requirements or the criteria it may
13 respond to the report and include
14 additional information to try to meet
15 criteria. It can request a hearing. The
16 office of self regulation would issue a
17 decision on that petition and in a
18 decision to deny its appeal to the full
19 Commission.

20 So that's the process from NIGC to
21 decide, once we start getting information
22 for a petition to become self regulated
23 or get a self-regulation certificate.

24 So not just what is required to be
25 submitted and how a tribe might meet that

1 criteria and what the functions of NIGC
2 would be once we receive the information,
3 there's also annual reporting
4 requirements that need to be met every
5 year by a self-regulated tribe.

6 Again, we have three tribes, two of
7 which are reporting to us annually and
8 what we would look for in this draft is
9 an independent auditor, which everyone
10 does already. And complete resume for
11 all PMOs, primary management officials
12 and key employees hired and licensed by
13 the tribe after receiving certificate of
14 self regulation.

15 That seems sort of cumbersome, but
16 it's straight out of the Act. Right now
17 the current regulation does not specify
18 PMOs or key employees. It only says all
19 employees. So the tribes, the two tribes
20 that are doing their annual report have
21 quite a bit to do on this section, which
22 they report every year. And so we
23 interpret -- that could be overly
24 burdensome when you're getting asked the
25 resume of your maintenance worker or your

1 line cook. That is an employee of the
 2 casino but it's not necessarily maybe who
 3 we're looking for.

4 So we've modified this to be all
 5 PMOs and key employees, information that
 6 we should've had anyway. So that is a
 7 change from the current regulations.

8 And the tribe has continuing duty to
 9 report to the Commission changes in its
 10 circumstances that are material to the
 11 approval of the self-regulation
 12 certificate. So anything that has
 13 changed, maybe their organizational
 14 structure, the funding sources, or
 15 systems controls have changed, been
 16 updated and that the tribe has to do to
 17 inform the Commission that something in
 18 the criteria has changed (indiscernible).

19 So also from the Act, it
 20 specifically says that any tribe that
 21 obtains a self-regulation certificate,
 22 this is automatically followed by the
 23 NIGC's limited powers for that self-
 24 regulated tribe.

25 So what would be limited for the

1 NIGC are the following: monitoring Class
2 II gaming, that would then be the
3 responsibility of the tribe who is self
4 regulated; conduct examination where
5 solely Class II activities are conducted,
6 so that would be taken on by the tribal
7 gaming regulatory body that -- the tribe
8 that is self regulated; (indiscernible)
9 background investigations, we would not
10 do that, the tribe would do that; access
11 and inspection of records in respect to
12 Class II gross gaming revenues. Again
13 this is straight from the Act.

14 The current regulation actually
15 doesn't state this. The current
16 regulation says the NIGC will not limit
17 this regulation of these things. So we
18 are abiding by the Act here because our
19 belief is that the purpose of self
20 regulation is for the tribe to step in
21 where the NIGC wouldn't and act per the
22 language of the Act clarifies this. So
23 those would be the powers of the NIGC
24 that would be limited and transferred
25 over to the tribe.

1 More on this section, Commission
2 retains all the powers over Class II
3 gaming activities of the tribe and then
4 Commission retains the power to
5 investigate and bring for actions for
6 violations to IGRA and NIGC regulations
7 or the tribal gaming ordinance. Those
8 would be powers that the NIGC would
9 retain.

10 We have a draft out currently; again
11 you have two versions depending on which
12 way you prefer to view this. And even
13 though the comment period has closed, we
14 will continue to hear from tribes and how
15 -- about questions on this and comments,
16 any suggestions, how we can change or
17 improve the draft that we put forward.

18 I'm coming right to you, President
19 Steele.

20 PRESIDENT STEELE: Yes, I'd
21 mentioned that we were possibly moving
22 back to Class II, and our Class II gaming
23 would be very, very small. And we would
24 probably use the same Commission
25 (indiscernible) this regulatory body And

1 seeing as our little bitty Class III, to
2 incorporate Class II in there it's going
3 to have to do a whole new separate --
4 have two gaming commissions and
5 regulating self -- I mean the self-
6 regulating of Class II in addition to
7 Class III. That would be very, not only
8 burdensome, but I think it would be more
9 cost effective if we could do it together
10 in one body.

11 CHAIRWOMAN: That's certainly the
12 prerogative of the tribe to determine how
13 it wants to structure its gaming
14 ordinances, its gaming laws, and how they
15 want to structure their Commission, as
16 long as the requirement under IGRA are
17 met. Are there tribes that have only one
18 Commission? I've not heard of that so
19 that would be a hornet's nest to me --
20 personally -- waiting to happen.

21 But there's -- that's certainly the
22 prerogative of the tribe to decide how
23 they want to structure their Commission,
24 as long as your ordinance specifies,
25 according to -- you know, is compliant

1 with the Act and our regulations,
2 (indiscernible) gaming ordinance so that
3 you can structure your Commission how you
4 see best for your tribe.

5 The last thing that we can talk
6 about before we go to lunch today is sole
7 proprietary interests. There's
8 (indiscernible) to actions.

9 UNIDENTIFIED FEMALE SPEAKER 1: These
10 are all through legal opinions issued by
11 the general counsel.

12 CHAIRWOMAN: Okay. So the Notice of
13 Inquiry asked whether the Commission
14 should consider a regulation that defines
15 sole proprietary interest and provide a
16 process by which the tribe may request
17 review of a sole proprietary interest
18 matter.

19 We received some comments that --
20 both sides of the fence here -- that the
21 Commission should promulgate the
22 regulations that would provide review
23 only at the tribe's request. The
24 percentages contained in IGRA define what
25 the percentages -- what percentage might

1 violate the Act's sole proprietary
2 interest, it was between thirty and forty
3 percent in some instances.

4 But we also received some other
5 comments that if sole proprietary
6 interest is defined than so should
7 primary beneficiary because
8 (indiscernible) the primary beneficiary
9 of its game revenues.

10 A clear definition of sole
11 proprietary interest might provide
12 stability and access of funding so what
13 happens now is we (indiscernible)
14 contracts or any collateral agreements
15 that go with those. And thus we have a
16 number of legal opinions, not necessarily
17 defining agency action about the tribe's
18 interest in contracts. It's not clear to
19 tribes and some tribes have said, hey, if
20 you define this, it'll be more certain.
21 It'll be more certain for the tribe,
22 it'll be more certain for investors.

23 But then on the other hand, we heard
24 some comments that said it might limit
25 access to capital, it might chill

1 financing. Determination of sole
2 proprietary interest should belong to the
3 courts.

4 So far what's happened is we have
5 probably ninety-one opinions, it was a
6 number of opinions. Many of those have
7 ramped up over the past two years because
8 of some court rulings, and very
9 individually based on a tribe, its
10 circumstances, and what the agreements
11 say, plus other factors that are not
12 necessarily consistent from one tribe to
13 another.

14 So we're at a point where we're just
15 talking about this. We don't have a
16 draft ready. I know that it continues to
17 be an issue. We've had some tribes come
18 to us and say hey, we think there might
19 be a sole proprietary interest violation
20 here and we (indiscernible) the matter
21 and (indiscernible) NOV's recently that
22 indicate that the tribe's -- there's been
23 some violation of what we interpret the
24 sole proprietary interest to be for that
25 tribe.

1 We've had other tribes who want us
2 to stay out of it. And we would like to
3 hear from tribes on whether this would be
4 something that is even manageable because
5 it is so specific to any particular set
6 of circumstances, details that may not be
7 consistent. What we've heard is it might
8 be too much to try to think of everything
9 that could affect a tribe's position in
10 an agreement that would be really
11 difficult to name everything, especially
12 as some of these management
13 (indiscernible) and financing deals
14 become more and more complex.

15 And so if we couldn't name
16 everything specifically, could we
17 possibly name things narrowly, or
18 generally, on what we look for so that
19 there's some guidelines? Because we do
20 have tribes and investors and others
21 involved with tribes looking to us for
22 some guidance.

23 And it's -- right now it's case by
24 case where we have a tribe come to us
25 saying can you look at this for us and

1 make sure that we're not violating sole
2 proprietary interest. Or they're coming
3 in after the fact, which is the worst of
4 the two scenarios, that if there had been
5 some general guideposts that maybe that
6 might have been averted.

7 So we would like to hear tribes'
8 take on this so there is a clear
9 difference between some tribes who want
10 some guidance, and some tribes who don't
11 want guidance, and want to make
12 statements of individual, case-by-case
13 review.

14 MS. THOMAS: Thelma Thomas, Santee
15 Sioux Nation, could you please give us a
16 couple of examples of what you were just
17 talking about in terms of management
18 contracts but also financing contracts?

19 UNIDENTIFIED FEMALE SPEAKER 1:
20 Sure. If you go to our website and you
21 can look -- there's a tab called
22 enforcement actions. And so there are
23 two examples on our website that talk
24 about sole proprietary interest.

25 Congress actually in the statute

1 says that tribes need to have sole
2 proprietary interest in their gaming
3 activity and responsibility over that
4 gaming activity. So the question is what
5 does that mean and should the NIGC
6 interpret that in a regulation, and
7 recently an NOV was issued against a
8 tribe for a sole proprietary interest
9 violation because an entity, a city
10 actually had pull over certain aspects of
11 the tribe's regulatory body, over changes
12 to gaming ordinance and tribe -- the city
13 got a certain percentage, a large
14 percentage of the revenue for a
15 substantial term.

16 And so those are the elements that
17 we have looked at to try to determine
18 whether someone other than the tribe had
19 (indiscernible) proprietary interest in
20 the tribe's gaming activity

21 MS. THOMAS: That helps a little bit
22 but what about the new facility that's
23 going to be constructed when you have a
24 financier and in those agreements terms
25 sole proprietary interest? Have you run

1 across problems in that area at all and
2 maybe there was a (indiscernible)?

3 UNIDENTIFIED FEMALE SPEAKER 1: We
4 have a bulletin, I think it's 93-3 that
5 talks about contracts and trying to
6 figure out whether a contract is a
7 management contract or whether it has
8 sole proprietary interest.

9 And one of the things that the rules
10 have recommended that you send the
11 contract to the Office of General Counsel
12 at the NIGC and let them take a look at
13 it, to give you our thoughts, a legal
14 opinion about whether there are issues.

15 Under the statute, Congress set
16 forth the amount of revenue that it
17 thought appropriate for management
18 contractor but it didn't say that for a
19 developer. And so the elements that I
20 talked about previously in my prior
21 example are things that we look at when
22 we look at those types of financing
23 developmental contracts.

24 MR. THOMAS: Thank you.

25 CHAIRWOMAN: So we looked before and

1 after but it's all contingent on the
2 tribe sending us the material. The after
3 usually is a result of not seeing, we
4 didn't see it beforehand. We didn't see
5 the contract or the terms beforehand or
6 there were some amendments that we didn't
7 know about. But the before is before you
8 enter into the agreements.

9 We encourage tribes to do that
10 anyway, so that we don't get too "oops"
11 later, or that your tribe doesn't. And
12 so it can be a challenge to define
13 because some of these agreements have
14 become very complex and creative to say
15 the least.

16 So we would be happy to hear any
17 more comments on their experiences with
18 us, with their contracts, what your
19 position in your tribe would be on
20 whether we should move forward with the
21 regulation that would generally or more
22 specifically define what this means.

23 UNIDENTIFIED MALE SPEAKER 3: We
24 were one of the first tribes that went
25 through a bond renegotiation due to the

1 debt of building a new property. And
2 that was one of the things that the tribe
3 did was submit the bond agreements to the
4 NIGC for review, make sure that they
5 didn't qualify as management agreement.
6 We think that ability to be able to do
7 that is an excellent resource. That was
8 one reason we submitted it.

9 CHAIRWOMAN: In terms of your
10 financing, I want to make clear and I say
11 this any time I have the opportunity to
12 speak to tribes, whether it's in a
13 consultation or if it's a panel or a
14 speech. Most times it's the bank that
15 wants it submitted so that there is some
16 opinion from the NIGC's General Counsel's
17 office that clarifies whether or not that
18 financial instrument has management
19 provisions in it. That's what a recent
20 court case has been all about and it's
21 still in the appeal process.

22 So we are encouraging tribes that if
23 their bank is requiring -- most of the
24 banks now want this, or their lending
25 institutions, or whatever bank it is that

1 the tribe is seeking to finance their
2 endeavors. Most of them know this now
3 and so they are submitting their
4 financial agreements to us in advance to
5 give a legal opinion from our general
6 counsel's office with regard to whether
7 there are management provisions in that
8 instrument or not, to avoid future
9 problems like we're seeing in the courts
10 now.

11 So again I want to emphasize that's
12 another requirement for us, regulation
13 for us. It is a desire generally from a
14 bank to make sure that their deal goes
15 through. It's clean of management
16 provisions and they don't see something -
17 - they don't experience something that
18 has already been experienced already.

19 So we are cooperating and
20 cooperating as quickly as we can when you
21 submit your financial documents to us.
22 We just ask that you do so in as much
23 time in advance as you can. We ask for
24 four to six weeks. We know that terms
25 can change very quickly, percentages, and

1 because we have so many of these coming
2 in and there's only so many of us, we ask
3 for submissions even if you haven't come
4 to an agreement.

5 We've had tribes who are submitting
6 portions of their documents to us as they
7 make agreements with the bank and
8 (indiscernible) that go so that when the
9 whole lot then comes to us we can review
10 a little quicker, providing that the
11 terms weren't changed the last time that
12 we saw it.

13 But please do submit those to us in
14 advance, four to six weeks if you can,
15 because the turnaround time to go through
16 the mounds, especially the bond, it takes
17 quite a bit of time to go through --
18 especially when I said, instruments have
19 become more and more complex.

20 So always happy to help in those
21 instances so we (indiscernible) your
22 problem. I'm glad to hear that it worked
23 out for you. We encourage everybody else
24 to utilize our services.

25 We've covered the whole day today

1 and it's only lunch, so I did want to let
2 President Steele, one more time.

3 PRESIDENT STEELE: Yeah, I
4 (indiscernible), the last time you were
5 here I opposed regulating Class II, but
6 some areas want regulations. Your
7 innovative approach to granting of self-
8 regulatory authority I think is really
9 good. I can see how tribes are wanting
10 to self regulate.

11 And so folks seem to get a lot of
12 confidence you and being innovative and
13 in doing this because the size of our
14 operations, the amount of technology and
15 regulations that each tribe has, I think
16 we should take that into consideration,
17 thank you.

18 CHAIRWOMAN: Thank you President
19 Steele for those really kind words. My
20 people would say my hand's up to you,
21 thank you.

22 I fortunately, and many of us have a
23 background in working for either our
24 tribes or tribal operations, and come
25 from our reservations. One size does not

1 always fit all and for self regulation
2 it's one of the first things we heard,
3 even prior to coming into office. It was
4 the topic of conversation for a number of
5 years prior to my arrival and the other
6 commissioners' arrival. That just out of
7 the exercise of sovereignty many tribes
8 wanted to become self regulated, just
9 because it was the muscle they had to
10 demonstrate their sovereignty.

11 And we just are looking at this
12 process for self regulation to make it
13 clearer and clearer, more transparent,
14 and not quite so burdensome,
15 unnecessarily burdensome. So thank you.

16 UNIDENTIFIED MALE SPEAKER 4: I just
17 had a quick question or comment. I look
18 at the NIGC as an excellent resource and
19 John will tell you I'm on the phone with
20 his staff, him and his staff on a fairly
21 regular basis.

22 We just had there some of the staff
23 over to our tribe to do some training for
24 new tribe council members. And for us
25 it's a great opportunity to get everybody

1 in the same room and hold discussions and
2 put it on the table.

3 One of the comments that was made
4 during this training was that the NIGC is
5 possibly looking at pulling back from the
6 Class III mix completely, and taking a
7 step back from dealing with Class III.
8 And we are a Class III operation.

9 One of the comments, and I know
10 we're not really discussing Class III
11 here but the Class III mix; but one of
12 the questions from one of our tribal
13 council members during this meeting is if
14 the NIGC is pulling back from the Class
15 III mix, does that means that we will
16 also be seeing a reduction in our fees in
17 regard to Class III?

18 I feel obligated to pass that
19 question on from our tribal council
20 members but also want to state that we do
21 see NIGC as an excellent resource. We
22 just went through our tribal mix again
23 and took a look at all the proposed
24 changes from 2010 that were posted on the
25 website. And many of the changes there

1 are things that we're already doing, we
2 did incorporate many of those into our
3 (indiscernible).

4 And having that ability to see
5 something that's updated on a fairly
6 regular basis as something that will
7 benefit us, is an excellent resource for
8 us. So I just wanted to make sure I put
9 that out there; that is something that we
10 do still use, NIGC as a resource.

11 (indiscernible)

12 I was told a long time ago was don't
13 be afraid to use your resources. If you
14 don't know the answer somebody else may.
15 Thank you.

16 CHAIRWOMAN: Thank you very much. I
17 appreciate that attitude because in the
18 long run, there's three regulatory bodies
19 that are overseeing (indiscernible) and
20 the tribes are the ones who are on the
21 ground twenty-four hours a day, seven
22 days a week. But that doesn't mean that
23 there aren't other resources out there,
24 NIGC being one of them, that we should be
25 able to utilize in a way that's more

1 partnership providing opportunities to
2 train, give technical assistance, provide
3 guidance, and other ways. And I'm glad
4 to hear that you see us as a resource.

5 We have not yet determined what
6 we're going to do with Class III because
7 tribes are on different -- how Class III
8 works for tribes in terms of a minimum
9 internal control standards is different
10 throughout the country, so that Colorado
11 River Indian Tribe decision basically
12 said the NIGC cannot promulgate or
13 enforce minimal internal control
14 standards.

15 So it presents us with a bit of a
16 problem. There are regulations on the
17 book currently, published in 2004, a few
18 years ago. They're on the books. The
19 court says you can't promulgate them and
20 you can't enforce them, however; there
21 are tribes who have the NIGC's Class III
22 minimal control and control standards in
23 their compacts. They cite NIGC, and
24 they're controls that are in place.

25 There are tribes that have in their

1 game ordinance, although it's not in
2 their compact, have given over authority
3 of Class III enforcement to the NIGC and
4 abide by the NIGC's Class III minimal
5 control standards that are currently on
6 the books.

7 On the other hand, there's a number
8 of tribes that have negotiated Class III
9 minimal control standards through the
10 state. They already have it all sorted
11 out and they don't need NIGC minimal
12 control standards. They actually have
13 more stringent, in some cases they have
14 more stringent controls, Class III
15 controls in their compacts, or they have
16 them in their ordinances.

17 So tribes are on different sides of
18 this and we have to weigh out how we will
19 proceed because again what we want is to
20 make sure that tribes have controls in
21 place that safeguards their operations.
22 And we don't want to upset apple carts
23 because it seems that most of those
24 mechanisms are probably working for the
25 tribes, whatever that framework is for

1 them.

2 Now in terms of fees, we do do some
3 regulation of Class III in some
4 circumstances. I don't know if we could
5 address that question now, it depends on
6 what route we take to move forward in the
7 future, again the number of different
8 positions that exist in Indian country.

9 But we do know for sure that we
10 don't want to upset structures that are
11 already working for tribes, whatever
12 those might be, and coming up with some
13 creative or innovative solution so that
14 tribes can continue to have
15 (indiscernible) in place that safeguard
16 their operations.

17 So all questions that are yet to be
18 answered, and we are going to be very
19 deliberative and thoughtful about this as
20 we consider what our options are moving
21 forward.

22 Thank you. I think that's it for
23 the end. I'm not sure -- President
24 Steele if -- do you want to add anything
25 before we break for lunch, and if anyone

1 is not going to come back after lunch,
2 we'll be here after lunch in case anyone
3 new shows up. Be we understand if
4 everyone -- President Steele, if you have
5 any closing remarks that you wanted to
6 make, on behalf of your nation.

7 PRESIDENT STEELE: I'm just
8 satisfied, especially with the self
9 regulatory portion of it. I just wanted
10 to (indiscernible) that were different
11 and to paint the whole United States with
12 an Indian brush and say this applies to
13 all of you.

14 I see you got that in hand. You're
15 coming across different than the last
16 meeting of the Commission and telling us
17 what it was going to do. I thank you.

18 CHAIRWOMAN: Well thank you and I
19 want to thank everybody for attending
20 today and in case you don't come back
21 after lunch, we'll be here in case
22 somebody new shows up and more than happy
23 to go through this all over again if
24 anyone else new comes in or if you have
25 any questions that you weren't able to

1 ask, or were shy. We'll come back after
2 lunch. We'll be here at 1:30.
3 Otherwise, if you all must travel a
4 distance, I wish you safe travels on your
5 journey home. So thank you for
6 attending.

7 (Break for lunch at 1:32 p.m.)
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C E R T I F I C A T I O N

I, Tamara Bentzur, hereby certify that the foregoing is a true and correct transcription, to the best of my ability, of the sound recorded proceedings submitted for transcription.

I further certify that I am not employed by nor related to any party to this action.

In witness whereof, I hereby sign this date:
December 8, 2011.

Tamara Bentzur

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