

TRIBAL CONSULTATION  
DRAFT 25 CFR 162 (LEASES AND PERMITS)

held on

Wednesday, April 6, 2011  
8:50 a.m.

at the

Indian Pueblo Cultural Center  
2401 12th Street, N.W.  
Albuquerque, New Mexico 87104

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## I N D E X

	Page
1. Welcome and Introductions	3
2. Overview of Draft 25 CFR 162	3
3. Input and Comments - Tribal Representatives	14
4. Break	55
5. Input and Comments - Tribal Representatives	55
6. Lunch Break	78
7. Input and Comments - Tribal Representatives	80
8. Adjourn	96
9. Reporter's Certificate	97

1 MR. BRYAN NEWLAND: Good morning. I apologize  
2 for running a little late. I'm an Ojibwa. I can't help but  
3 get caught behind. My name is Bryan Newland. I'm from the  
4 Department of Interior, Assistant Secretary's Office. I  
5 just want to thank you all for coming out so early this  
6 morning to talk about these exciting draft regulations. I  
7 can't think of a better way to start the day.

8 I want to, really briefly, let you know that  
9 Principal Deputy Assistant Secretary Del Laverdue will be  
10 joining us. We're dealing with a couple of things back in  
11 Washington. I think everybody is seeing the news, what's  
12 going on with the budget. He's wrapping that up and will be  
13 joining us shortly.

14 I want to thank our bureau staff and  
15 acknowledge some folks here in the room: Liz Appel and  
16 Michele Singer who were instrumental in putting these draft  
17 regulations together. I think we have Omar Bradley from the  
18 Navajo region. We have Roger Knight from the Office of  
19 Indian Energy and Economic Development. And any other  
20 bureau staff here, I would appreciate if you could raise  
21 your hand at this time so we all know where you're at. All  
22 right. We almost got them outnumbered.

23 I'm going to really quickly run through these  
24 -- an overview of the draft regulations and then we'll turn  
25 it over to you guys for comments and questions. We'll do

1 our best to answer any questions that you have. That's why  
2 we have our bureau staff here.

3 But I want to preface this by saying that  
4 these are draft regulations. They have not been formally  
5 proposed yet. So that makes it really easy for us to  
6 incorporate changes that you guys feel are necessary for us  
7 to make in order to make these better. So this is the last  
8 consultation session before they're formally proposed. We  
9 intend to do some more consultation after that point. We'll  
10 get rolling on these things. All right.

11 Those of you who have read through 172 pages  
12 of the draft regulations and are familiar with the existing  
13 regulations notice some differences probably right off the  
14 bat. The current regulations are broken down into two --  
15 basically two substantive parts. There's the agriculture  
16 leasing regulations and then everything else.

17 The "everything else" is really, we felt,  
18 ill-suited to modern economic development, energy  
19 development and housing development in Indian country. So  
20 what we wanted to do is break it out into specific subparts.  
21 A lot of the terms are redundant. But we wanted to make  
22 sure that everything was self-contained so that when you're  
23 looking at how to do a residential lease on tribal lands,  
24 you're not flipping back and forth. We wanted to make this  
25 more user-friendly.

1           A note about agricultural leases. I know  
2 that's very important, especially out in this part of the  
3 country. We wanted to address those, but the time line that  
4 we're operating under, coming down with -- you know, about a  
5 year -- well, two years left in the first term of this  
6 administration. It's going to take us another year at least  
7 to get these -- you know, to get these rules finalized.

8           We didn't want to give short shrift to the  
9 agricultural leasing regulations. We also wanted to not run  
10 out of time in getting the rest of these regulations  
11 promulgated. So we intend to address those, but we wanted  
12 to focus on the residential, economic development and  
13 renewable part at this time.

14           As I mentioned to you before about how the  
15 regs are broken out -- this has been a work in progress for  
16 the last 18 months, within the department, to put this draft  
17 together. One of the things I wanted to mention about the  
18 wind and solar leasing provisions in the draft regs -- you  
19 know, here it says -- I don't think it -- well .... We have  
20 a new part in here for just wind and solar development on  
21 tribal lands.

22           Within that there's a section for wind and  
23 solar called permits. One of the things that we heard from  
24 Indian country was that, you know, it's problematic to do  
25 this broad environmental scoping for renewable energy

1 development when, you know, tribes or tribal companies are  
2 just doing resource assessments. So you're putting up met  
3 towers or recording data and you have to do environmental  
4 scoping for an entire project when you don't even know if  
5 you're going to go that far.

6 We wanted to include some provisions that  
7 would allow for very narrow scoping just for renewable  
8 energy resource assessments. So that's these wind and solar  
9 resource permits. You notice that I use the word "permit"  
10 there. That's a term that you're not going to see in these  
11 regulations anywhere else. The bureau is getting out of the  
12 business of approving permits.

13 Permits, you know -- for the lawyers in the  
14 room, as you know, permits is not an interest in land. It's  
15 permission to use land. We said, well, nobody's  
16 encumbranced trust lands with a permit. So we want to get  
17 out of that business and just streamline this process.

18 We've heard a lot of feedback about some of  
19 the different provisions in the regulations that folks have  
20 problems with. I want to let you know that we tried to push  
21 this as far as we could, but we do have statutory limits  
22 that we can't change. Congress has to change those,  
23 including terms of leases, some of the consent provisions.

24 We hear your comments and concerns and we'll  
25 continue to hear your comments and concerns on these issues.

1 But I wanted to point out that we're working within the  
2 statutory limits that we have.

3 Here's a time line we're working under. You  
4 see, we're right at the top bullet right now with tribal  
5 consultation. After next week, when we're going to close  
6 the period for written comments, we're going to go to back  
7 to the drawing board, incorporate the changes we can, make  
8 any necessary changes and then we're going to continue the  
9 process of having interdepartmental review where all the  
10 other departments in the federal government get to take a  
11 look and comment on these. We want to get these formally  
12 proposed by August.

13 At that point we'll come back for additional  
14 tribal consultation, go through the formal regulatory  
15 rulemaking process. You see there at the bottom, we want to  
16 get this published as a final rule in the Federal Register  
17 before this time next year. All right.

18 To get into the heart of the draft rule,  
19 here's the quick overview on the general provisions. You  
20 see in there, there's no BIA approval for permits except for  
21 the wind and solar resource permits. Because we do want to  
22 know what's going on out there, there's a provision in there  
23 for recordation of permits at the LTRO.

24 You see some other general provisions. That  
25 last bullet in there I want to draw your attention to that.

1 As part of our trust responsibility, we have to retain the  
2 authority to take emergency action to protect trust lands in  
3 case of emergencies, fires, floodings, what have you.

4 Residential leasing. You notice there's the  
5 consent provisions in direct pay, fair market value and the  
6 assessed value of property. We know that in Indian country  
7 a lot of times tribes want to lease homesites to tribal  
8 members for nominal value, \$1 for 99 years, or folks want to  
9 lease their land to their relatives for nominal value. In  
10 that case, neither party has an interest in collecting the  
11 fair market rent, if you will. So we wanted to simplify  
12 that process and make it easier to accommodate folks who  
13 want to do that.

14 This is one of the big features of the draft  
15 rule, is the time lines. When I was a kid, my parents were  
16 waiting six years to get an approval from the bureau for a  
17 leasehold mortgage so we could move out of our trailer and  
18 into a home. I know there are a lot of stories across  
19 Indian country that are far worse than that.

20 We want to make sure that folks get into their  
21 homes, get on their homesites as quickly as possible. So  
22 the regulations have these provisions in there that require  
23 the bureau to respond -- this is an enforceable time line.  
24 The Bureau has to respond to lease applications within 30  
25 days. Now because this is a trust asset we're talking



1 about, we're still going to require BIA approval for the  
2 first lease out.

3 So if there's -- for some reason there's a  
4 complication, the bureau can request additional time to look  
5 at a lease. But as many of you know, residential leases  
6 really are not that complicated too often. So we wanted to  
7 make sure that, you know, within 30 days we're getting back  
8 to tribes and landowners and allowing folks to get in their  
9 homes on tribal lands.

10 I see it's on this slide. Amendments,  
11 subleases and mortgages. This is another new feature that's  
12 in this draft rule. You heard me mention just a second ago  
13 about -- the "first lease out" means express bureau  
14 approval. When we're talking about subleases, mortgages and  
15 amendments or assignments of those leases, then we're  
16 talking about if the bureau does not respond, that there  
17 will be a deemed approved of those subleases and mortgages.

18 So if that gets buried on somebody's desk and  
19 the bureau doesn't get back to within the time line there,  
20 it's automatically approved for subleases. We have the  
21 compliance and enforcement provisions. We have to continue  
22 to exercise our trust authority to enforce and cancel leases  
23 on trust lands.

24 Business leases. A lot of these provisions  
25 are going to track the residential leasing provisions.

1 There are some differences that I want to draw your  
2 attention to really quickly. There's not going to be any  
3 direct pay for business leases, and the fair market value  
4 provisions -- we know that we're talking in the commercial  
5 context that -- you know, this is profit driven we're now  
6 talking about. So we want to make sure folks are getting  
7 fair market rent for the lease of their lands. You see  
8 right there.

9           Again, the -- you know, the mirror provisions  
10 on BIA approval. The time line is a little longer because  
11 business leasing can be more complex. We see it especially  
12 in this part of the country with a lot of commercial  
13 developments on tribal lands. But the BIA will have 60 days  
14 to respond to the first lease out. If we have to take more  
15 time, we can request an additional 60 days to examine the  
16 lease. That's going to require express BIA approval.

17           But again, as in the residential context with  
18 the amendments, subleases and leasehold mortgages, if the  
19 bureau isn't responding, there's going to be automatic  
20 approval of this. So we're not going to be -- we're trying  
21 to speed up business development on tribal lands, return  
22 control over economic development on tribal lands to tribes  
23 and Indian landowners. We don't want to be a barrier to  
24 that.

25           Again, enforcement provisions similar to what

1 you're seeing in the other subparts. The wind and solar  
2 resource permit and lease. This is brand-new to our  
3 regulations. It's kind of -- we let our staff kind of use  
4 their creativity and go to work and see what they could come  
5 up with. Welcome you guys' feedback on this. We know that  
6 solar development is really big down here. We want to  
7 promote that. So we're really looking for your comments on  
8 how these are going to play in with what you guys are trying  
9 to do down here.

10 As I mentioned before, we have provisions in  
11 there -- I think it's on the next one. The permits for the  
12 resource assessment. There's going to be a three-year term  
13 with a one-year -- one time, three-year renewal. We're  
14 talking about -- we anticipate that there will be  
15 improvements involved with resource assessment. But we're  
16 not talking about putting up a 300 megawatt solar farm here  
17 or 300 megawatt wind farm. We're talking about, you know,  
18 very light equipment that's going to be temporary on trust  
19 lands so that there's no need to do that broad scoping that  
20 I mentioned earlier.

21 Here's the compensation provisions for the  
22 renewable part. See the permits. There's not going to be  
23 an appraisal required, because, again, we're talking  
24 short-term. You see here again. Time lines. BIA is going  
25 to have 20 days to approve permits. We still have the

1 compliance and enforcement provisions consistent with our  
2 trust authority.

3 Here's the WSR leasing that follows the  
4 permits. We have a 25-year period with one-year renewal --  
5 or one-time renewal for 25 years. You see some of the  
6 requirements that leases are going to have to have. Due  
7 diligence, things with compatible uses, if you have a wind  
8 farm and you're talking about agricultural operations on  
9 those lands in conjunction with a wind farm.

10 Again, we're talking about, you know,  
11 profit-driven enterprises. So we're going to have the  
12 compensation provisions. Here you see at the bottom there  
13 about bureau approval of less than fair market value leases  
14 before power generation actually begins.

15 Again, the leasing provisions -- or the time  
16 lines are very similar to the other subparts. We're going  
17 to have 60 days to look at these leases and respond. For  
18 whatever reason, we need to continue looking at them, if  
19 it's a complex deal, we'll request another 60 days. I do  
20 want to note that these are enforceable time lines against  
21 the bureau under our Part 2 regulations.

22 The amendments, subleases, mortgage provisions  
23 are the same with the automatic approval if the bureau is  
24 taking too long. Again -- I know it's getting redundant at  
25 this point with the compliance and enforcement provisions,

1 but I do want to reiterate that we're trying to make this  
2 user-friendly so you don't have to go flipping back and  
3 forth between subparts and rules. We want the subject  
4 matter to be self-contained when you're talking about what  
5 do I have to look at to get a solar operation off the ground  
6 or a housing development.

7           There you see the deadline for the written  
8 comment submissions on April 18. E-mail those -- we really  
9 look forward to receiving written comments. You can e-mail  
10 those to Consultation@Bia.Gov.

11           I do want to mention a couple more things.  
12 Today, I'm going -- in conjunction with this event, there's  
13 a Department of Energy Tribal Listening Session, I believe,  
14 going on in this building. So a lot of what we're trying to  
15 do is in conjunction with the Department of Energy in  
16 promoting renewable development on tribal lands.

17           So I encourage you guys to kind of wander back  
18 and forth, if you will. Look forward to hearing your  
19 comments and listening to you today. We have a court  
20 reporter here who's taking notes, and this is going to be  
21 part of the record that we use to revise these regs, as  
22 necessary, before we publish them.

23           So before you begin with your comments and  
24 questions, I would respectfully ask that you state your full  
25 name and the tribe that you're here representing. If it's a

1 difficult tribal name for somebody to pronounce, if you  
2 could maybe repeat that or -- you know, keep in mind that  
3 we're trying to make sure that we can attribute the comments  
4 properly.

5           So I thank you for your time today.  
6 Appreciate it and look forward to hearing from you.

7           MR. JAN REIBACH: Jan Michael Looking Wolf  
8 Reibach, Confederated Tribes of Grand Ronde. The HEARTH Act  
9 is up for consideration. How will these regulations -- how  
10 would the HEARTH Act impact the proposed changes? I mean,  
11 have you guys been considering that?

12           MR. BRYAN NEWLAND: Yeah. Absolutely. For  
13 those of --

14           MR. JAN REIBACH: Just residential rights.

15           MR. BRYAN NEWLAND: Yup. For those of you who  
16 don't know the HEARTH Act, which legislation has been  
17 introduced -- I know in the Senate. I believe in the House  
18 as well. HEARTH is an acronym for Helping Empower (sic) and  
19 Advance Responsible Tribal Homeownership. I don't know who  
20 comes up with these acronyms, but this legislation would  
21 allow -- I hate using that the term would "allow" -- would  
22 restore tribal leasing authority back at the tribal  
23 government level.

24           So a tribe -- like what happens at Navajo. If  
25 a tribe develops its own laws governing the leasing of

1 tribal land, the department would approve those regulations  
2 and then you don't have to come back to us again for  
3 leasing, if you don't want, on tribal lands. Tribes can  
4 approve leases. But the department will have to --  
5 consistent with the trust responsibility -- would have to  
6 approve the tribal laws governing leasing.

7 What we wanted to do with these regulations --  
8 when we heard the HEARTH Act was moving in the last  
9 Congress, we really ramped up on this draft rule because --  
10 these regulations will serve as a baseline. We know with  
11 Navajo we had some problems with delay in reviewing the  
12 Navajo Nation's draft -- or a draft of their laws governing  
13 leasing. It took a number of years. We said, well, the  
14 HEARTH Act will do no good if -- instead of leases being  
15 held up at BIA, their tribal leasing laws are held up at the  
16 BIA.

17 There are going to be some core provisions in  
18 here that we're going to kind of look at tribal leasing laws  
19 to mirror, and hopefully, that will speed up the review  
20 process for those tribes that want to participate if the  
21 HEARTH Act is passed. The department hasn't submitted an  
22 official position on the HEARTH Act. We're going to be  
23 asked to do so in the very near future. So you can look for  
24 that. That's how it's going to play with that piece of  
25 legislation.

1 MR. JAN REIBACH: Thank you.

2 MR. BRYAN NEWLAND: Any other comments? Folks  
3 need to let their coffee kind of twist their brains a little  
4 bit.

5 MR. MANUEL MYORE: My name is Manuel Myore,  
6 and I represent the Ute Tribe. I'm the Director for the  
7 Energy and Minerals Department. I've worked with the bureau  
8 for 20 plus years. It seems to me that we went down the  
9 same track at one point when we were going to revise the 25  
10 CFR. I understand what was involved in that. I'd like to  
11 know what became of that. Was that another smoking mirror  
12 kind of process or what?

13 MR. BRYAN NEWLAND: Are you talking about  
14 previous efforts to --

15 MR. MANUEL MYORE: Yeah. Mr. Wells -- he was  
16 the head of that program or that review or that process back  
17 then. I'd like to know whatever became of that. Are we  
18 going down the same path as we are now than we did then?

19 MR. BRYAN NEWLAND: These regulations are 50  
20 years old. I know they've been tinkered with a little bit  
21 in the past. There have been efforts -- you're right, there  
22 have been efforts in the past to completely overhaul them.  
23 Again, the rulemaking process takes a long time. We have  
24 already been at this internally for a year and a half. The  
25 presentation had the time line that we're operating under.



1           It's going -- from this point, it's going --  
2           if we continue to push at the pace we've been going and  
3           don't encounter any major speed bumps, it's going to be next  
4           February before these rules become finalized. We've got  
5           some leeway before the end of the administration, but not  
6           much. It takes a long time. I think they ran out of time,  
7           is my understanding.

8           MR. MANUEL MYORE: I was in the subcommittee  
9           hearing last week in D.C. with Congressman Don Young and we  
10          testified. These issues were mentioned and -- they were  
11          really addressed, but more or less the commission or the  
12          senators that were on that board were leaning more toward  
13          the tribes taking over their own responsibilities as far as  
14          APDs, right-of-ways and this sort of stuff.

15          I remember tribes had testified to that fact  
16          and made their point. And I think they were going to  
17          introduce a bill to that effect of some sort. I don't know  
18          where this is going to run into that or if you guys are  
19          going to get involved with the tribal leadership in Native  
20          Alaskan affair.

21          MR. BRYAN NEWLAND: Just really quickly, these  
22          regulations would apply to surface use on trust lands. What  
23          they were talking about in the subcommittee -- I think a lot  
24          of it was focused on oil and gas and mining. I think most  
25          people in this room know that's covered by separate statutes

1 -- you know, a broad number of statutes that interplay with  
2 each other. These regs don't address --

3 MR. MANUEL MYORE: Surface and right-of-ways  
4 always include surface.

5 MR. BRYAN NEWLAND: Right-of-ways are under a  
6 separate piece -- separate part of CFR. We're also working  
7 on those. Again, we're trying to -- we've got limited  
8 resources. We're trying to push out what we can that has  
9 the maximum impact, but we're also looking at the  
10 right-of-way regulations along the trespass and agricultural  
11 subpart. But this is the first part of that effort.

12 Thank you. Any other questions? Comments?

13 MS. TERESA LEGER: Hello. I'm Teresa Leger  
14 from the Nordhaus law firm. I'm here representing the -- as  
15 general counsel for the Pueblo of Laguna, Pueblo of Santa  
16 Ana and the Pueblo of Santa Domingo. The pueblos have  
17 submitted extensive written comments to your extensive  
18 regulations, but I thought we would highlight perhaps a few  
19 of the matters orally and then you could look at them in the  
20 regs.

21 The first issue that we wanted to address is  
22 to make sure that in the leasing regs it is very clear that  
23 tribes can use the leasing regs for whatever type of  
24 business lease they desire. We raise that because we have  
25 used the leasing regs instead of the right-of-way statute to

1 renew energy right-of-ways in order to avoid Strate.

2 It took us a long time to get that through and  
3 approved by the BIA. The BIA did approve those leases. We  
4 think that that is the best answer to the jurisdictional  
5 issues that Strate raises, especially with the cases -- here  
6 in New Mexico we have one case. We have an Attorney General  
7 opinion saying it really doesn't matter what kind of  
8 language you use in a right-of-way because of the  
9 relationship where, in a right-of-way, the BIA is issuing  
10 the right-of-way and the tribes are merely consenting.  
11 Whereas, in a lease, it's the tribe that is actually in the  
12 driver seat.

13 That is really consistent with  
14 self-determination, leaving Strate aside. It's consistent  
15 with self-determination that the tribe is in the driver seat  
16 and is entering into the lease directly. So we want to make  
17 sure that your regulations acknowledge that and acknowledge  
18 that the listing that you have as to what kind of purposes  
19 you can use a lease for, that that would include something  
20 like a right-of-way. Because even though we've had a lot of  
21 back and forth with the tribe on what common law -- you  
22 know, what common law, et cetera, et cetera, is, none of  
23 that is acknowledged, I think, in the regulations. We would  
24 like to make it little more clear.

25 We have extensive comment on why the common

1 law properties do not apply in this situation, but we want  
2 to make sure that since that was a big issue that the BIA  
3 raised, that it be reflected perhaps simply by a statement  
4 saying, "and leases for any purpose that derive an economic  
5 benefit to the tribe." Something like that.

6 MR. BRYAN NEWLAND: Sorry to interrupt. Did  
7 your written comments include language that -- the language  
8 you would like to see in there?

9 MS. TERESA LEGER: Yes, we did.

10 MR. BRYAN NEWLAND: That's helpful for us.

11 MS. TERESA LEGER: That's helpful. In some  
12 areas, there's actually specific language we suggested. In  
13 some areas, there's more -- it's a broad comment.

14 The other issue is in terms of deferring to  
15 tribes with regards to negotiated valuation. I know that  
16 there is an emphasis on looking at appraisals. Oftentimes,  
17 those appraisals are basically land appraisals intended to  
18 appraise tribal land for grazing purposes, because it's out  
19 in rural areas. Where, in fact, the tribes have been very  
20 good at negotiating a valuation that is in excess -- in a  
21 renegotiated valuation that was 113 times more than what the  
22 BIA-mandated appraisals came up with. But BIA's mandated  
23 appraisal added four months to the process of getting the  
24 leases approved, with money that should have been the  
25 tribe's sitting in an escrow account while we waited for

1 those appraisals.

2 So I think that having more explicit language  
3 about a deferral to alternative valuation methods that are  
4 more market-based would be good, so that there isn't the  
5 fall-back on, well, let's get an appraisal just so that we  
6 have something in the file, even though we know it's not  
7 going to be reflective of what the market is. It adds a lot  
8 of time. So that would be another issue.

9 We also, in looking at the regulations, in  
10 looking -- we felt that what you might have been struggling  
11 with in some of the areas where there was perhaps more BIA  
12 involvement than presently, is that you may be struggling  
13 with the fact of when are you dealing with tribal land and  
14 when are you dealing with individually owned land that has  
15 fractionated interest.

16 It might be a suggestion to actually separate  
17 those two so that you don't unnecessarily interfere with  
18 tribal self-determination and tribal evaluation of what's in  
19 its best interest because you're trying to protect perhaps a  
20 more complicated -- in terms of consent and other things  
21 with regards to individual landowners.

22 A point I would make to highlight is that the  
23 tribes -- the pueblos that have sent me here today are  
24 absolutely dead set against having an automatic consent  
25 after 30 days. There are lots of reasons why -- especially

1 with the pueblos that have ceremonial issues, that have  
2 transition issues, where 30 days just might not make sense  
3 and we should not allow a lessee to get the benefit of a  
4 30-day automatic consent.

5 Now, that said, we don't mind the fact that  
6 the BIA has imposed upon itself some deadlines. We very  
7 much applaud that. That's a great thing that you have done  
8 here. We look forward to see that more expedited review  
9 process. So that 30-day consent as to tribal land, I think,  
10 runs through all the different sections that you have.

11 With regards to waiver requests, though, we  
12 noted that there is no 30-day request, unless we missed it,  
13 on a waiver request. And there's various places where you  
14 require that the tribes seek a waiver of the regulation.

15 We'd make two comments on that. One, is that  
16 you should impose the same kind of deadlines on yourself as  
17 you impose on the other matters; and two, that you might  
18 look back at that and instead of having some of the matters  
19 being subject to waiver, actually say that we will defer to  
20 the tribes so that there's not a need to get a waiver on  
21 certain things, like alternative valuations as an example.

22 So there are some things which a tribe is --  
23 you will defer -- if you find it is in their best interest,  
24 unless you find a compelling reason not to. So that way  
25 you're not going back for waivers on those things, but you

1 are evaluating them. But you have the authority within the  
2 regulation to evaluate them and determine if you're going to  
3 defer to the tribe's judgment and in their best interest to  
4 approve it.

5 So we would urge you to look at those issues.  
6 We did feel like there was perhaps a little bit of increased  
7 bureaucracy that we saw in these regulations on certain  
8 matters. It would be nice to see it go the other way and  
9 streamline it more.

10 The issues -- and little things like issues of  
11 having -- that you can approve -- you know, you're going to  
12 approve things and you're going to send the approval  
13 documents certified mail to the lessee but not to the  
14 tribes. I mean, that doesn't make any sense why the tribes  
15 shouldn't get notification immediately. Why you're entering  
16 into the leased property -- I'm not sure that we've seen  
17 that before. Tribes definitely always put that they have  
18 the right to enter, but whether the BIA should have the same  
19 right -- unless it's in those emergency situations.

20 The issues with regards to their solar  
21 permitting -- why the BIA would need the information  
22 developed because that might lead -- we've negotiated solar  
23 access permits. We call them different things. Land use  
24 agreements. And the information developed in those -- that  
25 permitting process, that is something that the tribe and the

1 energy company have come to agreement on what should be done  
2 with it.

3           Sending it over to the BIA, making it  
4 potentially subject to discovery and to FOIA, especially at  
5 the permitting stage, that might be difficult. And the  
6 energy companies might be a little leery of allowing that to  
7 happen because protecting it, according to the greatest  
8 extent of the law, just might not be enough protection. I'm  
9 not sure why the BIA would need it at that permitting stage.  
10 It might need -- moving to the next stage, it might then be  
11 something that you need.

12           With regards to -- sticking on the solar  
13 issue, the permitting issue of wind and solar, is that the  
14 -- we think that the regulations -- and this actually  
15 applies across the board. That the regulations should make  
16 sure that they allow and recognize that tribes can use other  
17 types of agreements consistent with Section 81 for land use  
18 agreements.

19           With solar permitting, that would be a case  
20 where it might be that the energy company and the tribe  
21 decide they don't want to go through this process because it  
22 adds -- it does -- it does trigger a need, but adds  
23 different complexities and time lines, where if you're in  
24 the evaluation stage, that the tribe and the energy company  
25 should be able to enter into other types of agreements,



1 short-term use agreements, that don't have to go through  
2 that.

3 MR. BRYAN NEWLAND: Thank you. I really  
4 appreciate that. A number of those issues came up in our  
5 discussions. I wanted to note just a couple of things  
6 really quickly. As you're flipping through your packet  
7 there, you see a watermark on every page of "draft." We can  
8 go back. Nothing is set in stone. We do want to push this  
9 forward. Our goals are to speed up the process, simplify  
10 it, make it more user-friendly and streamline it, giving up  
11 bureaucracy -- and we've heard that comment from a number of  
12 folks that are going to take a look at those provisions that  
13 you're talking about.

14 With the right-of-way stuff, I do want to note  
15 that that is something that is coming up frequently in the  
16 comments, too. We're going to take a look at that. Thank  
17 you.

18 MR. ANTHONY AGUIRRE: My name is Anthony  
19 Aguirre with the Navajo tribe. This is more for other  
20 tribes' information. The issue was raised about  
21 right-of-way. I guess the A1/Strate -- the jurisdiction  
22 issue, but the way the Navajo deals with that -- and we can  
23 deal with it now. I'm not saying you can't put something in  
24 the regs that clarify this, but in terms of -- there's  
25 nothing to keep the tribes from negotiating right-of-way

1 leases. We do that for the major transmission lines all the  
2 time. We require consent to jurisdiction. We also put  
3 statements in there that say the right-of-way remains in  
4 Indian country forever.

5 For the smaller types of right-of-ways like  
6 power lines or water to people's homes, that we have  
7 standard terms and conditions which are part of our consent.  
8 So if somebody wants a right-of-way, the applicant has to  
9 get -- this is jurisdiction. That's our standard terms and  
10 conditions that are submitted to the BIA when we give our  
11 consent. So that's another way to try to maintain  
12 jurisdiction over the applicant. Thank you.

13 MR. BRYAN NEWLAND: Thank you.

14 MR. DEAN SUAGEE: Hi. I'm Dean Suagee. I'm  
15 an attorney with Hobbs, Straus, Dean and Walker reporting  
16 for a group of tribal clients. This is just a comment on  
17 the effort to streamline the process. I want to suggest  
18 that in conjunction with reviewing these regulations, you  
19 also look at the updating and revising the list of  
20 categorical exclusions under the procedure's schedule in  
21 NEPA and the department manual.

22 The Council on Environmental Quality issued a  
23 guidance document recently at the end of December advising  
24 federal agencies on how to evaluate their categorical  
25 exclusions and revise their lists, and suggested agencies

1 ought to do that every seven years periodically. It's been  
2 14 years since the BIA did theirs. There wasn't really any  
3 consultation for the tribes back then.

4 You're going to run into -- you're not going  
5 to deal with -- you're not going to be able to streamline  
6 the process unless you expand the list of categorical  
7 exclusions. There's really no justification for having to  
8 do an environmental assessment on a typical homesite lease.

9 MR. BRYAN NEWLAND: Thank you for that.  
10 Without getting into it too much, because the consult for  
11 environmental quality works directly with the president, we  
12 have been in discussions with him and the folks in the  
13 department about the department manual, environmental review  
14 process and how that's going to interplay with that. We're  
15 well aware of that. We are working very hard to make sure  
16 that, you know, exactly what you're warning about doesn't  
17 occur. We made these changes in the environmental process,  
18 you know --

19 MR. DEAN SUAGEE: I think if you don't try to  
20 engage tribes in consultation regarding revising the  
21 economic procedures, you're going to get pushed back. Even  
22 though, you know -- everyone agrees that it serves -- most  
23 people agree that it serves -- it will serve tribal  
24 interest. If you don't engage in consultation -- we're  
25 getting pushed back for not doing consultation. Let's say,

1 hey -- you don't have to do rulemaking, but you do have to  
2 publish things in the Federal Register. There should be  
3 some recognition of the interconnection between the two  
4 subjects.

5 MR. BRYAN NEWLAND: I appreciate that. Your  
6 recommendation on consultation is well taken. Any other  
7 comments on Part 162? You've got to get those hands up high  
8 or else we're going to miss you.

9 MR. MONTE MILLS: Hi. Monte Mills from --  
10 here on behalf of the Southern Ute Tribe. I'm just  
11 following up on the question about -- or the comment about  
12 NEPA regulations. It may be -- it's just from a lack of  
13 time to read the regulations clearly thus far, but on the  
14 WSR permit and lease provisions, how do those interrelate  
15 with the NEPA requirements?

16 Because it appears like the permit, the  
17 three-year and then potentially three-year extension of the  
18 permit process, is intended to be a feasibility period where  
19 those things can be studied. But in terms of the  
20 requirements for granting a permit, the regs require that  
21 all environmental reports and other things be submitted  
22 before the permit is granted.

23 So I just wondered how that discussion went in  
24 the drafting of it. How do you guys see the relationship  
25 between the NEPA requirements and the granting of the

1 permits?

2 MR. DEAN SUAGEE: See, there needs to be  
3 categorical exclusions for that --

4 MR. BRYAN NEWLAND: I appreciate that comment.  
5 David, did you want to .....

6 MR. DAVID JOHNSON: This is David Johnson from  
7 DOI. I came into the writing process fairly late in that  
8 process. I know that discussion has been ongoing. I don't  
9 think there's a resolution to it yet. So, actually, I think  
10 it's a fair question. We're looking at it and trying to  
11 figure out what to do there.

12 The whole process with the permit first was to  
13 enable there to be some level of -- a hint on both sides for  
14 the WSR purposes. I think the concept here is that  
15 hopefully the review for solar and wind will be somewhat --  
16 is something that we can get in a cookie-cutter fashion.  
17 But we haven't got that resolved.

18 MR. ANTHONY AGUIRRE: Just one quick  
19 follow-up. I think if you look at this with the idea of  
20 these permits for wind and solar resources, I don't --  
21 that's something that really ought -- sounds like a really  
22 good idea. It's certainly -- it's something we really ought  
23 -- ought to make sense as a categorical exclusion. Unless  
24 you write that in the NEPA procedures, you're going to end  
25 up either doing environmental assessments and qualities or

1 getting sued.

2 MR. BRYAN NEWLAND: Again, I appreciate that.  
3 We are looking at that and working on that, you know, today.  
4 It's ongoing.

5 I just want to note for the process we're  
6 going through today, that if we could make sure that, you  
7 know, everybody has a chance to speak before we -- folks  
8 take a second crack at the mike. I just want to make sure  
9 that we get everybody's comments and questions on the  
10 record. And that's not -- I'm not saying that because I  
11 don't want to talk about NEPA, because we know it's out  
12 there. We want to work on it. We've heard it. I'm sure  
13 we'll hear more of it today.

14 Any other questions? Roger wanted to ....

15 MR. ROGER KNIGHT: Roger Knight with the  
16 Division of Energy, Minerals. When we worked on this  
17 process, that is one of the big problems we had. There is  
18 one statement in the regs that if a tribe does the permit  
19 and does the feasibility study by the tribe for the tribe,  
20 then a lot of -- it's a cat. ex. -- a lot of the provisions  
21 are waived.

22 So that's one statement that we did put in  
23 there to try to eliminate that NEPA process. But it's  
24 something that I think we really need to address, because  
25 you have the tribes -- you have to go back twice for

1 negotiations. You're doing your NEPA when you don't know  
2 what's going on. You're taking a larger area with your  
3 resource assessment and then you're bringing it down when  
4 you're doing your actual leases. So it's something that we  
5 really need comments on. We would like to have any input on  
6 that.

7 MR. BRYAN NEWLAND: Thanks, Roger. You had a  
8 comment up here.

9 MR. LESTER TSOSIE: Good morning. My name is  
10 Lester Tsosie. I'm here on behalf of the Ak-Chin Indian  
11 Community in Southern Arizona. For my Navajo citizens,  
12 (native language spoken.)

13 The Community Council designated me to provide  
14 some comments on the BIA draft regulations because the  
15 Community is -- as you all are probably also engaging in  
16 numerous economic development activities, and we'd really  
17 like to use the regulations to, you know, fulfill our dream  
18 of self-determination and be able to develop those economic  
19 development activities.

20 Ak-Chin Indian Community is about 22,000 acres  
21 in South Central Arizona, south of Phoenix. About 16,000  
22 acres of that is designated for farming, but the rest of it  
23 is designated for housing as well as commercial and  
24 industrial development.

25 We would like to just share with you some of

1 the comments we're going to present to the BIA before the  
2 official deadline. There were eight questions that were  
3 provided to us to provide comments on, and I'll probably  
4 answer or address a couple of those.

5 The first one is, do you agree with the policy  
6 changes made in these draft regulations. We agree with the  
7 goal of the policy changes -- increasing efficiencies and  
8 transparency of the BIA approval process -- however, we feel  
9 the proposed regulations do not realize the intended goal,  
10 specifically, the regulations -- 172 pages in total -- are  
11 long and extensive. The length alone may be imposing to  
12 lessors, and consequently, deter potential leases and  
13 economic opportunities. The burden of the regulations  
14 prevents tribes from being competitive in the leasing  
15 market, especially the business leasing market.

16 The regulations could be more simplified. The  
17 regulations fail to strike a balance between fulfilling the  
18 federal government's responsibility of protecting Indian  
19 land while promoting tribal economy, autonomy and  
20 self-government. Any regulations governing Indian land  
21 should be -- make every reasonable attempt to facilitate the  
22 leasing of Indian land and should not unduly delay or  
23 frustrate the leasing of Indian land.

24 The time limits for BIA approval should be  
25 made firm and all documents -- leases, amendments,



1 assignments, subleases and mortgages -- should be deemed  
2 approved if the BIA does not act within the prescribed  
3 amount of time. Correspondingly, one of the stated goals in  
4 the regulations is to encourage the BIA to approve leases,  
5 amendments, assignments, mortgages and subleases unless  
6 there's a compelling reason not to; however, the lack of  
7 firm deadlines, by which these documents are approved, will  
8 allow the BIA to circumvent this stated goal.

9           The imposition of leasing regulations on  
10 housing leases is a significant departure from current  
11 practices and it will make it harder for tribes to provide  
12 housing for tribal members. At Ak-Chin there's no Indian  
13 allotment. Just our reservation land.

14           The regulations use "Indian landowners" to  
15 refer interchangeably to individual Indian landowners and  
16 tribes. The BIA's approach to leases, especially business  
17 leases, should, however, be different and have much more  
18 deference to decisions made by tribes regarding leasing of  
19 their tribal lands versus leasing the lands owned by  
20 individual Indian owners.

21           We recommend that Part 162 regulations define  
22 "Indian landowners" to mean only individual Indians and  
23 create a new definition for "tribes." This may require  
24 separate regulations for these leases because the actions  
25 which the BIA should take to protect the interests of

1 individual Indian landowners and the deference that the BIA  
2 should give tribes when deciding how to manage their land  
3 may conflict.

4 We recommend that the BIA adopt regulations  
5 that are consistent with the 111th Congress' S. 3235,  
6 Helping Expedite and Advance Responsible Tribal  
7 Homeownership Act, HEARTH Act, for those tribes who would  
8 like to utilize such a leasing process.

9 In terms of residential leases, we do not  
10 agree with the policy proposed in the residential lease  
11 section, which is a significant change to the currently  
12 accepted practices regarding residential leasing on tribal  
13 lands. Further, the proposed regulations, which are a  
14 replication of business lease rules, will create significant  
15 burdens on tribes' efforts to make housing available to  
16 members.

17 Specifically, the current draft would stifle a  
18 tribal member who wanted to lease a tribal home on their own  
19 reservation with all the business lease requirements for  
20 appraisals, bonds, insurance and other approvals. The  
21 maximum lease term allowed under Section 162.311, Subsection  
22 B, cannot exceed 50 years. Thus, for a tribe which leases a  
23 tribal house to a tribal member who is 18 years old, such  
24 lease will expire when the tribal member is 68 years old.

25 The effect is that 68-year-old tribal elder is

1 then forced to start all over again to renew the lease or  
2 else they cannot -- there cannot be a holdover -- they  
3 cannot be a holdover tenant. Such a policy is inconsistent  
4 with many cultural practices.

5 Previously, tribes used 25 CFR Section 103(b)  
6 as the authority to lease tribal land to tribal members  
7 without requiring to -- requiring a lease approved by the  
8 BIA. Often, the houses leased were constructed with HUD or  
9 other tribal funding. HUD requires that all homes  
10 constructed with HUD housing funds must be assigned to  
11 tenants pursuant to a lease that meets certain requirements  
12 of federal law and regulation. Any attempt by the BIA to  
13 regulate the lease of HUD-funded homes will create a dual  
14 regulatory system with conflicting requirements.

15 We strongly recommend that the regulations  
16 exempt from coverage of the leasing regulations any land  
17 leased by a tribe to tribal members through a tribal housing  
18 authority or department, especially for homes constructed  
19 with HUD or tribal funding.

20 In terms of businesses leases, it is unclear  
21 what "developed land" means in the context of business  
22 leases. As tribes diversify, they're looking to  
23 opportunities beyond a standard ground lease. Tribes have  
24 constructed shopping plazas, office buildings and industrial  
25 complexes and are interested in leasing space in these

1 buildings, not the entire building. Not all tribes are  
2 interested in leasing the whole property to another entity  
3 and having that entity sublease the property pursuant to a  
4 master lease. Instead, some tribes prefer to maintain  
5 control of the property and instead to enter into leases  
6 directly. Leasing space in a building is similar to  
7 receiving a permit to use tribal property and conveys to the  
8 tenants a much smaller interest than what is conveyed  
9 through a ground lease.

10 Our recommendation: clarify that agreements  
11 to rent space in a developed tribal building are permit  
12 agreements, not leases. Otherwise, revise the regulations  
13 to make them more accommodating to the diverse range of  
14 business leasing opportunities on tribal lands.

15 MR. BRYAN NEWLAND: Excuse me, sir. I want to  
16 try to make sure that we keep our comments --

17 MR. LESTER TSOSIE: Okay.

18 MR. BRYAN NEWLAND: You can come back.

19 MR. LESTER TSOSIE: Sure. These are some of  
20 the comments we're presenting to the BIA. And I guess one  
21 thing that is very important is that Ak-Chin is trying to --  
22 it has positioned itself to really take advantage of  
23 market-driven drivers out there in terms of economic  
24 development.

25 So having to go through the BIA right now is

1 very, very lengthy and extensive. So we want to be able to  
2 work with the BIA to see if we can provide regulations that  
3 will help us react, for one, quickly, have a short-term  
4 lease that we can use as long as, you know, we address all  
5 the compliance issues.

6 One example that came up within our community  
7 is that we're building this beautiful, multispace building  
8 where we're going to lease to entrepreneurs and small  
9 businesses that are just starting out. We want to be able  
10 to use like a one-year lease and then -- you know, most  
11 small businesses will succeed or not after three years. So  
12 we want to be able to have that flexibility. So we're  
13 suggesting language in here that will be almost incremental  
14 in the shorter time units up to the maximum of 25 years.

15 So that's something that we really want to  
16 impress and emphasize as we present this information. Thank  
17 you very much.

18 MR. BRYAN NEWLAND: Thank you for your  
19 comments. I appreciate the substantive remarks we're  
20 getting today. We know we're departing in a number of  
21 instances very far from what's currently in place with the  
22 regulations. This is going to involve a large amount of  
23 training of our bureau staff to implement properly in a way  
24 that benefits tribes and Indian landowners, you know, going  
25 forward after these rules come out.

1           These comments -- I'm going to reiterate over  
2 and over again today that these comments are going to be  
3 read by myself and everybody else involved in the drafting  
4 process. And they make a difference. Because you guys are  
5 doing this on the ground. We're trying to make this better.  
6 We appreciate the guidance in how to make this work for you  
7 guys.

8           Are there any other questions or comments?

9           MS. MARGUERITE SMITH: Marguerite Smith. I'm  
10 actually from the Shinnecock Nation. We don't have trust  
11 lands yet, but apart from that, one question that comes to  
12 mind is with regard to coastal tribes and how will these  
13 regulations and how will the staff interact with other  
14 bureaus. For example, the offshore energy development work.  
15 I'm going to go to that energy meeting. But some of these  
16 wind projects will be both onshore and offshore in scope.

17           Is there any discussion or consideration given  
18 yet to those projects that may reach both on and offshore  
19 lands?

20           MR. BRYAN NEWLAND: Well, offshore development  
21 is, as you acknowledged, governed by -- I think it's BOE.

22           MS. MARGUERITE SMITH: BOE -- BOEMRE.

23           MR. BRYAN NEWLAND: I'm losing track of the  
24 acronyms. I haven't been with the feds very long. You  
25 know, that's a good question. I don't know. You know, we

1 can take a look at that.

2 MS. MARGUERITE SMITH: They have been very  
3 active at doing consultations, at least in the Northeast.  
4 So we're interested to make sure that the BIA is also in  
5 consultation with them.

6 MR. BRYAN NEWLAND: I appreciate that.

7 MS. MARGUERITE SMITH: Thank you.

8 MR. SCOTT WESTON: Good morning, everybody.  
9 My name is Scott Weston from the Oglala Sioux Tribe of Pine  
10 Ridge, South Dakota. My question being -- we talked about  
11 the lengthy process of leasing. Is there any resolution to  
12 the undivided interest or the process to slow that down when  
13 we come to trying to put a HUD house on to some undivided  
14 heirship land? Because right now within our tribe, the only  
15 way that we do -- you know, the only way that we can right  
16 now -- unless you're a total individual owner, you have to  
17 have -- you have to have -- I mean, you've got to get 100  
18 percent of your undivided heirship's permission. You've got  
19 to have that. That signage.

20 So, is there something in these draft  
21 regulations that will negotiate or try to determine some of  
22 that and define that issue?

23 MR. BRYAN NEWLAND: I thank you for your  
24 question. We're working with the consent provisions. I  
25 know there's a lot of -- it's a huge issue. As -- I mean,

1 we have the Cobell litigation. We're working within the  
2 statutory limits that we have. We talked to members of  
3 Congress. We heard from Indian country about fractionation  
4 for many years. But we can't change, by regulation, the  
5 statues that are in place. So that's where we are on that  
6 issue.

7 With respect to working with other agencies,  
8 are you talking about HUD and things like that? I know that  
9 you had mentioned that in your remarks. We have reached out  
10 to HUD and are discussing our regulations, and that's going  
11 to be part of the interdepartmental dialogue.

12 We consult with Indian country, but we also  
13 consult with the other departments on their regulations and  
14 our own to see how that affects programs that they're  
15 operating in Indian country. So those discussions will  
16 continue as well. Thank you.

17 MS. SARAH LAWSON: My name is Sarah Lawson.  
18 I'm the Trust Services Director for the Muckleshoot Indian  
19 Tribe up in Auburn, Washington. My question actually kind  
20 of goes to that issue of consent. I saw in Part 162.010  
21 where it says, "An Indian landowner of a fractional interest  
22 in a tract must obtain a lease ... unless the Indian  
23 co-owners have given the landowner permission to take or  
24 continue possession without a lease."

25 We have a lot of fractionated land like most



1 Indian reservations do. That just presents sort of a  
2 hornet's nest in my mind. So my question, I guess, what was  
3 the thought behind doing that? Because I can completely see  
4 in the future the landowners on a fractionated interest that  
5 we have given permission to someone to continue to have  
6 permission -- or I'm sorry, continue to have possession of  
7 property with a home and then later getting into a family  
8 argument and withdrawing their consent. If there's no  
9 actual lease in place, we've got a problem.

10 MR. BRYAN NEWLAND: I appreciate that --  
11 bringing that to everybody's attention. That's -- I mean,  
12 you know better than I do about how sticky that issue is  
13 when you have multiple landowners. Who gets the possession  
14 of it. You know, we've kicked around a number of ideas on  
15 how to address that within the regulations and more  
16 generally.

17 We welcome any written suggestions you might  
18 have. If you're concerned about -- I'm looking at it right  
19 now: 010(b). If you have a way that you think that it  
20 could be rewritten to avoid those types of disputes or  
21 better resolve them, we would certainly welcome that and  
22 look at that in our redrafting period.

23 Sir, I want to make sure that everybody gets a  
24 chance to talk before folks get a second crack at the mike.  
25 I'm not trying to cut off dialogue here, guys. Because

1 people have a lot of very good things to say. I just want  
2 to make sure everybody gets their chance.

3 Is there anybody else?

4 MS. KARIS BEGAYE: Hi. My name is Karis  
5 Begaye. I'm from the Navajo Nation. I had a couple of  
6 clarification questions, I guess. The Navajo Nation will be  
7 providing comprehensive comments to the regulations. At  
8 this point we're just trying to understand what the thought  
9 process is behind developing these regulations.

10 The Navajo Nation, we do issue our own  
11 business leases. Looking at this, we did have some  
12 practical questions to it. The first one is the permits.  
13 You were mentioning that the tribes can issue their own --  
14 approve their own permits, and all we have to do is give it  
15 to the Land Title Records Office for recording.

16 The issue that we, the Navajo Nation, run into  
17 -- because that's exactly what we do. We issue our own  
18 business leases, but then we have to submit it to LTRO for  
19 recording. The practical part of that is always unclear  
20 exactly what is required to be submitted for recording. Is  
21 the BIA going to be considering doing a checklist for  
22 further clarification on that issue, because we run into  
23 situations -- we did an MOU, actually, with the BIA. And we  
24 listed in that MOU what we needed to submit for recording.  
25 And that started -- well, one, it expired; but, two, the

1 list started growing over time. We were just unclear as to  
2 what exactly needs to be submitted for recording. We've run  
3 into an issue where we still have a lease that we approved  
4 back in 2006 that's yet to be recorded.

5 So we just need clarification, I guess, on  
6 that aspect. What exactly are you looking for? When you're  
7 saying all you have to do is submit it for recording -- it's  
8 a little more complicated than that. I think it will be  
9 helpful if the BIA would provide clarification or if we  
10 would require documents for that.

11 The other question I have, in reading this --  
12 or a second comment, is on the grazing -- or I'm sorry, the  
13 landowner issues where we're required to -- it looks like --  
14 if a business owner or an entity wanted to come into the  
15 tribe and lease lands, that they could put a request to the  
16 BIA or whoever are the owners of the land, the landowners.  
17 The title records of BIA and the tribe are not always  
18 compatible. I guess we have a little bit of a concern  
19 there. You know, the lessee can come and just rely on what  
20 the BIA tells them who the landowners are.

21 First is the tribe which can have a separate  
22 or different list than what the BIA has. Which one is going  
23 to dictate? There's a little bit of a sovereignty question  
24 with that, whether, you know, the landowner can just ignore  
25 what the Navajo Nation has on their records and just go with

1 the BIA, whether that will supersede.

2 The next question I have is on -- or the third  
3 comment is on enforcement. There is a 10-day to show cause,  
4 like if there's no payment, which is fine. We at the Navajo  
5 Nation -- we do our own enforcement. We have our own  
6 policies as to how to try and collect on rentals. If we're  
7 unable to do so and we have an uncooperative lessee, we then  
8 defer to the BIA for a unilateral termination. But it takes  
9 a long time to get that done.

10 Is there going to be some time lines inserted  
11 in here, that upon receipt of the tribe's resolution or  
12 presidential letter, to request that you guys unilaterally  
13 terminate it? Will there be some set times? Or what  
14 documents are you guys looking for to be able to carry out  
15 that duty?

16 For example, you know, we have several  
17 enforcement letters that we send out. Then we have  
18 resolutions. Then we have letters from the president. And  
19 then we submit it to the BIA, but then we don't get a  
20 response for quite a long time.

21 What exactly are the parameters? What are you  
22 looking for from the tribes, so we can get that enforcement  
23 done right away? Otherwise, the rental will start accruing  
24 and instead of it just being \$5,000, now we're looking at  
25 \$100,000. So just a little clarification on that.

1           My fourth comment is on the performance bond.  
2           We ran into a couple of issues where we have some of our  
3           leases expired. And the performance bond is held by the  
4           BIA. We sometimes have tried to collect on that whenever  
5           the lease expires or there's a termination that goes  
6           through, there's rental owed on the lease.

7           The question I have for that one is, how do we  
8           get that performance bond? We've oftentimes asked the BIA,  
9           can you submit the performance bond back to the tribe  
10          because we have this outstanding rental, but it's already  
11          been given back to the lessee.

12          What exactly do we need to do? Is there some  
13          -- to ensure that that doesn't happen, I guess. Is there  
14          some safeguards that we can have in here to make sure that  
15          the tribes are contacted before the performance bonds are  
16          released, especially if there's outstanding rental owed on  
17          those leases?

18          The sixth comment I have is kind of going back  
19          to recording. Is the BIA going to be looking at doing some  
20          training for the tribes? The reason why is because we do  
21          submit legal surveys and legal descriptions and oftentimes  
22          those are not sufficient.

23          I think a lot of it is just because the tribes  
24          -- we don't really know what to look for in the legal  
25          surveys. We don't really know until the BIA tells us, oh,

1 this isn't sufficient. You need to redo it. And it's  
2 oftentimes embarrassing because then we have to go back to  
3 the landowners and lessees and say, sorry, you know, we need  
4 to process the lease all over again.

5 So I just wanted to know if the BIA will be  
6 considering maybe doing training or even putting in here to  
7 ensure that there is training conducted for the tribes,  
8 especially on legal surveys and legal descriptions.

9 The seventh comment I have is on -- I was  
10 looking at your fair market value section. It talks about  
11 allowing for another valuation of the land, but it doesn't  
12 actually address it in the regulations. It says that --  
13 it's mentioned in Paragraph D, and there is no Paragraph D,  
14 unless --

15 MR. BRYAN NEWLAND: What page is that?

16 MS. KARIS BEGAYE: Section 164.21 -- 162.421.

17 MR. BRYAN NEWLAND: The business leasing  
18 provision?

19 MS. KARIS BEGAYE: That's correct.

20 MR. BRYAN NEWLAND: You're talking about Page  
21 81 -- or 82.

22 MS. KARIS BEGAYE: Page 82. And it says,  
23 "unless we approve another type of valuation pursuant to  
24 paragraph (d)."

25 MR. BRYAN NEWLAND: We've had a number of

1 folks point that out. That's on the radar.

2 MS. KARIS BEGAYE: We, the Navajo Nation,  
3 created a separate valuation system. We don't do  
4 appraisals. We do it all in-house. So I was curious as to  
5 what that valuation would be that you guys would allow so  
6 other tribes could implement the same thing that we've done,  
7 because it's cost saving and it's a lot faster.

8 My last comment is on insurance. In the  
9 regulations, it implies that the lessee obtain insurance on  
10 the property's improvements. I just don't want to see any  
11 situation, I guess -- we, the Navajo Nation -- we often  
12 build our own businesses, buildings, property, and so we  
13 carry our own insurance on a lot of these properties.

14 The way I read the regulations, if this goes  
15 into place -- not that this would apply to the Nation at  
16 this point, but if something happened and we would be  
17 subject to this, then we would run into the situation where  
18 we would have to -- I guess my interpretation would be that  
19 we would have to require the lessee to hold the insurance on  
20 our own property, our own buildings; whereas, right now we  
21 are the ones that do the insurance. It's just limiting a  
22 little bit, I guess, we see. And there's just some  
23 clarification that I have. These are initial comments -- or  
24 questions I have.

25 MR. BRYAN NEWLAND: I really appreciate that.

1 If I can just take 30 seconds to respond. Most of your  
2 comments and questions dealt with practice, BIA practice and  
3 how we're going to implement that. To answer your question  
4 about training, there's going to be a lot of training  
5 involved from the standpoint of the bureau training, you  
6 know, field staff, in how to implement these. We can work  
7 with the bureau director and regional directors to see how  
8 we can incorporate tribes in that process.

9 When you're talking about the LTRO, I do  
10 believe that we're talking about, you know, coming up with  
11 some MADA forms and things like that in conjunction with  
12 these regulations. I really appreciated your question about  
13 the conflict between BIA records versus tribal records and  
14 tribal -- as a matter of sovereignty and self-determination,  
15 tribal policies and laws prevailing.

16 This is difficult because we do have to retain  
17 our ability to carry out the trust responsibilities. With  
18 that said, we have -- we worked very hard to flag as many  
19 places in here as possible where we could incorporate  
20 deference to tribal law to the greatest extent possible.  
21 I'll flag that, and we're going to go back and look at that  
22 and see what kind of options we have with that regard.

23 To be honest with you, it may be that -- as a  
24 matter of federal law, it may be that, you know, we just  
25 have to use the bureau records. But I've noted it. We're



1 going to go back and look at that. Because we do want to  
2 make sure that tribes have the control over tribal land use  
3 to the greatest extent that we can make possible.

4 So thank you very much.

5 MS. CELENE HAWKINS: I'm Celene Hawkins,  
6 Associate General Counsel for the Ute Mountain Ute Tribe. I  
7 just have a couple of comments on the wind and solar regs.  
8 From my standpoint and from the tribe's standpoint, we can't  
9 see how the permitting process is going to facilitate  
10 development.

11 A lot of times when we're at the feasibility  
12 stage, we're not actually having a lot of work done on the  
13 reservation. Most of it is really the nondisclosure and  
14 sharing of information. A lot of this stuff is the  
15 transmission studies and stuff including -- requiring  
16 placement of anything on the reservation.

17 So I guess my question would be, why is that  
18 the only place that the BIA is still going to require a  
19 permit? I guess along with that, we're also seeing that  
20 when payment standards are set by regulation, it can be  
21 harmful to the tribes negotiating their own rates.

22 For example, we're seeing development coming  
23 in and limiting their offers to the published BLM rates for  
24 leased land. So I would really encourage the BIA to rethink  
25 the idea of just publishing a straight form for the permits

1 if they are done, to really stay away from that leasing. I  
2 think it would be very harmful to the tribes for being able  
3 to negotiate their own rates.

4 MR. BRYAN NEWLAND: Thank you. With regard to  
5 your first question, a lot of times when we're talking about  
6 met towers and other equipment that -- it's kind of a hybrid  
7 between a permit and a lease. You're talking about  
8 short-term possession of a very small part of tribal lands.

9 I think the idea with the WSR permit  
10 provisions in there was -- again, we have to -- we're  
11 talking about possession of trust lands that implicates the  
12 trust responsibilities. So we have to make sure that, you  
13 know, we're looking at that. So that was -- that's the  
14 intent behind the permit provisions in there. Because a lot  
15 of times we're talking about -- we're talking about very  
16 small possession with a very small footprint for a short  
17 period of time. Those are the types of things that we  
18 wanted to cover with the permit.

19 I do appreciate the remarks that you had about  
20 the data collection things occurring off the reservation or  
21 not directly tied to the land. We're looking at that as  
22 well.

23 MS. CELENE HAWKINS: You might look at the  
24 meaning and scope of the permit. It's pretty broad. Right  
25 now I would be worried that it would cover almost anything.

1 And I would also look at BIA imposing a lot shorter time  
2 lines that are generally proposed under Section 501. So  
3 those shortened time lines would also need to be developed.

4 MR. BRYAN NEWLAND: Okay. Thank you.

5 MR. JEFF WARNKE: Hi. My name is Jeff Warnke.  
6 I represent the Chehalis Tribe in Washington State.  
7 Chairman Burnett was unable to make it today. He simply  
8 wanted to extend his thanks to everybody who's worked so  
9 long and hard on these draft regulations and taking it on  
10 the road and leaving your families and coming out to speak  
11 with us.

12 He specifically -- the Chehalis Tribe is  
13 wanting to address 162.415, business leasing. In  
14 particular, Section -- Part C which addresses taxation of  
15 permanent improvements. The Chehalis Tribe is engaged in a  
16 business venture with a nontribal partner. We needed to do  
17 that because we're a small, rural tribe. We thought we had  
18 covered all our bases by working with the state on taxation  
19 issues. We got a favorable opinion from the state.

20 As things turned out, we, one day, got a tax  
21 assessment from the county, not on the dirt -- because it's  
22 in trust -- but on the permanent improvements to the land.  
23 It was a little shocking to us. What we found since then  
24 that there's very little case law or guidance from the  
25 courts to determine exactly what the legal issues are around

1 whether the tribe is liable for taxes -- or I should say,  
2 the joint venture is liable for taxation or not.

3 We're currently in court on the issue. We are  
4 just encouraging other tribes here today to speak up and  
5 really kind of take a look at Section 415 and weigh in and  
6 support these changes that will clarify that the permanent  
7 improvements will not be subject to taxation by the state or  
8 county. Again, I just want to thank you.

9 The other thing that the chairman wanted me to  
10 mention is we are very supportive of the time line you have.  
11 We think it's aggressive, we agree. But we do think that  
12 the sooner we can get this thing wrapped up, the better.  
13 We'd just encourage you to stick to those time lines and get  
14 these things done. Thanks so much.

15 MR. BRYAN NEWLAND: Thank you very much. Just  
16 a note in there. That's on Page 78 of the packet you may  
17 have. That's something that we're well aware of. We know  
18 that it's also going to affect renewable energy development  
19 on tribal lands. You're talking about non-Indian  
20 improvements on trust lands and who can tax and who can't.

21 Certainly, as a trustee, we want to weigh in  
22 on that issue very clearly and state that -- you know, there  
23 under 415, that it's not subject to taxation by states and  
24 local governments, those types of improvements. So thank  
25 you for your comments.

1 Any other questions or concerns?

2 MR. ANTHONY AGUIRRE: Anthony Aguirre, again,  
3 with the Navajo Tribe. If we're talking about speeding up  
4 the process for homesite leases -- again, I don't think I  
5 have a pretty good handle on the procedures. I am way -- I  
6 asked for the old ones. I'm going back to the basic  
7 question on leases.

8 MR. BRYAN NEWLAND: Can you hold up your  
9 microphone closer to your --

10 MR. ANTHONY AGUIRRE: I'm going back to a  
11 basic question on leases. We have on the Navajo Reservation  
12 set-asides --- that's what we call it, but -- for use by the  
13 Navajo governmental people. Usually we don't talk about  
14 leases until we're talking about trying to get somebody  
15 outside the tribal government a property interest, whether  
16 it's a member or an enterprise.

17 But when it comes to turning these, they can  
18 -- like for homesites, I'm not sure why, if there's not a  
19 withdrawal like a -- we'll call it, you know, a 10-acre  
20 withdrawal. But I'm not sure why you can't have, in the  
21 lease preauthorization to assignments or transfers, to  
22 individual members of that tribe without BIA approval.

23 My intent has always been individual members  
24 don't need tribal -- BIA approval to live on their own land.  
25 They've been doing it for years. So if the issue -- I don't

1 see where a lease would be -- is even required, is when  
2 you're trying to create some instrument that allows  
3 encumbrance so you can get a loan to finance a home.

4 But if you're dealing with tribal members,  
5 then I'm not sure why you can't have preapproved forms,  
6 preapproved assignments, preapproved mortgages. So why do  
7 we need the BIA's approval on those for internal use? I'm  
8 not sure why the BIA can't do that preapproval in something  
9 like a master lease.

10 We deal with master leases or -- is going from  
11 -- you already have a lease and you're going to assign it to  
12 another tribal member, why do we need the BIA approval?  
13 That's internal use. It's always understood that the land  
14 is for native people.

15 MR. BRYAN NEWLAND: I appreciate that. The  
16 issue of master leases and long-term assignments to tribal  
17 members from the tribe is something that has come up in the  
18 other consultation sessions we had. Again, that's another  
19 one that I personally have flagged. When we sit back at the  
20 table, you know, later this month and open this up in the  
21 Word document and rewrite, we're going to take a look at  
22 that issue. But I appreciate your comments on that.

23 I know we're coming up on time for a scheduled  
24 break. Before we do that, are there any other questions or  
25 comments at this time? Why don't we take a break for 15

1 minutes. Then we'll come back in here and we'll pick it  
2 back up again.

3  
4 (Recess taken from 10:10 a.m. to 10:38 a.m.)

5  
6 MR. BRYAN NEWLAND: We've heard a lot of  
7 interesting comments this morning. I'm sure we'll hear some  
8 more. I just want to add, as a practical standpoint, to the  
9 extent that folks are going to be submitting electronic  
10 comments -- I know that a lot of times what we see is a PDF  
11 signed letter. If you also have suggestions or  
12 recommendations on language -- you know, what we do is we  
13 order some pizza back at the department and sit around a  
14 table with a projector and we work on this stuff.

15 If you have flagged something in here like a  
16 particular section, you have an idea on how to replace that,  
17 it might be helpful if you also submitted a Word document  
18 along with your PDF. That just makes it a lot easier than  
19 having Liz exercise her fingers in those meetings trying to  
20 type verbatim the suggestions. That's one kind of practical  
21 thing I wanted to highlight for folks.

22 I guess at this time we'll just open it back  
23 up for additional tribal comments or questions. Does  
24 anybody have anything they want to bring to our attention?

25 Yes. I want to make sure we get you a mike.

1 MS. ERNEE WERELUS: Good morning. My name is  
2 Ernee Werelus. I'm a landowner from Fort Hall, Idaho. I  
3 have a couple -- a few questions about your document. I  
4 would like to refer to -- this is the business lease in  
5 162-005, Page 19 and Page 24.

6 We have -- what I do at Fort Hall -- I started  
7 an association for our tribal members. So what I do is  
8 advocate for them on their behalf with the tribes and with  
9 BIA and OST. So that segment, particularly, is bothersome  
10 for me because on D it says, "We will not lease fee  
11 interests or collect rent on behalf of the fee ... owners."  
12 And that's exactly what my issue is.

13 Can you go to Page -- and you go to the  
14 provision 162.016 -- when it comes to compensation for the  
15 lease, they count the multiple owners on the tract as well  
16 as what's on the entire lease. So what you're saying is  
17 they do not lease a fee land because it's not under your  
18 jurisdiction. And then in 162.016, you count that into the  
19 compensation coverage for distribution. So that seems a  
20 little bit odd, and I have a problem with that. So it's  
21 kind of ambiguous, I think, for me.

22 The other one is the residential lease.  
23 Generally, the residential lease will not be advertised for  
24 competitive bidding. We all know reservations all over  
25 Indian country have lack of homes for members. And I've



1 often wondered why does the BIA -- or the CFR doesn't say  
2 like they do in lease provisions, that any homes that are  
3 available for leasing should be advertised and bidded out  
4 like your lease -- agricultural leases. That was on  
5 162.303.

6 The other thing that we have problems with is  
7 that when the lease goes out from the bureau on homesites,  
8 there's no compliance. Lack of compliance consists of old  
9 cars, permanent fixtures on the lease land. And somebody  
10 has to determine when the lease expires to that homeowner  
11 after its duration, what is considered permanent and what is  
12 considered the owner's property. So that hasn't been  
13 defined.

14 Trespasses happen all the time in home leases  
15 because no one is keeping track of it in the bureau or  
16 tribe. We don't have parties that will, you know, go out  
17 and check on them. So we have had homesite leases leased  
18 out by the bureau where it's been leased out to a nonmember  
19 and he will live there for \$50 per month and that's all he's  
20 paid for five years. There is no tracking of compensation  
21 to the landowners. That's happening, too.

22 The last of my questions is fee to trust.  
23 I've worked with a family that has -- under the Burke Act,  
24 have purchased some allotments. For the last 70 years they  
25 have been trying to transfer that back into trust. Their

1 hang-up is the BLM required a certified survey. They have  
2 to have around \$2,000 to \$3,000 upfront before they will  
3 give a certified survey copy to the bureau.

4 It is the government relationship with BLM.  
5 And I'm not sure why that cannot be waived or said in a  
6 different way so that doesn't cause hardship for landowners  
7 to transfer their fee land into trust. And this has been  
8 going on for 70 years. The parties that purchased it under  
9 the Burke Act has all passed away. It was inherited by his  
10 children. They've all gone. And the daughter inherited it.  
11 And she just died two years ago, and it is still in process.

12 MR. BRYAN NEWLAND: I appreciate your  
13 comments. I'll work backwards on the fee-to-trust issue.  
14 We know that up in your region, the cadastral surveys and  
15 environmental assessments and things regarding the  
16 department manual -- we're well aware that that's an issue.  
17 We're working with our sister agencies the best we can to  
18 clear them up. So your comments are well taken. They help  
19 us relay that message in that effort.

20 On the trespass, we also know that that's a  
21 problem. As I mentioned before, a lot of what we're talking  
22 about in the regulations is with regards to policy. But  
23 just as important as the policy is the practice and how it's  
24 implemented. When you get into talking about enforcement,  
25 that's a resource issue and a practice implementation issue.

1           The regulations have provisions in there about  
2 when we learn that -- when we learn of a lease violation.  
3 We're going to work with bureau staff to ensure that  
4 enforcement of a lease violation is a priority because the  
5 regs will have limited value if they don't mean anything in  
6 the back end. I appreciate your comments on that. Thank  
7 you.

8           Any other remarks?

9           MS. SARAH LAWSON: Section 162 -- I'm sorry.  
10 This is Sarah Lawson from Muckleshoot again. Section  
11 162.313, where it talks about -- go back to it myself.  
12 Mandatory provisions for leases. We work a lot with the  
13 Indian Estate Planning Institute out of the Seattle  
14 University School of Law to help a lot of Indian landowners  
15 do wills, providing for the disposition of their property at  
16 their death.

17           But a lot of times people forget that they  
18 have a lease and the lease doesn't show up on their ITI  
19 report. So my thought is that if we add the person's ITI  
20 number, if we make it a requirement to add their ITI number  
21 -- I'm sorry, not their ITI. The BIA number on the lease so  
22 that it would show up on an ITI and they would note to put  
23 it in their will, it might help with that process of  
24 remembering. We wouldn't have leases that kind of slip  
25 through the cracks, become residual under a will in a

1 probate.

2 MR. BRYAN NEWLAND: Thank you.

3 MR. ERIC SCHMIEDER: Hi. My name is Eric  
4 Schmieder. I'm with the New Mexico Tribal Homeownership  
5 Coalition, and I would like to comment specifically on some  
6 of the residential lease issues that we see in this  
7 document. I would like to kind of preface that with just a  
8 couple of real world examples without taking up a lot of  
9 time.

10 Section 184 Indian Loan Guarantee Loan (sic)  
11 has been around for maybe 20 years. When it first started,  
12 over 60 percent of those loans were done on trust and  
13 allotted lands. The latest figures that I see show that  
14 it's something like 6 percent. What we've seen is that  
15 those mortgages are being done on fee simple lands to  
16 Indians. But the areas that loan was targeting, which was  
17 where the housing is needed so much, which is Indian  
18 country, the reservations and pueblos of New Mexico, for  
19 instance -- that loan simply isn't being delivered by the  
20 private sector in any numbers anymore. It's because of the  
21 long process it takes to get leasehold mortgages and  
22 documents approved and everything else.

23 The other thing that's happened here in New  
24 Mexico recently -- and I guess it's nationwide -- is that  
25 Bank2, which was our largest performer, I think, in New

1 Mexico, was using a lot of mortgage brokers. So there was  
2 individual meetings between lenders and tribal members in  
3 getting loans made.

4 They have put a moratorium on all of the  
5 tribal mortgages. And so they're only doing fee simple  
6 stuff right now. The problem is -- the reason that they're  
7 doing that is because they have a huge backlog of  
8 unguaranteed loans because they haven't been able to get  
9 title status reports and mortgage approvals in a timely  
10 manner.

11 We really think that the approval of leases  
12 and mortgages should be delegated to the tribes. And the  
13 BIA is -- and we're not talking about all leases and all  
14 mortgages. We're talking about residential leases and  
15 mortgages, because that's what we're familiar with. We  
16 think that those approvals should be delegated to the tribe.  
17 We just don't think that the bureau is equipped to handle  
18 those in a manner that's going to be quick enough to make  
19 these mortgage programs work on Indian trust land.

20 There was a question about this deemed  
21 approved where a mortgage and the lease, I guess, can be  
22 approved if it isn't approved in a timely manner. I'm  
23 sympathetic to that. I just don't know how that would work  
24 with the mortgage industry in terms of actually then getting  
25 the documents for loan guarantees that center around the

1 mortgage. I think you've raised some of those questions in  
2 your distribution. So I don't know that it really works.

3 We're recommending changing all the references  
4 from 30 days to five days. You can do that real easy. In a  
5 Word document, there's a global way to do that. Really  
6 easy.

7 "What must the lease include if it contains an  
8 option to renew?" This is 162.312. "We must record any  
9 renewal of a lease in the Land Title and Records Office." we  
10 see a lot of leases that are with this 25 years, with  
11 another automatic renewal at the end of 25 years. So we  
12 think that doesn't make sense, because it's really an  
13 automatic renewal and it's in the lease to begin with. So I  
14 don't know that it -- I don't know what you record or how  
15 you document that it's been renewed.

16 162.356, "What is the consent and approval  
17 process for a leasehold mortgage under a residential lease."  
18 It's requiring the lessor to approve it within 30 days, I  
19 guess. But -- and I think I had the right lease. The  
20 one-stop lease which was approved. And I think the bureau  
21 has signed off on allowing us to -- for -- mortgaging for  
22 residential purposes a mortgage loan without additional  
23 approvals from the tribe. So we don't think that's  
24 necessary, because I think it's built into that one-stop  
25 lease again, which I say the bureau has approved. I think

1 it's going to slow stuff down.

2 What will BIA -- this is 162.362, "What will  
3 BIA do about a violation of a residential lease." That will  
4 require the lessee to provide response within 10 business  
5 days. We thought that maybe -- we're wondering why you  
6 didn't use 30 in that case.

7 MR. BRYAN NEWLAND: So you want the longer  
8 time, but you want the quicker -- okay.

9 MR. ERIC SCHMIEDER: That's right. I really  
10 think the intent of that regulation is good, but I don't  
11 think that the 30 days is going to solve it. In order to  
12 build residential markets -- in order to get the private  
13 sector to participate, which is the -- that's where a lot of  
14 the money is right now that might be available for  
15 homeownership. It's got to be streamlined more than that.

16 I thank you very much.

17 MR. BRYAN NEWLAND: Thank you very much for  
18 those comments. I wanted to note a couple of things. We're  
19 aware of what's going on with the HUD 24 program. We have,  
20 you know, discussed with folks at the American Indian  
21 Housing Council that issue, these regulations, the HEARTH  
22 Act, which -- again, I will note Congressman Heinrich here  
23 in New Mexico, as many of you know, has been a big advocate  
24 for tribal homeownership. He was the original sponsor of  
25 the HEARTH Act, which will do exactly what you said, is let,

1 you know, the tribes do the lease approvals rather than us.

2 So we're working -- you know, I can't --  
3 again, I can't come out and say what the department's  
4 position is on the bill at this time, but other than to note  
5 that that bill is out there and would do exactly what you're  
6 referencing.

7 With respect to the 30-day time periods -- you  
8 know, folks have a tendency to think that if you put 30 days  
9 or, you know, the 99-year leasing authority under the  
10 statute, that that means that it's going to take up that  
11 entire time. That's the limit. It's going to be incumbent  
12 on us as the department and our staff with the bureau to not  
13 make it a practice to wait until Day 30 to stamp a letter  
14 and say we need another 30 days.

15 We've just committed -- as committed to making  
16 sure the practice, the implementation of these regs,  
17 accomplishes the policy objectives. So we hope that we can  
18 get to a point where it doesn't take 30 days to approve,  
19 because you know -- we all know that, you know, banks like  
20 to move a lot quicker when they're talking about money.

21 I just wanted to point that out. That's the  
22 outer limit. We're going to work on the implementation to  
23 make sure that we have sound practice and that we're not  
24 waiting until the last minute. So, thank you.

25 MS. ERNEE WERELUS: Can I ask a question?



1 MR. BRYAN NEWLAND: Sure.

2 MS. ERNEE WERELUS: If the recordation of any  
3 leases -- residential leases is given regardless of who  
4 gives it, whether it's a tribe or BIA -- if it's not  
5 recorded, we -- we, landowners, receive quarterly reports on  
6 our lease tracts that is under lease. Many of my folks that  
7 want to make their wills and kind of get rid of  
8 fractionation do not have any of the encumbrances, such as  
9 leases -- homesite leases on some of their tracts on the  
10 quarterly report. Some folks have actually sold their land  
11 -- because when they got their ITI, it didn't show any  
12 encumbrances of utilities or gas lines or pipes or anything.  
13 So they sold it. Then later found out that they have sold  
14 property that would bring in a lot of compensation.

15 So my question, then, is, if you're going to  
16 allow homesite leases to be given to tribes or BIA, the  
17 recordation on some of those properties, whether it's tribal  
18 assignment or individual land, there's no recording on your  
19 TSRs to recognize that there is an encumbrance of a  
20 homesite.

21 MR. BRYAN NEWLAND: That's really a technical  
22 question. I'm going to confess ignorance. My wife would  
23 agree I don't know everything. I don't even know that much.  
24 If you want to talk after, maybe we can collect some of our  
25 staff to work with you on that.

1 MS. ERNEE WERELUS: I'd love to visit with  
2 you. Thank you.

3 MR. BRYAN NEWLAND: Do we have any other  
4 questions or comments?

5 MS. GERMAINE EWING: Hi. My name is Germaine  
6 Ewing with the Southern Ute Indian Tribe. We have, I guess,  
7 a concern that there doesn't appear to be anything in the  
8 regulation regarding cancellation or a time frame associated  
9 with a cancellation of a leasehold mortgage loan.

10 So -- although ours generally do come up on  
11 the title status reports, it takes us a very long time to  
12 get those documents released. So what happens is there is a  
13 term that's -- basically, the occupant can't do anything  
14 with that property. If they choose to refinance it or add  
15 on to their property or remortgage it, then they're tied to  
16 being able to release the first mortgage even though they  
17 paid it off.

18 So we've got to see something in the document  
19 associated to a time frame of when those documents will be  
20 released and it will be removed off the TSR.

21 MR. BRYAN NEWLAND: Thank you very much.

22 MS. SARAH LAWSON: Sarah Lawson from the  
23 Muckleshoot Indian Tribe, again.

24 MR. BRYAN NEWLAND: You don't have to  
25 apologize for saying that now.

1 MS. SARAH LAWSON: I didn't apologize. I just  
2 said "again." So Section 162.323, when rental payments are  
3 due. Section B says, "Unless otherwise" --

4 MR. BRYAN NEWLAND: Can you say the page  
5 number just to helps folks?

6 MS. SARAH LAWSON: Sure. Page 40. Section B  
7 says, "Unless otherwise provided in the lease, payments may  
8 not be made or accepted more than one year in advance of the  
9 due date." We're a compacted tribe. We are admittedly not  
10 on TAAMS and have not had any TAAMS training, but it is our  
11 -- or what we think we know about TAAMS all comes from the  
12 agency.

13 According to the agency, they cannot accept  
14 any future payments with the way TAAMS is set up. So I  
15 guess this is more of a procedural issue where -- we seem to  
16 have been led to believe that TAAMS cannot accept any future  
17 payments even less than a year out. And yet it's in the  
18 regs that you could pay your four-year lease six months into  
19 the future. That might be something that needs to be  
20 cleared up or addressed with the TAAMS team.

21 MR. BRYAN NEWLAND: Thank you. Appreciate  
22 that. Any other comments you have, halfhearted or not?  
23 We're going to miss you. You've got to get -- here we go.

24 MS. TERESA LEGER: Teresa Leger from the  
25 Nordhaus law firm with the Pueblo of Laguna. Following up

1 on that issue, which is -- although it is often the case  
2 that lease payments or annual -- it is also possible for an  
3 Indian tribe to negotiate an upfront payment, which probably  
4 could be better for that tribe to get everything upfront and  
5 then they have the money right away.

6 So I think that the regulations have to  
7 acknowledge that and have to acknowledge that the five-year  
8 review would not apply if indeed you don't have any payments  
9 that are happening after that first five years, because  
10 you've been paid everything upfront. So that's just a  
11 follow-up to that.

12 MR. BRYAN NEWLAND: Thank you. Any comments?  
13 Folks didn't get their second cup of coffee.

14 MR. LESTER TSOSIE: Hello. My name is Lester  
15 Tsosie. The proposed draft regulations -- in current  
16 practice is that when we submit a lease type to BIA, they  
17 often require company documents for the lessee. And I'm  
18 wondering -- I don't see that in the draft here and yet --  
19 is it then at the discretion of the local BIA office to make  
20 such a requirement? Because it doesn't seem consistent to  
21 do them -- one in one place and not do it in another place.

22 One -- some of the documents being required  
23 was incorporation documents as well as authority-to-sign  
24 documents. And it's not -- I don't think it's clear in your  
25 draft or current practices going on. Your comment on that?

1 MR. BRYAN NEWLAND: I don't have a comment.  
2 If there's somebody from one of our BIA staff here, if you  
3 want to address that or maybe we can -- I just don't have an  
4 answer for you on that.

5 MR. STAN WEBB: Stan Webb, BIA, Phoenix.  
6 That's in our region. Yeah, we would require that. Make  
7 sure the lease is enforceable. Organizational documents and  
8 a resolution from the lessee. Gloria has just reminded me  
9 of something. It's just in the manual. It's not in the  
10 current regulations, in the draft. We would require that.

11 MR. BRYAN NEWLAND: Do you have ....

12 UNIDENTIFIED MAN: Is that going to be in  
13 there, too?

14 MR. BRYAN NEWLAND: We can take a look at it.  
15 If you feel it's something that should be in the  
16 regulations, then we need to take a look at it. That way  
17 it's necessary we get your input.

18 But, again, when we talk about processes, I  
19 want to make sure that you -- there is a distinction between  
20 policy and how it's implemented. A lot of things that -- a  
21 lot of times folks think things are enshrined in the policy  
22 really overburden or confuse it. We want to have the  
23 flexibility to implement. At the same time, if there are  
24 things that you feel are very important as a matter of  
25 practice to include in the regs themselves, then we want to

1 hear about that.

2 MR. MONTE MILLS: Hi. Monte Mills from  
3 Southern Ute again. I think in looking at Section 162.138  
4 on Page 90, Sub C, there's your requirement for business  
5 leases at least. That organizational documents,  
6 certificates, filing records, and resolutions or other  
7 authorization documents be submitted to the BIA.

8 I don't know if that answers the question. I  
9 just have one other question. And that is, what's the  
10 deadline for comments next week? The "Dear Tribal Leader"  
11 letter said the 18th.

12 MR. BRYAN NEWLAND: April 18. I've been on  
13 the road doing consultations, so I don't remember what day  
14 it is. If I said next week, I meant the 18th. I'm sure  
15 that the tribes who -- the tribes who submit comments on the  
16 20th, they're not going in the recycling bin. If we get  
17 them by the 18th, that's really facilitating us hitting  
18 those targets, those deadlines.

19 MR. GREG SAMPLE: Greg Sample, tribal attorney  
20 with Drummond Woodsum. I've been traveling back and forth  
21 between the DOE round table -- and perhaps you've already  
22 covered this topic, but I wanted to ask about a memorandum  
23 of lease for recording as opposed to the lease itself,  
24 particularly now that you've gotten and are working on  
25 regulations for business leases.

1           The lease, in my experience, often has a good  
2 deal of the financial transactions worked into it. The  
3 parties to the lease often prefer that that not be a public  
4 record. It's quite standard in real estate practices to  
5 record a memorandum of lease identifying the parties, the  
6 terms, obviously the specific land covered by the lease so  
7 that anyone would have notice that somebody's got rights in  
8 that land for a specified period of time. But I don't think  
9 that it would be necessary to disclose the business terms  
10 that that business lease incorporates.

11           If you could consider that, that would be a  
12 big help to negotiating innovative business terms.

13           MR. BRYAN NEWLAND: I appreciate that. I  
14 don't know how many folks were at the National Indian Gaming  
15 Association Conference where we just came from, but Deputy  
16 Assistant Secretary Laverdure talked about that in the  
17 context of gaming with the revenue allocation planning and  
18 proprietary information. We all come from Indian country.  
19 We're very sensitive about protecting tribal business data  
20 from folks who want to blanket -- you know, cover us with  
21 FOIAs and try to get that information.

22           We're going to do our best to try to protect  
23 the information you're talking about.

24           Any other comments, questions? Part 162.

25           MS. SARAH LAWSON: Sarah Lawson from the

1 Muckleshoot Indian Tribe. At Section 162.407, which is on  
2 Page 73, Section (f)(2) where it says the BIA may consent to  
3 a business lease on behalf of "individual landowners of a  
4 fractionated tract where the Indian Landowners are unable to  
5 agree upon a lease during a three month negotiation period."

6 We actually had an issue about 20 years ago on  
7 the Muckleshoot Reservation involving a mobile home park  
8 lease when the Indian landowners vehemently objected to  
9 renewing the lease with the lessee. But the lease was  
10 approved over their objections.

11 It seems to me that the language "unable to  
12 agree" seems a little bit like a slippery slope where it  
13 could also get confused with the landowners actually not  
14 consenting and voicing their nonconsent to the lease.  
15 They're not the same, obviously. "Unable to agree" and "do  
16 not consent" are two separate things. But it seems that  
17 that could be misconstrued at some point.

18 MR. BRYAN NEWLAND: Thank you. I believe that  
19 we've exhausted everybody's thoughts on these draft regs. I  
20 do want to add again and reiterate several times more that  
21 these are drafts. Your comments of -- especially Sarah.  
22 You deal with this -- I mean, you have experienced unique  
23 circumstances that have arisen, that, you know, when we sit  
24 down and collaborate on these rules, we try to think about  
25 the universe of circumstances that might arise. I'm really



1 not that creative, so I can't think of too many things that  
2 might come up.

3 The regs cover the entire country. We know  
4 that everybody has unique circumstances. So you guys  
5 bringing those to our attention, things for us to consider,  
6 is helpful. That's why we're committed to this consultation  
7 process. It makes a difference. You guys will see, based  
8 upon these consultations and what moves forward later in the  
9 summer -- I mean, you'll see that this session today and the  
10 comments we've received made a difference.

11 UNIDENTIFIED WOMAN: I just have one question.

12 MR. BRYAN NEWLAND: Just wait a moment.

13 Behind you.

14 MS. MICHELLE TREVINO: My name is Michelle  
15 Trevino. I'm from the Yakama Nation, with the Land  
16 Enterprises. Since you brought that up, there's one area  
17 that I don't see in these draft regs, and that's for  
18 transmitter sites.

19 On our reservation, we have transmitter sites.  
20 And when you brought up the subleasing, we have all these --  
21 we have these sites. And you're saying they have -- what?  
22 -- ten days or something to get -- for subleasing to get  
23 approved if it's not -- is that the bureau that's going to  
24 approve that?

25 MR. BRYAN NEWLAND: I don't know what you're

1 referring to by transmitter sites. Do you mean cell phone  
2 towers?

3 MS. MICHELLE TREVINO: Cell phone towers, TV  
4 towers.

5 MR. BRYAN NEWLAND: If you're talking about a  
6 sublease, now that's where we have the automated approval  
7 section in there. That there will be a date after that  
8 period when the lease would become effective. If it's an  
9 initial lease out of trust land from the landowner, whether  
10 it's a tribe or individual, that is to have express -- would  
11 have under these draft rules -- would have express approval  
12 of the bureau.

13 MS. MICHELLE TREVINO: Yeah, because with  
14 these, you know, you're entering into a whole another area  
15 because a site may be for a cell phone. But when you go up  
16 and look at the antenna, there may be a microwave, you know,  
17 like for, you know, CB radios or -- you know, different  
18 things. There's different -- we're starting to hit another  
19 area.

20 It's almost like this transmitter site area  
21 should be just like the -- what is it? The wind solar,  
22 whatever, power. It should have its own section because  
23 it's just the same -- just like that. I didn't -- it was  
24 kind of confusing to me. I'm not in -- I haven't been in  
25 leasing for about two years. So I was like, okay, then,

1 where does the transmitter sites fall. Do they fall under  
2 the business lease or -- you know, I was just kind of  
3 guessing now. But I had to ask so when I go back, I'll be  
4 clear on it.

5 Because that generates -- not to the Land  
6 Enterprises, but to the Yakama Nation, millions of dollars.  
7 If they're subleasing, the tribe's missing out, you know.  
8 They may not cover -- you know, it's not -- it may not be  
9 negotiated or the tribe does not get to negotiate that part  
10 in a timely manner.

11 MR. BRYAN NEWLAND: If you're talking about a  
12 for-profit enterprise, then it would fall under, as this is  
13 currently constituted, business site leasing regulations  
14 here. So to answer your first question, that's where that  
15 would fall.

16 If you're talking about subleases, I guess --  
17 this is dangerous territory when I start talking about legal  
18 stuff, but generally subleases can't -- lawyers can get  
19 pretty crafty how they do this. Subleases can't trump --  
20 can't expand the scope of the original lease that they come  
21 down from.

22 I hear some chuckles because I'm sure there  
23 are attorneys in the room that say, yeah, right.

24 MS. ERNEE WERELUS: I just had a quick  
25 question. Do you have a sliding scale of consent

1 requirements for residential leases or business leases from  
2 landowners? If it's a lot of land, do you have a consent  
3 form that has a sliding scale?

4 MR. BRYAN NEWLAND: You mean like if it's ten  
5 owners or less?

6 MS. ERNEE WERELUS: Right.

7 MR. BRYAN NEWLAND: Yes.

8 MS. ERNEE WERELUS: Is that applied in -- to  
9 the residential?

10 MR. BRYAN NEWLAND: Yeah, I believe it is.

11 MS. ERNEE WERELUS: Well, that's going to be  
12 hard to get in.

13 MR. BRYAN NEWLAND: I don't know if you were  
14 here when I mentioned at the outset, things like that in the  
15 terms of the leases are governed by statutes. We can't  
16 change those statutes by the regulations. We've only got  
17 what we got to work with. So that's where we're operating  
18 under.

19 Any other questions? I thought I saw a hand  
20 up back in the middle. Comments. There you go.

21 MR. ANTHONY AGUIRRE: Anthony Aguirre, Navajo  
22 Tribe. So to answer the person who talked about his  
23 cellular towers, one of the problems that we run into --  
24 that -- do you use a right-of-way or do you use a -- some  
25 kind of lease or permit. I think right now we've been

1 processing cellular sites -- trying to do it by way of  
2 right-of-way. The BIA is, I think, split on that. Eastern  
3 Agency and Western Agency, whether you can do right by that  
4 right-of-way. Western Agency said, right-of-way, okay.  
5 Eastern Agency says, no, you need a permit or a lease.

6 What we're trying to come to now is that we're  
7 reintroducing this -- the old BIA revocable use permit that  
8 they use for radio towers. We're converting that to now --  
9 for cellular sites. It's not considered -- it depends on  
10 your use -- the terms and conditions are like a lease. It's  
11 a permit. But ours allows a co-location, like an antenna.  
12 I think it is -- that doesn't require BIA approval if a  
13 permit is preauthorized.

14 So that's one way we can do it. And it's not  
15 the BIA that's granted anything. We will approve the  
16 permit. Of course, the BIA has got to consent to it, but it  
17 will preauthorize co-locations because it's not -- it's a  
18 permit. It's not considered a lease. That's the way we're  
19 doing it. It's limited to five years.

20 This is what the BIA has always done, but they  
21 call it "revocable." Some companies don't like that because  
22 of the nature of revocable. You can revoke it at will. But  
23 anyway -- so that's kind of how we're dealing with it. Then  
24 you get away from the Al/Strate issue, too. That helps you  
25 deal with that. Thank you.

1 MR. BRYAN NEWLAND: Thank you. Appreciate  
2 that. Has everybody said their peace already. Do you want  
3 to break for lunch or .... We're here all day or we can be.  
4 It's up to you guys if you want to continue. If you want,  
5 regroup in the hallway and then break. We can come back  
6 after lunch.

7 There's a federal bar association conference  
8 going up in Santa Fe beginning today. Folks may be coming  
9 in on their way up to that. So we may have some new  
10 comments later in the morning or early afternoon.

11 If folks want to wrap up for the morning, I  
12 guess we can do that. I'm not going to stand up here and  
13 stare blankly at you guys. Why don't we do this. It's a  
14 quarter after 11:00 right now. We'll be back here -- the  
15 agenda says 1:00. Let's call it a quarter to 1:00. Indian  
16 time: we'll start at 1:00. We'll wrap this up in the  
17 afternoon. So, thank you, guys.

18  
19 (Lunch break from 11:17 a.m. to 1:17 p.m.)  
20

21 MR. BRYAN NEWLAND: I think we're going to  
22 pick it back up now. I see we lost a lot of folks. They're  
23 probably in a burrito coma or something. I realized over  
24 lunch that I didn't introduce myself properly this morning.  
25 I kind of just dove head first into this. I get so excited

1 about leasing regulations and I couldn't wait to get to it.

2 My name is Bryan Newland. I'm a counselor to  
3 the Assistant Secretary for Indian Affairs. I work under  
4 the Assistant Secretary Larry Echo Hawk and Principal Deputy  
5 Del Laverdure back in Washington. I'm an Ojibwa from  
6 Northern Michigan. I've been in this job for almost two  
7 years. It feels like 20. I've got some gray hairs that  
8 weren't there before. It really does a number on you.

9 But with that -- so you guys just have an  
10 understanding of -- it's not just this Indian guy up there  
11 with a ponytail talking about leasing regulations. That's  
12 who I am. That's why I'm here.

13 Again, I want to acknowledge our staff who's  
14 in the room. Liz Appel from Office of Regulatory Affairs.  
15 She's does a lot in getting this process rolling. So I want  
16 to thank her and her team for helping with that.

17 At this time I guess I'll just open it up to  
18 any other comments folks have on these leasing regulations.  
19 Again, we have our court reporter here. If you could say  
20 your full name and the tribe you represent, it will be  
21 helpful for us.

22 Someone has got to raise up their hand to  
23 stretch out their bellies for a moment. We'll give it a  
24 minute or two here. Then, if everybody feels they have said  
25 their piece and we heard everything, we can wrap it up.

1 Otherwise ....

2 MS. DIANE ENOS: Good afternoon, Mr. Newman  
3 and staff and everybody else that's here. My name is Diane  
4 Enos. I'm the current president of the Salt River  
5 Pima-Maricopa Indian Community near Scottsdale and Mesa,  
6 Arizona.

7 Our area is fairly well located within the  
8 metropolitan Phoenix area. We have over 9,300 members --  
9 enrolled members. And almost half of our membership is  
10 under the age of 18. The Salt River Indian Community is a  
11 self-governance tribe. We have compacted many functions  
12 from the BIA for about a decade and a half.

13 I'm reading from my notes because this topic  
14 really means a lot to me. If I don't read my notes, I'm  
15 bound to go off on some other areas that probably are not as  
16 on point as this needs to be.

17 In view of our self-governance compacted role,  
18 we have had an opportunity to review these draft regulations  
19 in depth. We look forward to submitting written comments  
20 within the time lines allocated for public comment on the  
21 draft regulations.

22 Before I go any further, I need to acknowledge  
23 some of the staff. Ruben Guerrero from the Office of  
24 Congressional Affairs and Legislative Affairs, Stacey Gubser  
25 who is our Director of Community Development, and Nicole



1 King who is with our Office of General Counsel. One of our  
2 staff attorneys. It's their work that has provided me with  
3 some of these notes here. We have had numerous meetings. I  
4 believe we met with you in D.C. on this very topic.

5 The general view of the commercial leasing  
6 sections of the draft regulations does have some very  
7 positive aspects. On our first review, we believe that some  
8 of the provisions will provide clarity to the commercial  
9 leasing process. While the commercial leasing regulation  
10 will provide clarity to economic development for Salt River,  
11 the draft homesite leasing regulations will provide grave  
12 hardships for our people.

13 Salt River has the majority of its developable  
14 land for homesites held in what's called "allotted status"  
15 with extreme fractionation on some of those allotments. I  
16 heard some of the comments earlier about some of the tribes  
17 that are in the same situation as we are. So it's not just  
18 us. I know you're hearing this across Indian country.

19 We have experienced the implementation of  
20 these draft -- proposed draft homesite leasing regulations  
21 over the last year. While these are still not in effect,  
22 they have already started to implement them in the Phoenix  
23 area region. This implementation has put a stop to building  
24 homes in the community and caused the community production  
25 of homes from an average of 40 per year to four -- only four

1 in the last year.

2 The draft homesite regulations as proposed  
3 will drastically hinder homeownership opportunities and the  
4 ability of the Indian tribal people to meet the common  
5 housing needs of their families. Unfortunately, the draft  
6 homesite regulations amendment goes in the direction of  
7 commercial leasing. Requiring homeowners to a pay appraisal  
8 rental value for a homesite lease will set Indian housing  
9 backwards over a decade, forcing Indian people to live in  
10 substandard housing and shifting our ancient tribal values  
11 of co-sharing and support within families to those of  
12 commercial values.

13 Salt River families want to live near their  
14 family. If an allottee wishes to give a small portion of  
15 land, about a third of an acre or less to their children to  
16 build a home, those young people are stopped in their tracks  
17 because they have to gain signatures now of 100 percent of  
18 ownership or people that have undivided ownership in the  
19 allotment in that parcel or possibly end up paying the  
20 family members and other co-landowners for fair market value  
21 for a lease. This changes homeownership.

22 In addition, the bonding and insurance  
23 requirements in the lease are again more suited for the  
24 commercial setting. Homesites are for homes, not for  
25 commercial gain. We need to adjust the regulations to focus

1 on what is important. Creating opportunities for families  
2 to live near their family and creating safe, well-built  
3 homes for the people.

4 Again, Salt River Indian Community wishes to  
5 thank the BIA for the clarity provided in the draft  
6 regulations, commercial leasing for commercial leasing, but  
7 we implore you and we invite you to see what the draft  
8 homesite leasing regulations have done for families in Salt  
9 River and to see what hardships and bureaucracy that will be  
10 if -- created by these -- will be created if these draft  
11 regulations are adopted.

12 I just want to add one more item here. I was  
13 just talking to my -- one of the attorneys here, Ms. King,  
14 talking about the inability of people to write wills because  
15 you don't have a valid homesite. You can't get a valid  
16 homesite. You can't write a will. That adds again to the  
17 fractionation problem that is so common in many allotted  
18 land reservations.

19 I could go on and on. As I said it before,  
20 this topic is a painful topic to us. Not least of which our  
21 elderly people have been living in a home, for example, for  
22 -- probably 50 years or more under the old regs. And maybe  
23 the land -- they actually signed a document that didn't get  
24 filed in the land and title, but they've been living there.  
25 They don't know any other home.

1           Those homes are falling into disrepair  
2 sometimes. It's difficult for the community to go in and  
3 make repairs for those homes if they don't have a valid  
4 homesite lease in place. And lots of times they can't get  
5 one because some of the members have not -- are not willing  
6 to sign. They may not be locatable.

7           It really creates problems. People ask -- and  
8 I used to manage an allotment -- how can you let some of  
9 your senior people live in such substandard housing. And we  
10 want to help them. We want to offer some resources, but we  
11 can't because you've got maybe 100 other people that own  
12 that house. They don't have a valid homesite lease.

13           So in terms of directly and clearly explaining  
14 the suffering that these regulations are creating now and  
15 will continue to create even further -- that's just one  
16 example. And like I said, I could go on and on. I think  
17 you get my point. We look forward to submitting some  
18 proposed changes for these regulations. Again, thank you  
19 for your time.

20           MR. BRYAN NEWLAND: Thank you, Madame  
21 President. It was great to meet with you back in D.C. I  
22 know that some of our team was at the Salt River Community  
23 to see what you guys have going on. We're well aware of the  
24 challenges that you guys face with fractionation and folks  
25 whose whereabouts are unknown. And we're working with our

1 Western Region to try to adjust that. But I appreciate very  
2 much your comments.

3 MS. DIANE ENOS: Thank you.

4 MR. BRYAN NEWLAND: Anybody else?

5 MR. LESTER TSOSIE: This is Lester Tsosie of  
6 Ak-Chin again. I'm just wondering. Are they going to make  
7 this testimony available to tribes, written format,  
8 otherwise?

9 MR. BRYAN NEWLAND: You mean the record from  
10 the consultation?

11 MR. LESTER TSOSIE: Correct. And when?

12 MR. BRYAN NEWLAND: I'll leave that up to Liz.

13 MS. LIZ APPEL: This is Liz Appel with  
14 Regulatory Affairs. We have our court reporter  
15 transcribing. So we'll post those transcripts as they come  
16 in on the Web site. It's on the BIA Web site: [WWW.BIA.gov](http://WWW.BIA.gov).  
17 There will be a link.

18 MR. BRYAN NEWLAND: We'll do our best to --  
19 the consultation period ends on the -- officially on the  
20 18th. We'll do our best to get everything up in a timely  
21 manner and make that available -- it will be on our Web  
22 site. You know, that sometimes -- it may be hard to  
23 navigate. We'll work with our IT folks, the people that do  
24 the Web site, to make sure it's easy to find. But that will  
25 be available.

1 MR. DAVID JOHNSON: I'm David Johnson. I'm  
2 with the Office of Indian Energy Policy Development. I just  
3 want to make a comment about the leasing regs, the intent  
4 behind them and this new push, particularly WSR regs, the  
5 HEARTH Act and several other initiatives going on in the  
6 department. They all seem to have the same couple of  
7 problems on how to make it quicker, better, less  
8 bureaucracy.

9 I just wanted to remind the folks that the WSR  
10 regs are one possible avenue towards improving the ability  
11 of tribes to tie into wind and solar power. Another is the  
12 TERA regs at 25 CFR Part 224. The long term impact of that  
13 is that a tribe that can follow the TERA process, can  
14 actually be in charge of certain elements of its own energy  
15 development, from leasing to environmental work. That's  
16 another avenue towards possibly resolving some of those  
17 problems.

18 MR. BRYAN NEWLAND: Thank you, David. I see a  
19 couple of new faces who weren't here this morning. My  
20 understanding is the Department of Energy has wrapped up its  
21 round table. If there's anything anyone else wants to say,  
22 I guess now is the time or hold your piece until, you know,  
23 you're able to submit written comments.

24 Does anybody else have anything they would  
25 like to add to this discussion? Going once, twice. All

1 right.

2 MR. MELVIN ROMAN NOSE: My name is Melvin  
3 Roman Nose. I work with the Cheyenne and Arapaho Tribe. My  
4 question is mostly what sort of effect do you expect to get  
5 out of it? And how do you expect to implement this once  
6 these get approved?

7 MR. BRYAN NEWLAND: David alluded to the  
8 intention just a minute ago. I touched on it this morning.  
9 What we're trying to do here is -- stepping back from a  
10 global perspective. What we're trying to do is make it  
11 easier for people to get into homes on tribal Indian lands,  
12 to start small businesses or large businesses. We're trying  
13 to make that process easier. The devil is always in the  
14 details.

15 One of the things that we know is that the  
16 bureau -- we can't let banks, lenders, business partners --  
17 they can't wait for these things to sit on somebody's desk  
18 for approval. We know that speeding up our review is a big  
19 part of facilitating economic development, energy  
20 development and homesite development on Indian land. That's  
21 the goal.

22 What we have before you guys today with the  
23 draft leasing regulations -- to use the term, they're  
24 half-baked, but they're our best shot so far. Knowing that  
25 they're not perfect, knowing that in this consultation

1 process we're going to hear a lot of things, recommendations  
2 on how to make it better, things that might -- find some  
3 things that might cause problems at a level. We're going to  
4 go back and work on those over the next few months.

5 But the intent, largely, is to speed things  
6 up, simplify it and promote homesites, economic and energy  
7 development on Indian lands. And to really restore, to the  
8 greatest extent that we can, that authority with the tribes  
9 in the exercise of inherent sovereignty. We're under a  
10 period of self-determination. That's what we're going for.  
11 So that's the intent.

12 MS. HEATHER WHITEMAN RUNS HIM: Has there been  
13 any -- oh, I'm sorry. I'm Heather White Man Runs Him,  
14 General Counsel for the Crow Tribe in Montana. Has there  
15 been any examination of what types of corollary services are  
16 going to be necessary to implement these effectively? I  
17 mean, I see a lot of time frames that look great for getting  
18 things done.

19 Like you said just a minute ago, the devil is  
20 in the details. There's just a lot of practical application  
21 problems with our regional offices and our local offices,  
22 where the appraisal issue, I've seen, is a huge, huge  
23 problem for us in our area, because right now there's a  
24 backlog on appraisals for the current transaction, both land  
25 sales and leases. It goes probably over a year.



1           We don't have any appraisers on staff at the  
2           tribe. We don't have any tribal members who are certified  
3           as appraisers. We don't have anybody in our surrounding  
4           community. So bringing in people from the outside, even if  
5           a tribal member decides to purchase their own appraisal, can  
6           be prohibitively expensive and take quite a while to get  
7           somebody in from a community like Billings. That's pretty  
8           far from the tribal land.

9           So, you know, just some of those issues that  
10          most concern me about this. Have you guys looked at all  
11          about beefing up those offices at the area level to make  
12          sure that that's not a bar to successful implementation of  
13          these regs?

14          MR. BRYAN NEWLAND: I think -- I don't want to  
15          be premature about what the future budget proposals are  
16          going to look like. That's something that we know is going  
17          to be a priority. I mentioned this morning that this is  
18          going to be meaningless if we can't enforce them and we  
19          can't carry them out.

20          We're working with the BIA Director Mike Black  
21          right now to start figuring out how we're going to train our  
22          staff. We had the suggestion this morning about including  
23          tribes in that process. How these are going to work. How  
24          they're going to be implemented.

25          Just to be perfectly honest, when we make big

1 changes like this, there's going to be bumps. There's going  
2 to be hang-ups that occur when they go into effect. We're  
3 trying to do our best to identify or anticipate what those  
4 are going to be and train folks so those actually do make a  
5 difference. It's not just policy on paper. We know that  
6 money has got to be there for enforcement and realty staff  
7 and things like that.

8 MS. ERNEE WERELUS: That's the forefront of  
9 our thinking in developing the FY-2013 budget request for  
10 Fort Hall. That's where I'm from. Instead of using  
11 appraisers, what they did to us is that -- OST did a market  
12 study of our reservation and that's what they used. They  
13 don't use appraisals.

14 My question on market study -- because I don't  
15 know where they got their information, if they got it from  
16 the records of BIA -- which is not accurate appraisals from  
17 back history. They use the market study that they have  
18 gathered the data from old records to apply to our new  
19 leases. And I have a problem with that.

20 So I don't know if the group that's doing this  
21 drafting has heard that the market studies are in poor  
22 health. It might be a good idea to look into that and see  
23 why they decided that. Because we had a backlog. The only  
24 appraisals they will do quickly is land sales. But  
25 appraisals for anything else is clogged somewhere along the

1 line, I guess. That's the reason why they have done a  
2 market study on our reservation.

3 MR. BRYAN NEWLAND: We can take a look at  
4 that.

5 MS. ERNEE WERELUS: Yeah. It would be  
6 interesting.

7 MR. BRYAN NEWLAND: Do we have any other  
8 remarks or questions on these?

9 MS. GERRI HARRISON: I'm Gerri Harrison. I'm  
10 with the Navajo Nation, Legislative Associate within our --  
11 one of our divisions there. But problematically for our  
12 tribe is our tribal council does not meet until April 18,  
13 which is the deadline. They normally don't get into any --  
14 forming any types of positions or comments until later in  
15 the week because they have statutory reports and  
16 requirements for hearing the president's state of the nation  
17 and so forth. So, is there a possibility of extending the  
18 deadline for comments?

19 MR. BRYAN NEWLAND: There's a possibility, but  
20 in all reality, if you send us your comments, we're going to  
21 get it. The April 18th date -- I don't know if you saw this  
22 morning, you know, the PowerPoint that we had up. We have a  
23 series of deadlines that we're trying to hit so these get  
24 promulgated in time before the president's first term is up.

25 We can extend it if we get enough requests,

1 but if you send me your comments, we're going to get them.  
2 If it's April 22 -- you know, we're not going to ignore the  
3 Navajo Nation's comments if we get them on the 22nd.

4 But we are going to begin -- I just want to  
5 reiterate -- we are going to begin compiling everything on  
6 the 18th and we're going to move forward. As soon as you  
7 can, I would really recommend that you get those to us.

8 Anybody else?

9 MR. ANTHONY BEGAY: Good afternoon. My name  
10 is Anthony Begay, Mariano Lake Chapter President from the  
11 Navajo Reservation, and also from the agency, agency roads  
12 committee member, vice chair. I just got here recently. I  
13 forgot this was going to happen. We were actually in  
14 another meeting and came over. I had a good lawyer joke I  
15 was going to start with, but I don't think it's a good time  
16 right now.

17 But individually, I've been working on a  
18 business lease for the last ten years with the BIA and the  
19 Navajo Nation. You can ask me about everything with the BIA  
20 regulations. I've gone through it and still going through  
21 it to this day and yet I still haven't got a business in  
22 place. You have to understand that these are in place for  
23 certain reasons.

24 A lot of discussions were going on about  
25 appraisals and concerns of different tribes and pueblos

1 we're having. One of the things that we really should think  
2 about is uniting and addressing these issues. The Navajo  
3 Nation has a lot of resources with the appraisals, DOJ.  
4 Just a lot of capabilities. Maybe we can utilize that.  
5 Unite in one place and then present it to the BIA. Then  
6 they'll listen.

7 But other than that, also being a chapter  
8 official, we do have a lot of issues with homesite leases.  
9 A lot of processes going through. Takes a lot of master  
10 planning as we put in place water lines, the terrains and  
11 stuff like that.

12 Also, one of the things that we run across is  
13 flood plain studies of the Navajo reservation. Being 27,000  
14 square miles, we don't have one. We don't have flood plain  
15 studies in place.

16 These are the things that I've been looking  
17 at, trying to work through it. Not being educated as much  
18 some of you -- I don't have a lawyer's degree or anything  
19 like that. Just common sense. It's kind of mind boggling  
20 what you guys go through. I always say educated people  
21 really just make themselves into a mess sometimes.

22 It's always the first -- when you run into a  
23 problem, it's always the first solution that you run into,  
24 that you think of. Being that person, I always think, why  
25 don't we just do this, with a gut feeling. That's how we

1 approach this -- a lot of things going on within our  
2 community.

3 So I've been addressing the council delegates  
4 at the Navajo Nation. I'm glad that one of them actually  
5 took notice of the CFR in place. The more I learned about  
6 it, the more I can actually address these at an individual  
7 level but also the community level, maybe the Navajo Nation  
8 level. At the same time, in working with the Department of  
9 the Interior, Secretary of the Interior Ken Salazar, maybe  
10 we can really get these things going.

11 But I'm glad you guys are coming out. I  
12 forgot about this, like I said. I wanted to go to the one  
13 in Vegas just for the trip. Just kidding. Other than that,  
14 I'm really glad you guys are coming out. I'm seeing some  
15 Web sites that I can look into. I've been working really  
16 close with BIA Realty. I've gotten to learn a lot of the  
17 process they go through.

18 Navajo Nation, same way. The business site  
19 lease issues. They always refer back to the BIA  
20 regulations. We are doing our own business site leases, but  
21 the only thing they did with it was just take off the BIA  
22 name off it. So we might streamline that more. But also  
23 with the infrastructure, renewable energy and all these  
24 things. Hopefully, that you guys can really work this out.  
25 Get some good opinions.

1           And I will look at the Web site to see all the  
2           comments that were made. Unfortunately, I wasn't here for  
3           the early morning because usually that's where all the  
4           action goes on than the latter part of the day. That's all  
5           I can say. Thank you.

6           MR. BRYAN NEWLAND: Thank you very much. Does  
7           everybody feel like you've spoken your peace so far? I know  
8           a lot of you have provided some written comments. If  
9           anybody else has anything else they want to say, now is the  
10          best time to do it. Otherwise, I think we're going to close  
11          up shop.

12          With that, I want to thank everybody for  
13          coming out. We heard a lot of great comments today. I  
14          think that is going to inform us going forward. As a former  
15          bureau skeptic myself, you know, I understand the skepticism  
16          about whether consultation is meaningful. I hope that  
17          everybody in here is pleased that -- when the formal  
18          proposals comes out later this year, to see that a lot of  
19          your recommendations are incorporated into what we're going  
20          to advance.

21          We take our obligation to consult very  
22          seriously. It's one of the reasons President Obama backed  
23          the UN for the rights of indigenous people. It's something  
24          that all of us coming from Indian country like. We know  
25          what that means.

1                   So you guys, I hope, are going to be pleased  
2 with what we're able to incorporate from this discussion and  
3 from your written submissions.

4                   Again, I want to thank you on behalf of the  
5 Assistant Secretary, our office, for coming out. Look  
6 forward to reading your comments. And with that, we'll  
7 adjourn for the day. Thank you.

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9                   (The Proceedings concluded at 1:45 p.m.)

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## REPORTER'S CERTIFICATE

1  
2 I, Yvonne C. Gonzales, NM CCR #62, DO HEREBY CERTIFY  
3 that on Wednesday, April 6, 2011, the Proceedings in the  
4 above-captioned matter were taken before me, that I did  
5 report in stenographic shorthand the Proceedings set forth  
6 herein, and the foregoing pages are a true and accurate  
7 transcription to the best of my ability.

8 I FURTHER CERTIFY that I am neither employed by nor  
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12 of this Proceedings in any court.  
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