

REPORTER'S TRANSCRIPT OF MEETING RE:

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

PROPOSED RULE: 25 CFR 162

(LEASES & PERMITS)

DATE: Thursday, January 12, 2012

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PLACE: Palm Springs Convention Center
277 North Avenida Caballeros
Palm Springs, California

REPORTED BY: Rhonda K. Goodman
CSR No. 8857

INDEX

PRESENT:

FROM THE DEPARTMENT OF THE INTERIOR:

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ELIZABETH K. APPEL

INTRODUCED:

MR. KEVIN BEARQUIVER

MS. GLORIA KOEHNI

MS. CARMEN FOSIO

MR. JIM JAMES

MS. OLLIE BEYAL

MR. MATTHEW KIRKLAND

MS. THERESA GLINSKI

MS. BELINDA RAY

MS. CYNTHIA MORALES

FROM THE AUDIENCE:

See seven pages of attached Sign-in Sheets

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PALM SPRINGS, CALIFORNIA

THURSDAY, JANUARY 12, 2012

8:52 A.M.

MR. NEWLAND: My name is Bryan Newland. I'm Senior Policy Advisor to the Assistant Secretary of Indian Affairs. And we have here today Stephen Simpson from the Office of the Solicitor. Elizabeth Appel from the Office of Regulatory Affairs at the Department. And I know we have a number of other folks from the Bureau, in the Office of Special Trustee this morning. If you could stand up and maybe holler out your name as loud as you can. Let's start with the guy with the long hair in the back.

MR. BEARQUIVER: Kevin Bearquiver from the Bureau of Indian Affairs, Pacific Regional Office.

MS. KOEHNI: Gloria Koehni, Western Regional Office, Real Estate.

MS. FOSIO: Carmen Fosio, Bureau of Indian Affairs, Pacific Regional Office.

MR. JAMES: Jim James, Regional Trust Administrator with the Office of Special Trustee.

MS. BEYAL: Good morning. Ollie Beyal, Acting Superintendent, Palm Springs Agency.

MR. KIRKLAND: Morning. Matthew Kirkland,

1 Deputy Superintendant of Trust, Palm Springs Agency.

2 MS. GLINSKI: Good morning. Theresa Glinski,
3 Office of the Special Trustee, Palm Springs Agency.

4 MS. RAY: Belinda Ray, Realty Specialist, Palm
5 Springs Agency.

6 MS. MORALES: Cynthia Morales, Realty
7 Specialist, Palm Springs Agency.

8 MR. NEWLAND: All right. We've got a full
9 contingency to answer all of your questions.

10 I want to take care of a few housekeeping items
11 this morning. We have with us today a court reporter to
12 take diligent notes for us to use when we go back and
13 review your comments. So before you make your comments
14 this morning or ask your questions, if you could identify
15 yourself by name and the tribe you are representing or
16 organization you are representing. And with that, I
17 think we'll get started. What I'm going to do this
18 morning is run through a brief overview of the proposed
19 regulations.

20 As many of you are aware, we've conducted three
21 Tribal Consultation Sessions in this last spring
22 throughout the Country, including one in the Southwest in
23 Albuquerque, New Mexico. At the Tribal Nations
24 Conference last December, the President announced that we
25 had proposed this rule. We had sent out notice letters

1 to tribal leaders about these consultation sessions, sent
2 out a lot of press materials. And this is the second in
3 a series of additional three consultation sessions that
4 we are hosting with Indian Country about this proposed
5 rule.

6 Stephen is going to click through the slides
7 here. I'm not going to read them verbatim, but I'll hit
8 some of the highlights of the proposed rules. As you
9 see, how this rule has come about, many of you know that
10 this effort to reform the leasing regulations is probably
11 older than me. I know it was talked about in President
12 Clinton's administration and the last administration. We
13 came in office and immediately picked up on the work that
14 had been done. Made a lot of changes to what you may
15 have seen in the past, and we conducted tribal
16 consultation, as I mentioned, last year on a draft rule.

17 We received over 2,200 discreet comments on the
18 draft rule. We broke those comments out into categories,
19 and we locked ourselves in a room with a number of staff
20 and folks from the Solicitor's office and went through
21 every single comment one by one for hours on end, days on
22 end, and weeks on end. And made a number of changes to
23 the draft rule that led to the proposed rule that you
24 have before you today.

25 I recognize that the proposed rule may not be

1 perfect or 100 percent satisfactory to everybody, but
2 please note that it does reflect significant tribal
3 input.

4 The proposed rule does something a little
5 different than what's -- a lot of things different than
6 what's in place, and the structure of it is different.
7 We wanted to make sure that the leasing regulations were
8 as user friendly as possible. So there's a lot of
9 redundancy you may have noticed. We broke them out into
10 different subparts. Under the current regulation, what
11 you had was agricultural leasing and everything else.
12 And we recognized very early on based on a lot of input
13 that the one-size-fits-all approach to non-Indian
14 cultural leasing just wasn't working. So we developed
15 separate subparts for residential leasing, business,
16 commercial, and other forms of leasing; and then wind and
17 solar energy development leasing. We are maintaining for
18 now the current agricultural leasing regulations and hope
19 to address those in very near future.

20 The new proposed rule has subparticle general
21 provisions, and then there's a lot of provisions that you
22 see repeated throughout the various subparts. You see
23 here on this slide, some of the significant changes we
24 made based upon our consultations last year. This is not
25 all of the changes that we made. This is just the

1 highlights, The Sports Center version if you will of some
2 of the changes that we made.

3 Here you see -- can you guys in the back see
4 these slides very well? Are you following along in your
5 book?

6 MALE VOICE: No.

7 Can we dim the lights a little?

8 MR. NEWLAND: And if you are having trouble
9 seeing the slides, this power point is in the packet of
10 materials that you have. So you should be able to follow
11 along with the paper copies, as well.

12 They're going to come and dim the lights. This
13 is Slide 6.

14 VOICE: Page 3.

15 MR. NEWLAND: It is on Page 3? Slide 6. I'm
16 going by the slide numbers. Slide 6 is an overview of
17 the general provisions. They continue to apply to leases
18 on Indian land and BIA land. The general provisions
19 maintain the requirement to obtain consent from other
20 landowners to occupy or take possession of land if you
21 don't own 100 percent of the interest.

22 New provisions include the removal of the
23 requirement for the Bureau to approve permits on Indian
24 lands. We know that this was a headache in a number of
25 places. Granting a permit does not encumber trust land,

1 and really there's no reason the Bureau should be
2 involved in permitting those permits. So we took that
3 out of the leasing regulations in the proposal you have
4 before you.

5 You see, here's a very broad overview on Slide 7
6 of the various subparts of the proposed rule.

7 Residential subpart has been applied to housing,
8 single-family homes, housing for public purposes.

9 Business leasing is maybe not wholly accurate, but it
10 does apply to commercial leasing, also applies to other
11 leases as well. Religious, educational, recreational,
12 cultural, and other public purpose leasing. And the wind
13 and solar leasing provisions are in the new subpart.

14 Here on we're on Slide 8. You can see one of
15 the key features in the proposed rule.

16 Thank you very much.

17 (Lights are dimming.)

18 MR. NEWLAND: Is that better?

19 VOICE: No.

20 MR. NEWLAND: No?

21 Can we go darker?

22 Well, if you are still following along, Slide 8.
23 This is a key feature with the proposed rule of the
24 timelines that we've instituted. The current regulations
25 allow for open-ended review of leases of Indian land.

1 The Bureau is under no strict time guideline to complete
2 its review and issue of approvals of leases. Again,
3 based on a lot of what we heard from Indian Country, we
4 said that -- we knew how problematic that was. So the
5 proposed rule has timeframes, enforceable timeframes,
6 that the Bureau has to complete its review of leases
7 within. For residential leases, the Bureau offices in
8 the field will have 30 days to review a residential
9 lease. If there are complexities or delays, we can work
10 with you for a brief extension of that period to address
11 any other issues; but those timelines are enforceable.
12 You guys will be able to hold the Bureau's feet to the
13 fire in holding these timelines.

14 For business leasing, we recognize that business
15 deals are going to be often more complex than a
16 residential lease. We allow for 60 days to review. And
17 I do want -- a lot of people have asked, "Why do you guys
18 need 30 days to review a residential lease or 60 days to
19 review a small business lease?" I want you to know that
20 this is not a forecast of how long it should take the
21 Bureau to complete its review. This is a maximum. This
22 is the outer limits of how long we can take for our
23 review. We are working with staff and the Bureau to
24 conduct training to be sure that our folks are giving
25 high priority to Indian land leasing, and that they will

1 conduct their reviews of those leases in as timely a
2 manner as possible.

3 If we can go back.

4 For another thing that I would like to draw your
5 attention to for subleases, we still have the timeframes
6 for BIA review; but with a sublease, if we don't complete
7 our review within the time period set up in the proposed
8 rule, the sublease goes into effect automatically by
9 operation of law. This means that a Bureau delay will
10 not inhibit your ability to move forward with housing or
11 small business development under subleases, and certainly
12 we are not interested in throwing up our hands and
13 walking away from our responsibility to review those
14 subleases. But at the same time, we want to ensure that,
15 if they're lost or, you know, any other imaginable
16 circumstance, that the Bureau's delay does not inflict
17 more harm on those of you who are trying to develop
18 tribal lands.

19 MR. SIMPSON: You'll notice in the draft rule,
20 when we first had consultation, the same deemed approved
21 provisions that Bryan was just talking about applied for
22 mortgages and assignments. We heard a lot from Indian
23 Country and from HUD how that was not going to work for
24 lenders. That, one, they needed a particular approval,
25 an actual approval, so that they knew when it was

1 approved. So we changed those -- you'll see here -- to
2 timeframes, but also took out the possibility for
3 extensions of those timeframes, because we wanted to make
4 sure that those financing documents were moving as fast
5 as possible.

6 The Bureau's review is not as extensive, not as
7 detailed on those, as it is on assignments and subleases
8 and the original lease and/or amendments in the original
9 lease. So we felt that the extensions were not needed
10 for those, and we wanted -- again, we wanted to make sure
11 that they moved as quickly as possible so the financing
12 will work as easily as possible.

13 MR. NEWLAND: Thank you.

14 Another key feature of the proposed rule is our
15 mind-set. Going into developing this was one that Indian
16 land should be under Indian control. Tribes and
17 individual landowners should be, you know -- this is your
18 land we're talking about here. And the Bureau shouldn't
19 be in the business of dictating to Indian Country how
20 Indian land is developed.

21 Our philosophy on deeds of trust and other land
22 use matters is tribal control over tribal land and Indian
23 control over Indian lands. Under the current
24 regulations, the Bureau has broad discretion in lease
25 approvals or disapprovals. The proposed rule kind of

1 flips the mind-set to the default consideration that
2 leases and subleases should be approved, unless there's a
3 compelling reason not to. This may look on paper like a
4 small change, but it's very significant in that your
5 leases are going to go forward, unless the Bureau finds
6 under -- the presumption is that leases are approved, and
7 these regulations reflect that.

8 You see here on Slide 10 -- this is Page 5 in
9 your packet -- about some of the other features for
10 subleases, about when BIA approval is not required, when
11 the lease provides for subleasing, the master lease
12 provides subleasing without Bureau approval, or the
13 Bureau has approved the general development plan,
14 sublease form, and rent schedule.

15 Page 6, Slide 11, is some of the features about
16 assignments, amendments, and leasehold mortgages. BIA
17 approval is not required in certain instances. It's very
18 similar to what's currently in place.

19 For amendments, this was a big discussion point
20 in our previous consultations. We are going to retain,
21 you know, that part of our trust responsibility to
22 monitor leases or amendments, because an amendment is a
23 fundamental change to the agreement. The legal effect is
24 it's a whole new agreement. That is why amendments do
25 not contain similar, automatic approval provisions like

1 subleases.

2 Go to the next one. Slide 12. Rental
3 Requirements. The current rule requires fair market
4 value on approval. The proposed rule for tribal lands --
5 we are again making a significant change from what's
6 currently in place where in many instances tribal lands
7 or tribes and tribal housing programs, business
8 development programs, want to lease land out for economic
9 value or for other consideration. And what we're going
10 to do under the proposed rule is really defer to the
11 tribes judgment. In that instance, where the tribe says,
12 look, we're getting adequate consideration for this
13 lease, don't second guess our judgment on that. And the
14 new rules reflect that. That is not necessarily the case
15 with individually owned lands for a number of other
16 special considerations that I'm sure we'll discuss today.

17 We'll move on to the next slide. Slide 13 on
18 Page 7 discusses periodic review of rental payments and
19 direct pay. Direct pay will continue to be allowed for,
20 where there are ten or fewer landowners, you need 100
21 percent agreement. And when direct pay is in effect, in
22 order to stop direct pay, you need 100 percent agreement
23 amongst landowners.

24 Slide 14 discusses improvements on Indian lands.
25 This is, again, highlighted in this proposed rule. We

1 put in the regulation that improvements developed on
2 Indian lands cannot be subject to taxation by states and
3 local governments. This will be important as many of you
4 move forward in developing small businesses or renewable
5 energy projects on tribal trust lands and individual
6 trust lands. And this is really the Department sticking
7 itself out there for Indian Country. This is a
8 cutting-edge issue that's debated in many parts of the
9 Country. It's in regards to states, counties, and local
10 governments attempting to tax improvements on Indian
11 lands.

12 Slide 15, Page 8. Discussing bonding and
13 insurance. The current rule, the lessee has to provide a
14 performance bond, unless the Secretary provides
15 otherwise. And the Bureau may require the lessee to have
16 insurance. Under the proposed rule, the lessee must
17 provide a performance bond, unless the Bureau waives or
18 the lease is for housing or public purposes. And the
19 lessee must provide insurance to protect the landowners'
20 interest and improvement unless the Bureau waives it.
21 And, again, I know we'll get into discussion on these
22 provisions later this morning, I'm sure.

23 Here on Slide 16, again, still on Page 8, we
24 discuss some of the consent requirements for leasing on
25 Indian lands. Please keep in mind, we've gotten a large

1 number of comments on these provisions. There are
2 statutes in place that govern consent to leasing on
3 Indian lands, in fractionated lands, that the Department
4 is bound by. We cannot change those statutes through
5 administrative rule making. And we can only go as far as
6 the statute allows. Really, that's what we've done with
7 these proposed regs.

8 Go forward. Again, more provisions on Slide 17,
9 Page 9, if you are following in your packet, for consent.
10 You see under Indian land, Consolidation Act. The
11 consent requirements. We put a table in there for your
12 use.

13 (Inaudible question.)

14 MR. SIMPSON: It's not in law. The statute just
15 has basically a list, and we've actually modified that
16 list a bit to make it easier to use, because Congress
17 said -- in the first column here, we have 1 to 5, 6 to
18 10, 11 to 19, 20 or more. Congress had 1 to 5, 5 to 10,
19 10 to 20, and 20 or more. So if you hit those 5, 10, or
20 20, you didn't know where you had to go, and that didn't
21 make much sense. So we did it this way instead.

22 MR. NEWLAND: And to clarify for those of you
23 following along, if you look, for example, where there is
24 6 to 10 Indian landowners, the consent requirement is 80
25 percent. That does not mean that if you have 10

1 landowners that you need to get consent from 8
2 landowners. What that means is you have to get consent
3 from those individuals holding 80 percent of the interest
4 in the land. So if one landowner owns 90 percent of the
5 interest, you only need that one landowner to consent.
6 And this has, I think, been a point of confusion and
7 contention in a number of discussions we've had about
8 this rule.

9 People say, you know, you are making us go
10 around and get consent from eight people, and we don't
11 even know where half of the people live. But maybe the
12 half that you know where they live has 90 percent of the
13 interest. You only need their consent. And that's
14 something we're bound by statutory law that we are not
15 allowed to change through administrative rule.

16 On Slide 18 on Page 9, again, we're talking
17 about consent on fractionated lands for fair market
18 rental. Again, another point of much discussion. A big
19 issue is -- I'm sure many people here this morning know
20 about it -- fractionated lands -- those folks whereabouts
21 are unknown. Maybe they have been absent from our
22 communities or tribal communities for a number of years.

23 Can I get a show of hands in this room on who
24 here is an individual allottee? Who owns an interest in
25 individual lots?

1 (Show of hands.)

2 So, guys, I don't have to explain to you the
3 problems that are related to fractionated lands. Those
4 of you who just raised your hand, the Department owes you
5 a trust responsibility directly as an individual
6 landowner. And the Department owes that same
7 responsibility to those landowners, whether their
8 whereabouts are known or unknown. We are well aware of
9 the difficulties and frustrations and obstacles posed by
10 exercising that trust and responsibility on behalf of
11 individuals who haven't lived in your communities for a
12 number of years. Whereabouts are unknown. We do owe
13 that trust of responsibility to them. We have had many,
14 many discussions on this point about whether, when, and
15 how the Department is going to waive their right to
16 receive compensation for the lease of their land, even if
17 they can't be found.

18 And for a number of reasons, we decided that we
19 were not going to do that because of that trust and
20 responsibility. And I'm sure that we'll have an
21 opportunity, again, later this morning to discuss this
22 issue and have a dialogue about it.

23 Here's some of the provisions about wind and
24 solar leasing. Again, what we were trying to do here is
25 spur development, especially in this part of the country,

1 this part of the Indian Country where a number of tribes
2 have expressed an interest to develop their wind and
3 solar resources. The current regulations, when combined
4 with the environmental law, require us to do
5 environmental review for the project, even before you
6 know you want to go forward with the wind project, for
7 example. And that was a very onerous process. What we
8 said was let's break that down into two steps, especially
9 for wind development. Do the assessment activities first
10 to find out if you actually have a wind resource to
11 develop. It's a much simpler environmental review
12 process.

13 And, then, once the assessment is made with the
14 tribe, the landowners want to move forward with a
15 full-scale wind development, then you do the full-scale
16 environmental review for that project, as it would be
17 developed. And it is our intention, our hope, that this
18 puts another piece of the puzzle in place for renewable
19 energy development on Indian lands. We know that there's
20 a number of other things related to financing and
21 taxation, also tax on improvement, provisions that I
22 mentioned earlier. But this is a big piece of the puzzle
23 that we hope will facilitate that development.

24 Here's our timeline that we want to get this
25 proposed rule done by. The Department is pouring all of

1 its resources into meeting these timelines. We have a
2 number -- you see the representation we have from the
3 Bureau and Department today. We have a number of people
4 who are fully committed to working on this, reviewing all
5 of your comments one by one, incorporating them into the
6 final rule where we can, and getting this done by the
7 summer. And I can tell you that without the blood,
8 sweat, and tears that I have put in this, Stephen and I
9 and others have given each other black eyes and whatnot
10 in a lot of our meetings. We want to get this done. And
11 I know a number of you have been working on this for a
12 long time, and you want to get this done as well.

13 We encourage -- we're going to record all the
14 comments that are made today and will review those. But
15 it is incredibly constructive for us to get your comments
16 in writing. Suggested language, suggested changes to the
17 proposed rule. And if and when you do it in writing,
18 submit it electronically. That makes it much easier for
19 us to parcel out the comments, put them with the
20 corresponding rules, and review them in an efficient
21 manner so we can meet those timelines.

22 So with that, I will quit boring you, and we'll
23 open up the table now for comments and discussion this
24 morning. We have some scheduled breaks, and we will go
25 as long as the discussion takes us today. And, again, I

1 want to remind folks to speak up, say your name and tribe
2 or organization so we can get it for the record.

3 MR. SIMPSON: And Liz is going to be walking
4 around with this microphone so we can make sure that our
5 court reporter can get all the comments and discussion.

6 MR. DAVIS: Good morning. My name is Tom Davis.
7 I represent the Agua Caliente Band of Cahuilla Indians.
8 I am the chief planning and development officer for the
9 Tribe; therefore, I work for the Government. I do not
10 work for the individual landowners. I do not represent
11 their interests, but we have concerns about how they are
12 affected. Welcome to Indian Country. You are sitting on
13 Indian land, and we thank you for coming to our
14 neighborhood.

15 First of all, generally speaking, we have known
16 about these provisions and have been in communication
17 with your staff and the agency office, and known about
18 these rule changes and applaud most of them on the
19 surface. They're going in the right direction. There's
20 a number of provisions that are definitely advantageous
21 to developing Indian Country; however, when we look at
22 the detail that's contained in the Public Register which
23 we relieved in early December there are some serious
24 concerns, and I'll give you an example. Some of them are
25 minutia.

1 For example, the operating Indian reservation is
2 approximately 32,000 acres. One-third is tribal trust
3 land, one-third is allotted trust land, and one-third is
4 fee land. With regards to that, we have a number of
5 semi-available master leases, subleases. Most of these
6 leases are on allotted trust land. The tribe also leases
7 land and also (inaudible.) So we have a number of
8 multiple-layered concerns that would affect the tribal
9 government, will affect a lot of trust land, and will
10 affect the operation of our own agency office. That is,
11 hopefully, when you institute the changes, you have the
12 resources to back up with regards to training and so
13 forth.

14 Getting down to specifics. I'll give you an
15 example. Permits. I applaud the fact that you are
16 trying to put permits in the hands of the allotted trust
17 landowners. However, relinquishing the trust agency's
18 responsibility is a concern for us because, as regulator
19 of Indian trust land of all lands within the
20 reservation -- for example, a permit may be issued or may
21 be, under the rules, may be conveyed by an Indian
22 landowner to a non-Indian party contrary to the land use
23 regulation of the tribe. And in that regard, there's
24 something that needs to be done with regards to consent
25 and operation. Okay. And that has an impact on tribal

1 government, and also puts us in a position of possibly
2 being in conflict with our own landowners.

3 So this is an example of many things what we
4 have concerns about and in greater detail of what we have
5 seen over the past six weeks. And being the fact that
6 also in addition to this that we were shorthanded over
7 the holiday period during this review; therefore, with
8 all these concerns in that comment period, we ask that
9 you extend the deadline for the comments for at least
10 30 days, if not 60 days. Thank you.

11 MR. NEWLAND: Thank you very much for your
12 comments.

13 With respect to the permit provisions, we know
14 that they are not -- there are either advantages or
15 disadvantages in doing that, you know, there are
16 trade-offs in every decision that we make with putting
17 that on there. I do appreciate you noting those
18 comments. With respect to extending the time period, you
19 know, that's certainly something we will consider.

20 MS. ENOS: Good morning. Bryan, good to see you
21 again. I know you've seen me many times. You and Dell
22 will see me again more times (inaudible) about this
23 outrageous, unconscionable proposal and (inaudible)
24 tribal people.

25 Let me introduce myself first before I get too

1 carried away here. My name is Diane Enos. I'm the
2 current president of the Salt River Pima-Maricopa Indian
3 Community in Arizona. With me today are numerous, just a
4 few, of the affected landowners in my community, but I
5 have some comments that I wish to make on behalf of the
6 community itself.

7 I'm here to present public comments on the
8 proposed residential, business, wind and solar leasing
9 regulations. Salt River Pima-Maricopa Community has
10 close to 10,000 enrolled members. We have 52,000 acres
11 in central Arizona. A lot of that land is becoming more
12 and more valuable for development, but I need to tell you
13 that about close to half of our population is under the
14 age of 18. That statistic ought to tell you a lot about
15 our housing needs, about the coming housing needs that
16 are going to become even more as the years pass.

17 The community and its members have very grave
18 concerns regarding these proposed regulations.
19 Specifically, we are concerned about the residential
20 leases. If adopted, these home-site leasing regulations
21 will make homes on allotted lands virtually impossible
22 for most of us and most of our families.

23 I want to acknowledge the Agua Caliente staff
24 person who spoke. I think he articulated some of our
25 concerns, as well. But I want to tell you also that I

1 know firsthand, as an individual Indian that owns an
2 interest in land allotment in my community, it's
3 frustrating because I have complied with all the BIA
4 requirements about 30 years ago in getting a homesite.
5 I, like a lot of people in my community, went and got the
6 required 51 percent interest signatures and approvals
7 from my family and my relatives for my homesite. My
8 family built my house, literally, by hand. And in doing
9 so -- we didn't have a lot of money. So to make a
10 foundation, we had the bricklayers go down maybe a foot,
11 not even a foot, and put down concrete blocks and fill it
12 in with cement. That was the foundation. And then the
13 bricks came in to complete the house, and the rest of it
14 we did ourselves.

15 Now, as the years have passed, I have added on
16 to that with the assistance of my tribal government for
17 home improvement loans. But there's a problem with the
18 original structure right now in that it's eroded. Some
19 of the irrigation has affected the stability of it, and I
20 have a hole under my house that I keep filling up with
21 dirt and with cement wherever possible.

22 I cannot get repairs to my house by my tribal
23 government; although, there are program monies for
24 seniors, and I am a senior. And there is assistance
25 available to do that, because I went back and found out

1 that my original homesite lease, my grant of authority
2 from my fellow family members, is invalid. I don't have
3 a homesite. So my tribe cannot come in and fix the
4 problem in my house. Even if I wanted to build a new
5 house right next to my existing house, I can't do that,
6 because I don't have a homesite.

7 Back then, I had to get signatures from one page
8 of people. It was probably about 12 or 14 people. Over
9 the years, people have come and gone. The land has
10 become more fractionated. These new requirements now
11 require that I get over 110 signatures. And as I told
12 you before, Bryan, and I mentioned to all the Federal
13 people in Washington, not all of those people are
14 findable. Some of them have not been in the community
15 for a while. And some of them don't like me. We all
16 have family issues, every one of us. And some of them
17 know that the BIA is proposing payment, and they're going
18 to stand there and fold their arms and say no and demand
19 payment. "I want my rent."

20 And I bring this to your attention because, not
21 only does this affect the allotted landowners, but I am
22 simply about one of about 400 in the Salt River
23 Pima-Maricopa Community who has houses that don't have a
24 valid lease and are limited to what assistance we can
25 get. Can't do a mortgage. Can't do any of that.

1 There's over 400 houses and 400 families. And the folks
2 that are with me today are just a few of those.

3 The community overall supports the proposed
4 regulations on commercial and wind and solar. We will
5 provide some written comments on these specific areas of
6 the proposed rates by the end of the deadline; however,
7 the community urges and requests that you withdraw and
8 separate out the proposed homesite lease regulations for
9 further consultation, as was suggested by Agua Caliente.
10 I am going to suggest that you do that indefinitely,
11 because we are a self-governance tribe. That means that
12 our government has a lot of direct communication with our
13 landowners; but across this country, a lot of tribes and
14 tribal members do not have this information. And they
15 are not going to know it. If you put these regulations
16 in place, as time progresses and these regulations come
17 to light by other tribal members across the country,
18 they're going to say, "Hey, what happened? How come I
19 didn't know about this?" Tribal governments are going to
20 say, "What are you doing?"

21 So we ask that you withdraw the homesite lease
22 regulations from adoption until further consultation and
23 further work. We must have more opportunity to review
24 the detrimental impacts that these regulations will have
25 on tribal communities nationally and tribal families.

1 For the record, I want to note specifically the
2 community's key concerns regarding the proposed homesite
3 regulations. Our legal staff have analyzed these. As I
4 mentioned earlier, Bryan has seen this before, Dell has
5 seen this before, Larry EchoHawk has seen this before.
6 And, in fact, I recall Mr. EchoHawk right now, who was on
7 travel, to further discuss these proposals. Our legal
8 staff is here. I'm going to ask for some time for
9 Theresa Roser to address those specifics, time
10 permitting.

11 An appraisal of costs, specifically our
12 concerns, the first one on the appraisal cost and the
13 increased delay in the homesite process. A potential
14 homeowner will be required to obtain an appraisal or
15 market study assessing the valuation for rental
16 compensation of our land, of our families' land. Who is
17 going to pay for this? The No. 1 question. The BIA?
18 Office of Special Trust? Are there additional budget
19 funding from the Federal Government to pay 1,500 to 4,000
20 for an individual appraisal? I tell you, a lot of our
21 people don't have that money. No. 3, the homeowner? How
22 many of us here can pull out one to two to \$3,000,
23 because we have asked about the cost of that. It's not
24 workable. Simply not workable.

25 The second area, going beyond the requirements

1 of the Indian Land Consolidation Act and requiring a
2 waiver of rental compensation by 100 percent of the
3 allotted landowners is another very serious, grave
4 concern that we have.

5 After the Office of Special Trust determines and
6 assesses a fair market value, the potential homeowner
7 then asks all other landowners or people that have an
8 interest in a particular allotment to waive in writing
9 the rental compensation. Not only is it burdensome
10 because you have got private fractionated land from all
11 across the country, but this requirement goes above and
12 beyond the provision of ILKA, as these proposed
13 regulations require all 100 percent of the landowners to
14 waive their rental compensation.

15 ILKA requires the lessee to obtain certain
16 percentages based upon fractionation of the land. We
17 have done that in the past. I think that's what I did.
18 I got more than 50 percent, 51 of the interest people to
19 agree. As such compensation proposals will always be
20 paid to landowners whose whereabouts are unknown and who
21 makes mistakes. Will the BIA waive compensation for
22 their mistakes?

23 Right now in the community we have a lot of
24 agricultural leases, and there are IM accounts already
25 set up for those folks that are not findable. So that's

1 already taken care of. It simply doesn't make sense to a
2 landowner to pay rent on land that you own. And I know
3 that the community members that are here want to say
4 that. This is anticultural, anti who we are as tribal
5 people.

6 No. 5. The community of all current landowners
7 who are paying rent at every homesite within our
8 boundary -- I'm going to talk about the administrative
9 nightmare. Salt River will be processing over 55,000
10 annual lease checks simply for land rental. 55,000.
11 Who's going to do that? Is the Bureau? We're
12 self-governance, and that creates a whole other area of
13 concern for our self-governance, and the self-governance
14 status of every other tribe, the tribes in the country,
15 they are all self-governance. Does the BIA have the
16 funds and the resources to manage the substantial
17 increase in IM accounts?

18 The third largest concern that we have are the
19 eviction or trespass actions against Indian families
20 proposed when there is a default on the homesite lease.
21 You see that in Section 162 (point something). Homeowner
22 pay rental compensation to all nonconsenting landowners
23 for the life of the lease. We've got 65 years, 50 years.
24 Is the Bureau required to evict Indian families when
25 rental payments lapse? Is the BIA prepared to evict

1 Indian people, elders and children, when rental payments
2 lapse? Who's going to do that? Is the Bureau going to
3 say, "Salt River, you are self-governance. You do it"?
4 I'm not going to do it, and I don't think any tribal
5 leader in this country is going to do it. You mentioned
6 earlier the appeal process. Those appeal processes can
7 take a long time. I'm telling you, we're going to use as
8 much appeal time as possible. So we're all going to be
9 faced with huge nightmarish appeal processes and
10 deadlines, so on and so on, administratively.

11 If an Indian homeowner defaults on these
12 payments at some point during the life of the lease, then
13 will the BIA and the self-governance be responsible for
14 assuming the default of the lease, the back rents, and
15 the eviction of the family? Unconscionable comes to
16 mind. This is unconscionable.

17 No. 4, the unreasonable five-year rental
18 adjustments provided for. Per the proposed regulations,
19 every five years there will be a periodic adjustment to
20 rental valuation. This provision is not reasonable for a
21 number of reasons. First, it requires rental
22 adjustments. The presumption is that homesite leases are
23 similar to for-profit commercial leases, because that's
24 what you do when you have businesses. Everybody knows
25 that. Homesite leases are not commercial economic

1 endeavors. Reevaluation of land rents is completely
2 inappropriate in a homesite setting. Home settings are
3 providing adequate and safe housing to tribal families
4 and are not commercial ventures.

5 Second, does the BIA and Office of Special Trust
6 have the budgetary or staff resources to provide
7 appraisal services ten times through the life of a
8 50-year lease, or even have self-governance tribes do
9 that? That's creating an administrative nightmare for
10 us.

11 5. Impractical bonding and insurance
12 requirements. Moreover, the requirement of performance
13 rental and reclamation bonds is another huge obstacle for
14 Indian housing. These requirements alone will destroy
15 the ability of allotted landowners, us, to build new
16 housing on our families' land. Again, the presumption
17 seems to be that homesite leases are commercial in nature
18 when they are not. Homes-site leases are not for-profit
19 ventures.

20 Our staff has called bonding companies, and I
21 know that our staff here will describe that. Frankly,
22 families do not have the credit requirements or financial
23 resources to provide these types of loans. For example,
24 suppose you are lucky enough to have a house or homesite
25 valued at \$250,000. This is just an example. The rental

1 bond, the cost on that, will be \$7,000 a year. \$7,000 a
2 year. Who has that money?

3 A performance bond for this home will require
4 \$150,000 worth of liquid assets. Did the drafters
5 contact bonding companies and see if these requirements
6 were even feasible for Indian families? We were told
7 that remediation and restoration bonds would be
8 improbable for Indian families on trust land. By
9 requiring insurance placed on homesite leases as best
10 practice is simply not practicable. Families with
11 limited money will ensure and have focus on putting food
12 on the table for our children and our families and
13 clothes on their backs before all else. Did the Bureau
14 contact insurance companies to even find out if requiring
15 insurance was feasible for allotted landowner families?

16 No. 6. The proposed regulations place financial
17 compensation before long-standing cultural practice and
18 values. The community believes that monetary value and
19 liability should not be the sole factors that the
20 Secretary determines whether a homesite lease is in the
21 landowner's best interest. Other considerations of
22 secondary changes that should be taken into account are:
23 No. 1, the cultural and traditional values of the
24 Pima-Maricopa people and tell them that the Maricopa
25 people at Salt River and the other tribal people

1 nationally. No. 2, the desperate need for safe and
2 adequate housing in Indian Country. No. 3, that rental
3 compensation also should be taken into consideration.
4 That rental compensation may make building more
5 unavailable or repairs unobtainable for poor or elderly
6 tribal members.

7 Then, the overall desire of Indian people that
8 have not had an opportunity to have a home, their ability
9 to come home and to build a stable -- contribute to a
10 strong and stable tribal community will be affected or
11 prohibited.

12 MR. NEWLAND: President Enos, I know that we're
13 going to have a lot of discussion this morning, a lot of
14 comments, and I know we have your written comments. We
15 want to make sure that everybody else has an opportunity
16 to -- I'm not sure -- I don't want to cut you off, and
17 we'll get to all of your comments. I want to make sure
18 everybody has an opportunity to bring up their remarks.

19 MS. ENOS: Let me finish up.

20 MR. NEWLAND: Sure.

21 MS. ENOS: I'm getting to the end.

22 MR. NEWLAND: Okay.

23 MS. ENOS: No. 7. You asked for what is it
24 we're suggesting or recommending. Right now there's
25 400-plus homes and families that don't have a valid lease

1 where we thought we had one. They have to be
2 grandfathered in. We met the requirements. Let's
3 partnership and go back and do what we can to grandfather
4 in those 400-plus homes at Salt River. They were built
5 to what the BIA required at the time in good faith. So
6 let's work constructively to do that. All the same
7 points that I am making apply to those. We should be
8 given every opportunity to follow the regulations that
9 were in place at the time.

10 I want to conclude and ask time for my members
11 here, but the proposed regulations will bring homesite
12 building repairs to a standstill at Salt River. Like
13 every other family in this country and in this world, we
14 need to have safe housing, safe, clean, stable housing.
15 The proposed regulations on homesite leases are a huge
16 step in the wrong direction, and these regulations must
17 be withdrawn from implementation.

18 The Department of Interior does not have the
19 budgetary or staff resources to implement these homesite
20 regulations, nor do Indian families, nor do we have the
21 financial resources to provide rental compensation
22 adjustments, performance, or reclamation bonding.

23 You asked earlier under Page 9 for suggestions
24 on the -- where we can't meet 100 percent consent
25 requirements. Our suggestion here is that the Bureau use

1 the best interest analysis in those situations and
2 consider hardship in that analysis; but also under the
3 Cobal Settlement, there were large sums of money to
4 address fractionated land and its problems. I would urge
5 that the tribe in its trust responsibility -- and I
6 appreciate what you said earlier about trust and
7 responsibility to all those absent or even the unwilling
8 members of a family or allotment. The Bureau ought to
9 use that money and administrator that and not put that
10 burden on the community since it's something that the
11 Bureau's creating.

12 So those are our comments. Thanks for hearing
13 me out. I have a lot more to say, and I'm going to
14 continue to visit you. Thank you.

15 MR. NEWLAND: Thank you, President Enos. I
16 appreciate your comments. I do want to note a few items
17 in response. I don't want to turn this forum into
18 necessarily a debate, rather a guideline.

19 I'm not -- I don't think any of us are going to
20 sit here and pretend that these regulations are going to
21 cure all the problems in Indian Country with respect to
22 fractionated lands. Quite honestly, it's a problem
23 that's beyond our reach with these regulations, and it's
24 a problem that's been, you know, well over a hundred
25 years in the making. What we've set out to do is what I

1 mentioned earlier is to restore Indian control over
2 Indian land ownership. And I recognize how difficult
3 that is where you have dozens and in some instances
4 hundreds of Indian landowners.

5 In response to your comments about the lack of
6 notice to Indian Country, the Department has consulted on
7 leasing regulations numerous times over the last decade.
8 We have issued notices in the Federal Register, public
9 comments, letters to tribal leaders, the President, the
10 Secretary, the Assistant Secretary, Deputy Assistant
11 Director, Bureau Director, the Solicitor, Deputy
12 Solicitor. All the regional directors have all been
13 discussing this for years; and, you know, if there's
14 another way you can think of that we can reach Indian
15 Country, please let us know because we will use it. We
16 have certainly taken our very best interest to get all
17 the public notice out there.

18 I know that the appraisal process is a pain.
19 You know, there's no two ways about that. You know, we
20 are very open-minded when it comes to figuring out
21 creative ways to value lands to ensure that rental amount
22 is determined. And I do want to just note two other
23 things with respect to the need to obtain a lease or
24 consent to lease your own lands. Again, this is a
25 problem that's borne out of fractionated lands. That is

1 something that's already in place under the current
2 regulations. What the proposed rule does not say is that
3 you have to have a lease. It says you have to have
4 consent. All the other Indian landowners can consent to
5 possession of individually-owned allotment without
6 drawing up a lease, and that is in the proposed
7 regulations.

8 With respect to getting the consent of
9 100 percent of the landowners to waive fair market
10 rental, you don't need to get 100 percent of the
11 landowners to consent to that waiver. If you own
12 10 percent of the interest in an allotment and you want
13 your cousin or your sister or your brother to be able to
14 develop a house on that allotment, you can waive your
15 right to receive 10 percent of the fair market rental of
16 that parcel. You don't have to go to every other rental
17 and get their consent. I understand that allotments --
18 there are too many people. We've been working with your
19 team to try to figure out ways to make that process come
20 more quickly. And I'm not pretending that we have all
21 the answers, but your comments are very well taken, and
22 we are wrestling with them.

23 So thank you for your comments, and I look
24 forward to more discussions with you about this.

25 MR. SIMPSON: And to follow up on what Bryan

1 said, from the Solicitor's Office' point of view, we
2 welcome further discussion, as well; and we've actually
3 made a request of your tribal lawyer, which is that --
4 Theresa, if you can come up with -- if you could submit
5 to us some proposed planning for trying to grandfather
6 those homesites in, I would appreciate it, because I
7 don't know enough about the actual -- I'm sure Gloria
8 probably does, but I don't know enough about the actual
9 situation, how all those worked, to be able to craft the
10 language for that. But if you can propose some, I would
11 certainly be happy to look at that and work with it.

12 MR. NEWLAND: Next comment or question?

13 MS. CHAVEZ: Good morning. My name is Mary
14 Chavez. I'm also from the Salt River Pima-Maricopa
15 Indian Community. We have several tribal members here,
16 as you can see. And we have come together as fellow
17 members of this tribe, because we are very concerned with
18 everything that is going on here. So as a rural
19 community within Salt River Pima-Maricopa Indian
20 Community, we feel that the proposed regulations are
21 detrimental to the future of our families. We feel that
22 it's going to severely affect the ability for families to
23 build and maintain homes for their current and future
24 generations, as our President Enos has mentioned. I
25 thoroughly agree with the comments that she's made. So I

1 will be making reference to some of the comments that
2 she's already talked on.

3 But we implore the Bureau of Indian Affairs to
4 hold off on approval of homesite leases and regulations
5 until further research has been made as to the impact
6 that is really going to be detrimental to our community
7 and our community members on behalf of the community and
8 our tribal government. Our tribal government has, as I
9 understand, submitted comments on April 18, 2011,
10 expounding the negative impacts that these and other
11 sections of the rulings are going to be on our community.
12 We just hope that you take into consideration all the
13 impacts that it will affect on the many, many families.

14 As she mentioned, there are over 400 families
15 that are sitting without a place, you know, and with
16 their homesite lease just up in the air, you know. I,
17 too, am one of those people where we also have been
18 living on our property now since -- I don't remember what
19 year -- probably 1954, you know. And then to find out
20 that we don't have the paperwork to actually say that we
21 are supposed to be there. And then to hear that I'm
22 supposed to start all over by finding all these other
23 people. Like she said, many have gone, and there are
24 others in their place. Then I have to go out and look
25 for these people to try and sign paperwork just to say

1 that I can legally be there?

2 The homesite leases are there for raising
3 families. You know, it's way different from a business.
4 So we're not there for profit. We're there to raise our
5 families and keep them together. Our community is
6 struggling just like the whole country is with
7 unemployment and a lot of other things. And so it's hard
8 to find a job. I'm fortunate to have a job. But, still,
9 it's hard to make ends meet. Like she mentioned, we
10 can't make any improvements. I have a mobile home that I
11 have on my property at this time. The plumbing doesn't
12 work. Electricity doesn't work. It's an old mobile
13 home, and everything is going bad on it. I can't do
14 anything with it. We all should have the right to be
15 able to make improvements on our houses without having to
16 go to every single person and look for people. That
17 would take months on end, if not years, you know, to do
18 this.

19 Everybody wants to live in a safe environment,
20 and I for one am one of those. And I want my family to
21 be safe, and I want also my grandchildren. My children,
22 first of all, and my grandchildren to be able to grow up
23 on the same lands that I grew up on. So I just think
24 that it's really important. Again, I think that
25 grandfathering in this information or those families that

1 have been on their lands for all these years is a very
2 important part of this whole process. And I do have to
3 say, though, I appreciate the beginning of the talk when
4 I came in where I noticed that you have separated out the
5 residential, business, and solar winds and solar area,
6 because I just couldn't understand why it was all thrown
7 into one pot. So I appreciate the separation.

8 I hope that people in your position and others
9 will really try to look down deep into their hearts and
10 their minds and feel what it feels like for other people.
11 Have some compassion, and just do the best that they can
12 for everybody. Because we want to live here in this
13 country, whether we were born here, working, we're here
14 for a reason.

15 Thank you.

16 MR. NEWLAND: Thank you very much for your
17 comments.

18 Next one. I think we have one over here.

19 MS. RIVERS: Good morning, my name is Anita
20 Rivers, member of the Salt River Pima-Maricopa Indian
21 Community. And I have also inherited land from the
22 people before me. I have been taught about the BIA and
23 Federal Government. My dad always talked to me about
24 things like that when I was growing up. And he taught me
25 to respect all people. And to keep my eye and ears open

1 for changes that are coming, and that they're coming.
2 And in the past 56 years since I have been living, I have
3 seen many changes.

4 Today I come and I bring my daughter and my
5 grandson with me to be a part of this, to see what's
6 coming now, the changes that are heartbreaking to our
7 people. I am one of those people, just as President Enos
8 has stated, that has a home and a homesite, but no
9 paperwork behind it. I have never had any paperwork. My
10 father built this home in 1967, and we moved in there
11 when I was about 13 or 14. And since then my whole
12 family has passed away. I am now living in this area,
13 and I have no paperwork.

14 And now as she stated, I am very fortunate to
15 have a job in the community, but I am living with
16 termites and all kinds -- my windows that don't have
17 locks. They're so old, the windows don't have locks.
18 Everything is just falling apart, as well. They kind of
19 Band-Aided it up a little bit, but I'm living with
20 termites.

21 But I want to say, as well, from my heart and
22 from my ancestors that have gone and those that are
23 coming, that this situation that we are going to go
24 through, this change has to -- we ask you to please think
25 of us as people, as yourselves. Would you want to live

1 with termites and field rats that have come into your
2 house, under the floors or however they come in? And we
3 can't do anything about it, because we don't have the
4 homesite land papers and doing all this other stuff.

5 We're people like you. So I ask you to please
6 separate this package plan that you put together,
7 President Obama, and think of us as individuals wanting
8 the best way of life that we can have with what we've
9 been given. We were put on these lands, and we were told
10 in the beginning that this is what we get. And back
11 then, our Salt River Pima-Maricopa Indian Community, we
12 used to go up far west of Phoenix down south across into
13 Mexico and up north close to Flagstaff. That was the
14 Salt River Community. But now as President Enos said,
15 it's been pushed back smaller, and now I am here and have
16 lived to see this, this change.

17 And now my family has to go through these, and I
18 have to go through these changes in getting to abide by
19 your new policy. I just ask, again, to listen to our
20 president, to listen to each person here as they share.
21 And I'm sharing with my heart from my people and those
22 common bonds, and those that are gone on. Thank you.

23 MR. NEWLAND: Thank you very much for your
24 comments.

25 I appreciate where they're coming from and the

1 experiences that you are conveying to us this morning,
2 you know, with respect to listening to your president,
3 President Enos. We have, you know -- President Enos has
4 been a very strong advocate for your community in
5 Washington, and we've had a number of discussions with
6 her and your team from your community about this issue,
7 about leasing. And I feel that on a number of the issues
8 that have been brought to us, we have been able to make
9 great progress together through our dialogue through a
10 number of issues. There are some things that are still,
11 as noted, still hanging out there.

12 On the grandfathering in people who have
13 homesites, we're going to do our best to come up with a
14 way to do that. You know, I can't guarantee you exactly,
15 because I don't know what that language would look like,
16 but we're going to do our best to do that. And I
17 appreciate what you brought here today. And I ask that
18 you please also understand that our development of what
19 we're discussing today -- we're bringing our experiences
20 also with us, growing up in our tribal communities, to
21 this process, and none of us is claiming that we're
22 getting it all right and done perfect.

23 So thank you very much for your comments.

24 MS. PADILLA: I came to say good morning to you
25 all. All of you go clockwise. We go counterclockwise.

1 That was real important to us this morning. And I, too,
2 am from the Salt River Pima-Maricopa Indian Community.
3 My name is Serena Padilla. My concern is my
4 granddaughter's lot. She inherited my mother's lot. She
5 is probably, that I just found out this morning 400,
6 she's probably on that list. And hear stories. When you
7 say "grandfathered in," I think it's really important to
8 hear, because we're visual people, and we want to see a
9 face and hear your words when you talk to us. When you
10 write that paper down, when you write those, all this
11 stuff down up there, we listen to you. We listen to you.

12 In our nation, we go for days -- I don't know
13 about anybody else here. Our people sat down and talked
14 for days to see how we're going to take care of the
15 communities and nation, because we were a nation before
16 we were a reservation. And we go by your laws. And like
17 our sister said here, we were taught to respect you. We
18 were taught to sit and listen to you. But sometimes your
19 words on these papers our people don't understand. You
20 can send papers, and papers, and you ask how's another
21 way. Maybe it's going to take you as a young person to
22 go out there and talk to the people, because that's what
23 they told us. Because our language -- you know, we're
24 trying to get our language written, but we're oral
25 people. Our nation is an oral people. You tend or the

1 society tends to lump us into one way of life, as native
2 people. We're all different. We do things different,
3 but yet we're all one nation.

4 And they say there's four sacred colors: White,
5 red, black, and yellow. And we all have to live
6 together. For my own self, I don't understand how -- I
7 keep going down the road and keep asking how do these --
8 the society come in and tell us how to live our lives.
9 We're constantly told how to be, how to do things, how to
10 live, how to wear our clothes. We lived in mud houses.
11 We didn't have electricity. We used wood. We used water
12 when we got our water. I'm a product of that when no one
13 could go into our nation that was not of the tribe.

14 And like her, I've seen those changes and many
15 of us have. Most of us here grew up together. We're
16 this generation that's going to have to make a stand.
17 Because if we don't make a stand, who's going to do it
18 for our children and our grandchildren and our great-
19 grandchildren? I have 12 greatgrandchildren I have to
20 worry about. I am 58 years old. I have 15 grandchildren
21 that are looking for homesites now. And I've got four
22 children that I don't even know if their homesites are
23 legal. And it's starting a feud in our family because of
24 people inheriting and inheriting and fractionation.

25 You know, I think our ancestors had sat before

1 like this and talked with you and pleaded with you and
2 cried to you, because each of us come from the heart.
3 Unless you are in that situation, you won't understand
4 what we're talking about. But we don't give up. Time
5 and time the prophesies have said there's going to be
6 change, but don't forget who you are in here. And we
7 come to you and try to send our children off to learn
8 your language, to learn your ways. But if we have to sit
9 here and wonder where we're going to live, who are we?

10 I have a daughter that lives in town. She had
11 to buy a house in town, because no one would finish
12 signing our paperwork. She don't have the money. She
13 struggles. She has children. She has grandchildren.

14 My house is 32 years old. I can't even get --
15 I'm just barely trying to get it renovated. So these are
16 the changes that have come on our nation. I was
17 perfectly happy on a mud floor, you know, with a mud
18 floor and a bed so we can all sleep in there. No
19 electricity. Go outside. Probably when the rain came
20 in, rained in the house. We put pots and pans there.
21 That's where we're at again. But they said the society
22 is going to make it better for us. But we have bills to
23 pay now. We have to have a job. We have to have
24 transportation. We have to have an education. Our kids
25 are struggling.

1 It's true we have a lot of tribal members, and
2 there'll probably be a lot more. And from what we had
3 the abundance of we have less than. And I'm sure that a
4 lot of nations here in California have the same problems
5 that we do. Maybe even more so than what we do. But if
6 we could have brought vans from our community, we'd
7 probably be sitting out there around, but would you have
8 listened to all the people?

9 So I am thankful for our president to allow us
10 to be here and to read those comments to you or what you
11 needed on paper. And we strongly -- myself, personally,
12 my family our parents are gone. We're next in line, and
13 we have to speak up; because if we don't speak up, who is
14 going to speak up for us, other than the president?
15 Should only one person? We are a community. You put us
16 as a community that was a nation. So I appreciate each
17 and every one of you in this room. Just like I tell
18 people back home. Each of us are special. We bring
19 something good to the table.

20 But if I am correct, common sense will tell you
21 there is no way in the world you are going to get
22 100 percent. Common sense. This education. Education
23 that you tell us to take 100 percent. That don't make
24 sense to me. It doesn't. I don't know how you can get
25 100 percent from a nation with fractionated land. Maybe

1 I need to go to school again; but even in school, I was
2 told you cannot do that on fractionated land. Actually,
3 if you have to go out and look for a person that you
4 don't even know has died, or you don't even know who is
5 related to anymore, or who got married to who.

6 Is BIA going to do that for us, track them down
7 so we can get 100 percent? I am not talking about the
8 persons that are grandfathered in, because if they're
9 grandfathered in, that's good, fine, and well. They got
10 their 51 percent. I'm talking about the future, the
11 great-greatgrandchildren of us. Our language. Our
12 ancestors that put us in charge of taking care of our
13 families. So all that we say here is all food for
14 thought. So myself I'm really thankful to be here, and
15 I'm thankful for your time and your energy; but sometimes
16 we think and we don't feel. Maybe it's time to think and
17 feel. They say the longest journey is from here to your
18 heart. That's the longest journey. And we come here,
19 all of us, with an open mind. So we hope and pray that
20 you have an open mind.

21 MR. NEWLAND: Thank you very much.

22 MS. ROSER: Good morning. My name is Theresa
23 Roser. I'm Deputy General Counsel for the Salt River
24 Pima-Maricopa Indian Community. Obviously, Salt River
25 has a lot to say on this issue.

1 I actually want to raise other issues than the
2 President. She had included some of the important
3 issues. I'll try to be brief and succinct with each of
4 them. In 152.00, life estate dates, where there are
5 certain cases where the Bureau doesn't need to see a
6 lease, approve a lease. We think the assumption is that
7 life estates are for non-Indians. We hope that's not the
8 assumption. At the community, we use life estates for
9 estate planning. That is how we advise Indians,
10 landowners, to avoid three years of probate litigation
11 and just have a life estate. Have your grandmother grant
12 you a life estate. That's really trying to avoid
13 bureaucracy.

14 So it seems to be that the assumption that it's
15 for non-Indian spouses or whatnot, but that's actually
16 the minority in our community. Life estates are
17 oftentimes (inaudible) members for Indians trying to
18 avoid probate.

19 Second thought, the regulations, if you don't
20 approve this appeal under Part 2 -- I will tell you a
21 situation where we had an appeal that pended for
22 12 years. I don't think that's due process. We had a
23 leasing, a lease termination issue. The lease was quite
24 valuable, big time commercial leasing in Salt River. So
25 in 1998, our field office terminated the lease for

1 various reasons. The developer was not living up to
2 their requirements. The Western Regional Office, it sat
3 there for 10 years. It wasn't Gloria by any means. I
4 can't think who it was. But I'm not lying. I'm not
5 exaggerating. The appeal was filed in 1998; and in 2008,
6 we got a decision on January 4th from the Western
7 Regional Office.

8 MR. PARKER: Excuse me. I hate to interrupt,
9 but could you slow down.

10 MS. ROSER: Sorry, Mr. Parker, I'll slow down.

11 So the appeal had been ten years in the Western
12 Regional Office, and went to BIA in D.C. for two years,
13 got a final decision January 8, 2010. So I just -- when
14 you say there's a consequence to not approving a lease in
15 30 days, the consequence is 10 years of litigation. It's
16 not necessarily a true consequence. Just realize that
17 the appeal process anywhere is never a quick process.
18 Litigation is never a quick process.

19 Just to mention a few more issues. Under
20 162.327, this is Rental Reviews. Five-year adjustments
21 in commercial and homesite leasing. I'm going to tell
22 you that's really difficult. Even in a commercial
23 setting. We've worked with developers a lot. They can't
24 do adjustments every five years or every 10 years in a
25 commercial setting. It's too risky. They can't get

1 financing. So I think we're looking for CPI adjustments.
2 The homesite is not a for-profit. I just don't think you
3 need rental adjustments for homesite leasing. It's not
4 practical. I think when homeowners get mortgages, it's
5 going to be tougher to get financing if the rent is not
6 more -- clear what the rent is going to be, not an
7 unknown. Very difficult for people to get financing.

8 I want to turn you to 162.334. And this is
9 again bonding, rental performance reclamation bonding.
10 These provisions, we think, are really going to make it
11 impractical for an average person to get a homesite lease
12 in Indian Country. We've called bonding agencies, and
13 it's just not feasible. You're going to pay more for
14 administrative costs, for a performance bond than you are
15 for actually leasing the land. That doesn't make any
16 sense. I know there's waiver provisions that function.
17 You are supposed to go get this. It's administratively
18 burdensome, too costly for anybody to actually acquire.
19 People are not going to be in compliance. They'll work
20 around it, not follow the law.

21 Insurance Provisions, I thought that was very
22 interesting. If you are acquiring insurance as the
23 homeowner and also general liability insurance for all
24 the landowners. Well, for the homeowner, I think it's a
25 personal choice. There is no trust responsibility in the

1 personal property in that house. So that seems to be
2 going a bit far and out of step as to how far you need to
3 go on these regulations. It's a personal decision. If
4 the community, the lender, is going to require mortgage
5 insurance; but to give general liability in case someone
6 trips and falls to protect the other co-landowners, I
7 don't think that's feasible. It seems like we're taking
8 the trust responsibility, you know, unfortunately, beyond
9 where the Supreme Court says it is right now. We don't
10 know how or why that is necessary. The president said,
11 unconscionable. General liability insurance for all the
12 other co-landowners, it just doesn't make sense to us.

13 I want to talk about 162.351. Talking about
14 sublease. Maybe you guys know situations, but we don't
15 ever think that will ever be used in Salt River. I
16 don't -- sublease is really from our prospective more of
17 a commercial venture. I don't know why we would be
18 subleasing a homesite. Just assigning the homesite
19 lease. You can -- it just doesn't -- it seems to
20 overcomplicate the matter. Sorry.

21 Mortgages. 163.356. In the commercial setting,
22 those regulations make sense; but in the homesite
23 setting, I think we can draft a regulation to just say
24 what mortgage cannot do or what its limits are. But
25 having President Enos show all the landowners what her

1 mortgage is and what her financial situation is, that's
2 not -- that's unnecessary. And so I don't think all the
3 co-landowners need to consent to her mortgage. As long
4 as the mortgage won't touch the fee interest, it won't go
5 beyond the terms of the lease. Maybe mortgages did. So
6 that is -- that's really an evasion of privacy for many
7 people to be showing co-landowners what their mortgage
8 is.

9 I'm almost done. Couple other points.

10 This is in the commercial setting. 162 -- let
11 me see. 162.411. This is your renewal terms. Salt
12 River and many tribes have the 99-year leasing authority.
13 But even under these regulations, for renewal, we don't
14 seem to have the same exception. If we had a 65-year
15 lease, say, 50-year lease, we're capped at 25-year
16 renewal, even though Congress has given us 99-year
17 leasing. We think that capping renewals at 25 years
18 doesn't work for tribes who have the ability to go up to
19 99 years. We think you should make it -- do a renewal up
20 to the 99-year term.

21 What else. I think there's -- my last comment
22 is I know in your comments you say you don't always need
23 a lease. And you have the permission of others that you
24 can, I guess, put a homesite there. It just doesn't work
25 that way. You are not going to get financing for a home

1 without a lease. You are not going to get this --
2 Arizona SRP is not going to hook up electricity. They're
3 required to see the homesite lease. You can have
4 somebody, in theory, put a trailer there, who gets no
5 electricity, no sewer hookups. You need the lease for
6 all the services to be delivered to that person. So it's
7 not just as easy as, in this day and age, to say, yeah,
8 you can live there. That might have worked 50 years ago;
9 but today SRP, APS, sewer, power, water, the homesite
10 leases are a requirement.

11 These are all my comments today.

12 MR. NEWLAND: Thank you very much.

13 We're at that point in our agenda, we're going
14 to take a short break. Everyone stretch your legs, and
15 we'll come back here in 10 minutes at 10:30 and pick up
16 the discussion where we just left off.

17 (Recess.)

18 MR. NEWLAND: If we can take a seat and pick
19 this back up. One housekeeping item. So we can keep
20 track of you at all times, just kidding, if you could
21 please sign in at the sign-in sheet out front. It helps
22 us, again, to make sure we have accurate records of our
23 discussion this morning, which will facilitate and help
24 us come to a good, final product on the regulations.
25 Again, if you could sign, if you haven't, we'd really

1 appreciate it.

2 We had a, I felt, lot of heartfelt comments this
3 morning. A lot of frustration evident. A lot of
4 constructive comments. And the discussion so far has
5 been very enlightening and helpful in this effort. And,
6 again, I want to make sure that you know that this is not
7 just dialogue without meaning. Your comments are --
8 every single one of these comments is read over, it's
9 discussed, it's batted around with ideas on how it could
10 be used to improve this proposed rule that you have
11 before you. So I want to thank you and assure you that
12 the comments will get read, they are heard, they are read
13 by myself, Stephen, Liz, and others, who are not here,
14 who are involved in this effort, as well.

15 So with that, we're moving forward under our
16 agenda, and we'll move right along and take our next
17 comment.

18 MR. WHITSON: I'm Rod Whitson from Oklahoma
19 City. I'm with Bank2. Bank2 is owned by the Chickasaw
20 Tribe. I think we're the largest community bank in the
21 U.S. Wells Fargo -- we may be the largest. Native
22 American lands. At least more questions than comment.

23 Under the Consequences that are listed for
24 missing deadline 30-day periods.

25 THE REPORTER: Could you hold the microphone

1 closer.

2 MR. WHITSON: I was asking about under the
3 30-day period, consequences for the leases and all that.
4 What are those consequences? That's the first question I
5 have.

6 The second question I have really relates to a
7 lot of times I think there's been mechanisms in place to
8 attempt to move the recording of leases faster. I think
9 there's a passive problem with BIA. So once these are
10 enacted and they're in place in August, what's the
11 thought for the capacity to be able to achieve these
12 dates?

13 MR. SIMPSON: As far as consequences go, you
14 will see that for most of those deadlines, except as I
15 said earlier for the subleases and the amendments, but
16 the most important deadline, the one you are going to be
17 concerned with, is the lease home mortgages and the
18 assignments. As we said earlier, they're subject to
19 appeal under 25-C and FR-2. What that means is that, if
20 under those provisions of the regulations, if the Bureau
21 misses a required deadline, okay, then under 25-C/FR-2.8,
22 the missing of that deadline can be appealed if the
23 Superintendent missed it, the appeal will go to the
24 regional director. If the regional director missed it,
25 it will go to the Board of Indian Appeals.

1 Basically, what would then happen is you file an
2 appeal under 2.8 claiming that that deadline was missed.
3 What generally happens in those cases is that the
4 officials that are hearing the appeal go back and say,
5 okay, what happened with this can be a status report and
6 keep moving. And the document will often be issued right
7 then or as part of that status report, but you will at
8 least get information and get the next highest level of
9 officials on notice that something's happened, that
10 something's not happening when it should be happening.

11 And those actually -- and, in fact, if, as
12 Ms. Roser mentioned earlier about the appeal pending for
13 so long, that avenue is available for that, as well.
14 Under the Appeal Regulations, a regional director's
15 decision is supposed to be on appeal, is supposed to be
16 rendered within 60 days. For certain appeals under these
17 proposed regulations we're actually changing that to
18 30 days. And that procedure for inaction or for missing
19 required deadline is available for those, as well. It's
20 really -- it's basically, you know, as I said, basically,
21 bucking it up to the next level in the Bureau.

22 MR. NEWLAND: With respect to the second part of
23 your question about capacity, as words on paper are
24 meaningless unless you actually carry them out, that's
25 something that we are working on. Everybody knows what

1 the federal budget outlook is. We are trying to use what
2 we've got to make sure -- this is a big policy priority
3 for this administration, reforming treaty land use. We
4 want to match that with, you know, dollars. We want to
5 match it with the capacity to, you know, retrain our
6 staff to think the way that these regs are meant to be.

7 MR. SIMPSON: And some of that -- actually, the
8 regulations will help some with that capacity issue. For
9 instance, you've heard a lot about how appraisals take a
10 very long time. Well, as you saw, for tribal land, we're
11 basically taking out that requirement. And in our
12 discussions with the office of management and budget,
13 they've noted that that should actually free up some
14 resources at the Bureau to be able to work more on the
15 individual appraisals since there are not tribal
16 appraisals generally being done at that point.

17 MR. NEWLAND: Thank you for that.

18 Next question.

19 MS. ZUNI: Thank you. Good morning. My name is
20 Denise Zuni. I'm an attorney that represents various
21 pueblos in New Mexico, for (inaudible), Zuni, Isleta,
22 Laguna, Esteban, Cochiti, Acoma, Nambe, and Santa Ana.

23 My first comment is that the proposed rule was
24 supposed to be an improvement over the current rule.

25 That's true in some of the cases. It's not true for many

1 instances. For example, giving BIA a long deadline,
2 60 days to approve a lease, plus 30 days to approve the
3 leasehold, equals 90 days. That doesn't improve the
4 leasehold profits, which is what we thought the proposed
5 rule would do. Ready tribes are better off leasing under
6 the current rule, because they have already worked out
7 the coordination problems with their local BIA agency.
8 The proposed rule adds new requirements, including new
9 BIA reviews. This will result in delays because BIA
10 representatives now have to engage in additional reviews.

11 One of the facts of the proposed rule in my
12 area, at least, is that other attorneys are telling me
13 that they are advising their TDHEs to enter into master
14 leases prior to the effective date of the rule. 162.008,
15 that's the leasing requirement. Seems to require a TDHE
16 to obtain a lease to develop a tribal land. Contrary to
17 what you might have been told, the (inaudible) does not
18 require a TDHE to obtain a lease to develop.

19 Many pueblos when they're developing a tribal
20 land don't obtain a lease. They simply ask the tribe to
21 set aside the land, and they do that because they set
22 aside some of the lots for section 184 loans or other
23 private loans. And they merely develop the
24 infrastructure on that site.

25 Can you imagine the burden if a tribe now had

1 to, TDHE rather, had to obtain a lease to that site? And
2 then they wanted to give it to an individual to obtain a
3 Section 184 loan? They would have to get the lease.
4 They cancel the lease to allow the individual to obtain a
5 Section 184, a residential lease. I think if that's not
6 the intent of this section, that it needs to be made
7 clear. And, more importantly, BIA representatives need
8 to know this. I mean, I can just imagine the confusion
9 now among BIA.

10 Okay. With respect to the 90-day timeline,
11 because that's what it is, if you want to obtain a
12 leasehold mortgage you have to first obtain the lease and
13 then obtain the leasehold. Do you know BIA's response to
14 some of the comments that this timeline was too long? Is
15 there is no reason why you can't get the lease and
16 leasehold mortgage submitted at the same time? That's
17 simply not possible. And that's because no lender is
18 going to approve a leasehold mortgage until you first
19 have an approved lease. So I think that rule just
20 doesn't or rather that response doesn't make sense.

21 Subleasing is now more onerous under the
22 proposed rule. The current rule is so much better. It
23 now allows TDHE to sublease without further tribal or BIA
24 approval. It's provided for in the lease, and that's
25 what TDHEs do. The proposed rule now requires additional

1 requirements. Yes, you can get -- a TDHE can sublease,
2 but they have to first submit a development plan and a
3 sublease form to BIA.

4 The problem is that development plans, as we all
5 know, change. So that if a TDHE has maybe a plan for a
6 60-unit project but they had bidders that all bid over
7 the budget, and now they have to change the plan to a
8 20-unit project, does that mean that the new plan has to
9 be resubmitted? I don't know. The rule doesn't make it
10 clear. Same with the sublease. TDHEs change their
11 subleases regularly. Regularly meaning at least twice a
12 year. Does that mean when they change a form, when they
13 change any provision, or they change to a new form, those
14 have to go to BIA? Do BIA representatives know what they
15 will be reviewing for? I think that rule should just be
16 deleted. The better rule is the current rule.

17 Under Performance Bond, a tribe now has to
18 request for a waiver. Does that mean that BIA now has to
19 receive a cover letter from a tribe? Even though the
20 rule itself doesn't change, you are now requiring the
21 tribe to request the waiver. That's an example of adding
22 an administrative requirement. Under the current rule,
23 if a lease -- if a tribal proposed a lease to a TDHE and
24 no bonding required, that's all that's necessary. That's
25 sufficient for BIA.

1 Subleasing of Office Space is covered under
2 Business Lease. One of the responses from BIA is that a
3 TDHE can sublease under a business lease. Well, most
4 TDHEs, when they develop office space, they develop it
5 under a residential lease. So I'm not sure -- it is not
6 clear whether or not a TDHE now has to submit a sublease
7 form to BIA for review when they want to sublease office
8 space. Many of our clients do that. They have -- they
9 develop community centers within their housing projects,
10 and they sublease office space, the community center for
11 use by different entities. So will the sublease
12 provisions now require TDHE to sublease a form, to submit
13 a sublease form to BIA for review, or alternatively can a
14 TDHE treat an office sublease as a business lease? It's
15 not clear.

16 Again, in the sublease form, what will BIA look
17 for? And more importantly, will BIA representatives know
18 what to look for in reviewing? We don't want our BIA
19 representatives to say, "Hum, let me get back with you
20 after I check with the superintendent." I really think
21 these rules are going to create -- sorry for not finding
22 a better term -- create chaos with local BIA agencies.

23 Permits. And I'm almost through. Under
24 162.004, they now require tribes to submit permits to the
25 BIA office to make a determination that the permit is, in

1 fact, a permit. That's a new requirement. Additionally,
2 it seems to allow BIA to grant permits on tribal land.
3 And would that be without tribal approval? I think the
4 subpart C of 162.004 is unclear. Especially when it says
5 the lease and regulations in this part will apply.

6 So, thank you.

7 MR. NEWLAND: Thank you very much for your
8 comments, and I appreciate -- I'm going to ask Steve to
9 respond to some of the particular comments you made. But
10 I do hope that you submit written comments, because I
11 think what you said was very informative. We have worked
12 with HUD and the Housing Counsel in recognition of the
13 184 program and (inaudible), and we want to make sure
14 that this does not screw that up. And so your comments
15 are very well taken. You are not the only person to have
16 raised those issues with us, you know, since the proposed
17 rule has gone out. So that's something we're going to
18 look closely at.

19 I know Steve has some things he wanted to share.

20 MR. SIMPSON: Yeah, a couple things. One, on
21 the sublease requirements for master leases. Quite
22 frankly, did the plan -- if you look at the same
23 requirements or the same provision for business leases,
24 you will find exactly the same requirements. We heard
25 that at the last consultation, and we're hearing again

1 that those don't necessarily work for residential leases.
2 And that's a very good point. If there is some way
3 that -- because the goal here for all residential
4 leasing, not only housing for public purposes, but also
5 single-family residences, is, in fact, to make this
6 easier. In recognition of this severe and critical need
7 for housing in Indian Country.

8 So if there's some way that those provisions on
9 subleases under master leases need to be tailored so that
10 they fit better with HUD and how HUD does things, we
11 would appreciate -- we would greatly appreciate those
12 thoughts.

13 On the permit piece. Currently BIA is required
14 under the regulations, not under a statute, but under the
15 regulations, to approve all permits for Indian land or
16 for Government land. What we're doing here is we're
17 backing off of that and saying no, that we don't -- we
18 are not requiring approval for permits on Indian land.
19 The submittal of those permits -- and we're willing to
20 work with that, too. As you know, this is a new piece.
21 The submittal permits is basically so we know what's
22 happening out there to a large extent, and also to make
23 sure that what purports to be a permit is actually a
24 permit.

25 But the BIA issuing permits is only restricted

1 to Government land or BIA land. What that means is under
2 the regulations and actually defined in the regulations
3 is land is not trust land and not restricted land. This
4 is Government land that is owned by the BIA and used for
5 administrative purposes. This is land that agencies are
6 on, if they are not on trust land. This is schools.
7 This is the detention facilities. That kind of thing.
8 It's basically the same sort of land that the main
9 interior building in Washington is on where my office is.
10 It's truly land that is owned and used by the Federal
11 Government not in trust, not restricted.

12 And if I got that wrong in the definition,
13 please let me know, and I'll change it; but that's what
14 we're intending.

15 MS. ZUNI: May I respond?

16 MR. SIMPSON: Please do.

17 MS. ZUNI: Actually, I like your new definition,
18 because that --

19 MR. SIMPSON: Glad it's in the transcript.

20 MS. ZUNI: That makes it really, really clear.
21 If I can just tell you what the definition here says.

22 MR. SIMPSON: Please do.

23 MS. ZUNI: You mean any track or interest
24 therein in which the surface estate is owned and
25 administered by the United States, not including tribal

1 land that has been reserved for administrative purposes.

2 That tells me -- and I'm an attorney --

3 MR. SIMPSON: Understood.

4 MS. ZUNI: That, oh, okay, it must be any land
5 that is owned and administered by the U.S., including
6 trust land, except any tribal land that has been reserved
7 for administrative purposes. So in my area, I'm
8 thinking, oh, my gosh, the only land excluded from that
9 definition is the Santa Fe Indian school, the AIPC land.
10 I know that's not what you mean.

11 MR. SIMPSON: That's not what we mean, and we
12 actually had that confusion in Seattle, too. Yes, we
13 need to change it and make it clearer.

14 MR. NEWLAND: You are not the first, and you
15 most likely will not be the last to point that out. We
16 have red flagged it, how to clarify that definition, but
17 I do appreciate your comment.

18 MS. ZUNI: Thank you.

19 MR. NEWLAND: Any other comments?

20 MR. FELDMAN: My name is Glenn Feldman. I'm the
21 general counsel for the Cabazon Band of Mission Indians.

22 Our comments address solely the business lease
23 provisions, and we submitted written comments in the
24 first go-around and happy to say that most of the big
25 issues that we addressed in those comments were addressed

1 in this most recent draft. But there were three or four
2 what I would call relatively minor and what I thought
3 would be noncontroversial comments that we made the first
4 time around that weren't addressed in the most recent
5 version. So I want to just take a couple minutes,
6 because I have you here today, to just point those out to
7 you and see if I am missing something or something in
8 these comments are controversial or incorrect.

9 The first one is in Section 162.459. This has
10 to do with amendments, assignments, subleases, and
11 mortgages. If a lease is approved, the regulations say
12 an approved copy goes to both parties. Under 459,
13 amendments, assignments, and mortgages, the approved
14 document goes to the party that sent it to us and upon
15 request to other parties. Seems to me a better practice
16 would be, just like with the lease, if there's an
17 assignment or amendment or some other change to the
18 lease, both parties ought to get approved copies of the
19 document. No one should have to request it. Just seems,
20 as a practice, BIA ought to send an approved copy of
21 anything relating to the lease to all the parties to the
22 lease. So I would recommend that the last sentence in
23 459 be changed to provide all parties would get a copy of
24 the approved document.

25 MR. NEWLAND: Thank you.

1 MR. FELDMAN: We'll submit this in written form,
2 as well.

3 Second one is Section 463 A 2i. This has to do
4 with if there's a dispute over things. If the BIA thinks
5 there's been a violation and the lessee is now involved
6 with the BIA in addressing the violation. Under 463 A
7 2i, it says that the lessee shall send -- if the lessee
8 believes they have cured the violation, they send a
9 notice of that fact to the Bureau.

10 Again, I think a better practice would be that
11 they should be required to send that same information to
12 the tribe or to the lessor at the same time. The lessor
13 isn't just a by-stander in this process. The lessor of
14 the tribe has a very concrete interest in what's going on
15 in terms of is there a violation? Has it been cured? So
16 the idea -- so my suggestion, again, in that provision is
17 that it should require that the lessee, when they send
18 that notice to the Bureau, ought to send it to the tribe
19 or to the lessor at the same time.

20 Again, I don't think it's very controversial.
21 Just makes a better process to have the tribe involved at
22 every step of the process so they know what the lessee is
23 saying. The lessee may be saying things that are
24 incorrect, and the tribe may know they're incorrect.
25 Unless the tribe gets a copy of that information, you may

1 not know that it's incorrect. So, again, just seems to
2 me a better practice to do that.

3 162.462 A. Under this provision, it says that
4 the lease can contain provisions for termination.
5 Parties can negotiate termination provisions and the
6 Bureau may not have to be involved in that process. And
7 that's very good. But the last sentence of 462 A, says
8 that if that happens, if there are these negotiated
9 provisions and if the lease is terminated as a result of
10 those provisions, it says the parties, plural, must
11 notify us of the termination.

12 Well, if the tribe has just kicked somebody off
13 the leasehold because they violated the lease, that
14 person probably isn't going to be very interested in
15 cooperating and joining with the tribe to send that
16 notice to the Bureau. I hope I'm making myself clear.
17 It says the parties, which presumably means both parties,
18 have to join in that letter, which probably is not going
19 to happen in the real world. Again, instead of the
20 parties, it should say one or both parties shall notify
21 the Bureau so that notice to the tribe will be adequate.

22 MR. NEWLAND: Thank you for your comments, and I
23 agree with your assessment they seem to be relatively
24 noncontroversial. We will flag those ones.

25 MR. FELDMAN: One more.

1 MR. NEWLAND: Okay.

2 MR. FELDMAN: Has to do with the same provision
3 I was just talking about, 462 A, the parties can include
4 termination provisions in the lease. And it says: If
5 the parties (inaudible) BIA approval of the termination
6 is not required and the termination is effective without
7 BIA cancelation. That makes perfect sense.

8 But then if you go to 162.467 A, it says: A
9 cancelation involving business lease will not be
10 effective until 31 days after lessee receives a
11 cancelation letter from us. Us being the Bureau. It's a
12 conflict. I don't think it's intentional. On the one
13 hand, it says tribes may agree on termination provisions.
14 They can exercise those provisions without the Bureau's
15 involvement. But 467 says a termination isn't effective
16 until you get a letter from us saying that.

17 So I think 467 simply needs to be revised to
18 make it clear that it involves a cancelation in which the
19 Bureau must be involved, separate from the other
20 provisions.

21 MR. SIMPSON: This is a definition problem, and
22 it could probably be clarified. When we refer to
23 termination, it's the parties. When we refer to
24 cancelation, it's the BIA.

25 MR. FELDMAN: Oh, okay.

1 MR. SIMPSON: So it's just two different things,
2 and we may need to clarify that definition.

3 MR. FELDMAN: Okay. But you understand the
4 issue?

5 MR. SIMPSON: I do.

6 MR. FELDMAN: Thank you very much. I appreciate
7 the time.

8 MR. NEWLAND: Thank you.

9 Other comments or questions?

10 MS. ANTONE: My name Cecilia Antone with the
11 Salt River Pima-Maricopa Indian Community.

12 My comment today has to do with fractionation.
13 Fortunately, I'm not part of that yet. My mother is
14 82 years old. She's on dialysis. And one of the things
15 that she was taught was not to split up your land. I
16 have five siblings, and she worked real hard not to. She
17 gave us homesites; but she told us that, when she passes
18 this land on down to us, she didn't want to have a
19 homesite over here, over there in the field. So she
20 said, whether we liked it or not, we're all going to live
21 side by side; and that's how we live today.

22 And now if this is going into effect -- there's
23 five of us. And one of the traditions, I think, with our
24 Indian people is that, when you give your land, you give
25 it to your children or if you raise your grandchildren,

1 whoever you feel is fit to have it or deserves, however
2 it's put. But if this goes into effect, then all my
3 brothers and sisters are going to have a say in who I
4 decide to give a homesite to of my children and me of
5 theirs. And the way that she always looked at it, that
6 the 51 percent, that three of us siblings would all be in
7 agreement at one point whenever somebody wanted a
8 homesite.

9 And if this goes into effect, then they're all
10 going to have a say. And as stated before, not all
11 families agree or like each others children or maybe they
12 did something, you know. But I think that the way it
13 affects us, it not only affects -- it affects our
14 tradition as people. One of the best things about this
15 world that we live in today, I feel, is that we have the
16 chance to come here and express all these opinions from
17 everybody, from the lawyers, to our tribal president, to
18 everyone that's here. And as Serena stated earlier, it
19 might take days or it might take months, and we're asking
20 for more time for all these comments to be taken into
21 consideration for what is best for us.

22 It might be good for the Government, but what
23 about us? And we're the people that actually are going
24 to live with what happens by this decision. And it is
25 going to affect every being, every tradition, the way

1 that people live. And one of the things that I think
2 that we all want here today is that everyone that lives
3 on allotted land be able to have the kind of housing or
4 home that they deserve as a person.

5 Again, the best thing that we have in this world
6 is the freedom to have those amenities of life and that
7 is a secure homesite, that is a decent housing to live
8 in. And I think that -- I feel that it cannot be
9 expressed enough that these are the needs of the Indian
10 people today.

11 I thank you for letting me make these comments.

12 MR. NEWLAND: Thank you very much for those
13 comments. I really appreciate them.

14 MS. DONAHUE: Hello, my name is Carri Donahue
15 also from Salt River. I just wanted to share a few
16 words.

17 I agree with everyone, what they said here.
18 Another generation. I know my grandmother left us some
19 land that I knew of, but she passed away, went into
20 probate, held things up. I was not able to get some
21 land. For a while, was forced to live in the city,
22 because I had no where to go. No land. I had nothing.
23 And then I was able to lease from the tribe.

24 As I grew older, finished a little bit of
25 school, got my job. Currently, I am a program director

1 for a nonprofit. We work in the Salt River Pima-Maricopa
2 Indian Community, and this will also affect my job and
3 the people who benefit from it. In the last year, we
4 were able to grant money to 11, 12 homes this past year;
5 and we helped a lot of seniors. And how it affects my
6 job, if this goes through, it's going to decline. Next
7 year -- this year we're looking at granting four homes.
8 The next year, it's going to go down to nothing, which
9 affects my job, my living, and how I survive.

10 So I agree, as well, that it needs to be
11 extended. It really does affect so many people, and it
12 may be just in our community, maybe there's a lot more;
13 but I think you need to look at it in the human side
14 rather than just a Government side.

15 Thank you.

16 MR. NEWLAND: Thank you very much.

17 We had a comment over here first and then come
18 back.

19 MR. LOMA'OMVAYA: My name is Micah Loma'omvaya,
20 Office of the Chairman, Executive Staff, and also have
21 the director of our energy program, Ken Lomayestewa.
22 We're glad to be here and glad to see the tribes in the
23 local area involved in the discussion, and we took some
24 time yesterday to travel, an eight-hour trip Wednesday,
25 and got stuck in road construction along the way. Made

1 for a good trip. As far as today goes, we're very
2 interested in the Hopi Tribes' land use concerns. We
3 have at least 1.5 million acres on the main reservation.
4 We also purchased land south of the interstate, which is
5 about 60 miles south of our main reservation where we
6 also want to increase economic development, land use
7 opportunities for our tribal members, and also just
8 wildlife management and other resources on these lands.

9 In looking at the overview of these changes,
10 rule making, we definitely want to see how and realize
11 how the tribe can increase our wind and solar resource
12 within these areas. We purchased these lands, indigenous
13 land ways, and also take care of them, be stewards, and
14 also make use of those lands for our tribal membership.
15 So we look forward to engaging, working through the
16 negotiations that are going on today; and we have in the
17 past, to realize how tribes can be more in a controlled
18 situation or be able to realize the nation in these
19 efforts.

20 We have limited resources and limited economic
21 development on our reservation. We see that this is an
22 opportunity for us to increase it and to be able to
23 negotiate the pathways that have always resulted. We
24 want to see that these are clear pathways for us to make
25 decisions about these developments or opportunities that

1 we seem to engage in on our own lands. And through that,
2 we want to see that we can work with other tribes, of
3 course, that are our neighbors, as well as state, county,
4 private land holders in the area, because we all have to
5 make the best of a situation.

6 We hope that this will allow that and that we
7 look forward to engaging more and more in defining what
8 the pathways are for us to make sure that we come into
9 and realize those opportunities that may be available to
10 us as a tribal nation. Thank you.

11 MR. NEWLAND: Thank you.

12 MS. RODRIGUEZ: My name is Margaret Rodriguez,
13 and I'm from the Salt River Pima-Maricopa Indian
14 Community and also here representing seven or eight of
15 our family members. Everybody couldn't come, because
16 they have jobs. My older sister is going through surgery
17 as we speak, and my second older sister is disabled, and
18 she can't travel or walk very well. So I am here
19 representing eight families, all thrown into the
20 situation. We lived in our homes for 18, 19, and
21 20 years. And I just found out recently, our homes were
22 not registered in Albuquerque, and we don't know why,
23 because we went through the whole process at the time
24 19 years ago and got 51 percent signatures and followed
25 the whole process.

1 Understanding and finding out that now we have
2 to go through the whole process in getting 100 percent
3 signatures now has really thrown us, you know. We don't
4 have the time and the energy, not all the families
5 members; but we try our best. We haven't been able to
6 locate five that are part of our allotted lands. We have
7 25, and we could not locate five. And that's put a hold
8 on the process going forward. And, then, in the
9 meantime, one passed away. And my concern is that my
10 sister may pass away, and she can't even make her will
11 because we're just in a hole. We're stuck.

12 I'm here to say we as a family protest this, you
13 know. I feel that it's very detrimental to us as
14 individuals. It's going against, as you heard, our
15 culture, our ancestors who left us the belief, the
16 feeling, the heart. It's throwing it out the door. And
17 we as families have a right to talk to one another and
18 work things out, and I was saying earlier on, what is BIA
19 trying to do? Put us all in one so that one shoe fits
20 all? But, then, I thought, well, okay, now I am hearing
21 that's probably how you see it. It is one.

22 But all tribes I still feel are different.
23 We're a self-governance tribe. We had a coordination,
24 and I think that's still possible if between our
25 self-governance tribe and the BIA could work to continue

1 to work on this and have a stronger relationship to work
2 things out. You know, I think we have a homesite
3 process. It's not perfect, but it's worked for us. It's
4 been working. And I would see that -- I would like to
5 see that continue. And you come down to our level, as
6 community members, as community people. You are here at
7 the consultation meeting. I've heard from the very first
8 one, but it feels as if we're excluded. Many of our
9 tribal members cannot afford to. We're in economic hard
10 times; and yet you are telling us, okay, if you want a
11 home, to live decently, to raise your families, to be
12 safe, to be comfortable, whether you are healthy or
13 whether you are ill, you know. You can't do that. And
14 you have to spend money. You have to spend on getting,
15 you know, going through your site. You have to spend
16 money for insurance. You have to spend money for
17 bonding, which is outrageous to an individual. And you
18 may be talking and looking at an elder, a disabled
19 individual, those are the future generalizations, just
20 like this baby, who will not have that.

21 What will our daughters have to do, except not
22 to go through and get into a home. They'll be forced to
23 live with relatives, causing over crowdedness. They'll
24 be forced to even live homelessly, in a homeless
25 situation. And that's what I am concerned about. If I'm

1 having trouble as a semi-healthy individual, I'm thinking
2 of those that can't. Our elders. Our disabled
3 individuals. How can they afford it? How can they do it
4 to be able to live safely?

5 And so, again, I urge you, just as
6 President Enos has said, put this aside and give it time.
7 Education is important. You're talking about education,
8 getting the word out. We need to. We need to work in
9 cooperation. It can be done. Instead, I feel like we
10 are just being forced and being told what to do, what we
11 can't do. And that goes against, again, us as native
12 people. And, again, economic times are hard right now.
13 And you know in Indian Country, it's even worse. We're
14 thrown back even more so. So, again, I urge you please
15 reconsider this. Pull it out. Let's work together. Get
16 some education together.

17 Thank you.

18 MR. NEWLAND: I want to thank you very much for
19 your words.

20 If we could -- I really wish we could go out to
21 every tribal community and have these type of
22 discussions. I really do. I know that we had the top
23 leadership from our office, from Larry EchoHawk's office,
24 and spent a day with you, in your community, with your
25 President Enos, traveling to your community and your

1 tribe.

2 MS. RODRIGUEZ: He had come to our place. He
3 came to my sister's home. He visited my home, and they
4 all looked around. They only visited a few homes. They
5 didn't talk to anybody. Not the true representatives of
6 the community, and they didn't say anything. It was just
7 we'll take it into consideration, the same as you. We're
8 taking it into consideration. But no sitting down and
9 really talking about it. You got to take it, like as
10 been said, with the heart. Not just with the brain, but
11 with the heart also. And cooperation to come to a
12 solution.

13 MS. MILLER: Good afternoon. My name is Claire
14 Miller, and I'm here as a landowner and part of the
15 landowners association, a group from Salt River.

16 It became a necessity for the tribal members to
17 look at what they can do to protect their lands from
18 things like this. It's unfortunate that the Bureau has
19 to. As this lady said, things are supposed to be
20 beneficial and change for the better, and not the other
21 way around.

22 I just want to go back and see all of the
23 comments that were said today, and I want to agree with
24 all of them and really feel like you need to take that at
25 heart. And it is very sad that today we have to protect

1 our land. As a former counsel person, I just went into
2 protection mode. I saw the way that the lease and
3 landowners were starting to feel very threatened by some
4 of these regulations that are coming out. And this is
5 not the first one. There will be others that we have to
6 look and protect our lands, because that's all we do
7 have. That's what we are as Indian people. It's our
8 land.

9 Now, our reservation or our community is small.
10 We can't afford to sit back and say, oh, well, it doesn't
11 affect us. We're boxed in by some major cities. We
12 don't have a chance to extend our land base. What we
13 have is finite resources. That's our land. We have that
14 property, not as a tool to, again, gain income. A lot of
15 landowners that were born and raised on their lands,
16 their parents, and each generation. So it's not
17 something that we want to necessarily profit from. We
18 want to be able to hand that land down more and more. So
19 this kind of movement by the Bureau is extremely
20 concerning our people.

21 Right now there's a petition out. And when we
22 do submit comments at the end of the month, you will see
23 some of the people that are able to sign the petition.
24 Our membership is 10,000 or around there. Half of them,
25 as you heard, are under 18. But young people want to

1 sign. Young people wanted to be here today. They really
2 did want to come when they heard what was going on.

3 So I urge you to, again, listen to what was
4 brought to you today, especially as you will see in our
5 petition, look at the comments the community has been
6 submitting to you. It seems like you put out
7 consultation hearings, and you don't really hear. So
8 those comments were submitted to you, and they did
9 reflect the Government's stance on behalf of us as
10 landowners. So I wanted, again, to bring that to your
11 attention.

12 The other thing is, as I sat -- just getting the
13 homesite leases is one hurdle. Complying with it is
14 another. There's some very, very damaging parts of that;
15 and our attorney here has brought that to your attention.
16 I hope you will, again, look at that. Especially the 100
17 percent requirement in the bonding. And I hope some of
18 those things are things that can be talked about. I wish
19 the BIA would be more flexible in working with us. I
20 think if you're an agency and your area people would at
21 least respond and listen to us, we feel a little more
22 comfortable about not having to go out and rally up the
23 troops to protect our own property.

24 Our people and myself included, we go to bed at
25 night feeling we were appointed but not feeling very

1 secure in our homeland. We're not outsiders. We're not
2 nomads. Our lands have been deeded forever, and we
3 expect our people to be there. Yet now we don't know how
4 long we're going to be there. When you say we're in
5 violation and that somebody can come and take you out of
6 your home, that's very, very -- causing unrest in the
7 community.

8 So I wanted to say that again, and I urge you to
9 consider what's been said. Please put those regulations
10 on hold until you listen to more input. We just had a
11 tribe come in and say they didn't have all the
12 information, the considerations that we had brought
13 forward, it's new to them. It's going to affect other
14 people, and I think you need to understand and give them
15 time to catch up. Because a lot of people -- again,
16 because they're submitted with those other two parts,
17 they ought to be taken apart from the business. This is
18 nothing like a business lease.

19 Thank you. Thank you for hearing me, and I hope
20 you will consider some of the things that were said
21 today.

22 MS. ACHIN: Good morning. My name is Darayne
23 Achin. I am with the Salt River Pima-Maricopa Indian
24 Community. Born and raised there. Got a chance to
25 travel outside of the country due to my husband's

1 military background. Moved back into the states.
2 Grateful for all the experiences that it gave me. But
3 you know what. I wanted to come home. That's when I
4 realized that I'm a Pima girl. I am a girl of the
5 desert. I needed the sun. I needed my people. I needed
6 the complacency. I need security and just feeling
7 comfort of being home where I was raised. And we out in
8 Salt River -- and I've heard this in other native
9 communities -- no matter what we do, how much education
10 we get, no matter how far away we move, no matter how far
11 away we stayed, we usually come home to die. Because
12 that's our land. That's home. I just feel like that
13 home means something different to native people than it
14 does to the outside world. That's our connection. That's
15 our responsibility to keep the land, to keep it clean, to
16 raise our children, to see our grandchildren there.
17 That's us.

18 And as you heard, Salt River -- we're surrounded
19 by urban community, and you can tell when you cross right
20 across the street. So whether we enjoy going out
21 shopping at Macy's or going to the theaters -- we have 13
22 theaters we have available. You can eat dinner in them.
23 We can come back home, as soon as we cross that street.
24 Pima Road, McDowell Road. We literally say, "You can
25 breathe." You can say, "We're home."

1 My husband comes from Massachusetts. He's
2 Caucasian, and he's been living out in the community for
3 25 years now. And even he says, "Oh, we're home. We can
4 be who we are." And I have to say that many Caucasian
5 people that are not even community members, once they are
6 out in the community and are accepted, that's home. You
7 can breathe. You can relax. You know, you're among
8 people who love you and accept you.

9 But my point is this. For two years I have been
10 trying to get a new home. My husband and I came back and
11 retired from the military. My dad offered the land next
12 to him, his home. And we put a mobile home there.
13 That's what we could afford. We couldn't go to a board
14 and gather all the signatures. We got 51 percent. So we
15 did our job, and we got our home. And now 17 years later
16 or actually 15 years later, when I tried to get a new
17 home, I went through the whole process again. Got
18 51 percent. All my family is there, but my sister is mad
19 at me. She told her daughter not to sign. I got
20 51 percent, but now I am stuck. I don't know why.

21 So I was just told by the reality girl that BIA
22 is doing this new thing. Get 100 percent or pay them. I
23 didn't know. This is how I got familiar and got
24 initiated to this process, because I wanted my new house.
25 We can afford it now. We were going for it. I still

1 don't have a real home. I'm almost a judge in the
2 community. And you know how I found out about this new
3 thing before this happened? People from the 1930s were
4 coming into the court for probate matters for their
5 house. They needed a legal document to show who the
6 legal owner of that house was so that they could get a
7 deed and start the process. I was wondering these homes
8 in the 1950s, some weren't built by the tribe. They were
9 hand built, like her father. There were family built.
10 That's what we did.

11 I remember a burned down house when I was
12 little, and all of my relatives came the next day, all my
13 relatives came, and built a new house that same day, that
14 weekend. That's what we used to do.

15 I just hope that you hear us. That you consider
16 the human side. Because those of us that are here today,
17 we're fortunate to be able to travel. A lot came out
18 here without any kind of help. They just did it on their
19 own. Native people are uncomfortable generally to speak
20 out at forums in front of strange people. Heck, they're
21 even afraid to confront other family members. But to
22 come here and to hear all these people, you have to know
23 that there is a big concern out there in the community,
24 and we are representing our community. And you need to
25 hear us.

1 Apparently, on discussion, we don't have a
2 problem with your business proposal for the wind and
3 solar energy. But we have a big concern about what we
4 consider our homes and our lives.

5 Thank you.

6 MR. NEWLAND: Thank you.

7 I want to respond to the comments that a number
8 of the folks have raised from Salt River this morning.
9 We have heard you on the bonding and the insurance, those
10 provisions. And we're going to go back to the drawing
11 board on those. We've heard it across Indian Country.
12 100 percent being brought up this morning, and I want to
13 make sure that I'm clear.

14 These new regulations do not require 100 percent
15 consent for a lease. They don't. They don't require
16 100 percent for a mortgage. ILKA sets up the consent
17 provisions. We acknowledge ILKA. All we have said with
18 respect to what Salt River Pima-Maricopa Indian Community
19 has raised to the Department is that the Department,
20 because of its trust responsibility to individual Indian
21 landowners, is not going to waive landowners' rights to
22 receive compensation when the land is leased out. But
23 you will not have to go and get 100 percent signatures to
24 get a lease of individually owned land under these new
25 regulations. I want to make sure we are perfectly clear

1 on that point.

2 MR. SIMPSON: And that is not a new thing.
3 Before Congress passed the Indian Land Consolidation Act
4 in 2000, you did have to get 100 percent of all of the
5 owners to lease land. Congress wanted to loosen that up.
6 They put these percentages of interest to lease land in
7 those amendments in 2000. When we redid the leasing
8 regulations at that same time, there was, if you look at
9 the beginning of the nonagricultural leasing regulations,
10 it's the current regs. It says if these regulations
11 conflict with the Indian Land Consolidation Amendments of
12 2000, those amendments control. We proposed regulations
13 in 2004 that have those percentages in them.

14 MS. ENOS: Hold on. Let me be clear about
15 something.

16 MR. SIMPSON: Please do.

17 MS. ENOS: We don't misunderstand the proposed
18 regs. We know that there has to be an accounting for the
19 100 percent. You can't find something, you are supposed
20 to set up some compensation process. If somebody says
21 "No, I am not signing," you are supposed to set up some
22 compensation policy.

23 MR. SIMPSON: That's true.

24 MS. ENOS: We understand that.

25 MR. SIMPSON: Okay.

1 MS. ENOS: So don't misunderstand what we're
2 saying. I just wanted to not take up too much time.

3 MR. SIMPSON: I appreciate that.

4 MR. PARKER: Good afternoon. Members,
5 President, other tribal members, other tribes. My name
6 is Richard Parker. I'm from the Salt River Pima-Maricopa
7 Indian Community. I have a question on your first one
8 you have. We have in the middle, I guess, Page 73.784,
9 middle column, three quarters of the way up the page.
10 Comments and Information, Collections contained in this
11 proposed regulations are separate from those in substance
12 of rule.

13 Focus comments on "substance of rule."

14 MR. SIMPSON: There are provisions in this
15 regulation. There's a section in this regulation on
16 Page -- the charts that begin -- the Paperwork Reduction
17 Act. Begins on 73.786. Okay. And then there are charts
18 on how long it will take to prepare various documents
19 under the rule that was required to be submitted under
20 the rule. Okay. Those are -- those charts and that
21 information are required to be put in here under the
22 Paperwork Production Act. This is the same statute by
23 the way that prompts the IRS to say that it will take you
24 two hours to do your taxes.

25 Those come -- if you have any comments on what

1 we're saying in that portion that you just asked about,
2 if there are any comments on those charts, on the
3 Paperwork Reduction Act piece on how long it will take to
4 prepare those documents, those comments go to the Office
5 of Management and Budget, because they're the ones that
6 administer that statute and those requirements. Okay.
7 The Substance of the Rule, what we're talking about there
8 is everything else. Okay.

9 So comments on those Paperwork Reduction pieces,
10 those charts that I just mentioned, go to the Office of
11 Management and Budget. Any other comments you have come
12 to us at the address on the screen and in the packet.
13 Does that help?

14 MR. PARKER: I'm still a bit confused. Seems
15 like the rules and the comments that we have here today
16 are separate issues and were looked into separately, it
17 appears.

18 MR. NEWLAND: You want to make comments on what
19 we're talking about today?

20 MR. PARKER: Well, yeah. When you get this
21 documentation going, it shows there's two separations
22 here. A bit confused. One's a comment, and the other
23 one is substantive rule.

24 MR. NEWLAND: If you want to comment on what
25 we're talking about today, send it to him, and it will

1 get to us.

2 MR. SIMPSON: And if you are commenting on that
3 other stuff, okay, and you send it to us, that's fine,
4 too. We'll make sure that they get to the right place.

5 Send everything to us, and we'll get it there.

6 MR. PARKER: The documentation that I have here
7 is more or less doing the work for you. I don't want to
8 really -- I want to comment on it, but not comment on it,
9 because I am doing the work for you. But those
10 idiosyncrasies that you have in here, as your paperwork
11 or your documentation on this book, Page 98, 99, I mean,
12 there's some of them, but they're outlined out. Does
13 that mean that's no use or supposed to be underlined?

14 To me, it means it's crossed out and has no
15 effect; or is it supposed to be underlined, because it
16 all is crossed out to me.

17 MR. SIMPSON: I'm sorry. I don't have anything
18 crossed out.

19 MR. PARKER: Let me run this up there to you.
20 The comment is --

21 MR. SIMPSON: I don't want somebody to do the
22 work for us. That's perfectly fine. We're willing to do
23 the work.

24 MR. PARKER: 103 Congressional Meeting of
25 Congress expresses our religion and all that. Customs

1 and courtesies will supercede, but you're forcing
2 Christianity on it.

3 MR. SIMPSON: What you have here -- I see what
4 you are talking about. I understand.

5 MR. NEWLAND: For those of us trying to follow,
6 under Tab 6 in your packet. This is a red line of the
7 proposed rule that was noticed in the Federal Register
8 over what we consulted on last year as a draft.

9 MR. SIMPSON: Yeah. These are the differences
10 between what we consulted on before and the draft and
11 what we -- so if it is crossed out here, don't comment on
12 it.

13 MR. NEWLAND: This document is intended to --
14 it's for your reference so that you can see the changes
15 we made based upon previous tribal consultation.

16 MR. SIMPSON: Right. So what you want to
17 comment on is -- I'm sorry. I did not have this. What
18 you want to comment on is the text under Tab 2. Okay.

19 MR. PARKER: Okay.

20 MR. SIMPSON: Thank you for pointing that out.

21 The red line strikeout at the end is, as Bryan
22 noted, just the changes from the draft rule to the
23 current one. What you want to comment on is not those
24 changes, not that. That's only for your information.
25 What you want to comment on is the rule under Tab 2. And

1 as I said, if you send comments on that rule to us, then
2 we will consider them completely. And I can tell you
3 that -- I can pretty well predict that the Indians that
4 are working on this rule will do that, and I can commit
5 for the non-Indians that we will consider them both with
6 our heads and with our hearts. We also understand the
7 difficulties that you are going through out there, and we
8 take those very, very seriously.

9 MR. NEWLAND: Do you have a comment, sir?

10 MR. PARKER: Well, there's a contradictory on
11 Page 9 on your proposed rules.

12 MR. NEWLAND: In the power point?

13 MR. PARKER: Yes. You have stated it's not
14 100 percent. Here we have the layout, 1 to 5, 90, you
15 know. Should be 2 to 5. That's nit-picking. But it
16 says where I'm -- the 20 or more, over 50 percent. Now,
17 I forget the gentleman's name that I just talked to
18 earlier outside discussing 51 percent. Based on
19 individuals. Based on geographical land. 20 acres.
20 We'll use 20 acres, because that's what I got.

21 Say an individual has 10 acres, one individual,
22 and the rest by 100 people. So I get 26 people to sign
23 off on it, or do I get two that have the majority of 51
24 percent of the land base, where one has ten acres and one
25 has one acre to make the 51 percent of the majority of

1 the whole? So we're discussing this 51 percent is not
2 quite clear.

3 We keep discussing -- we discussed it out there,
4 and he said the percentage, what interest that individual
5 has, so he can go proportionate either way. Where I am
6 from, they say I have to have 51 percent of the people to
7 agree. But if you are fractionated and it's undivided,
8 and you get 26 people that own only 3 acres, that's not,
9 how do I say it, proportionate to the land base, and it's
10 not meeting 51 percent one way, but meeting 51 percent
11 another way. Can you make that perfectly clear of how we
12 do this 51 percent.

13 MR. SIMPSON: Make it as perfectly clear as it
14 can be. I'm not saying that's perfectly clear. The way
15 this works is, if you have the -- Indian land is
16 generally owned in undivided joint interests. As I -- at
17 one point, my wife volunteered to read all of these
18 regulations and preamble language. She is not a lawyer.
19 Doesn't work in Indian Country. I had explained to her
20 what this meant. What I said to her was that's the way
21 we own our house. She owns an undivided half interest,
22 and I own an undivided half interest. That does not mean
23 that she owns the kitchen, and I own the bedroom. It
24 means that we each own 50 percent of the entire house.
25 Similarly, with allotments, if you have 25 -- if you have

1 an allotment of, you know, where someone owns 10 percent
2 of a 25-acre allotment, that does not mean that they own
3 2.5 acres. It means they own 10 percent of the whole.
4 And that's what we're talking about here.

5 So it is not -- you do not need 51 percent of
6 the people. Those percentages have nothing whatsoever to
7 do with the number of people. They're the number --
8 they're the interest. So if you have -- and, actually,
9 we do mean 1 to 6. Congress said 1 to 5. And, in fact,
10 at Salt River, there, they're single-owner allotments,
11 but there are not very many of them across the country.
12 But you actually have more than I thought you did out
13 there. If you have -- so if you have 20 or more owners,
14 okay, that does apply to the people. If you have 20 or
15 more owners of the allotment. What you need to lease is
16 the owners of more than 50 percent of those interests.
17 Okay.

18 So if you have 20 people -- if you have 19
19 people, and you put all their interests together, and
20 they have 49 percent of the interests in the land, they
21 can't lease that piece of land without that 20th person.
22 If, however, you have -- if that 20th person apparently
23 has 51 percent, they can lease it on their own without
24 consent of any of those other people. Okay. It's the
25 percentages. It's the interests in the land. It's not

1 the number of people.

2 MR. PARKER: Okay. I understand that. At one
3 point it could go either way if you had 100. Okay. 51.
4 You know what I mean? There is a point where it can be
5 proportionate both ways.

6 MR. SIMPSON: The way the law reads and the way
7 these regulations read, it's the interest every time.

8 MR. PARKER: The interest of the land itself.

9 MR. SIMPSON: Yes. Every single time.

10 MR. NEWLAND: Again, this chart is what Congress
11 says we have to abide by. We cannot change it through
12 these rules.

13 MR. PARKER: Well, the problem I have, I could
14 be wrong, the people that work over there, our tribe, and
15 they have submitted this documentation of 51 percent and
16 had it rejected. They have been doing this -- from what
17 I have been told and what I have seen happen, they have
18 been giving us the documentation for the last two years
19 trying to get 100 percent. I think they only have, like,
20 10 houses. Prior to that, the 51 percent, they got,
21 like, 51 houses. I could be wrong, but that's some of
22 the numbers going around. BIA has always, from what I
23 hear, have been turning them down, because they did not
24 receive the 100 percent. So I don't know who's -- it's
25 contradictory to me. So I don't know who's doing what

1 where, but some of the people that did show up with us
2 might be able to clarify.

3 MR. SIMPSON: President Enos has pointed it out.
4 There's a difference between the consent on the lease
5 itself and the consent for waiving the appraisal on a
6 fair market value.

7 MR. PARKER: I'm not talking about that. I'm
8 just trying to get -- it don't make sense to me to get a
9 lease for my home on the interest, okay. I keep talking
10 about the 20 acres. That's what I am dealing with or
11 19.667, and I have 16 percent interest in an undivided
12 section. I can't see why -- I want this corner. I'm
13 only using what is allotted to me as it says on paper
14 3.33 acres. But I have to pay lease -- my
15 interpretation, I have to pay these other people, the
16 other 49 or 48 people, lease to compensate them for this
17 undivided section. But I ain't using anymore than -- I
18 mean, that's mine now. But other people have interest in
19 that land too, but I am not using anymore. I'm not using
20 5 or 10 acres. I am just using the allotted land that
21 was set -- see, I'm confused -- leased to them.

22 That performance bond. Should I get a
23 violation, which you have on there, kind of weird, a
24 broad spectrum of violation, a lease violation. And if I
25 appeal it, then I have to put up an appeals bond. I have

1 to put up my approval between 15 and \$4,000. You do the
2 math. Say somebody gets minimum wage. What is it?
3 \$5.50, \$6.50 or \$7.50, 2,080 hours, if they don't get
4 sick, you know. And I have to pay each of these 48 other
5 people lease lands or monies for my section that I want
6 that's undivided.

7 As I grew up, nobody's used that land, you know.
8 When my mom grew up, I don't think anybody used that
9 land. Nothing but desert or field there. And you are
10 going to force me and future members and other tribe
11 members to pay somebody for your own cut, then the other
12 portion of irrigation and drainage I have to maintain?
13 To me it's cheaper just to get a house on the outside.

14 My opinion is BIA, however they did their
15 homework or how they're doing this, is trying to put a
16 division in our people, you know. At the beginning they
17 couldn't kill us off. You put us on a reservation.
18 Where we're at, they started damning up the river. Go
19 down there by the river, you can farm, you can do this
20 and that. And all of a sudden, (inaudible) association.
21 Just started damning up the river. Now we have a dry
22 riverbed. It flows every now and then. Somebody makes
23 the decision to let the water loose. But to give us a
24 little insight, I could be wrong, you know.

25 Somebody mentioned that we're not nomads. Well,

1 we were. Until the Government, Christianity stepped in
2 and forced us to lose our tradition. We have -- all I
3 can say -- four districts. The mountain, the river, the
4 desert, and the sand. We're over there by Phoenix. To
5 give you an idea, you know, about this one gentleman, and
6 he took a shot. And some people might know him.
7 Christopher Columbus, you know. A little pond. Came
8 over here. Well, like I said, there's somebody that
9 mentioned Flagstaff, near Yuma, near Mexico and all that.
10 Actually, our territory is bigger than that. We had a
11 pair of feet. There was no pond in our way. I believe
12 we could have went up to Canada.

13 I don't have any ancestors back then that could
14 tell me all, you know, that was handed down. I know, the
15 Government put us on reservations. What's your migrating
16 area? Prescott, White Mountains, that way toward Baja
17 California, deep south. That's too much land for you.
18 We'll put you over here by the river. There's two of us,
19 tribes, people. Two of us. Pantonalou was the last
20 chief. And for him -- it's hard for me to imagine for
21 him, but he did, went to BIA or the President of somebody
22 and said "Hey, can I please have a hall pass to go over
23 to Salt River over there."

24 "Sure. You can go over there. We'll write up
25 an executive order. You can go over to this little lot

1 of land."

2 So we go to this lotted land that we're supposed
3 to govern ourselves with, but you guys have a hand on it
4 and telling us still what to do and how to do it, you
5 know. You say, "I know where you are coming from," and
6 technically you don't. At least that's my opinion, you
7 know. In a way, we put ourselves where we are right now,
8 in a way. But BIA, the Government, one day -- I keep
9 talking to some people. They say, "Well, we're conquered
10 and suppressed." I don't know. We did something, didn't
11 we? We're not dead. We're over here on this
12 reservation. So something had to happen.

13 You are forcing this down on us. I don't know
14 what language, except very little. My mom didn't want me
15 to go through getting my hands slapped on the knuckles
16 with a ruler for speaking her language when sent to
17 boarding school. But BIA has -- a man had a hand full of
18 beans. We'll give you health and education, but we will
19 not give you the quality of health and education. That
20 was never stipulated. So, yeah, we got health. It's not
21 the greatest health. We have education. Forced every
22 one of our people that we have as members to be people
23 proficient. Well, that starts at home. That's another
24 subject.

25 The BIA, the Government, in my opinion keeps

1 shoving it down our throat, you know. You're taking away
2 our customs and traditions, which should supersede law.
3 We get together and talk. Can I have this place for my
4 house? Sure. Go ahead. They all get together, put in
5 some straw, building bricks, make our mud houses. We
6 have no problem with that. BIA gets their hand caught in
7 the cookie jar because somebody mismanaged the trust
8 funds and the accounts. I see little bits and pieces of
9 why this is being enacted.

10 Salt River, Wayne Hill got a mining permit from
11 the Federal Government. Started digging a hole up there.
12 What are they doing up on tribal lands, our land? We
13 start suing. We lost. The Government issued them a
14 permit for use of land. Fought with them and fought with
15 them. I could be wrong. We ended up buying him out.
16 But that shouldn't happen in the first place. Now you
17 are telling us we have to pay our people monies for our
18 own land. We have to pay other people. You know, like I
19 said, most of our people are under the age of 18. Yeah,
20 we want houses for them. People that do have the mud
21 houses, stipulation of performance bonds, appeals bonds.
22 Just wait until lunch, you know.

23 And the other thing you talk about is you hear
24 us, you hear us. I don't want you to hear me. I want
25 you to listen. Take note. Come down. You know, I

1 invite you to come down to our reservation. Look at the
2 people. Yes, we do have our problems. Drugs. Alcohol.
3 Police brutality, stuff like that. Yeah, we have
4 problems just like everybody else. Walk a mile in my
5 shoes.

6 That's the comments I have. This is just too
7 burdensome.

8 Thank you.

9 MS. CREECH: My name is Lorna. My name is Lorna
10 Fullwilder Goodwin. Now, I am Creech. My last name is
11 Creech now. I come from Salt River, too. I have eight
12 brothers and sisters, I have eight children, And I also
13 am connected to the Covelo Tribe in California to the
14 Round Valley People, Mission Indians. And so I inherited
15 a lot of land from my elder relatives. So now we are
16 seeing it being dismantled. So I came here because it's
17 a long way away. My husband used to go. You need to go
18 and be heard, because that's how I feel. I look at our
19 land, and a lot of these relatives have said how I feel.
20 And if it weren't for my mom, my aunties, I wouldn't have
21 had an acre of land to live on. And now, thank God, four
22 of my children have their own homesites. Thanks to
23 getting all this paperwork done before this thing is
24 coming in. I have three more sons that need homesites.
25 So the land behind where my home is at on McDowell Road

1 going straight through the reservation, going to other
2 cities and different places.

3 Below me there's like 20 acres. And in that 20
4 acres, there's 200 people or 250 people that own shares
5 in that land. That's how fractionated it is in that
6 section. And then further at the north end of the
7 reservation, I have some land that I was -- somebody left
8 to me. I don't know who it was, but somebody left me
9 some land up there in different sections up on the north
10 boundary. And I was trying to get it all consolidated
11 into one, maybe about three years ago; but the tribe
12 wouldn't do it, because it wasn't enough. I think it was
13 going to be an acre that I would get consolidated to one.

14 So I just came because it's getting so crazy in
15 our own families. Because, like, my relatives have said,
16 that our own relatives will turn against us. Even my own
17 sister is trying to be big boss of the family, since my
18 mom has passed away, and only our auntie that survived,
19 her brother and her two sisters. So she's the only big
20 holder now. But when she passes, she's got four, five
21 kids of her own; and she's already given her
22 grandchildren and greatgrandchildren land. And so
23 everybody is going to have to start the process all over
24 again, because they never put nothing on that land that
25 she had given them.

1 So I think that was the reason I had to come. I
2 had to come. I had to be here, and I had to say
3 something. Because if I didn't say anything, it would
4 have been a waste of my time and my family's time for me
5 not being home with them. My boys and my -- they always
6 say, "Mom, where are you going? Where are you going?"
7 "I have to go do something important." It might not be
8 important to anybody else, but it's important for me to
9 come. And my husband said, "You have to go, then." So
10 he gave me \$200 to come with my sister here to help with
11 the gas. And I am really grateful to him for doing that.
12 And I am really grateful to see the faces here that care
13 about this stuff that's going on.

14 I know a lot. My older brother said, "What's
15 going on?" I said, "You work for the Tribe. You should
16 know what's going on. You should already know. I
17 shouldn't have to tell you these things." And we had a
18 family meeting because, like, my mom passed away a couple
19 years ago. One of my younger brothers, he is living in
20 her home, but there is no deed. And so we're trying to
21 figure out what we're going to do with the brothers. I
22 have two brothers. We have an old home, an old adobe
23 house that's been there a hundred years. It's been
24 redone and redone by one of my other brothers. And had a
25 HUD home built that was built in the '60s for my mom.

1 And my other brother is living in it.

2 We're trying to figure out what are we going to
3 do with my brothers? Because now those are -- it's
4 undivided land again, those homes. What are we going to
5 do with them? With us, we had a meeting of the brothers
6 and sisters. The brothers, because there's five brothers
7 and one sister, besides me. And, well, the next meeting
8 in West Virginia to include everyone. Everybody has to
9 be included. Our first cousins. So that is a real
10 problem to take into consideration and try to rethink
11 what you are doing to our families, the Salt River.
12 There's a lot of stuff going on out there. And we have a
13 lot of fields, yeah; but some of them are not -- they're
14 just sitting there. What are you guys going to do with
15 it, if we can't do nothing with it? What are you guys
16 going to do with it.

17 That's all I ask.

18 MR. NEWLAND: We will take a few more comments.
19 I know we started late so we're running a little late.
20 We have one over here. I want to give everyone a chance
21 to speak once before we go back.

22 MS. SLIPP: My name is Andrea Slipp from the
23 Salt River Pima-Maricopa Indian Community. Well, I am
24 one of the ones that -- I am one of the 400 that don't
25 have a deed to our home. And I was in the process of

1 trying to go get housing, to see if I could get a loan to
2 help me redo my home. I've been in my home 1993, April.
3 This April it will be 20 years. And I raised four
4 children in that home, and currently raising three of my
5 15 grandchildren. One of whom is in a wheelchair. He
6 has cerebral palsy. And I wanted to have a room built
7 for him and install a shower where we can roll him in
8 there. He's seven now. I have had him since he was a
9 year old.

10 I found out I don't have a deed to my house. No
11 paperwork to my house. I couldn't do renovations to my
12 house for my grandson. It's hard. I'm the grandma. I
13 don't work. I get lease monies every month; but, you
14 know, it's hard raising my own grandkids. I have had her
15 since she was a year old. She's 14. I have tried to
16 learn my language. What I learn, I teach them. I am a
17 traditional singer. A lot of what is going on is not
18 right for our families. Trying to raise my grandchildren
19 and teach my grandchildren the good way, you know. I do
20 a lot of traditional things. I have been learning and
21 teaching them, you know, my little ones. They're three
22 to five, you know.

23 I'm just trying to separate this housing, the
24 housing through the business and the commercial stuff.
25 The residential stuff, separate that, because it's not

1 the same. It's totally different. Yeah, some of the
2 things that are going on in the commercial and the
3 business leases are fine, but not with our homesites. I
4 have been on this property for a long time. I have it
5 through my father. And at that time, it was only five
6 signatures that I needed to get. And all my brothers and
7 sisters are gone except one. So now it's on the nephews
8 and the nieces and the grandkids. Some of them have just
9 passed. We had another death, my grandmother died. Now
10 we have the probate stepping in.

11 You know, I ask that you take into consideration
12 our tribe, and our legal is asking you to consider what
13 we're -- what we have to go through. We have to do all
14 this. My children are going to want homes, and it's
15 going to be a heartache on them.

16 Thank you.

17 MR. NEWLAND: Appreciate it.

18 Are there any others? Hand back here in the
19 corner first. Hasn't had a chance to comment.

20 Yes.

21 MS. MEDINA: Good afternoon. I'm on the staff
22 of the Agua Caliente Band of Cahuilla Indians. I'm the
23 Director of Realty Services. I have a comment question.
24 On Proposed Rule 162.445. It provides for a 30-day
25 approval by either amendment or deed approved. The

1 tribe (inaudible).

2 THE REPORTER: Could you slow down and put the
3 mic right up to your mouth, and I didn't hear you state
4 your name.

5 MS. MEDINA: Connie Medina, Director of Realty
6 Services, Agua Caliente.

7 162.445. It provides for a 30-day approval from
8 the BIA before the amendment is deemed approved. Has
9 LTRO been consulted on what's deemed approved would
10 entail? Because they can't record a document unless it
11 has Secretary approval. And the County will not accept
12 the document for recording unless it has the approval
13 sheet for the Superintendent's signature. That was my
14 comment. They should be consulted, or how are we going
15 to know? How's this going to affect the recording?

16 MR. NEWLAND: This is a significant change from
17 anything that the Department has done on leasing before,
18 and our Bureau staff all the way down to field offices
19 across the country, regional office, central office, have
20 all been heavily involved in putting this together. So
21 to answer your question, no LTROs have been involved in
22 this yet.

23 MS. MEDINA: Okay. So there will be a process
24 for the deemed approved?

25 MR. NEWLAND: Yes.

1 MS. VITOLS: Good afternoon. My name is Diane
2 Vitols. I'm in-house counsel at Agua Caliente. I have a
3 question about the tax provision, and you highlighted it
4 in the power point that the tax provision was new and
5 perhaps might be controversial. It is at Section 162.
6 415 C. And it says permanent improvements on lease land
7 are free of fees, taxes, charges imposed by the state for
8 the agency of the state.

9 So as an example, where a tribe was to build,
10 say, a restaurant building and lease the land and the
11 building to someone to come in and operate, we'll say, a
12 Friday's Restaurant. When the state or local
13 municipality comes along and wants to impose a possessory
14 interest tax, they want to tax that restaurant on the
15 value of the leasehold interest, will this section help
16 us, or are we still having to advise the restaurant
17 operator that possessory interest tax will be collected?

18 Thank you.

19 MR. NEWLAND: Thank you for that.

20 You know, this is something that we're trying to
21 sharpen. I can't answer your question definitely. I do
22 know that, you know, with the balancing tests that the
23 courts apply for taxation on Indian lands, this is our
24 expression of the federal interests. You know, there's
25 the tribal interests, the state interests and the federal

1 interests. And the best way that we can articulate
2 federal interest is to put it in regulations. But --
3 yeah, go ahead.

4 MS. VITOLS: Let me ask the same question a
5 different way.

6 MR. NEWLAND: Okay.

7 MS. VITOLS: Are you planning that we will be
8 the test case for this?

9 MR. NEWLAND: Agua Caliente? No.

10 MR. SIMPSON: We don't know who will be the test
11 case for this. The provision -- unfortunately, now they
12 have left. The provision was suggested or requested by
13 the Chehalis Tribe in Washington State, who is currently
14 involved in litigation on this very issue. And they have
15 lost at both trial court and the appellate level or at
16 least at the appellate level. They suggested this
17 provision to help out other tribes. As Bryan may have
18 noted, the intent here is to sort of on the White
19 Mountain v Bracker Balancing Test to sort of put our
20 thumb down on the federal side.

21 MR. NEWLAND: In favor of tribes.

22 MR. SIMPSON: In favor of tribes. Do we know
23 that this provision will be upheld? No, we don't. But
24 this is our attempt to do that. And if it can be
25 sharpened, as Bryan noted it can be sharpened, we are

1 more than happy to have comments from tribes on how we
2 could do that.

3 FEMALE: (Inaudible.)

4 MR. NEWLAND: We have no doubt that there will
5 be a test case at some point about this provision; and,
6 you know, we want to button it up as tightly as we can.
7 So ideas are welcome.

8 MR. PARKER: Got a question. I don't know the
9 answer. Maybe I'll find out. On the -- it was mentioned
10 400-plus homeowners that don't have deeds; and this other
11 thing, it doesn't stipulate anything about getting deeds
12 either. But the tribe has in the past, and I've asked
13 them, that people have gotten the 51 percent, but on the
14 100 percent. So you are saying you'll okay all the
15 homesites that they have in the past got the 51 percent
16 of the land or the interest?

17 MR. NEWLAND: We're going to do our best to make
18 sure that the folks at Salt River and elsewhere, who are
19 in a similar situation, can continue to keep their
20 houses.

21 MR. PARKER: There's two parts here. The
22 section of 400-plus people that don't have deeds that
23 went through this process before and got the 51 percent
24 had a house built, but they have no documentation to
25 that, plat that. Yeah, that's their land, and that's

1 their house. That's one. The other one, at a certain
2 point, they say two years, but there's a certain point
3 where they've been trying to get BIA to okay homesites,
4 but not reach the 100 percent, but reach the 51 percent.
5 Are you saying that you are going to okay -- because this
6 rule hasn't taken effect yet. So, I mean, is the BIA
7 going to okay the homesites at 51 percent today? I'm
8 talking for the people that aren't here.

9 MR. NEWLAND: That provision is effective under
10 the law that Congress passed already, regardless of what
11 we do with our regulations. Those percentages are in
12 effect. If our Bureau staff is not complying with them,
13 and we've had these discussions, they will be. They have
14 to comply with the law.

15 MR. PARKER: They are saying if you haven't
16 complied -- they've reached the 51 percent. Are you
17 going to reject the homesites? If they don't have it,
18 they don't have it. But if they reached the requirement
19 of 51 percent, are you going to be okaying them? Because
20 it seems like they want to follow this now to the
21 100 percent. Are you going to okay the ones that got the
22 51 percent?

23 MR. NEWLAND: If they have the 51 percent and
24 the other lease requirements are complied with, they
25 should be approving those leases. And we will talk with

1 Mr. Bochner and folks in the regional office about this.

2 MR. PARKER: Okay. That's all I wanted to know.

3 MR. NEWLAND: Any other comments? Let's do --
4 everybody who wants to commit, please put your hand up.
5 We'll get these two comments, and we'll wrap it up.

6 MS. ARCHER: Hello, my name is Collette Archer.
7 I'm with the Salt River Pima-Maricopa Indian Community.
8 I am one of the members that is affected by the 400
9 homes, existing homes that don't have a deed to their
10 home. I have been in my home since the 1990s. And the
11 residential regulations is going to affect the whole
12 community, not only as homesites and homeowners, it's
13 going to affect the financial services, our HUD homes for
14 the seniors, and all over. So I wanted to comment on
15 that, and just kind of agree with my fellow community
16 members and their comments, and for you guys to listen to
17 all the comments and put a hold on this until we have,
18 you know, you guys have all the comments handed to you.

19 Thank you.

20 MR. NEWLAND: And our final comment over here.
21 She's going to get you that mic.

22 MS. ZUNI: My name is Denise Zuni, and I
23 represent various pueblos in New Mexico. I wanted to
24 make sure all my comments made the record.

25 Back to the residential leasing, 162.341,

1 requires all subleases to be recorded, even if BIA
2 doesn't require their approval. Can you imagine all the
3 subleases that would have to be sent to BIA, including
4 amendments to subleases, and the onerous burden that
5 would put on, especially, TDHEs that develop rental
6 units?

7 MR. SIMPSON: Yes.

8 MS. ZUNI: Tenants vacate units very frequently.
9 Sometimes every three to four months. And especially now
10 that you have tribes building low-income housing tax
11 credits. Those units have a history of being occupied
12 for anywhere from three to six months.

13 I'm just worried that, you know, what happens
14 now? We'll be at a more increased level, and that is
15 that BIA or, what is the office, LTRO will not be able to
16 keep up with the demand.

17 I think from what I've heard from the pueblos is
18 that many pueblos, especially the small pueblos, didn't
19 really care about the HEARTH Act passing. They really
20 had hoped that these new improved -- that the proposed
21 rule would be improved, and they were hoping that the
22 HEARTH Act would not impact them. But after seeing the
23 rule, many tribes feel more of an urgency that the HEARTH
24 Act should pass, because, really, the HEARTH Act will
25 mean they can enact their own leasing regulations. So I

1 just wanted to make that comment. I have heard -- I
2 don't know how true this is -- that they have local
3 agencies telling them that they're waiting for the
4 proposed rule before they approve master leases.

5 MR. NEWLAND: That should not happen.

6 MS. ZUNI: Okay. I just wanted to make sure
7 that this didn't halt the process.

8 MR. SIMPSON: It shouldn't.

9 MS. ZUNI: And I don't know how true that is.

10 FEMALE: It's true.

11 FEMALE: That's true.

12 MR. NEWLAND: Well, to the extent that's true,
13 for our field staff that are here today, that should not
14 happen. Process leases under the existing regs until
15 those regulations have changed, and we're not holding
16 anything up. If they are holding anything up, we want to
17 hear about it. It shouldn't happen. To the extent it
18 is, it won't.

19 MS. ZUNI: My final comment is that in an
20 attempt to bypass the length of this whole process, some
21 pueblos have always given land assignments to their
22 tribal members. And what we're starting to see is tribes
23 giving land assignments to TDHEs or the Native CDFI in
24 lieu of a leasehold mortgage. Their attempt to be
25 creative and bypass this process, and I don't think that

1 was the intent of this rule. But that's what's
2 happening. I want you to know that that's what's
3 happening in pueblo country at least. So now what you
4 are seeing tribes do is give land assignments, and then
5 they're having the tribal members transfer the land
6 assignment to the TDHE or the Native CDFI to get a loan,
7 instead of doing the legal (inaudible). It's simpler.
8 You don't have to go through BIA, and they're doing it
9 using a solicitor's opinion through the northwest region.

10 I'm just telling you, you are going to get a lot
11 of creative solutions if this rule passes.

12 We also are starting to see gaming tribes
13 starting to use more of their gaming revenues for
14 housing; and what that does on the federal level is that
15 you have some tribes not using their (inaudible) money,
16 their grant money from the House, and now Congress is
17 wondering why tribes aren't using their money, the
18 unspent funds issue. That's where some of this is coming
19 from. Because it's just simpler to use tribal money and
20 not have to, you know, go through this process.

21 I just want BIA to really hear this. And that's
22 what's happening, and I believe it's going to have a
23 detrimental effect on federal funding.

24 Thank you.

25 MR. SIMPSON: There are tribes that have been

1 using tribal land assignments for residential development
2 for quite sometime now. And just so you know, I mean,
3 yes, there are solicitors' opinions -- in fact, I have
4 written one or two of them -- that say that we do not
5 have to approve tribal land assignments under tribal law.
6 And HUD is -- in fact, I have had discussions with folks
7 at HUD, and they're willing to do 184 money for support
8 for tribal land assignments for residential. It's under
9 tribal law. Tribes are forced to create program.

10 Thank you.

11 MR. NEWLAND: All right. I want to thank
12 everybody for coming out today, and many of you have
13 traveled a long way at great difficulty to provide us
14 comments, and we've listened. We've heard. We have
15 heard, and we've listened to the comments today. We have
16 heard a number of things that related to bonding and
17 insurance with residential leasing, and we continue to
18 hear those. And I would expect that we are going to take
19 a very long look at what we can do to make those
20 improvements.

21 We've heard some of the, you know, non-
22 controversial recommendations that we can make to kind of
23 smooth the processes over. We certainly have heard from
24 the folks in Salt River, as we have for sometime, meeting
25 some of the challenges you face. I'm glad to see you

1 brought up this HEARTH Act, because I neglected to do so
2 in my opening comments.

3 For those of you who don't know the HEARTH Act,
4 the HEARTH Act is legislation that would restore tribal
5 authority over leasing, tribes that develop their own
6 leasing laws, and cut the Bureau out of lease approvals
7 on tribal lands. We have testified in both houses, the
8 House and the Senate, in strong support of this
9 legislation. We continue to work for this legislation so
10 that those tribes that want to, you don't have to deal
11 with this process. You come up with your own
12 legislation. You control your own lands. And we will
13 work hand in hand with Indian Country pushing that
14 legislation.

15 Those of you who want to submit additional
16 comments, written comments, please send them to the
17 addresses here. You know, if you want to send them
18 regular mail, we will read them. It goes much quicker if
19 you are able to e-mail them to us, but we understand that
20 is not always an easy option for a lot of people. We've
21 gotten several requests to extend that period. If your
22 comment comes in a couple days late or even a week or two
23 late, I assure you it doesn't go in the recycling bin.
24 It gets put in, and we do read, and we consider it.
25 That's not how we operate.

CERTIFICATE OF DEPOSITION REPORTER

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I, Rhonda K. Goodman, Certified Shorthand Reporter in and for the State of California, Certificate No. 8857, do hereby certify:

That the foregoing meeting was taken before me at the time and place therein set forth;

That the meeting was recorded stenographically by me and thereafter transcribed through computer-aided transcription to the best of my ability, said transcript being a true copy of my shorthand notes thereof and a true record of the statements given.

I do further certify that I am a disinterested person and am in no way interested in the outcome of this meeting, connected with or related to any of the parties in this meeting or to their respective counsel.

IN WITNESS WHEREOF, I have subscribed my name this date: _____.

RHONDA K. GOODMAN, C.S.R.

CSR NO. 8857

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