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TRIBAL CONSULTATION MEETING
ON DRAFT PART 162 LEASING REGULATIONS

Held on Thursday, March 31, 2011
at the Bishop Henry Whipple Federal Building
Fort Snelling, Minnesota

Reported by: Lori Sorenson, RMR

1 MS. ROSEN: Good morning, everyone. I'm
2 Diane Rosen. I'm the regional director here at
3 the Midwest Regional Office, and I would like
4 to welcome our tribal leaders, tribal council
5 members, tribal representatives and BIA staff
6 who have traveled to come to today's
7 consultation on the 162 leasing regulations.
8 And also here today I'd like to welcome from
9 the Assistant Secretary's Office, we have Bryan
10 Newland, who's a Special Assistant. Bryan, do
11 you want to raise your hand.

12 We have Elizabeth Appel who's also part of
13 the Assistant Secretary staff. And Roger
14 Knight, he's in the back over here
15 (indicating); he's with the Office of Economic
16 Development of Energy, Mineral Development.
17 And we have Mike Black, the Director of the
18 Bureau of Indian Affairs. And also here on our
19 panel is Carrie Prokop, who is with the
20 Solicitor's Office, and Kayla Danks is the
21 Midwest Regional Realty Officer.

22 But before we get started, we'd like to
23 start with a prayer, and Roger Knight -- or I'm
24 sorry, not Roger Knight. Louis Houghton is
25 going to give today's prayer.

1 MR. HOUGHTON: I'm honored to have been
2 asked to give a prayer this morning. As this
3 young lady said, my name is Louis Houghton.
4 I'm a tribal council secretary for the
5 Winnebago Tribe of Nebraska, and I just wanted
6 to welcome everybody here to this consultation
7 process. And I hope everyone found this place
8 better than I did, a hectic morning for me.

9 Okay. If you'd bare with me. Dear
10 Father, we come before you today. Thank you
11 for your many blessings you have already given
12 us. Heavenly Father, we pray for blessings of
13 good health, happiness, safety for all our
14 people in attendance here. We pray that you
15 allow us all tribal mercies to and from here
16 and to our homes.

17 Heavenly Father, I pray that you be with
18 us to help everyone understand what is
19 happening here today. Heavenly Father, I pray
20 that we all enjoy one another's company here.

21 Heavenly Father, I thank you for all the
22 many blessings you have already given us, as I
23 said. I pray that you be with us again, all of
24 us here and our relatives.

25 Heavenly Father, if I have left something

1 out, please take care of them for me. I thank
2 you in Jesus Christ's name. Amen.

3 MS. ROSEN: Thank you very much Louis.
4 And now I'd like to turn it over to Bryan
5 Newland with the Assistant Secretary's Office.
6 Bryan.

7 MR. NEWLAND: Good morning. It's really
8 good to be up here in Anishnabay territory this
9 morning. I want to thank Diane and her team,
10 Kayla and the other folks from the Midwest
11 Regional Office for helping organize this, and
12 I thank tribal leaders for attending. And I
13 know it's a difficult -- this was a difficult
14 place to find, and, you know, we got -- we're
15 trying to get an early start, so I appreciate
16 everybody who made it up this morning.

17 My name is Bryan Newland. I'm a member of
18 the Bay Mills Indian community, Ojibway from
19 northern Michigan, so it feels really good to
20 be up in a place where there's still snowbanks
21 at the end of March and people say "You's Guys"
22 and "How you doing," and I feel at home, so
23 it's -- I'm really glad to be up here. I wish
24 I could stay.

25 I'm going to really briefly kind of run

1 through the draft leasing regs with you, some
2 of the highlights, and then we're going to turn
3 it over to you guys because that's what we're
4 here to do is to hear your thoughts on it. But
5 I'll just let you know when we started this
6 process, one of the things that -- or a couple
7 of the things that we wanted to accomplish was
8 to speed up the time it takes for the Bureau to
9 review and approve leases.

10 When I was a young kid, living at Bay
11 Mills, my parents had to wait for six years for
12 the Bureau to approve our residential lease so
13 they could mortgage, so they could get a
14 leasehold mortgage to buy the home that I ended
15 up being raised in. And I remember, you know,
16 being a little kid and hearing them talk about
17 that and being so frustrated and paying the
18 bills with exorbitant interest rates while that
19 process was ongoing, so this is really
20 important to me, and I know that there are even
21 worse stories out there in Indian country. So
22 that's one of the things we wanted to address
23 in the residential context.

24 Another thing that we wanted to address is
25 promoting economic development in Indian

1 country and energy development in Indian
2 country. And one of the ways we wanted to do
3 that was to really clarify how we were going to
4 look at leases and speed up that timeline and
5 really kind of put the responsibility --
6 restore that responsibility and authority, to
7 the greatest extent we could with our statutory
8 authority, at the tribal level. So that's --
9 you know, with that in mind, we kind of -- we
10 went and we took the previous draft and kind of
11 retooled them to fit those objectives.

12 So you'll notice, if you haven't looked at
13 them already, the new regulation -- the draft
14 regulations are structured differently than the
15 old ones. They break it out into sub parts
16 based upon subject matter. So the residential
17 leases have their own subpart with rules that
18 apply only to residential leases, the same for
19 business, the same for renewable energy.

20 A note on agricultural leases, I know
21 they're really big in the Great Plains area.
22 That is a very complex issue, and we want to
23 give it the attention it deserves, and we're
24 coming down with a short time frame before the
25 end of President Obama's first term, and we

1 wanted to get something out and didn't want to
2 get -- give agricultural leasing short shrift,
3 so we're going to come back and look at those
4 regulations more closely and hopefully get --
5 get those revised as well.

6 You see here's kind of a history of how
7 these were developed. We spent the last year
8 and a half, year really fine-tuning these draft
9 regulations and getting them ready to go. And,
10 of course, our tribal consultations are ongoing
11 through the middle of April.

12 One of the things, if you're familiar with
13 the leasing regulation, you'll notice is a new
14 subpart for wind and solar resource
15 development, renewable energy development. We
16 included a part in there about permits for wind
17 and solar resource assessments so we wouldn't
18 have to do the full environmental scoping for
19 renewable energy development rather than -- you
20 know, when you're putting up met towers, as it
21 stands right now, you have to kind of
22 contemplate the entire wind farm, if you will,
23 and prepare your environmentalist's review
24 documents based upon the entire wind farm, when
25 really all you're doing is checking to see if

1 there's even the resource available to do that.
2 So we wanted to kind of pull back and make that
3 a less onerous process and try to promote
4 renewable energy development on tribal lands.

5 You'll notice here on this slide, you
6 know, we've gotten a lot of feedback from
7 people who are concerned about some provisions
8 in the -- in the draft about the terms of
9 leases and the consent requirements, what have
10 you, and I just want to clarify that with
11 respect to those provisions, we tried to push
12 the envelope as far as we could, but in a
13 regulatory context we're really limited by what
14 Congress tells us we can do.

15 So this is our proposed timeline. We want
16 to get a formal rule proposed later this
17 summer, and we'll conduct additional tribal
18 consultations at that point. We're likely
19 going to hit some areas that we didn't include
20 in this round, looking tentatively at the Great
21 Plains, Northwest and then, you know, somewhere
22 else, maybe southern California, where they
23 have a lot of commercial leasing going on.

24 Okay. You see our general leasing
25 provisions. You know, this applies to leasing

1 on Indian lands. One of the things that I also
2 want to point out is that we're taking the
3 Bureau out of the business of approving
4 permits. Our trust responsibility applies to
5 interest in trust land. A permit is not an
6 interest in trust land. A permit is permission
7 to use the land, to use tribal land. And what
8 we said is, you know, a lot of times those
9 are -- those are really short-term, you know --
10 those are short-term things, where people are
11 coming out and, you know, they're conducting,
12 you know, some type of activity on tribal
13 lands, and why should the Bureau have to
14 sanction that, that's tribal lands, and it's
15 not encumbering trust land. So we wanted to
16 try to take the Bureau out of the business of
17 reviewing and approving permits.

18 You'll see in our general provisions here
19 we have some -- some items that regard BIAs or
20 residual -- or trust authority, if you will, to
21 enforce leases and trespass and to take
22 emergency actions to protect trust assets.

23 In our residential leasing subpart, you
24 notice that we have -- for under ten lessors,
25 we'll allow direct pay with a hundred percent

1 consent. There's bonding and insurance
2 provisions in there, which I'm sure that a
3 number of you have noticed already.

4 Another thing on the residential context
5 is the fair market value requirement. We know
6 that a lot -- in a lot of cases, tribes want to
7 lease residential lots to tribal members or
8 tribal members want to sublease their
9 residential lot to family members, and, you
10 know, the appraisal and assessment of fair
11 market value can really slow that down, where
12 both sides really don't have an interest
13 in imposing fair market value rent on the
14 lessee or the sublessee, so we wanted to make
15 sure that we covered those contexts and allowed
16 for rent for less than fair market value where
17 both sides agree to it and there's really no
18 interest. And, you know, the tribal interest
19 is in getting tribal members in a home in
20 tribal communities, and the interest is not
21 necessarily in making a profit.

22 Here's the -- here's the timeline stuff
23 that I mentioned earlier, the lease approvals.
24 When we get a -- when the Bureau gets a lease
25 under these new regulations, the Bureau's going

1 to have to take a look and respond within 30
2 days. And so instead of having these sit there
3 on -- on somebody's desk in one of the Bureau
4 offices, we're going to try to -- not try, but
5 regulations are going to require us to get back
6 to the lease applicant inside of 30 days. In a
7 residential context, we know that's going to
8 make a big difference, because most of the time
9 these are not overly complex leases, so that
10 can kind of, you know, force our hand to get
11 these out the door. But where there is complex
12 issues that we have to take a closer look at,
13 the Bureau, as a part of our -- retaining our
14 trust authority, we'll extend that period of
15 time by 30 days, in 30-day increments, to
16 continue reviewing and looking at those complex
17 issues.

18 For subleases and amendments and leasehold
19 mortgages, this is something that's going to be
20 hopefully really beneficial to Indian country,
21 so we're going to have a deemed approval in
22 there. So a sublease -- you know, if you have
23 your home and you're going to sublease it to
24 your son or your daughter or your nephew, you
25 know, that sublease is going to come into the

1 Bureau office and we're going to have 30 days
2 to look at that. And if we don't respond
3 within those 30 days, it's going to be deemed
4 approved. So there won't be anymore, you know,
5 waiting on the Bureau to approve subleases and
6 amendments and leasehold mortgages. And we
7 have limited grounds in there for BIA
8 disapproval of those subleases.

9 Here you see on this slide the compliance
10 and enforcement provisions, when the deemed
11 approved leases become effective, what we're
12 going to do when there's a lease violation and
13 how we're going to act. I see your hand up,
14 ma'am. If we can -- I just want to run through
15 these slides and then we'll get to the comment
16 period after this, and that's pretty much going
17 to be the rest of the day. So if you could
18 bare with me just a couple more minutes, I'd
19 appreciate it.

20 The subpart here on business leases, this
21 applies to leases for commercial purposes,
22 public, religious, educational and recreation
23 and other leases for mixed use development. We
24 have the rental requirements. They're a little
25 different in the residential context regarding

1 direct pay. And, you know, we have due
2 diligence, and we're going to look at zoning
3 and compatible uses and things like that. And,
4 again, you'll notice the bonding and insurance
5 provisions as well. Because this is different
6 than the residential context, where it is going
7 to be, you know, most often, especially in the
8 commercial context, it's going to be profit
9 driven, so we want to ensure that the landowner
10 is going to get fair market value for leasing
11 that land, and that's going to require a lot
12 more due diligence on the part of the Bureau as
13 well.

14 So you see here, though, we still have
15 relatively short time frames for the Bureau to
16 look at these things, 60 days to look at
17 commercial leases. And then if we have a more
18 complex deal, if somebody's building a -- you
19 know, a mixed use retail development, a power
20 plant, you know, manufacturing facility, if
21 there's a lot of parts to the deal, the Bureau
22 can take an additional 60 days to look at that
23 lease, so you're talking 120 days, which is --
24 I'm a lawyer, I'm not very good at math, I
25 think 120 days is four months.

1 In the amendments and subleases, the
2 leasehold mortgage process is the same as under
3 the residential leases with the deemed
4 approved -- you know, the period to respond to
5 the application. It's going to be the same as
6 under the residential context. And, again,
7 here compliance and enforcement is going to be
8 very similar to the residential rules. One of
9 the things I want to note here is that what we
10 tried to do by breaking the regs into these
11 subparts that's different from the existing
12 leasing regulations is if you're dealing with
13 just a residential lease, we wanted folks to be
14 able to go to that subpart and not have to flip
15 back and forth all -- and jump, cross-reference
16 all over the leasing regulations, you know, to
17 figure out what exactly the requirements are.
18 We want -- we want people to be able to look at
19 the subpart for residential leases, commercial
20 leases, wind and solar leases, and find mostly
21 everything that they're going to need right in
22 that subpart. So you're going to see a lot of
23 redundant provisions throughout these leasing
24 regulations.

25 Wind and solar resource permits, again,

1 there's going to be -- you know, if you want to
2 put up met towers, if you want to conduct a
3 resource evaluation on tribal trust lands or
4 individual trust lands, you're going to need --
5 This is the only part where we're going to
6 continue to enforce permits, because these
7 permits are more in the nature of a lease, a
8 very short-term, but we wanted to really kind
9 of limit -- you know, narrow down the
10 environmental renew process, because we know
11 that can get onerous and very lengthy at times.
12 So here you see a WSR permit for a three-year
13 term with a three-year renewal, and then you
14 can have an option to enter into a long-term
15 wind and solar power lease.

16 Here's the kind of unique compensation
17 requirements for a wind and solar permit. You
18 know, they're not going to require an appraisal
19 for this short-term use, but there's still
20 going to be bonding and insurance. You're
21 putting, you know, short-term, temporary
22 improvements on tribal lands. And, again, this
23 is one of the things that's a big priority of
24 the president, to promote renewable energy, and
25 especially promote renewable energy development

1 on tribal lands, so we have the 20-day period
2 to approve a WSR permit. You know, you see
3 here this is really -- really short-term, so,
4 you know, no assignments and subpermits and
5 mortgages. You have your enforcement
6 provisions here.

7 And then we have the leasing part for --
8 where you have your wind farm or your solar
9 farm, which is -- I don't know how many solar
10 farms we're going to have in the upper
11 peninsula of Michigan, but I just wanted to run
12 through this really quickly anyway, where you
13 can have a 25-year term on there and a 25-year
14 renewal period.

15 Here's the compensation requirements,
16 again, similar to the commercial context. And,
17 again, the -- the review and approval period is
18 the same as in the commercial leasing context
19 as well.

20 Compliance and enforcement, again, very
21 similar to what you're seeing in the commercial
22 subpart for -- for those types of leases.

23 And, you know, we're going to be accepting
24 tribal -- comments from tribes and other
25 interested parties until April 18th on this

1 round of consultation. You know, if we get a
2 lot of requests to extend that period, you
3 know, we will consider that. But we're trying
4 to gather everything up by April 18th, go back
5 to the drawing board, roll up our sleeves and
6 make the changes that are necessary to get this
7 thing proposed this summer, so we can have this
8 rule done by this time next year.

9 So with that, I want to thank you all for
10 your time. I know that was rivetting. We're
11 going to sit down and hear the tribal comments
12 now, and I know that all of us on the federal
13 team are going to be happy to answer any
14 questions that you have at this point, so thank
15 you.

16 MS. DANKS: With regard to comments, I
17 want to announce that we have a court reporter
18 in the room and we have two microphones on the
19 floor. This is going -- this is going to be
20 one of them. We have Russell over there in the
21 back; he's going to be covering the microphone
22 for that part of the room. And Tom Burr is
23 going to be covering the microphone for this
24 part of the room. And you can come up and get
25 this microphone, Tom. We just want you to

1 announce your name and who you're representing
2 so that we can get it documented in the record.
3 And I believe all of these -- all the comments
4 will be reviewed and taken into consideration
5 in the formulation of the next stage of
6 regulations which is proposed.

7 MR. NEWLAND: I saw that when I was up
8 there running through that presentation, that
9 the woman in the back had questions that -- Did
10 the rest of the presentation answer your
11 questions or --

12 UNIDENTIFIED WOMAN: I forgot.

13 MR. BURNETT: Good morning. My name is
14 David Burnett, B-u-r-n-e-t-t. I'm from the
15 Chehalis Tribe in Washington state. I traveled
16 out here. I want to say thank you for taking
17 the time to pull out testimony and thank you
18 for, I guess, allowing tribes to visit with you
19 ahead of time and make comment and input as
20 you -- as you develop these regulations.

21 We've been following this process for
22 probably six years, and it's been a long
23 process. And I understand that there may be
24 more work to be done, but I guess we would --
25 we would encourage the timelines that you have

1 laid out to -- you know, that if there's any
2 way you can stick to those timelines, that that
3 would be great to get these regulations in
4 place. So we're here, I guess, for kind of two
5 reasons, to continue to support the changes in
6 these regulations and then, also, to ask our --
7 our fellow tribes here that are far away from
8 Washington state to -- to support that as well.

9 And let me -- let me kind of describe a
10 little bit of background from -- from where we
11 are out on the West Coast. I'm not sure I
12 mentioned I'm the chairman of the tribe, and
13 we -- we have a -- a business that we've
14 developed, and, actually, we developed in
15 partnership with a company that is based right
16 here nearby in Wisconsin, and that's the Great
17 Wolf Lodge Resorts. And we -- we -- we built
18 one of those facilities on our reservation in
19 partnership with the Great Wolf. And in
20 developing that business, we worked with our
21 state very closely to try to address all of the
22 taxation issues. It wasn't until after the
23 business was opened and operating that we ran
24 into a -- our local county, who determined that
25 it was their job to try to tax that business,

1 and so -- so this is a business that is a
2 majority owned by an Indian tribe located on a
3 reservation and we're finding ourselves in a
4 tax dispute, which doesn't make any sense, and
5 everybody who, you know, kind of hears that has
6 that -- has the same reaction of why would you
7 even think you could do this. But yet the
8 county persisted, and we find ourselves in
9 court trying to continue to assert that. So
10 some of the language that's in this -- in this
11 business leasing provisions, specifically in
12 Section 162.415, we believe that type of
13 language would have benefited us greatly in --
14 earlier in developing that business. But even
15 more, as we develop new businesses, we believe
16 we'll prevail ultimately in court or settlement
17 or somehow with regard to this existing
18 business, but it's not something that our tribe
19 or any of your tribes should have to go through
20 to battle these counties over these type of
21 taxation issues. And so some of the type of
22 language that is in here would -- would very
23 much benefit all of us as it comes to
24 developing these businesses on our reservation
25 with tribal ownership. So we really support

1 that kind of language.

2 With business development, it allows each
3 and every one of us to provide more services to
4 our tribal members. It becomes a great
5 nonfederal source of revenue, the flexibility
6 that we have in -- in developing the programs
7 as we seek fit. So, you know, just -- it just
8 allows us as tribes to better express our
9 sovereignty and it's -- and it's necessary
10 that -- that we're treated like governments and
11 not taxpayers. So I guess I'll wrap up my
12 comments, but just to say thank you for --
13 thank you for allowing us to testify and
14 encourage that we stick to those timelines.
15 Thank you.

16 MR. NEWLAND: Thank you, Mr. Chairman.
17 And I appreciate -- it's good to see you again,
18 and I appreciate your comments on that.

19 And for those who aren't aware of the
20 particular provision that the Chairman
21 referenced in the leasing regulations, he's
22 talking about the construction of permanent
23 improvements on tribal lands. As he referred
24 to your Great Wolf Lodge case that's presently
25 in litigation, there -- one of the lower courts

1 had said that permanent improvements on tribal
2 lands are subject to taxation by states and
3 local governments. Section 124.415 of our
4 draft leasing regulations, I'll just -- I'll
5 read verbatim so you can hear it, it says, Any
6 permanent improvements on the leased land shall
7 be subject to 25 CFR 1.4 and, in addition,
8 shall not be subject to any fee, tax
9 assessment, levy or other such charge imposed
10 by any state or political subdivision thereof.
11 And, you know, that's one thing that I know is
12 very relevant to what the Chehalis Tribe has
13 going on and one of the things that the
14 drafters felt very strongly should be included
15 in these regulations.

16 Don't everybody jump at once here.

17 MR. KROHN: I'm Tim Krohn. I'm with
18 Fond du Lac Reservation, land information
19 manager.

20 A couple things. On page 82, paragraph D
21 is missing in your write-up. It refers to it,
22 and I don't see it there.

23 We have recreation leases on Fond du Lac,
24 and we're trying to figure out where they go.
25 We've had some discussions about it. We were

1 told, and now that I see it in the -- the rules
2 here, the recreation leases are under business
3 leases, and we don't kind of -- really kind of
4 consider that as a business, so we want to make
5 sure that that's not too onerous. You know,
6 there's -- further on down there it talks about
7 doing plans and -- and that kind of stuff. I
8 can't regurgitate it right this minute, but I
9 know where it is. But we want to make sure
10 that that's not over -- a overbearing burden
11 for recreation leases.

12 And then land surveys, we like to have
13 land surveys on residential leases, business
14 leases, possibly recreational leases, depending
15 if they're close to another boundary, another
16 lease. But if they're way off in the woods by
17 themselves, we don't necessarily want to have
18 to go through the expense of doing a land
19 survey but, rather, use our GIS that can mark
20 it out very good. But it wouldn't have irons
21 in the ground and that. You know, we can flag
22 it and we're getting close, but the expense for
23 a survey, it's not really necessary. We also
24 have a -- a local surveyor that does very good
25 work. He's reasonably priced, but he doesn't

1 have the BIA's blessing for being a government
2 surveyor, and he doesn't really want to go
3 through those hoops 'cause he's kind of near
4 retirement, but he's still very good, so we
5 wouldn't want to lose him. We may have to when
6 he does retire.

7 Also, we've had some discussions about
8 trespassing, not necessarily on buildings, but
9 walking on -- on land, whether it's trust --
10 tribal trust land, allotment trust land,
11 private land. We haven't found any regulations
12 in the federal rules about trespassing, and
13 when you can do it, when you can't do it. You
14 know, if you're a government official doing
15 your stuff, can you go -- go on land after
16 making a reasonable attempt to get permission?
17 That's all I got for right now.

18 MR. NEWLAND: I just want to respond to a
19 couple of quick points. I appreciate your
20 remarks regarding the recreational leases and
21 how they're going to -- how and whether they're
22 going to be a good fit under the business
23 leasing subpart. You know, a lot of what we're
24 trying to do here is new, and these
25 consultation sessions are very valuable in

1 getting insight from you on, you know, how do
2 you think they're going to play on the ground.
3 But also because they're new, they're going to
4 involve a lot of training at the -- at the
5 Bureau level, and I know that Director Black,
6 Regional Director Rosen, that when the time
7 comes that these rules are finalized and to be
8 implemented, there are going to be a lot of
9 training sessions done for our BIA staff to
10 take into account, you know, precisely those
11 types of things, you know. We don't want to --
12 we don't want to, you know, glom on a
13 burdensome process onto, you know, recreational
14 leases, you know, because they might not fit
15 neatly into a business leasing context. So I
16 appreciate your comments on that.

17 With regard to trespassing, we know that
18 leasing is -- these rules are of very limited
19 value unless there's a back-end enforcement
20 mechanism on that, and we have draft
21 trespassing regulations that are queued up.

22 You know, this regulatory process takes a
23 long time, as folks in Indian country know.
24 But, you know, just like the agricultural
25 leasing regulations, we want to get to those

1 very quickly because without those, you know,
2 we'll really limit, you know, the good that we
3 feel these new regulations can accomplish. So
4 thank you.

5 MS. PAGEL: Karen Pagel, Leech Lake. I
6 have a question. We have a -- well, a pipeline
7 came through us up there and now they're
8 looking at putting through a big power line.
9 Are they just going to come through if we
10 object to it or what? Are we covered even
11 though we don't want it? They said they can
12 just come through anyway, you's guys.

13 MS. DANKS: And, Jane, you can jump in
14 here if you want, our right-of-way person. But
15 with regard to tribal trust land, there isn't
16 condemnation authority. So if there's
17 tribal -- if they're trying to go across tribal
18 land, they would absolutely have to get the
19 consent of the tribal council.

20 MR. DANIELS: And just to back up on that
21 statement, the current regulations require that
22 tribal consent has to be obtained before you
23 can get a right-of-way, so if the tribe objects
24 to a right-of-way, then there's no way that
25 they can, you know, take a right-of-way, so...

1 MS. JOHNSON: Hi, my name is Lisa Johnson.
2 I'm from the Mille Lacs Band. I'm the director
3 of real estate. Just we're going to be
4 submitting also written comments, and I wanted
5 to go over a couple of our comments right now.
6 But what I would like to make a comment on is
7 on page 21, what applicable laws apply? I
8 think that the tribal law should be moved ahead
9 of the state and local law.

10 Also, in talking about the surveys, Tim
11 Krohn had brought that up, we believe that
12 there are going to be instances where a
13 certified survey is not needed, as in eloquent
14 parts or when you don't have issues of
15 trespass, and I think making tribes have to pay
16 for a certified survey is going to be an undue
17 burden, and where is that money going to come
18 from if you have to do it for every single
19 lease, so I do believe that that needs to be
20 reevaluated and possibly be at the discretion
21 of the BILS or the LDR reviewer.

22 MS. DANKS: We have our BILS here, and
23 since that question has come up twice, I know
24 that the regulations state that they need to
25 have the certified survey, in compliance with

1 the DOJ bill and title standards, and I wanted
2 to ask Ken, who is our BILS -- Ken Roy, who is
3 our Indian land surveyor, do the DOJ title
4 standards require that the surveyor be a
5 cadastral surveyor or a certified surveyor
6 within the state where they're conducting the
7 survey?

8 MR. ROY: This is -- this is Ken Roy, the
9 BILS director for the Midwest region. The DOG,
10 the Department 303 manual, that doesn't require
11 any surveys as far as leases, it just addresses
12 the services as far as LDRs and -- Land
13 Descript Reviews, Certificate of Inspections
14 and for possession the chain of survey and the
15 Boundary Assurance Certificate. So there's no
16 sort of requirement as far as -- you know, it
17 only talks about those services, which is
18 different than the certified survey for -- you
19 know, for the leases that is mentioned in the
20 169 paragraph of the regulations here. But I
21 can certainly think of scenarios where at least
22 it's stated that a survey would not necessarily
23 be -- be truly needed as far as -- as long as
24 there's a legal description -- a valid and
25 concise legal description, whether it be

1 aliquot part or whether it even be metes and
2 bounds. And, you know, and as long as the
3 legal description review was performed and the
4 BILS perhaps concurred with -- with that legal
5 description and affirmed that a survey was not
6 necessarily needed.

7 MS. DANKS: Thank you.

8 MS. SMITH: Good morning. My name is
9 Joanne Smith, and I'm from the Spirit Lake
10 Tribe, and I have a question on your wind --
11 no, your permits. Okay, we're thinking about a
12 wind farm. Now, it says here it's going to be
13 all on tribal land, so we don't need the
14 approval, then, for the BIA to -- we don't need
15 a permit, is this what this is saying, a lease
16 or a permit if it's on tribal land?

17 MR. NEWLAND: Under these regulations?

18 MS. SMITH: Yes.

19 MR. NEWLAND: The regulations, I believe,
20 apply to tribal trespassing.

21 MS. SMITH: It says except as provided in
22 162, anyone seeking -- let's see. With the
23 evaluation of the wind and solar resource on
24 trust or restricted land, a tribe that installs
25 wind evaluation equipment on a tribal land does

1 not need a permit. Is that so then?

2 MR. NEWLAND: For the permit on tribal
3 lands, I believe you're -- I believe you are
4 correct, then.

5 MS. SMITH: We don't have to go through
6 the Bureau for anything, then, if it's on a
7 hundred percent tribally owned?

8 MR. NEWLAND: I think that's just for the
9 evaluation.

10 MS. SMITH: Just for the evaluation. But
11 we do need a lease of some sort then --

12 MR. NEWLAND: If you're going to be
13 leasing --

14 MS. SMITH: -- with the company?

15 MR. NEWLAND: If you're going to be
16 leasing the ultimate development of the -- of
17 the wind project. Let's say you're partnering
18 with Citizen's Energy and they're going to
19 lease on tribal trust lands, they're going to
20 have to go through the lease approval process.
21 I think what you're referring to is just the --
22 the three-year evaluation period.

23 MS. SMITH: Okay. And then he was talking
24 about recreational leases. Okay, we have
25 recreational leases, also, on -- on our

1 reservation, and we would prefer not to have
2 them under a business, just leave them the way
3 they are and under lease. Thank you.

4 MR. YANKTON: Good morning. My name is
5 Justin Yankton. I'm the assistant treasurer
6 for the Spirit Lake Tribe, and I guess I just
7 have a part two question to Joanne Smith's
8 question when she talked about the -- the wind
9 evaluation now. It says wind evaluation
10 equipment. Now, we're talking like met towers,
11 you know, that we have to have installed and
12 sitting on tribally owned land for at least a
13 year, 12 months of -- of data that we need to
14 collect, so we don't -- again, we don't have to
15 get a permit, per se, in order to have the --
16 the wind tower sitting on tribally owned land
17 then or, again, do we have to? I mean, it's
18 like, okay, WindLogics is going to set up the
19 wind tower, but the tribe is purchasing the
20 wind -- the actual wind tower. So, again, you
21 know, it's going to be the tribe's equipment;
22 it's just another -- it's going to be a company
23 setting it up and collecting the data for us.

24 MR. NEWLAND: I believe, and I believe in
25 that instance, then, we're talking about under

1 the -- under the draft rule, the tribe isn't
2 going to need the WSR permit.

3 I saw Roger Knight. I think he's hiding
4 in the back. You know, he was really
5 intimately involved in developing this
6 particular subpart.

7 MR. KNIGHT: Yes, this portion was made
8 up if it's by the tribe and for the tribe, then
9 you don't have to go through the permitting
10 process. What our group tries to look at is
11 maybe the tribes lease land to their energy
12 group to keep it clean, and then you can go up
13 and put up a met tower in this category --
14 categoric exclusion on it.

15 MR. YANKTON: Roger, right? Okay, Roger,
16 but this -- this is what's going to happen is
17 it's going to be owned by Spirit Lake Tribe.
18 We're not going to have an energy company come
19 in and build X amount of wind turbines and then
20 they collect the revenues off of the -- the
21 energy that is, you know, being produced.
22 That's going to come through the tribe. It's
23 going to be owned by us, not by a energy
24 corporation.

25 MR. KNIGHT: Yeah, and then this one, what

1 you're saying is for the resource assessment,
2 then you don't have to have a permit. That's
3 where you don't have to have any -- no other
4 agreements. Then when you go to build the
5 facility, then you're going to have to go
6 through LIBA (phonetic) and all that. But just
7 for the resource assessment, if it's by the
8 tribe, for the tribe, then the permitting
9 process is not applicable.

10 MR. NEWLAND: If I understand you right,
11 what you're talking about, then, is Spirit Lake
12 is doing its own resource evaluation, and then
13 after the data collection you're talking about
14 developing your own wind farm on your own
15 tribal lands, collecting the revenues yourself
16 as the tribe, and there's no third-party
17 developers that are -- that are involved in
18 actually having an interest in the land. Is
19 that right?

20 MR. YANKTON: Yes. Yes.

21 MR. NEWLAND: Yeah, that's like -- as far
22 as I understand it, at the risk of getting
23 reprimanded from one of our Solicitors, the
24 tribe -- the tribes -- you don't have to lease
25 your land from yourself, I guess, is what

1 you're -- that's not what these apply to.

2 MR. YANKTON: Initially, of course, we're
3 going to have some financial backers in order
4 to get the wind farm up and running. And I
5 would -- talking with our attorneys and stuff
6 and our financial advisors, it sounds like they
7 might be involved for, let's say, probably the
8 first five to eight years until we're able to,
9 you know, generate enough revenues in order to
10 again purchase the -- the -- or pay them, I
11 guess, for their financial backing. Once that
12 happens, after the -- like I can't remember,
13 between five and eight years, once that
14 happens, it -- the wind -- the wind farm will
15 be owned wholly and solely by Spirit Lake
16 Nation.

17 MR. NEWLAND: I think when we're talking
18 about those, if you're having -- if you're
19 having investors but the tribe is going to
20 retain ownership in the development and the --
21 the interests in the land itself, then there's
22 no lease required. But if you're talking about
23 an incidence where the developer is coming in
24 and they're going to run the project, an
25 independent third-party or a corporation is

1 going to run the project and retain the
2 interest in the land, you would need a lease in
3 that instance, even if at the back end the
4 tribe is going to get the project back.

5 MS. DANKS: Especially if you're thinking
6 a mortgage.

7 MR. YANKTON: Okay. Thank you.

8 MR. KROHN: Tim Krohn again. You made a
9 comment about the tribes not leasing land to
10 themselves. We have a philosophical debate in
11 our neck of the woods about that. What's your
12 position?

13 We have a housing division with houses.
14 Do we have to have a lease for those houses?
15 We used to have a housing authority, which has
16 been terminated, that we had a lease for the
17 housing authority for those houses. So, in
18 general, what's the philosophy on the tribe
19 leasing -- needing a lease for itself for
20 houses or other activities that exist?

21 MR. NEWLAND: I'll let -- I'd like Kayla
22 and our associate to talk about this. But if
23 you're -- if you're talking about leasing land
24 to -- leasing, like, a housing plot to a tribal
25 member to live in, then the tribal member is

1 getting the interest in the land and you do
2 need a lease in that instance. But if the
3 tribe owns the land and the tribal government
4 is going to use its own land, you know, I don't
5 believe you need a lease in that instance. But
6 I think what you're talking about is an
7 individual tribal member is going to be --
8 going to be using the land, that's a -- that
9 somebody else is getting the interest in the
10 land, so you do need a less in that instance.

11 MR. KROHN: Well, this case, yeah, a
12 tribal member will be in the house. But (a),
13 they're -- in one case they would be renting
14 the house from Fond du Lac, and in another case
15 those different mortgage entities, Mutual Help,
16 Nasta, (phonetic) et cetera, I don't -- I can't
17 give you all the names and numbers, but they
18 have the mortgage on the house. And until it's
19 paid off, that landowner does not -- or that
20 house -- that occupant of the house doesn't own
21 the house until it's paid off. And then once
22 it's paid off, yes, we understand that there
23 has to be a lease once the occupant owns the
24 house. But until the occupant owns the house,
25 it's owned by a housing division, which is part

1 of the Fond du Lac government. Do we need a
2 lease in that case?

3 MS. DANKS: You're talking about in HASDA
4 is probably what you're referencing, where you
5 get your funding for housing.

6 MR. KROHN: Or other sources.

7 MS. DANKS: Yeah, tribally designated
8 housing authority. And it's defined in the
9 regulations, tribal designated housing
10 authority. It's not just -- there can be
11 various ways to define it. Different places
12 have -- you know, within their tribal
13 government, or they have it with some other
14 entity. But the thing is, if you're leasing it
15 out to a third party, especially if they're
16 paying rent, then that is a third party because
17 they're paying rent to live there, they're
18 paying for the right to live there; I would say
19 that you have to have a lease. Now, maybe
20 you're talking about master leases, I'm not
21 sure. But if it's to a master lease to your
22 housing authority and then they're doing
23 subleases, maybe that's what you're
24 referencing.

25 MR. KROHN: Well, we do have a master

1 lease for some areas with several houses on it
2 and we would like to possibly get rid of that
3 master lease and just have (a), no lease, or
4 (b), leases to each individual house is what,
5 you know, we're working with.

6 MS. DANKS: Okay. Well, I think that's
7 something that you would have to submit, you
8 know, your requests through the agency. But
9 with regard to -- you can dissolve it if you
10 can get everybody to comply -- I mean everybody
11 to consent, because it's a binding contract and
12 you need consent for the lessee and the lessor.
13 And so -- and then the sublease, too. So you
14 would have to submit all your documents to the
15 agency, and if you had all the proper consent,
16 then you could dissolve it.

17 MR. YOWAKIE: Yeah, this is Mel Yowakie.
18 And it's a comment, but really kind of based on
19 experience as well, as far as, like, a hundred
20 percent tribally owned project that is financed
21 requires a leasehold mortgage or a lease, which
22 becomes part of a financing closing document.
23 So I'm almost pretty certain that if it's a
24 hundred percent tribally owned, like a wind
25 energy company, or whatever, that tribal trust

1 land, if it -- if it gets financed, it does
2 require a leasehold mortgage or a lease, which
3 does become a part of the financing documents,
4 closing documents, so...

5 MR. NEWLAND: I think you're right,
6 whenever -- and this goes back to your comments
7 today. Whenever you're talking about any kind
8 of a contract or a legal document that is going
9 to encumber the tribal land, that's when you're
10 encumbering the trust land and you're going to
11 need a -- you can call it -- you can call it
12 something else, but at the end of the day
13 it's -- if someone's paying rent for that
14 interest in the land and there's an encumbrance
15 on the trust land, that's a lease, and that's
16 where, you know, the regulations kick in. Did
17 I get that right?

18 MS. PROKOP: I think you did.

19 MS. DANKS: Plus you can't mortgage tribal
20 land.

21 MR. KROHN: Thank you.

22 MR. NEWLAND: All right. Thanks.

23 MR. DANIELS: I just want to interject
24 here, you know, you have to have a tribal
25 entity; I mean, for example, like a wind farm

1 or you're talking about a housing authority.
2 You have to have a tribal entity and you put
3 the lease in their name, and then, for example,
4 like wind energy, it could be a -- say if you
5 have a natural resource program, you know, you
6 could issue a lease to them, and then they
7 would be able to do whatever you need for them
8 to do. But, also, we have the authority under
9 the current regulations where you can get a
10 master lease, say, like, for your housing
11 authority, and then what we can do is we can
12 preapprove a tenant use -- I call them tenant
13 use agreements, because basically, you know,
14 the housing authority has the master lease, and
15 then what you do is you, you know, move people
16 in or, you know, somebody moves out and
17 somebody moves back in. You can have
18 preapproved tenant use agreements so that you
19 don't have to come back to the Bureau for
20 approval, you know. So that's the kind of
21 things that you can do under the current regs.

22 And, Bryan, I'm not sure, but I -- I don't
23 recall if that's in the proposed regulations,
24 but I think that's something that we really
25 need to have available, because, I mean, when

1 you have a housing authority, you know, you
2 give them one master lease--and we've got this
3 at some tribes--you give them one master lease
4 and then they can issue these lease, subleases,
5 move people in, you know, whatever, and it's a
6 lot quicker and it's no change in current use
7 of the property, so we don't have to go back to
8 the NEPA clearance stuff. But I think -- I
9 can't recall, too, Bryan, and I'll look at
10 that, you know, when I get -- when I get the
11 opportunity, but I think you really need to
12 have that available so that the tribes can do
13 stuff like that, so -- Anyway, that's my
14 comment. Thanks.

15 MS. SMITH: You were talking about these
16 homesite leases on tribal land. Okay, we have
17 housing authority, it's owned by the tribe, and
18 he's talking about individuals living in these
19 homes. What the tribe does is they lease out
20 the whole 40-acre tract, or whatever, to
21 housing authority; there's housing clusters.
22 But that's up to the housing authority to --
23 they're not -- they're rentals, so the housing
24 authority has that lease there. But on
25 individual home ownership leases, once that

1 house is paid off, then that person has to come
2 in and get that lease for that tract. We ran
3 into incidences where maybe it should be a
4 longer term lease other than 50 years because
5 we ran into problems where the person --
6 another person that were moving into the house,
7 they didn't want them on that land, or they
8 didn't want that house to go to that person, so
9 the housing authority had a problem. But it
10 wasn't tribal land. It was individually owned
11 land, so they had a -- they had to move the
12 house a couple times.

13 And then another instance, I don't agree
14 with the lease mortgage. We rent -- we had
15 what, two houses? We had two homes that were
16 built on tribal land and we gave these
17 individual leasehold mortgages. Okay, they
18 lost their homes. They came to the tribe
19 wanting to -- us to buy them out, pay off their
20 loan, but the tribe didn't want to do that, so
21 they went up for auction. We were lucky that
22 two enrolled members of the tribe purchased
23 them; they bid on them.

24 But I don't agree with the leasehold -- I
25 mean, for the tribe or any individual. On this

1 one tract, the lady is an elderly lady and she
2 leased this land to her grandson, two and a
3 half acres; she couldn't do anything about it.
4 The person that bought it has -- was no
5 relative or whatever, but he can live there.
6 She has no say. I don't agree with the
7 leasehold. I mean, I wish they could -- I know
8 it's there and it probably has to stay, but I
9 just don't agree with that in here, for some
10 people anyway.

11 MR. BLACK: Well, thank you very much for
12 your comments. And I don't know, Jim, did you
13 have anything you wanted to add to that at this
14 time? We have the realty officer from Great
15 Plains Regions sitting in the back with us as
16 well today, so -- ma'am?

17 MS. YOWAKIE: My name is Madonna Yowakie,
18 and I wanted to talk --

19 MR. BLACK: What tribe are you with,
20 ma'am?

21 MS. YOWAKIE: I'm with Turtle Mountain
22 Band of Chippewa, except I'm a member of that
23 tribe, but I am -- live in Brooklyn Park,
24 Minnesota. My interest here is that we as a --
25 an American Indian who is enrolled at Turtle

1 Mountains, but also as a woman who does
2 business with tribes on tribal land, and I have
3 not delved into all of the details of what
4 you've provided, so I want to make that known,
5 but I'm speaking from some experience in
6 working on building out wire line and wireless
7 telecommunication infrastructure. That isn't
8 addressed in here, and with the push -- or
9 not -- I wouldn't say the push, but I think a
10 lot of tribes are recognizing that they lack
11 that type of infrastructure as well, and it's
12 limiting them from having access -- broadband
13 access and even basic telephone service.

14 In the existing environment, companies
15 that operate on tribal land operate under
16 blanket easements or no right-of-ways at all.
17 And so as we have worked with tribes, what I
18 think is important in this area is that we have
19 actually worked through a leasing process, and
20 we went according to your existing -- the BIA's
21 existing business leases for that type of
22 project. It was a multi site, 17-tower
23 project. And that was -- all the towers were
24 placed on tribal trust land. And what is
25 important -- and we're doing that again with

1 other tribes.

2 And what I want to ask you to consider,
3 and it appears that you have in some of the
4 language, that -- but I just want to say it out
5 loud, is that the leases distinguish between
6 tribal-owned and nontribal-owned development on
7 tribal trust land, because tribes should have
8 more -- more access and more opportunity for
9 development on their land than a
10 nontribal-owned company would. And I would ask
11 you not to allow blanket easements to
12 nontribal-owned companies.

13 And I was just -- I've seen 99-year leases
14 to companies, perpetual leases, and I would ask
15 that that not be allowed for nontribal-owned
16 companies to have those type of leases on
17 tribal trust land. And I want to say that it's
18 kind of a difference, but I understand the
19 reality of how work is going to get done on
20 tribal land, and when you're not using
21 certified land surveyors, I would ask that the
22 BIA require -- provide an alternative that
23 holds them -- whoever is doing those surveys to
24 certain standards, because ultimately they
25 become accountable for that land. And if we

1 don't have those types of qualified individuals
2 doing surveys on our land, I think it leads to
3 what issues are in front of the BIA today in
4 managing our land; there's uncertainty and --
5 and just management issues. So there has to be
6 some credentialed aspect to anyone doing
7 surveys on tribal land. Thank you.

8 MR. NEWLAND: Thank you for your comments.
9 It's good to hear the perspective from an
10 Indian-owned business developer who works with
11 tribes on tribal lands.

12 I just want to point something out. We've
13 heard in a number of different contexts a wide
14 range of opinions regarding 99-year leasing
15 authority, and one of the things that we've
16 always tried to point out is that, you know,
17 leases are two-party agreements, and there are
18 a lot of tribes that like that flexibility
19 because it does offer them some business
20 development flexibility. But because -- you
21 know, because regulations and statute allow
22 99-year leasing doesn't mean that the tribal
23 landowner has to approve or enter into a lease
24 for 99 years. And that's one of the things
25 that, you know, I'm really adamant in about in

1 the exercise of self-determination and
2 sovereign authority is that, you know, just
3 because a big company is coming to the table
4 and saying we want a 99-year lease and the regs
5 allow it does not mean that a tribe has to sign
6 on the dotted line. So the 99-year leasing
7 authority for a number of tribes does offer
8 that flexibility for long-term development, but
9 that doesn't mean that you have to bump up
10 against the ceiling of what the rules allow.
11 That's just the maximum. You know, you can go
12 anywhere in between that. But I do appreciate
13 that perspective, and we've heard varying
14 comments on that in a number of occasions over
15 the last two years. Thank you very much.

16 MR. KROHN: Jim Krohn. We haven't talked
17 about allotments, and I don't have much
18 questions with it at this moment. But in
19 dealing with the Minnesota Chippewa Tribe and
20 some stuff we have going on with that, you have
21 comments about 100 percent ownership, and there
22 are instances where when we're going through
23 the buying up of allotment interests that the
24 sum will not add up to 100 percent. It will
25 add up to 99.99. And granted in real life,

1 well, that's really 100 percent, but in the
2 math it's still not 100 percent, and that could
3 be a -- a roadblock at some point in time. If
4 somebody says, Oh, it's not 100 percent; you
5 know, it's close, but not -- not really that
6 magic number and, therefore, it doesn't follow
7 the rules.

8 MR. BLACK: Well, I'm assuming you're
9 talking the 99 percent would be tribally owned.

10 MR. KROHN: Yeah.

11 MR. BLACK: And that would largely give
12 majority consent for most of what you're doing.
13 Now, whether it would fall into the realm of
14 what's proposed in the regs, where you wouldn't
15 need permitting if it's 100 percent owned, I
16 guess those questions would have to be
17 resolved. But, again, 99 percent, you're
18 pretty close to a hundred.

19 MR. KROHN: Oh, yeah, I know that.

20 MR. BLACK: You know, you are dealing with
21 the majority consent requirements there, but I
22 don't know how that would play into here. I
23 think those are the questions that will have to
24 be answered yet.

25 MR. NEWLAND: I wanted to add to that,

1 we've already heard on these proposed regs, and
2 I tried to address it in my initial overview of
3 these, but we've heard a lot about the consent
4 requirements and the ownership requirements.
5 And, you know, we can't change statutory law
6 by -- by regulation, and, you know, to the
7 extent that, you know, you guys can provide
8 written comments to guide us on that, we would
9 certainly welcome those comments, take them to
10 heart in the review process. We tried to do as
11 much as we could in terms of restoring tribal
12 authority and flexibility in speeding up the
13 process, but we are limited by the laws that
14 Congress has enacted. And I'm not as -- I'm
15 not an expert on allotment coming from northern
16 Michigan, but I do know that, you know, that's
17 a very complicated area and it's governed by a
18 lot of statutes, and, you know, that really
19 limits what we can do in terms of the
20 regulatory process.

21 Why don't we -- it's ten -- going on
22 10 o'clock. Why don't we take a 10- or
23 15-minute break here and then we can all come
24 back in, and if folks want to continue this
25 discussion or bring up any other issues, we can

1 do that at that time.

2 (Break taken)

3 MR. NEWLAND: Hello. All right. That was
4 an Indian time 15 minutes, but, hey, we'll deal
5 with it. I guess if folks can take their seats
6 and wrap up conversations or continue
7 conversations out in the hall, we can move
8 forward with our consultation. I know that a
9 few folks brought up issues during the break,
10 and one thing I did want to note, that I noted
11 in our last consultation session, is that
12 there's a bill pending before Congress right
13 now known as the HEARTH Act, the Helping
14 Empower and Advance Responsible Tribal Home
15 Ownership Act. And what this legislation would
16 do would restore leasing authority to tribes
17 that want to take it back. So under the HEARTH
18 Act, if it were passed and signed into law,
19 tribes would develop their own leasing
20 ordinances through tribal law. Because the
21 land is trust land, the tribal ordinances would
22 then be submitted to the Department for
23 approval. But rather than having every lease
24 thereafter submitted to the Bureau for
25 approval, once the secretary approves the

1 tribal leasing ordinance, then all leasing
2 authority is restored to the tribe, and you
3 won't ever have to come back to us again to ask
4 for a leasing approval, unless you want to.
5 And that bill is pending before Congress right
6 now. I don't have the bill number for you. I
7 know that I would expect we're going to be
8 asked to provide our views as an administration
9 on it. Until the time that those views are
10 approved by all of the folks across the federal
11 government, you know, I can't comment on what
12 exactly, you know, we would express regarding
13 the HEARTH Act. But I hope you can kind of
14 glean that from where we're trying to go with
15 the leasing regulations. But I did want to
16 point that out for folks. So with that, I
17 guess we'll continue if anybody else has any
18 comments on the draft leasing regulations.

19 MS. SMITH: What's that you said? What
20 bill is that?

21 MR. NEWLAND: The HEARTH Act, like your
22 home hearth, H-E-A-R-T-H. They come up with
23 these fancy acronyms. I think there's a guy in
24 the basement of the capitol building, he's like
25 an outer work poet who comes up with this

1 stuff.

2 MS. SMITH: That's how it is, the
3 higher-ups that come up with all these new
4 things and they're not on the res.

5 MR. KROHN: Tim Krohn. Bryan and I had a
6 discussion during break regarding rentals on
7 tribal land and that in the proposed draft
8 regulations, each -- let's start out with a --
9 there's a master, a master lease on -- on the
10 land, and subsequential rental agreements in a
11 draft have to go through the IA approval. They
12 might just sit on their desk for 30 days and go
13 through the pocket of approval type of
14 procedure. But that still requires the tribes
15 to do the submittals and all that paperwork.
16 And in the current regulations, the tribes do
17 not have to get the IA's approval for
18 subsequent rentals. Is that what we -- that's
19 what we discussed. Is that -- do I have it --
20 do I understand it correctly?

21 MS. DANKS: Do you want me to answer?

22 MR. NEWLAND: Go ahead.

23 MS. DANKS: The current regulations
24 provide that when you submit the original lease
25 contract, you can submit a sublease contract

1 and get preapproval so that you don't have to
2 get further consent for the subleases. So
3 basically it is approved, but it's preapproved.

4 MR. KROHN: Right. And that is not part
5 of the draft regulations.

6 MS. DANKS: No, it's current.

7 MR. NEWLAND: That's the current
8 regulations. The draft regulations that we're
9 discussing with you today would require Bureau
10 approval of the -- express Bureau approval of
11 the first lease out of trust land. Subleases
12 would require Bureau approval. But as you
13 reference, it can be done in sort of a pocket
14 style, like you -- you know, the term you used,
15 where if the Bureau does not take action within
16 a designated time period, the lease is
17 automatically approved. But that would still
18 require the tribe, or whoever the sublessor is,
19 to notify the Bureau of that lease, and we have
20 to -- we have to record that also.

21 MR. KROHN: Okay. Another issue is within
22 Fond du Lac, we have Minnesota Chippewa Tribe
23 lands opened by the Minnesota Chippewa Tribe
24 and we have Fond du Lac Reservation band lands.
25 We're in the negotiations of -- within the

1 Minnesota Chippewa Tribe of allocating back
2 those lands to -- to the various bands, but
3 negotiations are long and tedious, and they may
4 or may not go forth. We still have, generally
5 speaking, management authority over those
6 lands, but on the -- The bottom line is it
7 still is Minnesota Chippewa Tribe land, Fond du
8 Lac using them. Because of the two entities
9 involved, there would be -- it would be a --
10 like a -- a homeowner or some other entity that
11 we would be dealing with; it wouldn't be
12 dealing with ourselves, is that correct?

13 MS. DANKS: Okay. Now, maybe Tom wants to
14 jump in here. But MCT holds title to trust
15 land.

16 MR. KROHN: Yes.

17 MS. DANKS: And then Fond du Lac holds
18 title to some trust land. Their name is on
19 title, the tribe. So are you talking about
20 Fond du Lac leasing land from MCT?

21 MR. KROHN: Yeah. Well, not Fond du Lac
22 itself lease -- sometime -- yeah, sometimes,
23 yes, we do. Sometimes it's homeowners,
24 sometimes it's -- it's our government
25 buildings, sometimes it's housing.

1 MS. DANKS: Okay. So I'm going to let Tom
2 respond to that because he processes your
3 leases.

4 MR. BURR: How it works and what
5 Mr. Krohn's trying to explain is that we have
6 different entities, the Minnesota Chippewa
7 Tribe and we have Fond du Lac lands. We have a
8 housing corporation through the Minnesota
9 Chippewa Tribe, which we have a couple of their
10 individuals here today, representatives, and
11 what happens is that there's a land ordinance
12 that the tribe has. Each tribe of the six MCT
13 tribes have the authority under their ordinance
14 to lease the MCT lands. And that's --
15 that's -- that's gone through the tribal
16 executive committee to give the tribes the
17 authority. And what happens is that the tribe
18 issues a lease and then the housing authority a
19 mortgage, because they're going through home
20 ownership, and then it's put together in a
21 packet, and then it comes to the BIA for review
22 and approval.

23 Right now, you know, what he's talking
24 about is what they're to do is there's a
25 special project going on that they're looking

1 at how are they going to move these lands --
2 They're looking at constitutional reform with
3 the Minnesota Chippewa Tribe. And if -- if it
4 goes through, they're trying to look at if each
5 one of the bands, if they abolish MCT in the
6 format that it's in, each one of the lands that
7 are in that respective exterior boundary of
8 each reservation that are MCT, how would -- how
9 would we transfer them to each one of the
10 bands, and there's obviously going to be some
11 bands that are going to be in a better position
12 landwise with MCT lands versus others. So
13 they're looking at how they're going to make up
14 the difference as well.

15 But with regards to the leasing aspect,
16 they don't lease from MCT. The tribe has
17 management authority of all those MCT lands
18 within their exterior boundaries, and that's
19 how it works at this time. It could change now
20 with the constitutional reform, but that's how
21 it's working at this time.

22 MR. KROHN: So does these proposed
23 regulations have any bearing on that?

24 MR. BURR: These are -- they're tribal
25 lands, so, yeah, they would -- they would have

1 a bearing on that at this time. But you
2 still have -- the tribe still has the
3 management authority because they're considered
4 tribal lands at this time under the land
5 ordinance.

6 MS. JOHNSON: Lisa Johnson from Mille Lacs
7 again. And this is just in regards to the
8 subleases. I know different tribes have
9 different housing stock, and, you know, at
10 Mille Lacs we have a significant amount of
11 housing stock that's leased to the housing
12 department, and, you know, tenants come and go,
13 and you'd be talking about an extreme amount of
14 paperwork if every sublease has to be submitted
15 to be approved. The gentleman before who had
16 indicated that some kind of a template approval
17 of a document, that that sublease document is
18 satisfactory, would probably save a lot of time
19 as opposed to trying to approve every sublease.

20 MR. NEWLAND: I appreciate that. And, you
21 know, I certainly -- you know, these are the
22 types of comments that we're going to take to
23 heart. And I know you mentioned this morning
24 you're going to be submitting written comment.
25 You know, we're going to sit down and look at

1 these after -- after the 18th. And, you know,
2 these are only draft regs, so that we're really
3 flexible in what we can do with them at this
4 point. So I appreciate your comments on that,
5 and that's something we're going to look at.

6 MS. PAGEL: Karen Pagel, Leech Lake. I'm
7 wondering why we cannot get our land records
8 from the Bureau office in Bemidji, Minnesota.
9 We have to go over there, they sit there and
10 somebody sits with us while we look over them.
11 We've asked for them numerous times and nothing
12 happens.

13 MS. ROSEN: Tom, do you want to answer
14 that question?

15 MS. PAGEL: Tom, do you want to respond to
16 that?

17 MR. BURR: Well, what's going on is that
18 we have -- we've paid for backgrounds for
19 certain individuals and certain departments,
20 mostly the land department with Leech Lake.
21 We've always made them available for them to
22 copy their records and come in and take what
23 they need for the transaction that they're
24 working on. We've also had a couple of other
25 of our reservations come in and do the same

1 thing. We're dealing with -- in our area up in
2 northern Minnesota, all six of our tribes are
3 self-governance compacted tribes, so there's a
4 lot of variances that we have with each one of
5 the tribes and the different agreements with
6 the tribes, but we always make it available for
7 them to come in. We do have to set up a time
8 with them because, you know, we're dealing with
9 trust records, and there's criteria that we
10 have to follow with the -- with the dealing
11 with the trust -- with a trust document.

12 MS. PAGEL: That didn't address my
13 question. I'm asking why we cannot have them?

14 MR. BURR: You know, we can set up a time
15 where you can come in and schedule --

16 MS. PAGEL: No.

17 MR. BURR: -- and copy some of our
18 records. You want the actual original records?

19 MS. PAGEL: Our records, yeah. We want
20 the records. Why can't we have them? We're a
21 self-governance tribe, all of us are. That's a
22 main concern.

23 MS. DANKS: I'm not sure how you're --
24 usually that's negotiated in the contract, the
25 trust records. And our concern with the Bureau

1 of Indian Affairs is that the records are
2 preserved, because we have to follow federal
3 archive regulations, FAR.

4 MS. PAGEL: What contract?

5 MS. DANKS: Are they compacted or
6 contracted?

7 MS. ROSEN: Compacted.

8 MS. PAGEL: We're compacted. We're a
9 self-governance tribe.

10 MS. DANKS: Okay, compacted. So the
11 compact would state who maintains the records.

12 MS. PAGEL: No, it doesn't.

13 MS. DANKS: It doesn't? It should is what
14 I'm saying.

15 MS. PAGEL: That's what I'm saying, it
16 should be an issue on our -- if you look at our
17 AFAs, our Annual Funding Agreements, nothing's
18 stated in there outside of the fact that we
19 have to follow their rules for looking at them,
20 dealing with them. I mean, there's nothing
21 that addresses the fact that they're our
22 records.

23 MS. ROSEN: Okay. Diane Rosen, regional
24 director. We have a new superintendent that's
25 going to be coming on board the end of April.

1 MS. PAGEL: Is it Joe?

2 MS. ROSEN: It is Patty -- Patricia Olby.

3 MS. PAGEL: Okay.

4 MS. ROSEN: And that is one of the things
5 that we can take a look at, because from what I
6 understand, that there was a contract with the
7 Minnesota Chippewa Tribe.

8 MS. PAGEL: We're not the Minnesota
9 Chippewa Tribe. We're the Leech Lake Band.

10 MS. ROSEN: Right. But you're part of the
11 Minnesota Chippewa Tribe. And from what I
12 understand, is do those records -- do those
13 records belong to, like, the Minnesota Chippewa
14 Tribe as a whole and then the bands, so to be
15 able to separate those out. So we can take a
16 look at the contract that's already in place
17 that was to have provided those records to each
18 band.

19 MS. PAGEL: What about if they go through
20 the constitutional change then and MCT is
21 abolished?

22 MS. ROSEN: Well, hopefully the records --
23 we'll have addressed that issue with the
24 records prior to that happening.

25 MS. PAGEL: Well, I'd like to set up a

1 meeting down here --

2 MS. ROSEN: Sure.

3 MS. PAGEL: -- with you people and the
4 Bureau up there and get something --

5 MS. ROSEN: Right.

6 MS. PAGEL: -- ironed out here.

7 MS. ROSEN: Yes.

8 MS. PAGEL: You know, this is just a
9 constant hassle for us, ongoing.

10 MS. ROSEN: And the tribes need the
11 documents in order for them to do their job.

12 MS. PAGEL: That's right.

13 MS. ROSEN: And that's all part of
14 self-determination and self-governance, and I
15 support that 100 percent. So I will definitely
16 be working with the new superintendent in order
17 to make sure that the compact tribes have the
18 records that they need, so that they can do the
19 job --

20 MS. PAGEL: Would you set up a meeting
21 with us then down here so I can bring our
22 tribal council members and everyone involved in
23 it?

24 MS. ROSEN: Or we can even go up there and
25 meet, along with the superintendent and the

1 different bands.

2 MS. PAGEL: Okay.

3 MS. ROSEN: We need to come up with a plan
4 in order to make that happen.

5 MS. PAGEL: All right.

6 MS. ROSEN: And if it's part of the
7 contract that's already in place. But
8 absolutely. Thank you.

9 MS. PAGEL: I have never seen a contract
10 in place. And, like I say, if you take a look
11 at our AFA, Leech Lake's read the part on
12 records.

13 MS. ROSEN: From what I understand, the
14 contract -- it was a contract that was to have
15 scanned documents so that to make it available
16 to the tribes. And that was like several years
17 ago that that apparently was something that was
18 put into place.

19 MS. PAGEL: Well, I'm an old war horse and
20 I've been there for several years, so I have
21 never seen it.

22 MS. ROSEN: Okay.

23 MS. PAGEL: Even the times that we went
24 over there, you know, to try and address some
25 of these problems, I was never given a contract

1 to even look at.

2 MS. ROSEN: Okay.

3 MS. PAGEL: Thank you.

4 MS. ROSEN: Sure. Thank you.

5 MR. NEWLAND: Does anybody else have any
6 comments on the draft part 162 regulations?

7 THE WITNESS: Good morning. My name is
8 Paula Antoine, and I'm from the Sicangu Oyate;
9 Rosewood, South Dakota. I represent the
10 Rosewood Sioux Tribe. I'm the coordinator of
11 the Sicangu Oyate land office, and I had a
12 couple comments on the procedures here. And
13 one of them was in -- on Section 162.406, "Who
14 is authorized to consent to a business lease."
15 We were asking for more of a clarification on
16 that, and in this Section C, any person who is
17 authorized to practice before the Department of
18 the Interior under 43 CFR Part 1, under the C
19 part, where it says where land is subject to
20 tribal land assignments, the individual and the
21 tribe must both consent to the lease, we
22 disagree with that, that it should only be up
23 to the tribe. And that's -- and I have some
24 other comments, too, but I would like to submit
25 them in written. But, also, we would like to

1 say that we support 162.415. And I'll also
2 include that in our -- in our comments as well.

3 And there are several of us that have come
4 from the Rosewood Sioux tribe, but I would also
5 like to express and say that we really -- that
6 the main thing that we would like is that our
7 tribal treaties are recognized and upheld. And
8 that comes directly from our -- our council
9 representatives and from myself. And we truly
10 believe that that is something that is the most
11 important thing that needs to be addressed.
12 Thank you.

13 MR. SPOTTED TAIL: Good morning. My name
14 is Charlie Spotted Tail. I'm the council
15 representative for the Rosewood Sioux Tribe.
16 Basically I'm here on the subject of wind
17 development. We had an MOA agreement with the
18 Citizens Wind Energy Corporation with the
19 Rosewood Sioux Tribe on a joint venture
20 concerning the development of a 190-megawatts
21 wind farm, North Antelope, called the North
22 Antelope Highlands Project 1 and 2. Basically,
23 I guess, we were -- we were kind of stuck with
24 the taxes with the state, and the Rosewood
25 Sioux Tribe has a proposed response to the

1 State of South Dakota's effort to impose taxes
2 on their tribe's wind energy project. We have
3 evaluated the correspondence between the R.S.T.
4 and the State of South Dakota and other
5 materials concerning the recently enacted wind
6 energy taxes. These taxes were enacted in 2008
7 in the state statute known as House Bill 1320.

8 As the law stands today, it is very likely
9 that the state would prevail in taxing
10 nontribally owned wind -- operating wind farm.
11 The courts apply a test that is supposed to
12 weigh federal, state and tribal interests in
13 order to decide whether state taxes may apply
14 to non-Indian business activities or property
15 within Indian country. This is called a
16 "Bracker" balancing test.

17 We have been working on an approach to
18 change the results in cases involving Bracker,
19 balancing to make it more likely that the
20 courts will not allow state taxes to apply,
21 even when a project is owned or operated by a
22 non-Indian. Specifically, we recommend that
23 R.S.T. joins with other tribes in petitioning
24 the Department to initiate the process of --
25 for revising 25 C.F.R. 1.4 in order to, one,

1 provide a basis for preempting state taxes that
2 might impede these projects; two, modernize the
3 reservation to reflect the significant changes
4 in federal Indian policy since this regulation
5 was enacted in 1965.

6 The Secretary of the Interior or his
7 authorized representative may in specific cases
8 or specific geographic areas adopt or make
9 application to Indian lands all or any of such
10 laws, ordinances, codes, resolutions or other
11 regulations referred to in paragraph A of this
12 section as he shall determine to be in the best
13 interest of the Indian owner or owners
14 achieving the highest and best use of such
15 property. The Secretary or its authorized
16 representative may consult with the Indian
17 tribe -- Indian owner or owners and may
18 consider the uses or restrictions or
19 limitations on the use of other property in the
20 vicinity, and other factors they shall deem
21 appropriate.

22 Furthermore, the prospects for securing
23 federal reservation to preempt state taxes is
24 equally bleak. To initiate a proposed
25 regulatory group making to enact such

1 regulations, one starting point for a
2 regulatory approach to state taxes would be to
3 petition Assistant Secretary Echo Hawk to
4 initiate a notice and comment procedure to
5 revise 25 C.F.R. 1.4 as set out below in order
6 to provide a basis for preempting state taxes
7 that impede the development of tribal projects,
8 modernize -- to modernize this regulation to
9 reflect the significant changes in federal
10 Indian policy. Once again, this is a
11 regulation that was promulgated in '65.

12 The proposed approach: The most promising
13 approach available for addressing state taxes
14 is to encourage the Department of Interior to
15 enact regulations directed at protecting
16 on-reservation infrastructure from state taxes.
17 Such regulations could be crafted to cover
18 circumstances where a tribe's control and
19 ownership is less than 100 percent. RST could
20 join with other Indian tribes in petitioning
21 the department, particularly the Assistant
22 Secretary Echo Hawk to initiate a proposed
23 regulatory rule making to enact such
24 regulations. The Department could either enact
25 an entirely new regulation on this subject or

1 simply initiate a process to revise an existing
2 regulation.

3 I have some other information to this --
4 on the subject, but I think we have testimony
5 probably to be given in written -- in written
6 form. But I do represent the Rosewood Sioux
7 Tribe and the wind development project.

8 I guess some of the issues that -- for the
9 changes in federal Indian policy, state taxes
10 that are interfering with objectives, we need
11 to balance state, federal and tribal
12 regulations. The courts will follow that
13 regulation when returning to the Bracker
14 balancing test. If we were to accomplish
15 anything, it is to rewrite -- to revise the
16 regs, finding a regulatory vehicle to break the
17 Bracker balancing test. To cure state tax
18 problems fundamentally economic and energy
19 development in Indian country, some feel the
20 RST is the key factor in changing these
21 matters. The RST committee would make a great
22 contribution to Indian country by taking the
23 lead on state taxation.

24 I have a little history -- historical
25 thing here from in 1932 in Worcester vs.

1 Georgia. The view that Indian tribes were once
2 wholly distinct nations within the state's
3 boundaries, which we have long ago departed
4 from, Indian tribes have been duplicitously
5 divested of their sovereignty in certain
6 respects by virtue of their dependent status;
7 that under certain circumstances, a state may
8 validly assert authority over the activities of
9 nonmembers on a reservation, and that in
10 exceptional circumstances, that a state may
11 assert jurisdiction over the activities of
12 tribal members.

13 Also, the Congress's overriding goal of
14 incurring self -- tribal self-sufficiency and
15 economic development, in part as a necessary
16 implication of this broad federal commitment,
17 we have held that tribes have the power to
18 manage the use of their territory and resources
19 by both members and nonmembers. The exercise
20 of state authority, which imposes additional
21 burdens on a tribal enterprise, must ordinarily
22 be justified by the function or services
23 performed by the state in connection with the
24 own reservation activity. And I have -- I've
25 picked here a dissenting opinion in one of the

1 court cases. Thus, a state seeking to impose a
2 tax on a transaction between a tribe and
3 nonmember must point to more than its general
4 interests in raising revenues.

5 Once again, Congress's overriding
6 objective in encouraging tribal
7 self-government, the tribe has engaged in a
8 concerned and sustained undertaking to develop
9 and manage the reservation's resources
10 specifically for the benefit of its members.
11 The project would generate funds for essential
12 tribal services and provide employment for
13 members who reside on a reservation. Oh, I --
14 I looked up some issues on the Indian Financing
15 Act of '74, 1974, was enacted to be the policy
16 of Congress to help develop and utilize Indian
17 resources, both physical and human, to a point
18 where the Indians will fully exercise
19 responsibility for the utilization and
20 management of their own resources and where
21 they will enjoy a standard of living from their
22 own productive efforts comparable to that
23 enjoyed by non-Indians in the neighboring
24 communities. Similar policies underlie the
25 Indian's Self Determination and Education

1 Assistance Act of 1975, as well as the Indian
2 Reorganization Act. The intent and purpose of
3 the Reorganization Act was to rehabilitate the
4 Indian's economic life and to give him a chance
5 to develop the initiative destroyed by a
6 century of oppression and paternalism.

7 The Indian Civil Rights Act of '68
8 likewise reflects Congress's intent to promote
9 the well-established federal policy by
10 furthering the Indian's self-improvement.

11 I guess with that, I just wanted to talk
12 about the history, and I would like to forward
13 some of our -- some of our information and our
14 intent in -- in the testimony form later today.
15 Thank you very much.

16 MR. NEWLAND: Thank you very much for your
17 remarks on that. And, you know, we're well
18 aware of what's going on in South Dakota, as we
19 heard from the chairman of the Chehalis Tribe
20 in Washington, very similar issues of states
21 trying to -- states and local governments
22 trying to impose taxation on improvements on
23 tribal lands. You know, it's a big priority of
24 ours and the Assistant Secretary's office to
25 promote renewable energy development on tribal

1 lands where tribes are partners in that
2 development. And, you know, we're aware of
3 what that -- what state taxation of those
4 improvements could mean in terms of
5 incentivizing or deincentivizing -- or
6 disincentivizing, rather, wind energy
7 development on tribal lands. So appreciate
8 your comments on Section 415, and, you know,
9 we'll take them to heart when we go back after
10 the consultation and look at the rules again.

11 Anybody else want to talk about part 162?

12 MR. YOWAKIE: I got a question.

13 MR. NEWLAND: Sure.

14 MR. YOWAKIE: I'm looking at page 102,
15 section 162.453. This is Mel Yowakie. It
16 reads here that -- that the Indian landowner
17 may receive income derived from the lessee from
18 a sublessee under the terms of the lease. What
19 is defined in terms of income? Is that a
20 one-time nonrecurring or is that -- would that
21 be general -- revenues generated on an ongoing
22 basis? And I guess I'm kind of thinking more
23 in line of a -- like a wireless communication
24 tower, where it could be very lucrative, and
25 extending that to, like, fiber optics where

1 there's fiber optics going through a
2 reservation could become part of a state-wide
3 network where it's generating, I would say,
4 millions of dollars of revenue. That income
5 is -- I guess I want a little bit more
6 clarification on that.

7 MS. DANKS: Generally -- generally when we
8 have a leasing contract, this is talking about
9 a sublease, so the leasing contract would
10 provide for rental payment to the lessor, the
11 landowner. And here it states the -- derived
12 from the lessee, and it talks about the
13 sublease. So what it's getting at here is you
14 want -- when you're negotiating the contract,
15 you want to take into consideration whether or
16 not the landowner wants to receive income
17 derived from the sublease, because they're
18 already guaranteed the income from the original
19 lessee. But the sublease, you know, you turn
20 around and you sublease it, maybe the landowner
21 wants to receive a percentage of that income.
22 You could base it on maybe income proceeds and
23 so on and so forth. So basically that's all
24 that's getting at is --

25 MR. YOWAKIE: Okay. So it would be a

1 percentage. And usually you don't know in
2 advance --

3 MS. DANKS: It's just negotiated. It's --
4 I mean, it's just throwing the option out
5 there, 'cause basically it's the landowners may
6 receive income derived from the lessee from the
7 sublease. So it's putting that option on the
8 table. So when you put together the contract,
9 the landowner -- that's an option that they can
10 take into consideration when they're
11 negotiating the contract. Does that help?

12 MR. YOWAKIE: Yeah. Usually you don't --
13 you don't know in advance if, you know, a
14 carrier -- one carrier is going to sublease
15 down the road to another carrier. And you can
16 have multiple carriers on the towers located
17 on the -- renting space. Or the same thing
18 would be true for fiber cable, where you -- you
19 know, they can lease out the fiber to another
20 carrier, multiple carriers, and so you're
21 generating lots -- lots of revenue.

22 So you're saying that you could negotiate
23 a percentage of --

24 MS. DANKS: You can negotiate almost
25 anything in your original lease contract. And

1 in your original lease contract, you need to
2 look at any subleases. You need to take into
3 consideration how subleases are going to be
4 treated. And so basically that's what this is
5 getting at. So, in other words, you have your
6 original lease, and then if you want to
7 consider subleases, then you write into your
8 contract -- you have to have a preapproved --
9 right now in the current regulation, you have
10 to have a preapproved sublease. It has to be
11 reviewed. But you could have a preapproved
12 sublease, and any subsequent subleases after
13 that you wouldn't have to go back to the BIA.
14 But in these regulations, they're going to give
15 you the 30-day time frame to consider the
16 subleases; is that correct?

17 MR. NEWLAND: (Nods head).

18 MS. DANKS: And so the landowner will have
19 an opportunity to take a look at every one of
20 those subleases.

21 MR. YOWAKIE: Okay. Because I guess the
22 way I see it in current -- the way it is
23 currently is that in a lot of cases the
24 right-of-ways have already been defined.

25 MS. DANKS: Your right-of-way, you're

1 talking right-of-way --

2 MR. YOWAKIE: I would say like highway
3 right-of-ways, where utilities use -- I mean, I
4 guess it -- and I'm talking more in line of
5 fiber cable.

6 MS. DANKS: Are you talking about
7 rights-of-ways and not -- because this is --
8 we're talking about leases. Rights-of-way,
9 that's going to be different. I think you're
10 talking about rights-of-way. I'm not sure.

11 MR. YOWAKIE: Yeah, yeah. So I guess I
12 take that comment back.

13 MS. DANKS: So I was responding to
14 subleases, I'm sorry.

15 MS. ROSEN: And those are totally
16 different regulations for rights-of-way.

17 MS. DANKS: If you want to talk to
18 somebody afterwards about rights-of-way, we can
19 give you a name, but -- if that will help.

20 MS. FREDERICK: I just had a comment. My
21 name is Alex Romero-Frederick, and I'm from the
22 Sicangu Oyate Lakota, or the Rosebud Sioux
23 Tribe. And the WSR permits and leases,
24 162.513, I see in the -- with the
25 archaeological and historic remains, I just

1 kind of -- on the Rosebud before any leases are
2 approved, we require archaeological clearance
3 and/or surveys, and I'd just like the CFR to
4 reflect that in the residential and the
5 business, and also to -- I know the Rosebud
6 does and I know the Oglala Sioux Tribe does and
7 others in South Dakota, but they have the
8 tribal historic preservation offices maybe to
9 reflect that BIA will work with them, too, to,
10 you know, determine whether or not it's, I
11 guess, a significant site or not before
12 development of any of these WSRs or homes or
13 businesses.

14 MR. BLACK: Thank you for those comments.
15 I think those are all things that are part of
16 the overall picture, and I realize, you know,
17 when we're talking some of these things, the
18 tribes still have those abilities to
19 incorporate those local ordinances and laws
20 into whatever leasing processes they would have
21 incorporated within their jurisdictional
22 boundaries as well. And they still were --
23 there's federal action we still have -- you
24 know, need many cultural and 106 requirements
25 that would still be held upon us.

1 MS. YOWAKIE: Madonna Yowakie. This is
2 more from my being a member of the Turtle
3 Mountain Band of Chippewa, our land is a small
4 land base. And what happens when an individual
5 has allotted land and wants to develop that or
6 place infrastructure, towers, possibly wind
7 towers on their land? What rules are they
8 required to adhere to?

9 MR. NEWLAND: Yeah, if it's an
10 individually owned trust land, if it's -- if
11 it's an individual allotment, it's subject to
12 the Bureau's leasing regulations at part 162.

13 MS. DANKS: Subpart F.

14 MR. NEWLAND: So it's -- so these would --
15 these draft regulations would apply to that.

16 MS. YOWAKIE: Okay. Because I'm thinking
17 of an instance where an individual made an
18 agreement with a cell phone -- a cell tower
19 company and put up the tower, and the tribe
20 wasn't involved at all, and -- and I shouldn't
21 say at all, but I don't -- I don't know that
22 they weren't involved at all. I don't know if
23 they had to approve it or not. But I think
24 that sometimes the implications of development
25 on allotted land and its effect on the tribe at

1 large isn't clear, and maybe that's not a
2 conversation for this time. But I think it's
3 important, because there may be individuals
4 that hold large parcels of allotted land who
5 think that that's something they could do as an
6 individual, and it would be important, I
7 think -- I mean for me I would like to
8 understand that better, what rights and
9 responsibilities they have. And you're
10 saying it's -- they have to adhere to these
11 regs?

12 MR. NEWLAND: Uh-hmm.

13 MS. YOWAKIE: Thank you.

14 MR. NEWLAND: Anyone else want to talk
15 about part 162? Over here.

16 MR. STRONG: Good morning. My name is
17 Corey Strong from Bois Forte. One of the
18 things that I just want to reiterate what --
19 what Lisa Johnson from Mille Lacs and Tim from
20 Fond du Lac mentioned, too, is that we also
21 have a lot of recreational leases on Bois
22 Forte, and in the sense that we would like to
23 see that actually maybe not lumped into with
24 the business leases, because I know that will
25 be confusing for our band members when they're

1 looking to, you know, put a cabin up for a
2 summer place on a lake and all of a sudden
3 we're like, well, now it's a business lease,
4 you know, and that will be confusing for them.
5 And if we can just keep it recreation, you
6 know, the terminology is -- it will go over a
7 lot smoother. And I think even our tribal
8 council will probably question us, why is this
9 called a business lease if the regs go through
10 it and it's not a residential lease. So that's
11 one thing I just would like to comment on.

12 MR. AYRES: Hi. Jason Ayres; Keweenaw
13 Bay. The same -- along the same lines, the
14 recreational lease, the recreational leases
15 that we grant at Keweenaw Bay are leases that
16 are exclusively used by the lessee for summer
17 homes, for exercising treaty rights, hunting,
18 fishing, whatever it might be. Those types of
19 leases, I believe, belong under Subpart C. The
20 types of recreational leases that belong under
21 Subpart B would be the lease -- the
22 recreational leases where the lessee's intent
23 is to sublet the property to other users,
24 whether it be for daily, weekly or monthly
25 uses. Putting all -- lumping all of them under

1 Subpart B doesn't make a lot of sense for a lot
2 of us, because at least a hundred percent of
3 ours at Keweenaw Bay are for individual use and
4 not subleases.

5 My other comment was to the surveys. To
6 require all leases have a certified survey is
7 going to put an undue burden on either the
8 tribes or the lessees. Now, I understand in
9 some cases where they would need to be
10 required, whether it's a subdivision, whether
11 you're leasing to an enterprise, whether it's
12 Indian or non-Indian, in those types of cases I
13 could understand that. But we've got staff at
14 Keweenaw Bay that have been writing legal
15 descriptions and running property lines and
16 marking property corners for decades, and to
17 now not recognize some of their work, again,
18 it's a financial burden in that the tribes
19 certainly can't handle. The individuals, most
20 of the individuals aren't going to be handled
21 -- be able to handle that burden. We're all
22 being cut, as we know, financially, so I would
23 think that maybe some criteria could be created
24 where it could -- whether or not a survey was
25 required to go through a test of some sort,

1 so...

2 MS. ANTOINE: I have a comment on that.

3 On a cultural or archaeological surveys -- this

4 is Paula Antoine again from Rosebud. And I

5 feel that it's of utmost importance to do that

6 on every -- you know, on every lease that's

7 assigned, because if there's no archaeological

8 survey done on any tract of land, there may be

9 something of cultural significance that's lost

10 or destroyed. For any tribe, regardless of the

11 price, regardless of the time and effort that

12 employees are putting in, you know, on the

13 amount of leases, that shouldn't matter. If

14 there is something that is culturally

15 significant to a tribe that's lost, that's

16 priceless. So, I mean, to me there's no

17 question there. You know, if -- if somebody

18 has to work an extra day to complete the

19 leases, you know, or extra hours and that --

20 and something of culturally significance is

21 saved for our tribe, that's -- you know, to me

22 that's worth it. So I don't even think that

23 should be a issue that cultural or

24 archaeological surveys should be over with.

25 They must be there.

1 And then, also, I had a question on -- on
2 historical or federal archives, and I think --
3 I'm not sure what her name is sitting right
4 there. But she commented on that when the lady
5 asked from Bemidji about getting documents back
6 or having access to them documents. Within,
7 you know -- my question is, when them -- when
8 those historical documents are being archived,
9 and I know that they're scanned and, you know,
10 what happens to them after they're scanned,
11 because it's under -- you know, from my
12 observation, that they're being shredded. Why
13 aren't they given back to the tribes? And what
14 is the process for the tribes to retrieve them
15 historical documents to be housed in a tribal
16 location and tribal archives? That's my
17 question. Thank you.

18 MS. DANKS: Generally when the tribe
19 contracts a program, they can -- within their
20 contract, as the regional director stated, they
21 can take all the documents with them. What we
22 do in the Bureau of Indian Affairs just as a
23 backup is we scan or make copies of those
24 documents to make sure that there's a backup
25 copy. Also, with regard to land records,

1 they're recorded in our Land, Titles and
2 Records Office that's located in Aberdeen,
3 South Dakota. And so the agency couldn't give
4 those documents out if it wasn't inside the
5 contract. But for the purposes of any
6 documents that we maintain for the federal
7 government, we are required to follow FAR.

8 And the thing is, we have -- we record our
9 documents in LTRO, and what we have now through
10 the new technology, we are able to scan the
11 documents and any -- like, for example, lease
12 contracts that are expired, and they're no
13 longer in effect after -- in accordance with 16
14 BIAM after -- it's either three or five, I
15 can't remember off the top of my head, 'cause I
16 don't do files every day. But after that,
17 then, what we do is we package up those lease
18 records that are expired and we send them off
19 to the federal archive center, because they
20 have a controlled center where they won't
21 deteriorate, and it's down in Lexington,
22 Kansas. I guess it's some big --

23 MR. BLACK: Lenexa.

24 MS. DANKS: Lenexa. So they preserve the
25 documents down there. So basically that's just

1 a high level overview.

2 MS. PAGEL: Why -- why aren't they given
3 to the tribe then instead of the Bureau, just
4 send them down to Kansas? I know about that.
5 Why aren't we given an option to get our
6 records back? Why do you just take them and
7 forward them to Kansas?

8 MS. DANKS: Are you talking about the
9 expired lease contracts? On allotted land --

10 MR. NEWLAND: No, she's -- she's talking
11 about the historical records.

12 MS. DANKS: Oh, the historical records.
13 The land records, that's negotiated in the
14 contract -- compact. Then you can have those
15 records. But it has to be provided for in the
16 compact. So, yes, the tribe receives those.
17 Or they can receive them.

18 MS. PAGEL: Not the way it's written into
19 our AFAs. We have to follow the Bureau.

20 That's another thing, Diane, that I wish
21 you would look at is our AFA. You know,
22 everything is written for the Bureau, it's not
23 for us, not for the tribes. They get to keep
24 flexibles in them. And they also say that
25 they'll give us our employee's training and

1 everything and they have to pay for it. That's
2 never been done, you know, nothing. But I'm
3 just saying, why aren't we given an option
4 instead of the government just shipping them
5 off down to Kansas where we'll never see them
6 again?

7 MS. ROSEN: Okay. Do you want me to --

8 MR. NEWLAND: You can if you want.

9 MS. ROSEN: Like I said previously --
10 Diane Rosen, regional director -- is that we'll
11 have to take a look at the records that the
12 Minnesota agency has on-site, and we can also
13 take a look at those records that have been
14 retired to the federal record center down in
15 Lenexa, Kansas, because we do have the ability
16 to -- while we can't get the originals back
17 from Lenexa, they will provide copies back to
18 us. So -- and I'm not sure what -- like the
19 volume that have been retired.

20 Tom, do you know as far as how many
21 records have been retired from the agency?

22 MR. BURR: I'm not sure specifically.

23 MS. PAGEL: How do we know when we have
24 no access to them?

25 MS. ROSEN: Well, those are things that

1 when the superintendent comes onboard, that
2 we'll take a look at. We'll look at what has
3 been retired and what records the agency has
4 that should be turned over to the compact
5 tribes.

6 MS. PAGEL: Right, because we're not given
7 any option at all.

8 MS. ROSEN: So we'll take a look at that
9 and come up with a plan on the best way to do
10 that.

11 MS. PAGEL: Thank you.

12 MS. ROSEN: Uh-hmm.

13 MS. SMITH: Hello. I don't know if the
14 individuals -- are they talking about lease
15 records or are they talking about their
16 original allotment folders?

17 MS. PAGEL: We're talking about all of our
18 records --

19 MS. ROSEN: Yeah, all of their records.

20 MS. PAGEL: -- you know, retired down
21 there. Why aren't we given an option? Not
22 only our land and stuff, our other valuables,
23 you know, treaties, all that stuff, our
24 contracts, everything. We're just not given
25 any option at all. They're just shipped off to

1 Kansas.

2 MS. SMITH: Okay. For our reservation, we
3 had our original allotment folders have been
4 kept at the agency for as many years as -- I
5 worked for the government for a few years, 16
6 years before I started working for the tribe.
7 So I've been working for, like, 30, almost 40
8 years now. And our original allotment folders
9 were always kept at the agency, and they're --
10 and they were shipped off, I think, in the
11 '80s. They had told the Bureau they had to
12 have these records shipped off so they can scan
13 them and whatever.

14 Okay. We requested those back, and we got
15 them back in a state where they didn't even
16 take care of them. They were all -- some of
17 the documents were not even in the right
18 folders, and we have to put them all back the
19 way they were when they -- before they were
20 shipped off. So we have them -- At the agency
21 they're in a fireproof safe -- I mean files,
22 and anyone can come in and request to look at
23 their -- some of them do family trees, and they
24 have those documents right there. They can
25 come in and take a look at them, they can make

1 copies. And -- but I think each tribe or each
2 agency should be able to get those back. I
3 mean, maybe they won't be kept at the tribal
4 offices, but at least they're there for someone
5 to go take a look at. I don't see why they
6 can't get them back. We got ours back.

7 And for a homesite lease, like they were
8 talking about surveying, that is a big expense.
9 I don't think we should have -- I mean, two and
10 a half acres, why do you need a survey to go
11 out and -- when the staff at the Bureau have
12 been doing that for years. I mean, there's --
13 what's to two and a half acres and go out and
14 mark two and a half acres? Why do you have to
15 have a surveyor to come out to do that for
16 them? Why is that a requirement?

17 MR. NEWLAND: Thank you for -- I think the
18 comments on the records issue, not related
19 directly to the leasing right, is a very
20 important issue. You know, going all the way
21 back to the sacred treaty rights, you know,
22 those original documents are very important.
23 And I hear your concerns on those, and, you
24 know, Mike and I are going to go back and, you
25 know, we're going to raise this issue. We'll

1 talk about it. And I know Diane said she was
2 going to come back and discuss -- discuss with
3 you going forward for your self-governance
4 compact. On the surveys, you know, I
5 appreciate your comments. We have them in the
6 record now. We're going to go back and look at
7 that issue as well because we've heard it a
8 number of times today.

9 MS. PAGEL: This is vital to our land
10 leases. When we have to go back, you know, and
11 do family trees and fractionated and find out
12 who's what and where they are, if they're dead
13 or what, these are vital to land issues. Them
14 records are vital, just as our enrollment is
15 vital. It does affect our land leases and
16 that. I mean, every time it's brought up, it's
17 shoved aside, or we'll deal with it later.
18 Well, that does affect our land issues, and I
19 want to go on -- on record stating that it's
20 very important, 'cause we have -- a lot of
21 allotments are in trouble over this. Thank
22 you.

23 MR. BLACK: I just want to comment real
24 quick on the records issue, because I know it's
25 pretty vital to everybody, just as it is to us.

1 We have some very strict regulations and
2 requirements in the management and preservation
3 of federal records and tribal records, and we
4 use the facility down in Lenexa for the
5 archiving of those facilities. [sic] It's a
6 climate-controlled facility, and we're able to
7 preserve those records much better than we can,
8 you know, at some of our local places, our
9 local locations.

10 Now, if we have -- I'm going to ask Diane
11 to go up and talk and see if she has her
12 records management officer here today and, if
13 possible, if they are here, we can maybe set
14 something up after this session is done and
15 have them come and just kind of give you a
16 real -- have a real quick rundown of the
17 requirements and how we manage the records that
18 are under our control. So if anybody would be
19 interested in that, I'll have Diane check and
20 see if somebody's available to do that after
21 this session. Thank you.

22 MS. PAGEL: I'm just a self-governance
23 director. None of my land staff is here, so I
24 guess you'll deal with it when you set up a
25 meeting? I don't know the ins and outs of

1 this, you know. I'm just there to do
2 self-governance.

3 MS. ROSEN: Uh-hmm.

4 MS. YOWAKIE: Madonna Yowakie. In
5 consideration of the timelines that you have
6 for leases in here, have you addressed the
7 title status report process as well in those --
8 the timing, because if deals, business is going
9 to be done, those title status reports have
10 some timing requirements as well.

11 MS. DANKS: In the proposed regulations, I
12 don't know that -- well, we have to, you know,
13 determine who the landowners are by getting a
14 title status report. There isn't a timeline
15 for receipt -- you know, for -- in this package
16 I didn't see any timeline for, you know,
17 procuring a title status report. But the
18 landowner negotiates the lease with whoever.
19 They go out and this is negotiated -- this is
20 negotiated leasing now. So they go out and
21 they negotiate the lease. They can get it --
22 you know, contact their agency and get a title
23 status report because they want to look at the
24 consent, because you want to come in with
25 consent in compliance with the sliding scale is

1 what I call it, but the consent requirements
2 within the regulations. So you want to get a
3 title status report up front in order to
4 procure consent. And you contact the agency,
5 so you should just -- the landowner, if they're
6 negotiating a lease, or even the lessee -- the
7 law provides that the lessee, if they're
8 negotiating a lease with the landowner, they
9 can contact the agency and get the addresses.
10 But the landowner needs to go in and get the
11 title status report. And I would ask for that
12 up front. So that's a very good question. You
13 need to ask, you know, to order it up front so
14 it doesn't hold things up is probably the first
15 thing.

16 MS. YOWAKIE: That's understood. And if
17 it's a tribally driven project, then the
18 landowner has given authorization to move
19 forward. But the title status report process
20 itself can be lengthy and add a lot of time --
21 of documentation of that land. That process,
22 when it's not moving along as quickly as the
23 project itself isn't getting financed, when you
24 think about time being money, that that's a --
25 that title status report process, even with all

1 the authorizations, can be lengthy, and it's in
2 the Bureau of Indian Affairs. And it's not a
3 criticism, it's a reality. And so it's like
4 that -- that process, if it's not addressed in
5 here, it should be as well, like some kind of
6 timing considerations for that.

7 MS. DANKS: Yes.

8 MS. YOWAKIE: Because we're assuming that
9 all the authorizations are in place, it's just
10 where it's sitting in the office that does
11 title status.

12 MS. DANKS: Okay. And on tribal land,
13 tribally owned land, it's probably not going to
14 be as big of a process because you have one
15 owner. With regard to allotted land, probates
16 and so on and so forth, they need to be updated
17 to get your certified TSR, and so that's why,
18 you know, when -- when the landowner comes into
19 the office, that's the first thing that we
20 recommend that they request, and so we'll try
21 to order it up front, and just to remember to
22 order it up front.

23 Now, with regard to mortgages, a lot of
24 times the banks want you to get another
25 certified TSR proving that that lease is on the

1 TSR, and I think that is where the issue comes
2 up. And so sometimes you have to get -- if
3 you're going to mortgage it, you have -- the
4 bank will require it. And that's up to the
5 bank. And sometimes they want one after the
6 leasehold is -- but we just give the landowner
7 whatever they need to get as many TSRs as they
8 need in order to get the leasehold mortgage.

9 MS. GALLAGHER: Hi, my name is Sandy
10 Gallagher. I'm with the BIA Michigan agency.
11 And I think what she might be talking about is
12 the length of time it takes sometimes to get
13 the TSR from the title plan. And we have them
14 problems also, you know. Some we get right
15 away, others it takes months. And they don't
16 have any time frames on the title plan for
17 this.

18 MS. JOHNSON: This is Lisa from Mille
19 Lacs. And just talking about the TSRs again, I
20 was just wondering, you know, at one point what
21 is the criteria on the certified TSRs, 'cause
22 at one point, you know, we were being told
23 that, you know, LTR is only certifying TSRs for
24 mortgages, you know, certifying the TSRs for
25 the allotments, you know, to show consent in

1 ownership. You know, that's really important.
2 And I'm just wondering, you know, do they still
3 have a step? Because the other issue, too, is
4 even on tribal lands where you have a tract,
5 say 80 acres, and you may have, you know,
6 numerous encumbrances on there because you've
7 developed the property, when you're doing a new
8 lease, say on a site, you know, you want to
9 make sure that old encumbrance has been
10 removed. And if we're not getting any kind of
11 a certified TSR on those types of tracts for
12 that purpose, you know, how are we knowing that
13 the stuff is being removed at LTRO and a new
14 lease is being put in its place, because, you
15 know, you don't subdivide an LTRO. Once you
16 have a tract, you know, a tract number, you may
17 have 56 leases on that tract. But at the
18 county, you would get a new tract number for
19 each of those divisions. You don't do that at
20 LTRO. So, you know, it's up to the real estate
21 departments to be able to make sure that those
22 encumbrances are being removed. And, you know,
23 they say they're canceled, but sometimes they
24 are delayed in the removal of it at the title
25 plan.

1 MR. BLACK: I want to ask Mr. Geffre to
2 respond back there.

3 MR. GEFFRE: Yeah, my name is Jim Geffre.
4 I'm the realty officer for Great Plains
5 Regional Office. And the Bureau of Indian
6 Affairs uses a TAAMS title, of course, as the
7 ownership of record, and the LTRO only provides
8 certified TSRs for sales and to awards and on
9 the ownership, and also for mortgages. A TAAMS
10 title is realtime, and as documents are coming
11 in from the 20 agencies and across the southern
12 states, per se, funneling into LTRO, they're
13 reported, they're scanned, and they're put into
14 the system. And -- and I understand that the
15 documents that are coming in, they're done
16 within days in terms of what -- what goes in --
17 as far as the updating goes to TAAMS title. So
18 when your agency, whether it's a Minnesota
19 agency or a Great Lakes Agency or a Michigan
20 agency or one of the Great Plains agencies,
21 goes in there and pushes that button to
22 retrieve a certain -- a TSR, it's real close to
23 being actually what's been recorded and shows
24 at the present time who the owners are and what
25 the encumbrances are.

1 It's not like the old days, where you used
2 to have an information system, ELRIS, we'd to
3 wait to have batch updates, which would take a
4 day or two. So the TAAMS time is realtime,
5 so -- and we're not requiring certified TSRs
6 for leases, you know, and, you know, it is true
7 that on some of the -- on many of our
8 allowances on Great Plains and Midwest region
9 the ownership are, you know, 1,500, 2000
10 owners. And when you get a request for a
11 certified TSR, which requires the chain of
12 title be updated from the last time it was
13 certified, does take time for -- for the sales
14 of new owners, et cetera, on the title and
15 these mortgages.

16 So when we talk about a holdup for TSRs in
17 the leasing process, when we want to go in
18 there and find out who the owners are and what
19 their addresses are, that's a push of the
20 button. At the agency they can provide that to
21 the tribe or the individual landowner. There's
22 also a report in TAAMS title that will show the
23 owners and a loan -- no ID numbers, but it will
24 show the owner and it will also show the
25 address along with that for anybody who's

1 interested in leasing that -- you know, that
2 allotment, in the case of an allotment.

3 In regards to the title plan separating
4 out -- making new tracts for every lease, it
5 will list an encumbrance on a title is what it
6 is. The lease does not divide the ownership.
7 It encumbers the title. It's a contract. It's
8 a contract against the property.

9 So the Bureau of Indian Affairs, what we,
10 you know -- because -- because it's a contract
11 on title, it encumbers title and it does not
12 convey, we do not in BIA separate the title
13 ownership by -- because we have a lease A,
14 lease B, lease C. The only time that we
15 subdivide out an allotment, per se, is if
16 there's a partitionment; then we'll go back to
17 a dash, b dash, c dash, d. Even like mortgage
18 and right-of-ways, there's no premise there.
19 There's no -- there's no legal authority but to
20 divide that ownership up to create new tracts
21 per lease, per grazing permits, sand to gravel,
22 what have you.

23 So I hope that helps a little bit on the
24 TSRs, the explanation of that. You know, it is
25 realtime, and I know they have a -- a good

1 staff there that just pound these records in as
2 they come in every day to TAAMS title to
3 maintain the ones that they can put in the
4 system immediately. So if you have any
5 questions about TAAMS title and that business,
6 TSRs, I would be happy to take those any time
7 during this process. Thank you.

8 MS. DANKS: Just to respond to your
9 question, Lisa, on cancellation, TAAMS also
10 includes leasing. So any lease that we
11 receive, or when it expires, so on and so
12 forth, it's all maintained in TAAMS, so you can
13 get an informational TSR starting at the
14 agency. And I know you already know that.

15 MS. JOHNSON: I mean, I guess what I've
16 been talking about, you know, over the last
17 several years as I get a TSR and I think
18 something should have been -- I tried
19 addressing it earlier, where -- to remove, say,
20 a lease that has expired --

21 MS. DANKS: Uh-hmm.

22 MS. JOHNSON: -- it's still showing up on
23 the TSR. So those are the kind of things. And
24 that might be from the dump from LRIS to TAAMS,
25 and whoever was doing the reconciliation didn't

1 know which stuff needed to come off that is now
2 considered historical on title. But it's
3 just -- you know, when you're going through and
4 you've done this four times and you're still
5 finding stuff that's on there that should be
6 removed, that's -- I guess that's where I'm,
7 you know, wanting to make sure that the
8 encumbrances show on that tract what's actually
9 there.

10 MR. GEFFRE: Jim Geffre. In regard to
11 the -- in the old days when you had LRIS, we
12 had to manually go in the system and expire the
13 leases. And, first of all, in gas leases, the
14 agency at Turtle Mountain would let us know
15 which ones have expired, per se. We have to
16 manually do that. Under the new TAAMS -- under
17 the new TAAMS title, it will automatically go
18 away. When an ag lease expires, it will
19 automatically go away. So if you have any
20 leases that are still showing up on the
21 system -- excuse me, on the TSR, those are from
22 the LRIS days, probably in those outer midsts.
23 You have to understand that there's thousands
24 and thousands of leases coming in, you know,
25 annually into the LTRO, and there may have been

1 for your time today. Your comments are going
2 to really shape these regulations going
3 forward. I just want to -- you guys have
4 picked up these packets with the draft regs,
5 you'll see watermarked on every page the word
6 "draft." And I want to reiterate that these --
7 that this is a draft form right now, and it's
8 very easy for us to incorporate many of the
9 changes that are recommended when we circle
10 back and decide that, you know, that's a course
11 that we can take. So this -- this discussion
12 is very valuable and we've heard a lot of very
13 informative and good comments that will
14 hopefully help improve these regs going
15 forward.

16 So with that, I guess I will just open the
17 floor back up to folks if you want -- have any
18 new comments on the draft leasing regulations.
19 Nothing? Everybody spoke their peace this
20 morning, it sounds like?

21 MR. BLACK: Have you told them where to
22 send the comments and stuff?

23 MR. NEUBERGER: Yeah, I think you saw in
24 the PowerPoint, if you have written comments
25 that you want to submit to us, electronic copy

1 is best at -- you can email to
2 consultation@bia.gov. Of course, you can
3 always -- you can always mail a hard copy as
4 well to principal Deputy Assistant Secretary
5 Laverdure.

6 I see a comment or a question here in the
7 back.

8 MR. YANKTON: Justin Yankton from Square
9 Lake Nation. Just one other question on the
10 wind and solar resource permits. There was a
11 checklist that it says that you would be able
12 to provide guidance, such as checklists, for
13 provisions. Where could we -- is there a Web
14 site or something that we could go and get this
15 checklist so that we know we're following the
16 regulations?

17 MS. DANKS: Currently they're processed
18 under the business lease section in the current
19 regulations at 25 CFR, 162, Subpart F. But
20 these -- these proposed regulations, they're
21 trying to streamline them so they're more
22 specific to wind energy. So now, currently,
23 you would process a wind energy lease under 25
24 CFR 162, Subpart F. And so we do have a
25 business lease handbook which has a sample.

1 Now, it's just a sample. It has a checklist in
2 there as a guide, and then there is also a
3 sample lease. But the Division of Energy and
4 Minerals out of Denver, we have a -- a
5 representative here from there, but they also
6 have a model, model lease -- or, no, I guess
7 it's a sample, sample wind energy lease that
8 you can get out of -- is he still here? Are
9 you still here?

10 UNIDENTIFIED VOICE: Yup. The Wind Atlas.

11 MS. DANKS: And we have a copy of it, but
12 you can get in contact with him and they can
13 probably send you a pdf copy. So that's what
14 we have available now under the current
15 regulations. We would have to, you know,
16 redraft our handbook and our -- anything after
17 these regulations are promulgated.

18 MR. NEWLAND: I know that other parts of
19 the regulations reference sample leases as
20 well, and, you know, I don't believe that those
21 are incorporated in the draft, the rule. But,
22 you know, that will be -- as these get moved
23 further down the court, we're going to take a
24 look at putting those materials together as
25 well.

1 MS. JOHNSON: Under what must be included
2 in the provisions, there's a section under six,
3 the lease -- lessee indemnifies the United
4 States and Indian landowners against all
5 liabilities or costs relating to the use,
6 handling, treatment, removal, storage,
7 transportation or disposal of hazardous
8 materials. Is this complying with the
9 responsible party under CERCLA, or has that
10 been looked at in the definition of who a
11 responsible party is for environmental law?

12 MS. DANKS: I don't really know the answer
13 to that one.

14 MR. NEWLAND: You know, I think we're
15 going to have to get back to you on that
16 question. Maybe if you want to touch base with
17 me afterwards, because I know that there are
18 issues -- you know, we deal a lot with issues
19 related to the CERCLA, so let's touch base
20 after.

21 Well, I'll look around for one last set of
22 comments. Oh, we got one here.

23 MR. BROWN: Good afternoon. My name is
24 Darwin Brown, and I'm vice chair of Spirit Lake
25 Tribe. We have a few of our council here, and

1 this is the first time I've seen the book, so
2 we're going to take this back and review it
3 with our council and we will submit, like you
4 said, online our questions, concerns, but a lot
5 of it does look good. But if we have any other
6 issues or concerns, we will get them to you
7 guys.

8 MR. NEWLAND: Okay.

9 MR. BROWN: Okay? Thank you.

10 MR. NEWLAND: All right. With that, I
11 think that -- you know, I think we'll look at
12 closing up shop here on this consultation. I
13 thought maybe we would get some new folks after
14 lunch, but it looks like everybody got a bite
15 to eat and stuck around.

16 I know that today is opening day of
17 baseball, and I'm crossing my fingers that the
18 Tigers win the Central Division this year and
19 get past those darn Twins. But, in any event,
20 I again want to thank everybody for -- on
21 behalf of the Assistant Secretary for coming
22 out and participating in this consultation
23 session. I want to thank especially Diane and
24 her team, Tammy and Kayla, also Director Black
25 for taking the time. I know he was up on

1 Capitol Hill yesterday with the budget
2 hearings, and he flew out late -- late night
3 last night because he wanted to be here; and
4 Liz Appel from our Office of Regulatory Affairs
5 that do a terrific job on these sort of things,
6 but most of all you guys for coming out and
7 sharing your thoughts with us today.

8 I'll be -- you know, I'll be sticking
9 around for a little bit if anyone wants to come
10 up and ask questions about other matters that
11 the Assistant Secretary's Office is handling,
12 and look forward to reading your written
13 comments as they come in. Do you want to say
14 anything?

15 MR. BLACK: Nope, pretty much echo the
16 same things.

17 MR. NEWLAND: So thank you all very much,
18 and that will conclude our consultation session
19 today on the leasing regulations.

20 (The session ended at 1:25 p.m.)

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1 REPORTER'S CERTIFICATE
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4

5 I, Lori Sorenson, a Registered Professional
6 Reporter in the State of Minnesota, do hereby certify
7 that the foregoing pages of typewritten material
8 constitutes an accurate verbatim record transcribed from
9 the stenotype notes taken by me of the proceedings
10 aforementioned before the tribal leaders, tribal council
11 members, tribal representatives and BIA staff on the
12 31st day of March 2011, at the times and place specified.
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17 DATED: April 13, 2011
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22 Lori Sorenson
23 Registered Professional Reporter
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