

1 NAHASDA REAUTHORIZATION ACT OF 2008:

2 NEGOTIATED RULEMAKING MEETING

3 Scottsdale, Arizona

4 March 9, 2010

5 8:11 a.m.

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20 REPORTED BY:

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22 Cindy Bachman

23 Certified Reporter No. 50763
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1 NAHASDA REAUTHORIZATION ACT OF 2008:

2 NEGOTIATED RULEMAKING MEETING, taken on March 9, 2010,
3 commencing at 8:11 a.m. at DOUBLETREE PARADISE VALLEY
4 RESORT, 5401 North Scottsdale Road, Conference Center,
5 Scottsdale, Arizona, before CINDY BACHMAN, an Arizona
6 Certified Reporter, in and for the County of Maricopa,
7 State of Arizona.

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9 COMMITTEE MEMBERS PRESENT:

10 Steven Angasan

11 King Salmon Tribe

12 Carol Gore, President/CEO

13 Cook Inlet Housing Authority

14 Blake Kazama, President

15 Tlingit-Haida Regional Housing Authority

16 Retha Herne, Executive Director

17 Akwesasne Housing Authority

18 Ray DePerry, Housing Director

19 Red Cliff Chippewa Housing Authority

20 Robert Durant, Executive Director

21 White Earth Reservation Housing Authority

22 Leon Jacobs

23 Lumbee Tribe of North Carolina

24 Susan Wicker, Executive Housing Director

25 Poarch Band of Creek Indians

1 Jason Adams, Executive Director
Salish Kootenai Housing Authority

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3 Lafe Haugen, Executive Director
Northern Cheyenne Tribal Housing Authority

4 Rebecca Phelps, Development Specialist
Turtle Mountain Housing Authority

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6 S. Jack Sawyers
Paiute Indian Tribe of Utah

7 Marguarite Becenti, Member, Board of Commissioners
Umatilla Reservation Housing Authority

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9 The Honorable Henry Cagey, Chairman
Lummi Nation

10 Larry Coyle, Executive Director
Cowlitz Indian Tribal Housing

11

12 Karin Foster, Legal Counsel
Yakama Nation Housing Authority

13 Marvin Jones, Manager, Housing Oversight
Cherokee Nation

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15 Thomas McGeisey, Executive Director
Seminole Nation Housing Authority

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18 Shawna Pickup, Housing Director/Secretary
Eastern Shawnee Tribe of Oklahoma

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21 Russell Sossamon, Executive Director
Choctaw Nation Housing Authority

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24 Ervin Keeswood, Member
Navajo Housing Authority Board of Commissioners

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Judith Marasco, Executive Director

Yurok Indian Housing Authority

Sharol McDade

Fallon Paiute-Shoshone Tribe

Darlene Tooley, Executive Director

Northern Circle Indian Housing Authority

Sandra B. Henriquez

Assistant Secretary for Public and Indian Housing

Rodger J. Boyd

Deputy Assistant Secretary for Native American Programs

P R O C E E D I N G S

MR. BOYD: We have a couple of things we need to do to open up the meeting, and we would like to start by posting the colors, please.

(Posting the colors was performed.)

MR. MASSEY: My name is Dallas Massey, and I'm the executive director of White Mountain Apache Tribe. I've also been the tribal chairman for White Mountain Apache Tribe for eight years.

This morning I would like to introduce Mr. Rodger Boyd, HUD Deputy Secretary Assistant since 2002. He served as a former division director of the Navajo Nation, the economic development and housing. He was involved from the beginning of the leveraging of funds, such as tax credit, community buildings, community developments and intermediaries, development on simple land.

He was also involved at the federal level with the U.S. Treasury and has spent most of his career in promoting CDFI creation and economic development.

He brought to the Indian Country vast finances and resources to enable tribes to affect economic development. Most of all, the Director has shown a leadership in Indian Country in the most difficult

1 years in the housing industry.

2 Today we honor him, Mr. Rodger Boyd.

3 MALE SPEAKER: This song says when life becomes
4 difficult, I always go back to the traditions that my
5 mother and father taught me, my ena and ahta
6 (phonetic). So this song is for this man that has done
7 good deeds. We honor him for his work. We were asked
8 to sing the following songs for you.

9 (Pause in proceedings for music.)

10 MR. BOYD: Thank you. I don't think I could
11 have received a better honor than a song from our
12 brothers. Thank you very much. I want to thank them.
13 They are the Phoenix Yatay (phonetic) singers.

14 I would like to also thank the color guard:
15 Jim Kenoyer, Yankton Sioux; Eldon Lewis, Salt River
16 Pima, also a veteran Marine. Jim is a veteran of the
17 U.S. Army. Tony White, Oglala, veteran of the
18 U.S. Navy; and Michael Smith, Kanet Tribe, veteran of
19 the U.S. Marine Corps.

20 At this time, I would like to ask
21 Raymond DePerry to give the introduction prayer this
22 morning. Thank you.

23 (Introduction prayer was performed by
24 Mr. DePerry.)

25 MR. BOYD: Thanks, Ray.

1 As many of you know, Ray was the former
2 chairman of the Red Cliff Tribe and is the current
3 executive director of the housing authority, and
4 certainly a great leader within our community.

5 Thank you.

6 I was talking to Debra Lance a little while
7 ago, and she was beaming, because she said, "You know,
8 I haven't seen a lot of these old friends for a very
9 long time." And I share that with her, and that
10 certainly is the way I think that my staff, both at the
11 national level and at the regional level, view our
12 relationship. It's that friendship and camaraderie,
13 and with the understanding that we're all working for a
14 very, very common goal, and that's to provide good,
15 affordable housing for our people throughout the
16 country.

17 So we're coming together like this every so
18 often, forming this committee with a lot of assistance
19 and with a lot of nominations. As usual, what we've
20 tried to do is organize this committee to be a good
21 cross-representation throughout the country of small
22 tribes, medium-sized tribes, and large tribes.

23 So I take this responsibility of being on this
24 community, sharing with you our goals and our
25 aspirations, and carrying it forward just to do better.

1 Like families and like friends, there will be
2 times where we don't agree. And, fortunately, there
3 will be, hopefully, more times that we do agree.

4 But, again, it's like these competitors, I
5 think, who play sports. They play hard, and at the end
6 of the game, they shake hands. And depending on what
7 you like to do after the game, drink a beer, have a
8 glass of wine, have dinner, whatever the case is. And
9 I find that very reassuring in our community because
10 that's just the way we are.

11 So I want to welcome you. I want to thank you.
12 There are a lot of good familiar faces and friends
13 here, both on the committee as well as in the audience.
14 There are some new members on the committee, and
15 especially the elected leaders that are with us today
16 serving on this committee, I especially want to welcome
17 you and to thank you for being with us.

18 Some of you, I think, have experienced a
19 Neg-Reg before and have participated in this process
20 and have certainly demonstrated your leadership, both
21 on the committee in the past and in your own
22 communities. And I do thank you. We'll have, in a few
23 minutes, an introduction for all of you.

24 Assistant Secretary Henriquez will be here
25 later this morning. She said to me the other day, she

1 said, "I've really got a dilemma." And she meant it
2 from the heart. She said, "What do I do? Do I go to a
3 meeting where I've been invited by the president or do
4 I go to the committee and meet with the committee?"

5 And so I said, "Well, you know, it's hard to
6 turn down your boss." So she will be with us later
7 this morning. She'll be coming in later this morning
8 from Washington. Then we'll have opening remarks right
9 after lunch, and she will be with us the rest of the
10 working session, on hand.

11 As the dates get established for future Neg-Reg
12 meetings, it'll be very helpful because we'll make sure
13 that it's on her calendar. And she's looking forward
14 to being with you and all of us in these negotiations.

15 Every time we've met -- and I'm probably still
16 a young guy at this process. This is the second
17 negotiated rulemaking that I've participated in. And
18 to help the committee and to work forward in
19 accomplishing our goals for this particular negotiated
20 rulemaking, we've often -- in the past, we've had
21 independent facilitators that sit with us and work with
22 us, get to know us.

23 And at this time, I would like to introduce the
24 facilitators that will assist us. And, of course, as
25 we move through this process, I've encouraged them to

1 get to know you better and for us to get to know them
2 better. They don't come to us without an experience in
3 working in Indian Country. They have done negotiated
4 rulemaking for the BIA and for Indian Health Service.

5 They, I think, are very familiar and sensitive
6 to our communities and to us as a people. So without
7 any other ado, I would like to introduce Jan Jung-Min
8 and Erin Spalding. (Applause.)

9 I would like them to at least -- and if you
10 look at our agenda, the agenda for today and tomorrow
11 is very heavy on the administrative side. We are going
12 to spend a bit of time, you know, getting the committee
13 organized or helping the committee get organized and to
14 eventually come -- I hope that we can get everything
15 done in the next two days administratively so that in
16 the coming -- and also look at coming updates for
17 future Neg-Reg meetings, because I know we're all busy,
18 and what we'd like to do is plan ahead as well as
19 possible.

20 And certainly this afternoon, you'll see that
21 we want to establish the charter and the protocols as
22 well. If we could get that accomplished today, I think
23 we would really be in a good position tomorrow.
24 Certainly we want to talk about the amendments and move
25 forward. So I would appreciate it if you could work

1 with our facilitators -- your facilitators and get a
2 level of comfort and to help make this committee move
3 forward.

4 Again, thank you, all of you. I know it's
5 going to take up a considerable amount of your time for
6 these meetings and in between the meetings. It's just
7 something that we absolutely have to do. So without
8 any hesitation, I would like to have Jan take over.

9 THE FACILITATOR: Thank you for the
10 introduction, Rodger. And thank you for the very nice
11 invocation. It gave us the right feeling -- spirit of
12 being here.

13 I'd like to thank HUD for the honor of asking
14 us to, again, work as a facilitator in this setting as
15 we have in the past with the self-determination and the
16 638 regs. Some of you know what those are all about.
17 So Erin and I are both humbled and feel very honored to
18 work with this group.

19 As facilitators, as mediators, we come from the
20 Federal Mediation and Conciliation Service, which is an
21 independent agency, a government agency that has no
22 affiliation with any of the other federal agencies and
23 has been around for 60 years. It's a neutral agency,
24 and we work a lot to try to stop strikes from
25 happening.

1 Our experience is really to work as neutrals
2 and to work as assistants and support to the committee.
3 So anything that you have a problem with process-wise,
4 or if your microphones don't work, anything that you
5 have a problem with, please let us know. We're here to
6 assist the committee do its work.

7 We do that because we have some experience in
8 the process of problem solving, the process of
9 multi-party negotiations. But we're not the content
10 experts. The content experts are sitting around this
11 table. The years of experience that you have in
12 knowing the ins and outs of housing and loans, all
13 these kinds of things, and your relationship with the
14 government, we don't even pretend to know half -- or
15 even a piece of that. But our job is to help you do
16 your jobs to move the process along.

17 I think a very brief introduction for ourselves
18 is that we are here as your facilitators. We serve at
19 the will of the committee, so you have to let us know
20 if anything is going wrong or if we're not doing the
21 job right. Please let us know before you fire us.
22 Give us a chance to repair whatever problem you may
23 have.

24 We all have our bosses, and you are our boss.
25 And we know, as mediators, we cannot be effective if

1 all the parties don't accept and work with us or want
2 to work with us.

3 So it's our job to be impartial. But my father
4 always told me there's no such thing as an impartial
5 person. He said, "You know, you are Korean-American.
6 You were raised in San Francisco. You were with the
7 union for a while. You were with the government. How
8 can you be impartial?"

9 So I said, "Okay, Dad. What's your definition
10 of what I should be doing?"

11 He said, "Well, you should really try to be a
12 trusted friend to both sides, to all sides. That's
13 what your job is." And I like that. I think that's
14 kind of how I see my job, and I think Erin sees it the
15 same way.

16 So, again, we're very pleased to be working in
17 this situation. We are going to ask you now if you
18 could go around the room and introduce yourselves. But
19 let me first just give Erin an opportunity to say a few
20 words.

21 MS. SPALDING: I don't really -- Jan pretty
22 much said it all for me. I just want to reiterate, the
23 more information you give us, the better we can do our
24 job, and that in the end, your success is our success.

25 So please, again, let us know whatever we can

1 do to help you out or assist you in any way. That's
2 what we're here for, and we're honored to be here.
3 Thank you.

4 THE FACILITATOR: Among the distinguished
5 representatives around the table, we have people who
6 have been here in the past and have worked and have a
7 lot of experience working in the 1997 and the 2003
8 negotiations. We also have people who are brand new.

9 One of the more senior persons told me, "Well,
10 it good that we have new people here because they don't
11 have any baggage." So it's always good to have a
12 combination of old and young people.

13 But that also means that we have to be more
14 patient with those who are new to the table, and be
15 patient with their questions and give them a chance to
16 catch up and to become involved.

17 But as we work in this consensus-based
18 approach, we also know nobody is more important than
19 anybody else. Everybody has an equal opportunity, an
20 equal vote, an equal say. The most successful
21 negotiations that I've been a part of have been those
22 where everybody respects the right of everybody else to
23 have an opinion.

24 You don't have to agree with them, but to have
25 an opinion, and to make sure that everybody's opinions

1 are heard so that what we produce at the end of these
2 negotiations is something that's lovely and complex and
3 contains everybody's thoughts and everybody's input so
4 that everybody can support it. So that's a very
5 important task.

6 We've spoken enough about ourselves. Maybe if
7 I could ask Ervin to start, we can go around and please
8 introduce yourselves and maybe just make a mention of
9 what your expectations are in these negotiations.

10 MR. KEESWOOD: Good morning. I'm
11 Ervin Kesswood. I'm a member of the Navajo Nation.
12 I've been on the Navajo Nation Council. This is my
13 16th year on the Council. I'm also a board member of
14 the Navajo Housing Authority.

15 Before I go any further, I'd like to introduce
16 an individual that's here with us who is the speaker of
17 the Navajo Nation Council, Mr. Lawrence Morgan. Please
18 welcome Mr. Morgan. (Applause.)

19 Also along with the speaker, we have NHA staff.
20 If you would please stand up. (Applause.) They're my
21 support and also other regional members that are here.
22 I'd like to thank you all for being here.

23 As far as expectations, there's certainly an
24 interest in the Navajo Nation and the region that we
25 deal with this matter with true transparency. We also

1 would ask that members of the audience have time to
2 participate.

3 Also we're seeking for those of us that may not
4 be able to make it to all the meeting, that we deal
5 with the issue of alternates, that alternates be
6 allowed to attend these meetings. And that's not very
7 much to ask at this point in time, but I'll be more
8 demanding in the future. Thank you.

9 THE FACILITATOR: By the way, let me give you
10 some instructions on this. As each person talks, you
11 can press the button and that light will go on. That
12 means your mic is on. And when you've finished
13 talking, push it again, and the next person can speak.
14 Thank you.

15 MS. HERNE: Good morning, everybody. My name
16 is Retha Herne from the Akwesasne Housing Authority.
17 I'm a newbie and not really sure what to expect here.
18 But, hopefully, I'll bring some sort of expertise on my
19 level.

20 I've basically been involved just on the local
21 level in my housing authority. I've never been on any
22 national committees or anything like that, so this is
23 pretty overwhelming to me for my first time, but I'm
24 definitely honored to be here.

25 One of the first things you guys could do is

1 maybe get my name spelled right on my name thing.

2 Thank you.

3 But I do look forward to meeting everybody here
4 on the committee. I'm also a representative of the
5 USHA Housing Committee, so I was nominated and accepted
6 this post. Hopefully I'll learn a lot, and I'll also,
7 hopefully, bring something to the table. So I
8 appreciate being here. Thank you.

9 MS. WICKER: Good morning. I'm Susan Wicker.
10 I'm a member of the Poarch Band of Creek Indians from
11 Alabama, where I serve as executive director for our
12 tribe. I have been a past tribal council member and a
13 past board member for our tribe. I have served on the
14 negotiating rulemaking committee. In 1997, I served as
15 an alternative for the formula committee.

16 And my expectation is to come out with
17 something that we all can work with, that we're all
18 happy with, and that will help our tribal members.
19 Thank you.

20 MS. TOOLEY: Good morning. My name is
21 Darlene Tooley, and I'm the executive director at
22 Northern Circle Indian Housing Authority. We're an
23 umbrella housing authority for seven small tribes in
24 northern California. I, too, have served on the
25 previous Neg-Reg committees. And, hopefully, I'm not

1 here with too much baggage, Jan.

2 One of my colleagues this morning said, "We'll
3 probably get along because we're not talking about
4 money." So I think that was pretty accurate.

5 My expectation is that, you know, we do the
6 work we're supposed to do, and we end up with a product
7 that I'm not sure we'll all be happy with, but that we
8 can use to implement the service that we're supposed to
9 be providing, which is housing for the people we work
10 for. Thank you.

11 MS. PHELPS: Good morning. I'm Rebecca Phelps.
12 I'm an enrolled member of Turtle Mountain Band of
13 Chippewa in North Dakota. I've been with housing for
14 about 18 years. I look around the table, and I see a
15 lot of people that have been here longer than me, so
16 I'm really honored to be here.

17 I think what I expect from the committee is
18 that I'm going to learn a lot and be able to make some
19 good informed decisions and that we can be productive.
20 And we will have good outcomes because, like I said,
21 looking around at the committee members, I think we
22 have a good committee that will be working for you.
23 Thank you.

24 MR. JACOBS: Good morning. My name is
25 Leon Jacobs. I'm a member of the Lumbee Tribe from

1 North Carolina. But if you notice on the list, it says
2 Connecticut because I did retire in Connecticut.

3 I think that Rodger and the HUD group decided
4 they needed an elder on the committee. I just turned
5 71 this year, so I have been around, having worked both
6 sides, spending a lot of time with HUD, and then as a
7 tribal administrator for the Mashantucket Pequot Tribe,
8 as well as the Lumbee Tribe in North Carolina.

9 I tried to retire twice and decided that
10 retirement is not for me. There's a lot of needs out
11 there in Indian Country, and if I can be helpful in
12 some way to help meet some of those needs, that's what
13 my goal really is.

14 As far as the expectations is to work
15 diligently, collaborate a lot. And let's make sure
16 that we keep this program moving forward in a positive
17 way, because there's still a lot of needs out there in
18 Indian Country, and we guys can help with that
19 situation. Thank you.

20 MS. DADE: Good morning, everyone. I am
21 Sharol McDade. I am the administrative director for
22 the Fallon Paiute-Shoshone Tribe. I am humbled and
23 honored to represent Chairman Alvin Moyle, who is the
24 chairman of the business council with the
25 Fallon Paiute-Shoshone Tribe.

1 I've been getting looks around the table, like,
2 you're not Chairman Moyle. So I just wanted to
3 reassure you that I am not, but he will be here later
4 on today. So I will use Rodger's analogy of, do you do
5 what the boss says, or do you sit in the crowd? So I'm
6 here representing the boss.

7 As far as expectations go, this is truly an
8 honor just to be here with all of you, because there is
9 so much expertise around the table. And Leon putting
10 his age out there just goes to show how much expertise
11 there really is.

12 So for me, I'm just interested in collaborative
13 teamwork; learning from all of you; and then, of
14 course, garnering the input from all the people in the
15 crowd. I think it's extremely important to understand
16 each one of the regions and get perspectives from all
17 levels, since we come from diverse and unique history
18 and customs and culture. Thank you.

19 MS. PICKUP: My name is Shawna Pickup. I'm
20 with the Eastern Shawnee Tribe of Oklahoma. I'm their
21 housing director. I represent seven programs for the
22 tribe. I sit on the tribal council as a secretary, so
23 I am an elected official.

24 Our housing authority is very tiny, so I'm just
25 happy to be here so that the smaller housing

1 authorities are involved and get a chance to have a say
2 in how things are going to come out.

3 So I expect that working with everybody, that
4 it's a fair product for all the tribes, not just the
5 bigger ones that receive larger funds or have more
6 houses. And I'm just very honored to be here.

7 MS. GORE: Good morning. My name is
8 Carol Gore, and I represent Cook Inlet Housing out of
9 Anchorage, Alaska. I was also nominated by two
10 self-determined tribes in our region, very small
11 tribes: the native village of Tyonek and the village of
12 Salamantah (phonetic.) I'm of Aleut descent, and it's
13 really a privilege to be here.

14 This is my second time back. I was here for
15 the formula negotiation. I'm expecting a more peaceful
16 process. It's much easier to sit at a table where
17 we're negotiating things other than money. It's good
18 to see some good old friends back.

19 I take a lot of my lessons from my mom, who is
20 80. When she asked me why I am here, I said, "Well,
21 I'm here for negotiated rulemaking."

22 She said, "What is that?"

23 I said, "Well, we all sat around, and we talk
24 about the rules, and we try to make them better."

25 She says, "Well, it sounds like you need a lot

1 of good listening in the room."

2 So that's really my expectation, that we would
3 be listening to each other; we would be learning from
4 each other; and at the end, we would have a better
5 result for our people and an easier program to
6 implement. So those are my goals. Thank you.

7 MR. KAZAMA: My name is Blake Kazama. I'm with
8 Tlingit-Haida Regional Housing Authority. I'm the
9 president and CEO. I am Raven Coho. My Tlingit name
10 is Siou (phonetic).

11 I want to introduce my board chair,
12 Ala Bennett, who also flew down with us, so here she
13 is. (Applause.)

14 I also wanted to, I guess, understand why I
15 have so many lawyers behind me. They're kind of in a
16 row. They look sort of -- I don't know -- hungry or
17 something. (Laughter.)

18 But I guess my reason for sitting here at the
19 table is Alaska has 229 tribes, and I want to make sure
20 their voices are heard here at the table as well. You
21 know, many of our tribes are isolated. They're small
22 tribes, and often they deal with such unique
23 circumstances. I think in all fairness, I need to be
24 here and represent them as well. Thank you.

25 MR. SOSSAMON: My name is Russell Sossamon.

1 I'm a member of the Choctaw Nation of Oklahoma. I
2 serve as the Choctaw Nation of Oklahoma's Housing
3 Authority Director. I also serve our regional
4 association and our national association. I'm
5 delighted to participate as a member in this group.

6 Two of my expectations are to do what my boss
7 expects, which is our tribal members back home, and to
8 engage with this group to learn; to do the hard work;
9 to test one another's assumptions so that we can create
10 a framework of reference, of guiding principles, that's
11 flexible, that regulates the implementation of the
12 legislation in a way that is responsive to each of the
13 unique and individual tribes and that directly impacts
14 their ability to provide the services of their tribal
15 members. So I just look forward to it, and thank you.

16 MR. McGEISEY: Hello. My name is Tom McGeisey.
17 I'm a member of the Seminole Nation of Oklahoma.
18 I serve as the executive director for the housing
19 authority. I feel privileged to be here. I'm also
20 new. This is my first time. It's going to be, for me,
21 a tremendous learning experience.

22 I am also looking forward to all the expertise
23 that's here at the table, to hear their knowledge, gain
24 from them, with the anticipation of taking back a
25 quality product to our people, to our housing

1 authorities, no matter the size. I'm looking forward
2 to all the conversations with HUD. Thank you.

3 MR. SAWYERS: Jack Sawyers, Utah Paiute
4 Housing. First of all, I'd like to introduce our
5 executive director. She's way back in the back,
6 Jesse Lagust (phonetic).

7 Jesse, get back home and do all that work you
8 told me you had to do. Hell, that felt good telling
9 her what to do. (Laughter.)

10 I'm so happy to be here with my father
11 (indicating to Mr. Coyle). (Laughter.) I notice that
12 Dave and Jim were behind me, and I'd like to say a word
13 about two honest and intelligent lawyers, but I don't
14 know any.

15 I'm from a very small housing authority. As a
16 matter of fact, next Tuesday, we're celebrating our
17 third anniversary of our ZIP code, so we're pretty
18 excited. (Laughter.) I built our authority from the
19 ground up. We're not large, but we've got two houses
20 coming on line next week, which will double our housing
21 stock, so we're excited. (Laughter.)

22 What to expect out of this organization? I got
23 nothing last time. I'm not sure if I expect anything.
24 That's not true. Whatever Russell said is what I
25 really believe. Thank you.

1 MR. COYLE: How can you follow something like
2 that? Larry Coyle. I'm executive director of the
3 Cowlitz Indian Tribal Housing up in Washington State.
4 I'm also on the tribal council. I've been a member of
5 them for -- since they've been recognized. Well, a
6 couple years before that.

7 Between Jack -- the other Jack and myself --
8 yeah, we've got a kid over here. We've got over
9 150 years between us two right here, so divide that by
10 two and see what you come up with.

11 I started out the Cowlitz tribal housing in '02
12 when we got recognized. We've went from ground zero to
13 where we're at now. We just finished a \$5 million
14 housing renovation of Catholic housing that we're kind
15 of proud of. And we went a long ways in the nine years
16 that we've been working on it now, so we're kind of
17 proud.

18 And these gentlemen behind me, I've got one
19 back there, too. We've had to throw a peanut back to
20 them every once in a while.

21 We're looking forward to our little session
22 here. I think we'll get a lot better items attended to
23 than we did on the allocation of money. That's why
24 Jack and me are still sitting side-by-side. Before, we
25 were on opposite tables. So here's hoping, and thank

1 you.

2 MS. BECENTI: My name is Marguerite Becenti.
3 I'm representing the Confederated Tribes of the
4 Umatilla Indian Reservation. While I'm in Pendleton,
5 I sit on the board of commissioners for our housing
6 authority. I have brought some support staff,
7 Brook Kristovich. He is also the chair of the
8 Northwest Indian Housing Association. This is my first
9 Neg-Reg experience, and I hope it to be a positive one.

10 As of now, I don't have any expectations, but
11 that may change at the end of the day. Good morning,
12 everybody.

13 MR. JONES: Marvin Jones, Cherokee Nation from
14 Oklahoma. (Indiscernible - speaker not using
15 microphone.)

16 THE FACILIATOR: Do these work different?

17 Excuse me, Marvin. Some of these microphones
18 don't have buttons to push. Do they work different
19 than the others?

20 (Indiscernible - speaker not using microphone.)

21 THE FACILIATOR: Oh, push. Okay. We'll need
22 some help here.

23 Marvin, why don't you --

24 MR. JONES: Marvin Jones, Cherokee Nation,
25 Oklahoma. If I start speaking too fast, let me know.

1 (Laughter.) I expect that we approve the program as
2 quickly as possible through tribal sovereignty.

3 MR. ADAMS: Good morning, everyone. My name is
4 Jason Adams. I'm the executive director for the Salish
5 Kootenai Housing Authority in western Montana. I come
6 here today to welcome you all to this opportunity for
7 us to meet and gather here to walk through this process
8 together.

9 My expectation for this committee is that I
10 have the opportunity to help you understand the area
11 that I'm from; the conditions that I represent in my
12 area, not only on my own reservation, but within the
13 regions that I represent also. We have some severe
14 poverty situations in our area, and so the housing
15 programs are very critical to the tribes in our area
16 and to my own tribe.

17 I hope to be able to listen and understand all
18 of you and the situations that you represent back in
19 your homes, your tribes, your people. Not only in
20 housing but, in general, who you are as a people.

21 So I thank you for this opportunity to be here,
22 to work together. I look forward to the next several
23 months as we work through this process. Thank you.

24 MR. HAUGEN: Good morning, everyone. My name
25 is Lafe Haugen. I'm the executive director for the

1 Northern Cheyenne Tribal Housing Authority in
2 Lame Deer, Montana, representing the Northern Plains
3 Region.

4 I wanted to start off by thanking the drum
5 group and also Ray for the nice prayer.

6 Thank you, Ray.

7 You know, we were talking about the elders at
8 this table. I think I'm the youngest person here,
9 might even be in the room. I just celebrated my 25th
10 birthday the other day. I am a newbie as well. This
11 is my first negotiated rulemaking committee, so I'm
12 very honored and humbled to be here. I see a lot of
13 friends that I've met along the way and friends that I
14 will meet, new friends.

15 One of my expectations is -- and this goes out
16 to Rodger. Rodger, you said we were going to be in an
17 area that had nice weather. Were you just teasing or
18 what's the deal? (Laughter.) Anyway, I pulled in on
19 Sunday, and I thought we were pulling into Seattle with
20 all the rain.

21 Anyhow, I'm very happy to be here, and I'm just
22 excited. I don't know really what to expect, but
23 whatever comes my way, I'm sure I'll be able to work
24 along with all of you. As I said, I'm very happy to be
25 here, so thank you.

1 MR. DePERRY: Good morning again. My name is
2 Ray DePerry. I am the housing executive director for
3 the Red Cliff Housing Authority for the Red Cliff Band
4 of Lake Superior Chippewa in Wisconsin.

5 I come to this table as an elected official for
6 my tribal government as well, having been honored in
7 the past to serve as its chairperson for four years.
8 And also at one point in my life, to also have been a
9 tribal attorney for them, assisting more on in-house
10 legal issues, so to speak.

11 I also, like so many others -- well, some of
12 the others -- I'm a rookie. This is my first time in
13 rulemaking committee work. I can only hope that with
14 the knowledge and the expertise -- I'm sure that I've
15 gained some over the course of my years in working with
16 tribal communities -- that I am able to contribute to
17 making this committee and its purpose one that is
18 meaningful and will have some impact on our communities
19 back home.

20 No matter what the size of our areas that we
21 may come from, pain is pain; neglect is neglect; need
22 is need, no matter from which area we come from.

23 But, as I said earlier in my thoughts and in my
24 prayers, that the creator must have saw something in us
25 to bring us to this table, regardless of the size or

1 the acreage or the areas from which we come. This has
2 brought us together, to put the mind together so that
3 when all is said and done, when this committee's life
4 has come to an end, it will have one voice out there
5 that is going to help those of us who are called upon
6 to serve.

7 I'd like to also mention the fact that there
8 are three of us sitting here who also serve on the
9 AMERIND Board of Directors. Susan as the secretary;
10 Lafe here as one of the board members; and I myself
11 from my region, Region II of the Great Lakes Region,
12 to serve as vice chairperson for the board. The work
13 that we do here today will obviously have such
14 far-ranging effects on any aspect of housing throughout
15 Indian Country.

16 What my expectations are that being such a new
17 person to this whole process, I hope to be able to
18 leave here a better person, a bit more informed than
19 when I first got here.

20 And in that particular way, I also hope that
21 I'll be able to give back a little bit to the group,
22 something that we can build on or something that will,
23 in some small way, help us to reach a greater good and
24 a more common cause for why we're sitting here.

25 So it's an honor to be amongst all of you;

1 those of you who have been here before on committees
2 and those who are new. I look forward to our work.
3 Thank you.

4 MR. CAGEY: My name is Henry Cagey, chairman of
5 the Lummi Nation up in Washington State. I want to
6 introduce some of our people, too. We have our housing
7 director, Diane Perry, back here. She's doing a heck
8 of a job with our housing projects, and she's building
9 some apartments for us and doing a very good job with
10 the youth-build program. Also we've got our chairman
11 of the housing committee, Jacqueline Nelson.

12 (Applause.)

13 I guess I'm an oldie to the process. I still
14 see my name on the charter in 1997. That was a
15 different time then. Again, it was '97; it was a
16 different era and a different feeling that was
17 happening with the tribes and with HUD.

18 The process has to be tribally driven. One of
19 the things we want to create and ensure is that this
20 process is going to be tribally driven, and it's
21 government-to-government.

22 Again, the expectations that I have on this
23 process and the committees; we are a committee of
24 tribes representing our areas. We are people that
25 represent our housing authorities and our governments.

1 And, again, the expectation is, this is
2 negotiated rulemaking. It's not a compromise. It's
3 really what we want out of this process. And what we
4 expect out of it is decisions, meaning that we have to
5 have the decision people here at the table when the
6 time comes to decide.

7 You know, I was really frustrated with the
8 first process as we began, in that we had the HUD
9 officials who couldn't make a decision, where the
10 tribes actually decided. So we hope Rodger has the
11 authority to make the decision with us. I respect
12 Rodger. I've known Rodger from when he started.

13 And, again, we are very proud of HUD because I
14 think Rodger's been doing a heck of a job for us. He's
15 one of the few people back in DC that has experience
16 and knowledge within the administration. So, again,
17 we've got a new administration; we've got a new
18 feeling. But Rodger has been able to stick through the
19 process and has represented Indian Country and Indian
20 housing.

21 So, again, I want to thank Rodger for all his
22 work that he's done for Indian Country, and I'm looking
23 forward to a good process to begin. Thank you.

24 MR. DURANT: Good morning, everybody. I feel
25 real proud and honored to be with everyone that's in

1 this room. My name is Robert Durant. I'm the
2 executive director for the White Earth Nation in
3 northern Minnesota. It's really nice down here.
4 Yesterday I was shoveling snow.

5 But, anyway, I'm a new member. I'm approaching
6 ten years as the executive director. I've met a lot of
7 challenges. We've gone through a lot. We've
8 learned -- or I have personally learned the hard way,
9 and I look forward to a new challenge.

10 My expectations are coming together for all
11 tribal nations -- I think that's the most important
12 thing that I feel in my heart -- and the whole process,
13 making it through every meeting, and after everything
14 is set up, we all being one voice.

15 Also, I'd like to really thank the honor guard.
16 That was wonderful, the drum group. Thank you.

17 MS. MARASCO: Good morning. My name is
18 Judith Marasco, and I'm the executive director for the
19 Yurok Indian Housing Authority. I would like to
20 recognize my board chair, Betty Brown. (Applause.)
21 I appreciate it.

22 Unlike Darlene, this is my third time around on
23 the committee, and I brought all of my baggage with me.
24 But I'm looking forward to the process again.

25 I think that this committee has advanced

1 sovereignty and self-determination and self-governance.
2 Maybe not at the speed that we'd like, but, certainly,
3 at a speed that's moving forward. That's always the
4 most important thing for me is: Are we moving forward?
5 And the ripple effect that this small group of people
6 has on Indian Country nationwide is just immense.

7 So I guess my expectation is to hope that we
8 all recognize what effect we have on everyone's lives,
9 not just our own tribes, but for Native Americans
10 across the nation, and that we continue with respect.

11 MR. ANGASAN: Hello. My name is
12 Steven Angasan. The last time I was a member of the
13 audience and learned a lot about the negotiated
14 rulemaking. But this time I'm up here representing one
15 of the smallest tribes in Alaska with one of the
16 highest cost of living in Alaska. So I will do my best
17 to represent small tribes in Alaska, and, hopefully,
18 we'll come together and do some good for housing.
19 Thank you.

20 MR. BOYD: Since it's moving this way, I
21 neglected to do a couple of things. So, Karen, excuse
22 me just a second.

23 Again, I was very honored about the song that
24 was sung for me this morning. But you know all the
25 good things that we try to do and hopefully do

1 accomplish professionally, you never really do it by
2 yourself. So I'm fortunate in having a really great
3 staff by me. Sometimes they're in front of me, and
4 that's okay, too.

5 But at any rate, many of you may have noticed a
6 lot of our regional administrators are here today, and
7 I'd like them to stand, please. (Applause.) Of course
8 these are the folks that work with you on a day-to-day
9 basis, and they are the field managers, if you will,
10 for ONAP.

11 Since I moved into this job a number of years
12 ago, one of the things that I really worked hard to
13 accomplish was for our folks to be more proactive. And
14 these folks have certainly proven themselves, I
15 believe, in initiating that vision.

16 Certainly at headquarters, it goes without
17 saying, there are people that you work with on a
18 day-to-day basis, and fortunately I do as well. A good
19 case in point is Debra Lancet, who you all know.
20 (Applause). Jennifer Balogh (phonetic) (applause),
21 Ed Fagen (applause), and Deana Hare (phonetic)
22 (applause).

23 There was some talk about age, and I'm not sure
24 where I fit in on all of this. But I am self-taught on
25 the computer, so, fortunately, when I do get stuck

1 occasionally Deana comes in and says, "Oh. Well, just
2 do this."

3 And I say, "Oh, good."

4 But then she said something to me the other day
5 that I'm still mulling over in my mind. She said, "You
6 know --" She didn't quite put it this way, but it's
7 almost like, "You know, you're not half bad on the
8 computer, given your age." So I took that as a
9 compliment, actually.

10 But at any rate, I think I already expressed my
11 feelings and my aspirations for this committee.

12 And lastly, speaking of lawyers, we do have a
13 contingency sitting back here that I know communicate
14 with those lawyers over there quite often. But, you
15 know, those kinds of deliberations and decisions that
16 come out of that are all for the better, I believe. So
17 thank you.

18 MS. FOSTER: I guess I'm the last one to speak.
19 I've heard a lot of good things around this table
20 today.

21 My name is Karin Foster. I'm here with the
22 Yakama Nation Housing Authority. I serve as their
23 legal counsel. It's a position I've held for about ten
24 years now. I'm also Yakama descendent, first
25 descendent.

1 It's an honor to be here and to be sitting at
2 the table. I am also a first-time committee person.
3 At the last rulemaking, I served on the drafting
4 committee.

5 And I guess my expectations, I will echo the
6 first speaker we had, Mr. Keeswood, in saying that I
7 expect this to be a transparent and open process, and a
8 process where participation by the audience is
9 encouraged, and where there's a full discussion of
10 issues so that we all have an appreciation of how we're
11 moving forward, that it reflects the interest of all of
12 us, and that we're able to work hard and work together
13 to come to some very protective rules. So thank you.

14 THE FACILITATOR: Okay. Thank you all
15 committee members for introducing yourselves, and our
16 distinguished guests in the audience as well.

17 There's one last party in the room who, I
18 think, will be our backup for the length of this
19 negotiations also, and those are our consultants back
20 here. They will help us with all of our logistical
21 arrangements and our technical arrangements. So if you
22 could just stand up for a moment so we can all know who
23 you are. (Applause.)

24 Okay. So now the committee has to make your
25 first decision, and that has to do with our agenda.

1 We have put together a proposed agenda. This is a
2 draft agenda. But I think -- we don't feel that we
3 just want to go ahead with it until everybody has had a
4 chance to review it and make sure that this represents
5 the way you want to spend your next two days here.

6 But I think we have to thank HUD for taking the
7 initiative of putting something together that they felt
8 would be appropriate for the first two days here.

9 This is a committee event, and it's your
10 committee. So I think the first order of business
11 would be for you to look at it, just to make sure that
12 the components that are here are what you anticipate
13 would help us go forward.

14 You may want to suggest a change, like maybe
15 you want the Indian caucus early or something like
16 that. But could you please take a quick look at this
17 so we can see where we want to go with this, and then
18 we'll proceed from there.

19 What we had scheduled for the rest of the day,
20 basically, was to have next a general overview of the
21 rulemaking process and negotiated rulemaking by
22 Daniel Brown, and that was to give some guidance to the
23 new members of the committee. It's very brief, but
24 gives them some background, which we can then
25 supplement with all the experienced people around the

1 table.

2 This afternoon, Sandra Henriquez will be here
3 at 1 o'clock to give us her welcoming remarks. Keith
4 is going to give us some travel information, which we
5 have to put in there some time during today.

6 And then what we thought would be the most
7 important first order of business, beyond the co-chairs
8 and the regional representative and the tribal caucus,
9 would be to adapt the -- establish the charter and the
10 protocols. Those, basically, are what set the ground
11 rules for the committee. That will take some
12 discussion, so we'll have some discussion about that
13 sometime in the afternoon.

14 So we can kind of put it out this way. If you
15 turn it over, one of the tribal representatives will
16 give the history of NAHASDA; some further education for
17 those of us who haven't been involved in this very
18 long; some explanation of the NAHASDA amendments.

19 And then from that point on, what has been done
20 traditionally in working in these types of groups is
21 that we organize the work into small subcommittees.
22 And this is where we rely on our people who are
23 familiar with NAHASDA and with the amendments to help
24 us organize the different subcommittees you might want
25 to work on. We find that the group is much more

1 productive, so we're not just all sitting around a
2 table with 27 people and just talking about every
3 little thing.

4 So we divide the group off into areas of
5 expertise or desire or interest. And those mixed
6 subgroups -- and each of these subgroups have both
7 tribal as well as at least one federal representative
8 in it.

9 The subgroups kind of develop some language for
10 one part of the regs and bring it back to the large
11 group for discussion. We find that that's very
12 efficient and an effective way to develop the regs. So
13 those are sort of the general outlines of how we see
14 going forward with this.

15 But I think first we just need to decide
16 whether this agenda meets everybody's approval or
17 whether you have any suggestions.

18 Yes, Lafe?

19 MR. HAUGEN: Yes, Jan. This was raised by
20 Jason, one of my counterparts here. It says there were
21 no break times on here. Do you believe in a break,
22 Jan? I don't smoke, but if we don't have a break, I'm
23 going to start smoking.

24 THE FACILITATOR: You've very observant there,
25 Lafe. I was sort of planning to take like a 20-minute

1 break at about 10:30, if we can put that in. I thought
2 we could either do -- what I was thinking is this, we
3 could do this as approval -- get approval for the
4 agenda, take a break, and then come back and hear the
5 general overview of the rulemaking process and the
6 negotiations meeting.

7 Does anybody have any comments on the agenda?

8 Yes, sir?

9 MR. JACOBS: I have a question on the afternoon
10 today. When we're setting the future meetings, why are
11 we doing it up front rather than at the end? We don't
12 know what we're going to accomplish the rest of the day
13 or tomorrow, so why are we setting meetings early in
14 the process?

15 THE FACILITATOR: I'll let Rodger answer that
16 question.

17 MR. BOYD: That discussion can always be moved.

18 THE FACILITATOR: Marvin?

19 MR. JONES: First, do we -- in previous
20 committees, we had to identify ourselves each time for
21 the benefit of the people who are taking notes. Do we
22 still need to do that?

23 THE FACILITATOR: At this point, I think it's a
24 good idea. Thank you, Marvin, for reminding us.

25 MR. JONES: Okay. Marvin Jones, Cherokee

1 Nation. I think that we need a discussion of the scope
2 of the issues that we're going to discuss.

3 THE FACILITATOR: Marvin, would that fall into
4 the protocol discussion, do you think -- protocol and
5 charter discussion or do you want to have a separate
6 discussion?

7 MR. JONES: It can, if that's the right place
8 to do it.

9 THE FACILITATOR: Some say tomorrow. Okay.
10 That topic will be taken up -- they think it'll be done
11 tomorrow. I think it may also enter into the protocol
12 discussion, because there were some proposals made by
13 the Native America Indian Housing Council that might
14 have some impact on the scope of the negotiations.

15 MR. JONES: If I could just respond.
16 Marvin Jones, Cherokee Nation. I think if I recall
17 correctly in the protocols and charters in the past, it
18 actually has the scope included. So if we had that
19 discussion and not even discussed, you know, then it
20 would have already been decided, it seems. So that's
21 probably an appropriate place to discuss it.

22 THE FACILITATOR: Thank you. I think that
23 would be a nice hot discussion for us there.

24 Any other comments on the agenda?

25 MR. KEESWOOD: (Indiscernible - speaker not

1 using microphone.) One of the areas I see missing is
2 the public participation. One would be --

3 THE FACILITATOR: This is Ervin Keeswood.

4 MR. KEESWOOD: Yes. Ervin Keeswood.

5 One would be to add on to the first day, where
6 I see missing is the public participation, to add that
7 on also to today.

8 And the reason why I asked that is because
9 there are so few of us representing all the tribes that
10 we're all segmented in various areas where we may not
11 have day-to-day contact with all of the regional
12 membership in our regions. And this would allow them
13 time to offer a comment at the end of the day or else
14 during the day.

15 Secondly, I would ask for a different seating
16 arrangement, meaning that our staff and our attorneys
17 be allowed to sit behind us, so we can talk to them
18 much easier than we can with this seating. That's
19 it --

20 THE FACILITATOR: Okay.

21 MR. KEESWOOD: -- for the moment.

22 THE FACILITATOR: Any other suggestions? Yes.

23 MS. MARASCO: I'm not sure this is the
24 appropriate place, but I've had some requests from some
25 of the smaller tribes that can't afford to participate

1 or come to the meetings ask that I at least make a
2 request that the proceedings be webcasted.

3 THE FACILITATOR: Thank you.

4 Any other comments or suggestions?

5 Yes, Carol?

6 MS. GORE: I'm Carol Gore. I want to make sure
7 that lessons were learned from the last negotiated
8 rulemaking, at least for myself. We formed a drafting
9 committee, but that drafting committing sort of started
10 close to the middle or at the end of the process, and
11 they had a lot of catch-up to do.

12 I think if we're going to be efficient and
13 effective, it would be great in our discussion of
14 charter and protocol if we formed that drafting
15 committee early so that when they write the preamble,
16 they don't have to go back and really look at history.
17 They can really work with us in a cohesive manner,
18 rather than playing catch-up. Thank you.

19 THE FACILITATOR: Thank you, Carol.

20 Any other comments?

21 MR. CAGEY: Again, I agree with some of the
22 comments that were made. If you look at the agenda,
23 we've got three and a half hours for protocols and
24 caucuses. Is that the recommended time or is that too
25 much time to go through this?

1 I know the first time we did this, it took us
2 two days. It seems like the committee's a little more
3 mature now, as far as what needs to happen. But three
4 and a half hours is a lot of time. Most of us have
5 seen the charters and bylaws, and that's all they are.

6 So, again, I don't expect -- are we going to
7 get done early today? Is that the goal here? Is that
8 something that we can get to?

9 I'm kind of anxious to kind of get to who's in
10 charge. And, again, who is in charge of the HUD side,
11 and who's in charge of the tribal side? And I'd like
12 to know who that is. Is that going to be Sandra? Is
13 that going to be Rodger? You know, kind of framing out
14 the leadership and deciding who is the official from
15 HUD and who is co-chairing the rulemaking committee.

16 Those are important. So when Sandra gets
17 here -- I don't know whether she's our lady or not --
18 but, again, I'm kind of anxious to find out who's in
19 charge of the process.

20 So, again, the caucus, I think -- I recommend
21 that we probably try to do this a little bit earlier
22 instead of waiting until the end of the day. But
23 that's just my recommendation is to get that over with
24 earlier. The caucus isn't going to take that long.
25 There might be time to caucus before lunch even.

1 THE FACILITATOR: Thank you, Henry.

2 Do you want to respond to this -- the comment
3 about it?

4 MR. BOYD: Yeah. The time frames were as good
5 a guess as we could possibly make it. I mean, we were
6 hoping within these time frames, different things could
7 happen and be accomplished. Certainly we were hoping
8 that one of the things that we could certainly get
9 accomplished today would be the establishment of the
10 charter and the protocols, and it could be very
11 important to the committee. That helps us to really
12 identify leadership on the tribal side.

13 Certainly with regard to HUD, the Assistant
14 Secretary is the decision maker, and that will be her
15 position in future meetings. She is the chief
16 negotiator for HUD.

17 THE FACILITATOR: Any other comments? Is there
18 any -- can everybody -- can we live with this agenda
19 then for the time being? And then the only thing I
20 would suggest, perhaps, is that before lunch we have a
21 tribal caucus.

22 So how about if we take a break now for about
23 20 minutes, and then come back, have a presentation on
24 the general overview of rulemaking, and then take a
25 tribal caucus before lunch. Would that work for

1 everybody?

2 Okay. All right. Then let's all get back
3 here by a quarter to 11:00. Thank you.

4 (A break was taken from 10:28 a.m. to
5 10:53 a.m.)

6 THE FACILITATOR: Okay. Come back to the
7 table, please.

8 When I was working previously on the Neg-Reg
9 for self-determination, I started to tell the committee
10 some jokes about Korean time. But they told me more
11 stories about Indian time than I had about Korean time.
12 I don't know what that is, but all these different
13 cultural familiarities that I had when I worked with
14 Native America people here.

15 When you work with different groups, different
16 cultural groups, as we do, as Erin and I do, coming
17 back to the room at a certain time always has different
18 significance for different people. Some folks are
19 like, "Well, I'm at the table. He said 15 minutes, and
20 I'm here. Where's everybody else?"

21 Other people are like, "Oh, but I had a much
22 more important meeting. I had a very important
23 discussion out there. I had to finish that up."

24 Other people were like, "Well, the meeting
25 starts when everybody gets there."

1 So I realize that I have to be a little bit
2 flexible, but not too flexible. It's sort of like
3 herding cats, you know, to get people back to the
4 table. So that's what you can expect out of me pretty
5 much.

6 Because the other thing that's pretty
7 important, I think both in the Asian culture as well as
8 in Indian culture, is you don't want to embarrass
9 anybody. You know, you want to make people feel
10 respected and comfortable whenever they're working
11 together. And so that's the other thing. You don't
12 want to point out people who were late or that kind of
13 thing either.

14 So it's kind of a dilemma for a facilitator to
15 try to keep everybody happy doing that, but I know
16 you'll work with us on that.

17 Okay. Our next stage here is Daniel Brown,
18 who's with the office of general counsel of the
19 regulation division of HUD. He's going to give us a
20 brief general overview of the rulemaking process and
21 negotiated rulemaking. So for those of us who were
22 here for the first -- yes, Jack?

23 MR. SAWYERS: Before we do that, can I suggest
24 that we have our caucuses after lunch, because there's
25 a lot of things that we'll be discussing. If we don't,

1 it'll go through lunch instead. So that's just a
2 suggestion that our folks talked about, that we've got
3 quite a few things on our plate for our caucus, and
4 we'd like to do that right after lunch, if it's all
5 right with you folks.

6 THE FACILITATOR: How about this, would it be
7 all right if we had Sandra Henriquez speak right after
8 lunch and then do the caucus immediately following
9 that? Would that be okay for everybody?

10 MALE SPEAKER: Sure.

11 THE FACILITATOR: Okay. Good.

12 Okay, Dan.

13 MR. BROWN: Good morning. Again, my name is
14 Dan Brown. I'm with the regulations office in the
15 office of general counsel of HUD. I work with Ariel,
16 who probably all of you know. He seems to be pretty
17 famous in this crowd. So I'll be transitioning into
18 somewhat of the role that Ariel took in the past.

19 This is my first experience with negotiated
20 rulemaking, so at least half of you already know a lot
21 more about this than I do. I'm mainly just presenting
22 today on the general process of rulemaking that applies
23 across the government and a little bit on the process
24 of the actual negotiation itself.

25 The main purpose is just so that people have a

1 sense of what all the various steps are. Like
2 everything in the federal government, it's much more
3 complicated and tedious than you might at first
4 suspect. You also just might want to consider some of
5 these different steps and different phases of review
6 that the rule will go through when you're setting up
7 the charter and protocols this afternoon or throughout
8 this meeting.

9 I also just wanted to say, don't worry, this is
10 not going to take a full hour, even though it says that
11 on the agenda. This will probably just take 15 or
12 20 minutes or so, depending on how many questions there
13 are.

14 Our goal, of course, for this whole process is
15 to reach consensus on regulatory changes, pursuant to
16 NAHASDA reauthorization. The goal, of course, is to
17 meet the statutory date of two years from date of
18 enactment, which is October 14, 2010.

19 Probably the most important point to take away
20 from this is that in negotiated rulemaking, all of the
21 processes that we go through in these meetings are in
22 addition to all the processes that we have to go
23 through in all rulemaking. So those include review by
24 the agency, which is HUD; by the office of management
25 and budget; and by both committees in Congress that

1 have jurisdiction over HUD.

2 After that, as with all rules, there will be a
3 couple additional proposed rules in the Federal
4 Register that's provided for public comment. That way
5 any member of the public will have the ability to
6 comment on or to submit their view on the rule.

7 After the committee considers all the public
8 comments received, it will publish a final rule and
9 explain any differences between the proposed rule and
10 the final rule. And then that final rule becomes
11 effective 30 days after publication.

12 And, again, just to reiterate, all those
13 processes are in addition to the negotiated rulemaking
14 process. And in the negotiated rulemaking process,
15 this is where all the recommendations for policy calls
16 are made. So it's essentially in addition to, or in
17 place of, those deliberations on policy that would
18 normally in another rulemaking context take place
19 entirely within the department here, and they have
20 their source with the negotiated rulemaking committee.

21 So the first step upon completion of the
22 meetings is submission by the committee of a report to
23 the Secretary of HUD, and that committee report will
24 specify all the items in which the committee reached
25 consensus. According to the Neg-Reg Act, that is

1 contained in the proposed rule. But as in the
2 administrative procedure act, proposed rules aren't
3 really defined. It doesn't really say what it has to
4 contain.

5 But under NAHASDA, historically, that report
6 includes the text and the preamble of the proposed
7 rules as it would be published in the Federal Register.

8 And then, of course, if there are any
9 additional items or additional information that the
10 committee wants to provide to the Secretary, including,
11 for example, any items on which consensus was not
12 reached, those could also be included in the report.

13 Again, with any rule that HUD produces, it goes
14 through a process of internal departmental clearance.
15 Basically, every office within HUD gets a chance to
16 review it and submit comments through our office.
17 Typically those can include very minor things like
18 adding a comma, or changing a comma to a semicolon, or
19 very exciting things like that.

20 Sometimes it has to do with ensuring that we're
21 complying with all the requirements already applied to
22 everything that HUD does. Fair Housing, for example,
23 comes up a lot.

24 However, when it comes to negotiated
25 rulemaking, we always make the point in the clearance

1 process to all the other offices within HUD that this
2 is a different process than what we usually follow in
3 starting a rule, and that we expect there to be full
4 respect for the decisions that the committee has made.

5 So we would normally expect that any changes or
6 any questions that arise out of the internal
7 departmental clearance process would be pretty minor.
8 And, in any case, no matter what they are, whether it's
9 just an insertion of commas and things like that, no
10 matter what it is, we will provide a red-line markup of
11 the rule back to the committee for review after the
12 departmental clearance process.

13 And then to make additional points. It's
14 probably obvious since HUD is a member of the committee
15 and the committee decisions are made by consensus, HUD
16 already has obviously a very strong stake in keeping
17 the rule the way it is. So it's not like clearance is
18 going to reopen the rule to all sorts of new changes.

19 The next step is it's reviewed by the Office of
20 Management and Budget. OMB, as it's referred to in
21 shorthand, is within the White House -- actually within
22 the executive office of the president. They report to
23 the president.

24 They operate, for our purposes, under an
25 executive order signed originally by President Clinton

1 called Executive Order 12-866, that provides for review
2 for virtually all regulations that come out of
3 executive agencies.

4 Section 6 of the Executive Order provides
5 that -- there are significant regulatory actions that
6 are reviewed by OMB, but we never know for sure whether
7 OMB will consider a rule to be significant and will,
8 therefore, review it or not. But we very much expect
9 them to consider this one significant, in a large part
10 just because of the importance of it.

11 Any time that they do review a rule, they have
12 up to 90 calendar days to complete their review. At
13 least in my experience lately within the past year or
14 so, it's not uncommon for them to take up to the full
15 90 days; whereas, I think in the past sometimes it was
16 less than that.

17 Just as a background, according to the
18 Executive Order, these are the criteria under which a
19 particular rule can be determined to be significant.
20 As you can tell, they're somewhat ambiguous and
21 amorphous. It's sometimes hard to tell which one
22 they'll apply.

23 But, in any case, any rule of this sort when
24 it's dealing with a grant program or one of this
25 importance, it's likely to trigger the last criteria,

1 at a minimum. It will raise not only legal but policy
2 issues that they will want to review.

3 Now, their purpose in reviewing it is generally
4 to make sure that any changes that are made within the
5 rule are consistent with the decisions of other
6 executive agencies on similar matters. So Bureau of
7 Indian Affairs, for example, would have to make sure
8 that there's coordination there.

9 In addition, in general, OMB's review under
10 Executive Order 12-866 is to insure that the burdens
11 and costs that are imposed by any regulation are
12 outweighed by the benefits of it. It's basically to
13 ensure that rulemaking is rational. It's not just
14 making rules for the sake of rules, but that there's a
15 tangible benefit from each one.

16 Then in addition, of course, in this case,
17 we're dealing with grant funds that are ultimately
18 public funds. And since it's the Office of Management
19 and Budget, they have a particular interest in making
20 sure that the rule is providing sufficient oversight to
21 make sure that funds are not misused or something like
22 that.

23 I'm sorry. I meant to say earlier, if anyone
24 has any questions at any point during -- while I'm
25 going through, please interrupt me, or you can wait

1 until the end if anyone wishes.

2 The next step is that after the Office of
3 Management and Budget review, we send a draft to the
4 chairman and ranking members of both of our committees;
5 that is the House of Representatives and the Senate.
6 And they have 15 calendar days to review it.

7 It's really quite rare for the committees to
8 send us anything. Usually the 15 days lapse, and we
9 just go to the next step. I think I'm only aware of
10 two times when we've received anything at all.

11 In any case, they are just comments; they're
12 not a veto to the extent that they submit anything.
13 But, in any case, it's extremely unlikely that we'll
14 increment from the Hill.

15 The next step, Step 5, once it clears the Hill,
16 is to send the rule to the Federal Register. It's
17 usually just a question of three to five days from the
18 time we submit until it's published. It's pretty
19 quick.

20 And, of course, the purpose of being published
21 in the Federal Register is to give notice to the
22 public. Any member of the public -- that includes
23 individuals, groups, anyone -- can submit their views
24 on the proposed rule; to basically weigh in on the
25 wisdom of certain policy judgments that are made in the

1 proposed rule; to provide information or facts that
2 they think that may not have been considered in the
3 development of the rule that might suggest that
4 something should be changed.

5 It's not unusual to find, in general, that
6 comments tend to be more negative than positive, which
7 is not necessarily indicative of any problem, just so
8 you're prepared for that. The reason is simply that if
9 someone is opposed to the rule as it's drafted, they're
10 probably more motivated to submit something than
11 someone who reads it and is supportive.

12 So even if they do happen to be overwhelmingly
13 negative -- well, they're not likely to be
14 overwhelmingly and negative comments. But even if
15 there are more negative comments than positive
16 comments, again, they're not votes. They're just
17 simply comments.

18 HUD and the committee does need to consider all
19 the comments and give each one a fair chance. So if
20 the commenter is arguing that we have not considered
21 some particular set of facts or that the policy
22 judgments are inappropriate for some reason, we need to
23 consider those and respond to those comments ultimately
24 in the final rule. If we don't adopt the change
25 suggested by the commenter, then we generally need to

1 provide some sort of explanation why.

2 If it's just a question of difference in
3 policy, then we just need to state that and state why
4 we think that the proposed policy is a preferable one.
5 If it's new information that the commenter thinks we
6 didn't consider, then we can respond to that.

7 But it is important to realize that a rule that
8 is otherwise valid can be challenged in courts if
9 someone submitted a comment and we are seen to have
10 responded by simply saying, too bad; we think
11 otherwise. We have to supply some sort of explanation.

12 And I guess, as has been the practice in the
13 past, we will provide all the comments to the
14 negotiating rulemaking committee. And, again, as
15 you're considering the charter and protocols, you might
16 want to consider how you would like to receive those.

17 Internally within the department, what we
18 typically do is, our office will actually prepare a
19 summary of all the comments. It can be several pages
20 of a list or maybe one small paragraph summarizing the
21 comment. Then a checkbox for agree or disagree and a
22 response. You all can use that format. Or if you just
23 prefer to receive the comments in raw form, that's fine
24 also. It's really whatever the committee prefers.

25 And, again, as I said before, then the

1 committee decides how to respond to each comment and/or
2 to adopt any change proposed in the comments.

3 I guess the next point is mainly just that
4 then, to a large extent, once we draft the final rule,
5 much of the same process has to be done all over again.
6 So, again, it will go through a HUD clearance. Again,
7 the same expectations and control that people will
8 respect -- within the department will respect the
9 negotiated rulemaking process, and we'll provide a
10 red-line with any changes.

11 And, again, it's subject to review by the
12 Office of Management and Budget. It can be up to
13 90 days. We like to think that if there aren't major
14 changes adopted, that OMB will not take 90 days in both
15 phases, but we can't say that for sure.

16 The one step that is missing purposely on the
17 final rule stage is that a final rule does not have to
18 go to the Hill for review by our committee.

19 And then once the final rule is published in
20 the Federal Register, it has the force of law and is
21 effective 30 days later. So that's it.

22 Does anyone have any questions? Yes?

23 MR. JONES: Marvin Jones, Cherokee Nation.
24 What precisely needs to happen by October 14th?

25 MR. BROWN: Well, the statute says promulgate.

1 The rule has to be promulgated by then. If I can just
2 say what that means. That term is used sometimes to
3 mean the publication of a proposed rule. Sometimes it
4 means an announcement of a rule for final effect.

5 Our view is that in any case, at a minimum, we
6 believe we'll be able to get through all the negotiated
7 rulemaking process and get a rule to OMB by
8 October 14th. Obviously, that's a tight deadline,
9 especially if we were hoping to get a proposed rule out
10 by that date. But there's nothing in the statute that
11 says if we happen to miss that deadline, that there
12 would be any particular consequence.

13 So we regard the language as prefatory as
14 Congress' preference. But if it comes down to a choice
15 between respecting the negotiated rulemaking process
16 and the sake of rushing in order to meet the
17 October 14th deadline, I think it's clear that we're
18 going to respect the negotiated rulemaking process.

19 MR. JONES: So you're saying get it to OMB at a
20 minimum, if possible?

21 MR. BROWN: That's our goal, yes.

22 MS. TOOLEY: Darlene Tooley. Perhaps some of
23 my baggage is going to show right here, but a couple of
24 things. I would like to see us be sure in our process
25 that we allow some time for the committee to consider

1 whatever the HUD clearance and OMB clearance comes back
2 with. Because I will venture to say that some of the
3 changes that were made to the initial regulation that
4 the committee developed were significantly changed.

5 It wasn't a matter of punctuation or grammar.
6 It was a matter of policy and intent. So somehow in
7 our process, I would like to see us have the time to
8 look at those -- whatever those recommended changes are
9 and figure out how they really affect us in
10 implementing the program, if they are adopted in the
11 final rule.

12 And the second comment on this arena is, I
13 think that we need to build into our process some time
14 and some goodwill, I guess, in addressing the public
15 comments. It happens at the end of a long tedious
16 process, and we're all tired.

17 It matters to people when they take pen in
18 hand. And if they have something to say, whether it's
19 negative or positive, I think we should respect our
20 constituents and to actually pay attention to those
21 comments and have some process by which we deal with
22 them.

23 Again, I don't believe that that was a
24 particular goal of ours in the previous Neg-Reg
25 processes. I'm bringing this up not just because it's

1 an issue for myself, but it's also been brought to my
2 attention by some of my constituents, and I wanted to
3 put it out there as a concern. Thank you.

4 MR. SAWYERS: You know, HUD is here at the
5 table, and the tribes are here, but we never have OMB
6 involved. We understand they have oversight, but so
7 does HUD. So I'm just wondering, wouldn't it be wise
8 to have a representative?

9 We're not exactly the same as most
10 organizations. Other organizations don't have a
11 sovereignty issue; we do. And yet OMB kind of divorces
12 itself from us until they want to make a decision.
13 They make a decision, and there's no way we can go
14 around it.

15 I'm just saying that wouldn't it be nice if we
16 could invite them, just one person, to come and
17 represent OMB and solve that problem before it comes
18 back to us all the time. Every time we do something,
19 and HUD agrees, and we agree, and it goes to OMB, and
20 they want to change it, move it, cancel it, whatever.

21 So I'm just suggesting that if we could,
22 Rodger. I don't know, but I'd really like to see OMB
23 more involved.

24 MR. PEREIRA: Hi, everyone. I'm Ariel Pereira
25 in the regulations division. I just wanted to comment

1 briefly. We have invited OMB, and they are considering
2 that invitation. So, hopefully, they'll take us up on
3 it and be at the sessions.

4 Traditionally, as Jack pointed out, that's not
5 the way OMB likes to perform its role. They do not
6 like to attend the negotiated rulemaking sessions. But
7 we have extended that offer, and we'll just have to
8 wait and see.

9 In regards to Darlene's point about the
10 changes, that did happen in '97. HUD has learned its
11 lesson. That is not something that HUD or we'll be
12 doing, making these types of changes. The way we've
13 addressed that in the second negotiated rulemaking was
14 through the establishment of the drafting committee so
15 that members of the committee or their alternates could
16 be a part of considering those comments and be involved
17 in the making of the changes.

18 And Carol mentioned it earlier. Certainly, it
19 would be a recommendation as a good policy -- as a best
20 practice for the formula negotiated rulemaking. And I
21 hope it's a practice that this committee will consider,
22 establishing a drafting committee that would be a part
23 of making those types of decisions.

24 MR. BROWN: And I guess maybe just to pick up
25 on that. One possible way that we could deal with even

1 minor comments -- things that we perceive as minor,
2 such as commas and semicolons -- is, for example, we
3 could just provide any comments to the drafting
4 committee. Then the drafting committee can determine
5 whether to send that on, whether it even warrants
6 consideration of the whole committee. Or, we can just
7 send everything to the whole committee. That's for all
8 of you to decide.

9 Okay. I guess if there's no further questions,
10 thank you.

11 THE FACILITATOR: I've got a suggestion for the
12 committee -- first of all, I was negligent in not
13 introducing Cindy Bachman, our reporter over here. So
14 I apologize, Cindy. She's also reminding us to say our
15 names and speak into the microphones when we speak, so
16 she can record what is being said.

17 The suggestion I have, because of the request
18 for the tribal caucus to meet this afternoon, is that
19 we move the travel requirements to now. It's about a
20 15-minute presentation.

21 Keith, can you come forward and do that.

22 MR. GIARRUSSO: Hi. I'm Keith Giarrusso, and
23 I'm the travel guy. I'm glad everybody has made it
24 here, and I really appreciate your help. I've probably
25 talked to you too many times. I particularly want to

1 thank those of you who have assistants that have been
2 extremely helpful. I talked to everybody prior to the
3 meeting starting, and I've given you all a CD.

4 When I was talking to Jack Sawyers, he put it
5 to me only the way that Jack could do it. He said,
6 "Can you make this easier?" So I've tried.

7 I've got an XL file with the travel voucher on
8 here and along with the instructions on how to do it,
9 but I'm still available, too. So plug in the figures,
10 it does the calculations.

11 And, Rusty, Anita said make sure you give her
12 the CD.

13 Just a couple things where folks tend to make
14 errors on the reimbursements. The first and last day
15 of travel, the per diem is reduced to 75 percent. For
16 Phoenix, that comes out to \$53.25. Days in between,
17 it's \$71, the full per diem.

18 Let's see. We also have to list the hotel
19 charges separately. So there's a hotel tax here, and I
20 think it's like \$16.29, something like that. You'll
21 see it on your bill. And the actual room charge,
22 they're listed separately. I provided you, hopefully,
23 a nice example of a sample travel voucher.

24 A couple folks, including like Darlene and
25 Judith, have mentioned excess baggage. I know you were

1 referring to something else, but actually excessive
2 baggage is a reimbursable item. As you all know, the
3 airlines have started charging for extra baggage, and
4 it truly is a reimbursable item for one bag. So I
5 wanted to take this opportunity to just remind all of
6 you that if you brought your excess baggage, we can
7 reimburse.

8 Receipts. The receipts that I'll need you all
9 to send back are a copy of the sale, airline itinerary,
10 and on the bottom, it's got the actual dollar amount of
11 the ticket. Even though those expenses are billed
12 directly to HUD, they like to see it included as part
13 of the voucher package.

14 The voucher actually has two pages. The second
15 page is the specific charges, and the first page is
16 like the summary sheet and where you sign. Please sign
17 it. I can't process it if it isn't signed.

18 Let's see. The other receipts I need are
19 anything over \$75, and that's just a government rule.

20 I'm here for the entire meeting. If anybody
21 wants to talk travel with me, I have a computer. So if
22 anybody wants to start their voucher, I'd be more than
23 willing. If you want to wait until you get home,
24 that's fine, too. And, again, if my instructions
25 aren't clear enough, just call me. I'm usually pretty

1 good about returning calls.

2 Let me think. There was one other item that --
3 oh. I will need to have your voucher before I can
4 issue you the travel orders for the next meeting. And
5 that's just a HUD requirement. And, in fact, as
6 employees, we have to follow that rule, too.

7 If anybody has any quick questions, I'll take
8 them. If not, I'm available off-line as well.

9 Yes, sir?

10 MR. KAZAMA: Maybe this is for you or Rodger or
11 somebody. I brought this up at the last negotiated
12 rulemaking regarding travel or airline reimbursement
13 from Alaska. We have issues in terms of the distance
14 we travel, the timing that we can get out.

15 When we're dealing with a company that is in
16 Washington, DC, like the sales company, they have, at
17 times, rerouted us from Salt Lake and who knows where
18 to get us to the points of destination. We'd like to
19 be able to do our own booking and turn that in as
20 reimbursement. Is that doable? Is that a federal
21 congressional law that we can't overturn? Do I have to
22 see the Pope regarding this?

23 MR. GIARRUSSO: I actually get the same
24 complaint from our staffers as well. Not only HUD, but
25 all the federal agencies, are bound by a GSA contract

1 with the airlines. And in some cases, there are
2 negotiated contracts between destinations. In fact,
3 it's actually airports, and they're referred to as
4 contract air.

5 In some places, there is no contract or no rate
6 was negotiated. In some cases, it ends up costing us a
7 little bit more money, but it does give us a little
8 more freedom. Unfortunately, you're in a contract
9 route area. And, yes, we're sort of stuck with that.

10 The waivers to get around are pretty hard to
11 get. They're not impossible, but they are pretty hard
12 to get. And that's something that maybe Rodger and I,
13 or Rodger with my help, could push the Assistant
14 Secretary. In fact, all the waivers go through her.

15 MR. KAZAMA: Rodger, what do you say?

16 MR. BOYD: How do you feel about relocating
17 down to Seattle for a couple of months?

18 You know, Keith is right. I think we really
19 should look into it. I know that this issue is also
20 brought up by our office in Anchorage, because there
21 are no contract carriers.

22 There is a process where one could make a
23 request. So we'll work with the Assistant Secretary to
24 identify that as an issue and see if we can't make
25 accommodations that would be more convenient.

1 MR. KAZAMA: I mean, my organization is
2 committed to having me come here. So whether you pay
3 it or we pay it, we'll be here. However, maybe I
4 should send in my airline ticket and things just to see
5 if you guys need that.

6 MR. BOYD: Well, one thing I'd like -- and we
7 could possibly look at it. I know it's happened in a
8 couple cases within HUD where people have actually
9 found lower prices for travel and were able to submit
10 that as a request. That helped them to accept that
11 airfare. But I'll work with Keith on that and see what
12 we can do to hopefully make it more convenient for you.

13 MR. KAZAMA: Thank you very much from all of
14 Alaska.

15 MR. GIARRUSSO: Again, any other questions?
16 And, again, I'm available the entire meeting. Thank
17 you.

18 THE FACILITATOR: Thank you, Keith.

19 I'd like to make a suggestion to the committee.
20 It's 11:30 now. We're all here in kind of a new town.
21 We don't know where all the restaurants are and
22 everything like that. Would you like to take an hour
23 and a half and everybody be back here at 1 o'clock,
24 German time? Would that be acceptable?

25 When we try to reach consensus, one of the ways

1 we do it is we just ask everybody to put a thumbs-up if
2 they agree; and thumbs-down if you disagree, and a
3 thumbs-parallel if they have questions. Okay?

4 So in terms of the question, an hour and a half
5 for lunch and back by 1 o'clock, German time. Can I
6 see a sign?

7 You're trying to confuse me there, Larry.

8 Okay. Then we'll see you back. Thank you very
9 much.

10 (A break was taken from 11:30 a.m. to
11 1:15 p.m.)

12 THE FACILITATOR: I'm just looking at my clock,
13 and we're not quite on Indian time, so I guess we can
14 start. We're only 15 minutes late, so we're within the
15 parameters.

16 MR. BOYD: What we wanted to do is start off
17 this afternoon with Secretary Henriquez, who is with us
18 this afternoon and tomorrow and into the future. I'm
19 very pleased to have her as a member of our committee.
20 I've had the fortune of now working with her for a
21 little over eight months, and the learning curve has
22 been very steep.

23 But I can tell you from my experience in
24 looking at her background, it's very intriguing,
25 because for 13 years, she was the administrator and

1 chief executive officer for the Boston Housing
2 Authority.

3 When I heard that, I knew that there was going
4 to be a great identity of relationship between those of
5 you who are executive directors of your own housing
6 authorities, because there's a lot of similarities
7 within the business.

8 Even though it's public housing, I think the
9 experience in administrating a housing authority of
10 this size, this magnitude, I think that there's a lot
11 of experiences, and certainly a lot of knowledge, that
12 she has gained directing this housing authority, that
13 she really very clearly identifies with the work that
14 you do in your own respective fields.

15 I also have observed her desire to learn more
16 about this. And I say "us" as tribal communities and
17 members of federally recognized tribes and state
18 tribes. Not only here in the 48, but our brothers and
19 sisters up in Alaska as well. So it gives me a great
20 deal of pleasure to introduce Assistant Secretary
21 Henriquez. (Applause.)

22 MS. HENRIQUEZ: Thank you, Rodger.

23 Good afternoon, everybody. It was indeed a
24 delight for me to be here.

25 First, let me apologize to all of you for my

1 inability to join you first thing for the morning
2 sessions today. There was an event at the White House
3 that I was asked to attend. And when your boss asks
4 you to appear, you do that. It was the only thing that
5 would keep me away from beginning the day with you
6 here. I am truly honored to be here today for my first
7 NAHASDA Negotiation Rulemaking Session.

8 As Rodger said, I've dedicated my entire
9 professional career; it's been 40 years. I tell people
10 I started when I was 2 years old. But I've spent my
11 entire life in real estate property management, both
12 managing, producing, and preserving affordable housing
13 for low-income communities.

14 It's a job I sort of fell into. There really
15 is no formal training for it. From the age of 6, I
16 wanted to be an obstetrician. I got to college my
17 freshman year and took chemistry, zoology, statistics.
18 I think my easiest class was probably English Lit. And
19 I ended up -- instead of a 4.0, which is the max you
20 can have for the best, I had a 1.8. It got better from
21 there, but, of course, you can see I'm no longer a
22 physician -- and never got close.

23 It was so bad -- I'm from upstate New York,
24 from Rochester, New York. I went to Boston to go to
25 college. Whatever you've heard about the Boston

1 accent or ah- -- I didn't even say it right. You know,
2 Boston. A's at the end of words are e-r. Rs are
3 a-h's.

4 I sat in a statistic class with 900 people in
5 the days when they had overhead projectors, none of
6 this fancy stuff here. The professor was talking about
7 a formula, and he said, "Ah, Ba equals --" and he just
8 talked about it, didn't write anything down.

9 I went back to the dorm that night to try to
10 figure out what the heck Ah, Ba equals and something
11 was. I went through my statistical book, and I
12 couldn't find it. I was in tears. The next time we
13 had class with 900 people, I was not about to raise my
14 hand and ask the question.

15 Thankfully, he decided to write on the overhead
16 projector the letter "R" with a bar across the top.
17 Well, shoot, I had seen that equation a thousand times
18 looking it up the night before, but that's not what he
19 said. It was Ah, Ba. So that was my introduction to
20 New England and the accent and my demise.

21 I can give you one other story on myself. In
22 organic chemistry -- again, 900 people in a classroom
23 taking the final exam. The professor -- I remember him
24 dearly, Morton Z. Hoffman -- gave us two points for
25 writing our names correctly. I desperately needed

1 those two points.

2 He gave us a point if we could guess what the
3 "Z" was. Some of my fellow students put "zombie." I
4 couldn't afford to give up a point, so I thought maybe
5 Zachary. I was desperate. He started off by saying,
6 "Welcome to Chemistry Final 101 or 102. It's time to
7 tune in, turn out, and drop out. I'm not interested in
8 any of you who are going into medicine. I'm only
9 interested in chemistry majors."

10 He then left the room. We thought, oh, God, it
11 was just so inviting to cheat, you know. So people
12 began to just call out, "Question No. 1," and someone
13 would say, "A," because it was all multiple choice.
14 But what we failed to realize was that our sheets were
15 in colors -- different colors in different
16 arrangements. And so 1 on a pink sheet could be 200 on
17 a blue sheet somewhere.

18 So the way I decided to write that exam was,
19 the first page I did all A's. The second page I did
20 all Bs. I did, you know, Zs across. I did T shapes.
21 I did whatever it took, and that was my 1.8.

22 I petitioned to come back to school, had to
23 keep a 2.7 or better, did better than that, and
24 graduated as a generalist. I went on to think about
25 grad school. I thought about being a teacher. No. I

1 thought about being a guidance counselor. No. And
2 then I started teaching part time. I definitely
3 decided I wasn't going to be a teacher. I got into
4 real estate as a part-time job, and that's how it all
5 started.

6 So I've struggled a little bit in my life,
7 academically. But I really came to this in some ways
8 by chance, but stayed by choice. I love this business.
9 I love what we all do together. And I believe that
10 this is the Lord's work; that we are our brothers'
11 keepers; and that it's our place to do something to
12 leave this world better than in which we found it.

13 So despite my entire career in affordable
14 housing, as Rodger said, I came to HUD about eight
15 months ago when I knew a little about the housing
16 challenges in Indian Country. Now thanks to many of
17 you in this room, as well as Rodger and the
18 extraordinary team of ONAP, I understand all too well
19 about the housing conditions and the critical housing
20 conditions on tribal land.

21 I was once asked -- as my name became public as
22 the nominee for this job, somebody said, "So suppose
23 you get this job, what is it you want to know more
24 about? What is it you want to do?"

25 And I said, "I really want to know more about

1 the Indian housing and Indian Country."

2 What has struck me the most, though, is that
3 some of the challenges that you face are incredibly
4 unique. And those of us that live and work in
5 affordable housing share that same fundamental goal.
6 If we can ensure where families live and how they raise
7 their children in safe healthy communities, then that
8 begins the platform upon which we build our lives.

9 We build up on our dreams. We really think
10 about education and jobs and making the world a better
11 place for all of us, or at least our portion of it, for
12 ourselves, for our families, and for our neighbors.

13 And I think that's the reason we're all sitting
14 here around this table today, and all of you are in the
15 audience as well. We are dedicating and have been
16 dedicating our professional and personal lives to
17 making the housing around us better.

18 As the Assistant Secretary for Public Indian
19 Housing, I want to make sure that that goal becomes a
20 reality, while continuing to respect the
21 government-to-government relationship that we have and
22 to work in consultation and collaboration with
23 federally recognized tribes in this country.

24 I want to thank all of you for being committed
25 to this process, for committing to the work you do.

1 I especially want to recognize those committee members
2 who are elected tribal officials around this table. I
3 want to thank you for your willingness to share your
4 time and your wisdom with us. And I also want to thank
5 those tribal leaders who are here in the audience as
6 well for your leadership and your guidance.

7 Although this is my first time at NAHASDA
8 Rulemaking, it's not my first time negotiating. I
9 recognize that we share a vision for improving housing
10 opportunity and choice in Indian Country. I also
11 recognize that there are times that we won't always
12 agree on the best way to get there. But we're in the
13 conversation, we're in the moment, and we do know that
14 together we can get there.

15 There will be times over the next few days and
16 throughout this process that we won't see eye to eye.
17 But every person around this table, I'm sure, will
18 remain committed and focused as to why we are here.
19 And every person here will understand that if we are
20 truly committed to better housing on tribal land, there
21 has to be a compromise on both sides, and we will get
22 there.

23 We all want the same thing, to ensure that all
24 Native Americans and Alaska natives have decent, safe,
25 affordable places to call home. That's our goal at

1 HUD. That's your goal in Indian Country. That's our
2 goal together. So let us roll up our sleeves. Let's
3 work together and rise to meet these challenges. Thank
4 you. I look forward to working with you the rest of
5 this session and sessions in the future. Thank you.

6 (Applause.)

7 I'm going to turn it over to our facilitator.

8 THE FACILITATOR: All right. Thank you very
9 much, Madam Assistant Secretary.

10 And now that we're all assembled, I just want
11 to make a comment before we break into the caucus,
12 which we've agreed to do. I just want to make a
13 comment about the arrangement of the table and of the
14 room and the chairs.

15 Late last night, we came in here, and we had a
16 big U-shaped, very formal looking situation, and
17 everybody was spread out like two seats apart. So it
18 filled up, basically, the whole room. I think it was
19 Rodger or some of the other folks looked at that and
20 said, "That's not the best situation to accommodate
21 what we're trying to do here, which is we're problem
22 solving as a group."

23 So we rearranged the tables to try to
24 accommodate that. It'll feel a little snuggler, a
25 little more cozy, but actually it's much more conducive

1 to discussion and to sharing ideas with each other.

2 If this works for us, we can keep it this way.

3 If you have other suggestions about how you want to
4 rearrange things to make it more conducive to our
5 work -- and it has to serve the work -- please give us
6 your feedback.

7 The other thing is that during the course of
8 the break, one of the committeemen asked me, he said,
9 "Well, I'm used to having my staff a little bit closer
10 to me. They're sitting way over there across the room.
11 It's a little hard to ask a question if I want to make
12 a statement or something like that. Would it be
13 possible to have our staff a little closer?"

14 And some other committee people said, "I don't
15 need -- my staff is fine. I don't want them too close
16 because they bother me. Let's keep them back a little
17 distance."

18 My feeling is that we should be flexible about
19 that as well. So if any of you would prefer to have
20 some staff, you know, a little closer at hand because
21 you work in that manner, I don't see any problem with
22 them sitting behind you or close to you. Whatever's
23 going to make it more productive in this group, I think
24 we will try to accommodate that. Okay?

25 I don't want to put this all on protocols and

1 everything because we'll get too caught up in -- we'll
2 have nothing to discuss in the protocol.

3 If that's agreeable to everybody, can we just
4 sort of like leave that a little bit flexible. If you
5 have any objections to that, you know, let us know, and
6 we'll work with that.

7 My only concern as a facilitator is that when
8 people have their staff too close to them, you would be
9 tempted to talk to them a lot while somebody else is
10 talking and then that wouldn't be very respectful to
11 people who are talking. So as long as they can
12 maintain -- you know, use them in an appropriate
13 manner, then I think it will work okay.

14 Okay? Can we agree with that? So if you want
15 to have one or two of your staff a little closer by,
16 that's fine. We'll see how it works out.

17 I think at this point we need to let the folks
18 have their tribal caucus. There are some important
19 decisions to be made there. Decisions that have to be
20 made about selections and that kind of thing.

21 Can you give me a rough estimate as to how much
22 time you might need? It's also an opportunity to get
23 to know each other a little better. But how much time
24 do you think you might need for that, a rough estimate,
25 so that our federal folks will know what to do?

1 Somebody just throw out a time for me.

2 MALE SPEAKER: 30 minutes.

3 THE FACILITATOR: 30 minutes? That's
4 optimistic. Are you sure you don't need more? Take
5 more if you think you'll need it.

6 FEMALE SPEAKER: Is that German time or Indian
7 time?

8 THE FACILITATOR: Well, this is a tribal
9 caucus.

10 MR. KAZAMA: I think it would help us,
11 especially for those who are just joining us, in terms
12 of this Neg-Reg, maybe an explanation of the tribal
13 caucus and the expectations of the tribal caucus.

14 THE FACILITATOR: Okay. This is the initial
15 tribal caucus. Normally within a Neg-Reg in the
16 past -- I'm kind of looking at the past protocol from
17 '97 and from 2003. The tribal caucus -- or the members
18 of the tribe and the tribal organizations get together,
19 and they elect a couple of tribal co-chairs and also
20 representatives from different regions that are
21 represented here.

22 It doesn't give them extra power to make
23 decisions on behalf of everybody. But we find that
24 it's very useful to have a couple co-chairs to help set
25 the agenda for every meeting; to have a place where

1 people can go if they have concerns within their group;
2 to kind of focus how the input and the information can
3 come if we have to make a decision about agendas, if we
4 have decisions about meeting places, time, that kind of
5 thing. A lot can be accomplished within a tribal
6 caucus and within a federal caucus that we facilitators
7 work with, to just establish things, like time and
8 agendas, that kind of thing. So that's the main point
9 of this.

10 I think in this first initial caucus, it would
11 be to elect co-chairs -- several tribal co-chairs, if
12 that's the way you want to work it again, and some
13 representatives from the different areas. I think
14 there are six(sic) regions that are represented. So it
15 would be the east, the northwest, the southwest, the
16 south, and central plains areas.

17 It just kind of speeds things up a little bit,
18 streamlines it, and gives us what, you know, I think
19 Henry would say. "Well, who's the boss of your side?
20 Who are we going to talk to? Who makes --" that kind
21 of thing.

22 It helps, on the tribal side, if we have that
23 kind of arrangement, where the tribal co-chair doesn't
24 make decisions on behalf of everybody, but everybody
25 tells them what to say, and then they can convey that.

1 It helps the communication move much quicker,
2 especially when you're trying to set an agenda.

3 It's hard to set an agenda with 27 people. But
4 if the tribal folks are telling the tribal chairman,
5 "These are the things we think are important to talk
6 about. Please put that on the agenda," then it gets
7 funneled to one point. So that's the main point of
8 that.

9 Any questions? Okay. Then why don't we
10 give you -- we'll give you a half hour. We'll check
11 with you at 2 o'clock. The tribal caucus, we've
12 reserved a room for you. It's called the Bouchan Room,
13 and someone from Nelrod will be out there to guide you.
14 If you go out to your left, you go around the front
15 desk. It's right past the restaurant, on the left.

16 MR. KAZAMA: Before we break into the caucus,
17 we were talking, maybe we could spend like ten minutes
18 within the region to select the regional leader, and
19 then come back in 20 minutes and select the co-chairs.
20 Because we only have four -- technically, four from
21 each region, so it should be easier for us to select
22 those regional chairs.

23 THE FACILITATOR: That's fine.

24 MR. KAZAMA: And then take ten minutes for that
25 and then break.

1 MALE SPEAKER: (Indiscernible - speaker not
2 using microphone.)

3 MR. KAZAMA: Yeah. Maybe we can just meet in
4 here instead of going over there.

5 THE FACILITATOR: Then we have to clear out the
6 rest of the room. Do you mean for the regional?

7 MS. TOOLEY: Yeah, for the regional.

8 THE FACILITATOR: Okay. Sure.

9 MS. TOOLEY: If we actually just sort of
10 pointed and we said, "Alaska over there." There are
11 six regions, so it's just a private discussion, but I
12 think we could do that within the room.

13 THE FACILITATOR: Okay. Before you go to
14 tribal caucus, you mean?

15 MS. TOOLEY: Correct.

16 THE FACILITATOR: Okay.

17 MS. TOOLEY: Thank you.

18 MALE SPEAKER: Is there a reason why we need to
19 do it this way? Why does a new caucus take -- there's
20 more tribal (indiscernible - speaker not using
21 microphone) than is here in this room.
22 (Indiscernible - speaker not using microphone.)

23 THE FACILITATOR: That's not a problem. That's
24 not a problem.

25 So anybody that's not in the tribal caucus, we

1 invite you to take a break and come back here around
2 2 o'clock. And the tribal caucus will stay in here.

3 (A break was taken from 1:36 p.m. to
4 2:54 p.m.)

5 THE FACILITATOR: Okay. Can we get back to
6 session? Would anybody like to give us a little bit of
7 a sum of what happened at the caucus and let us know
8 where we can proceed? Who would like to take a shot at
9 that?

10 MR. JONES: Essentially, we have wanted to
11 proceed with the agenda as is. We would like to have
12 the facilitators conducting the meeting, not -- at this
13 point, you know, until we get further in the process
14 and make some further decisions. We don't want any of
15 the parties, whether it's HUD or us, facilitating this
16 next session. And we want to see where that leads us
17 to. Is that fair?

18 MR. ADAMS: We did have a breakout section of
19 our caucus, essentially, in the regions. And within
20 our regions, we determined who would be potential
21 representatives for our regions.

22 MR. JONES: And if I could follow up on that,
23 because we didn't identify all these -- our particular
24 region consists of Oklahoma, Kansas, a little bit of
25 Texas, a little bit of Louisiana.

1 Each one of us -- we had several votes, and
2 each one of us was getting one vote a piece, so we
3 didn't select anybody. In reality, we decided that as
4 issues come up, the person that we feel most competent
5 in that particular subject area will handle it on our
6 behalf. And that could be any one of us.

7 So if there's any correspondence or any
8 questions needed to be asked of our region, all four of
9 us would like the information, and we'll decide amongst
10 ourselves who wants to handle it.

11 THE FACILITATOR: Okay. That makes sense.

12 And some of the other regions were able to find
13 someone they wanted to put forward as their regional
14 representative for different things; is that correct?

15 MALE SPEAKER: We have our representative.

16 THE FACILITATOR: Okay. Can you identify who
17 they are?

18 So, Karin, for what region?

19 MS. FOSTER: Region (indiscernible - speaker
20 not using microphone.)

21 MALE SPEAKER: Alaska.

22 THE FACILITATOR: For the Alaska area? Okay.

23 MR. ADAMS: For the northern plains, it was me.

24 THE FACILITATOR: Okay. Jason Adams.

25 MR. DePERRY: For the eastern and Woodland out

1 of Chicago, I'm the --

2 THE FACILITATOR: Ray DePerry.

3 And other ones?

4 FEMALE SPEAKER: For Region 9, it's the
5 Honorable Ervin, who's with us at the very end.

6 THE FACILITATOR: Okay. Ervin. He's with
7 Region 9.

8 FEMALE SPEAKER: We can't hear.

9 THE FACILITATOR: Region 9 is Ervin Keeswood,
10 the Honorable Ervin Keeswood.

11 And that's one, two, three -- that's five,
12 right? Anybody left out?

13 Okay. So my understanding is that there was
14 some reluctance to name a tribal chair and co-chair
15 until the protocols -- until we went through the
16 overall protocol and got those established?

17 MALE SPEAKER: Yes.

18 THE FACILITATOR: So then you just want to
19 proceed to facilitate the establishing of the charter
20 and protocol to this point; is that correct?

21 MALE SPEAKER: Yes.

22 THE FACILITATOR: Okay.

23 MR. JONES: Obviously, with Jan's okay.

24 THE FACILITATOR: We're okay.

25 Okay. Now, we have a little bit of a -- we

1 have several ways to proceed on this. In the past, we
2 had existing protocols in 1997 and 2003. And then more
3 recently, the National American Indian Housing Council
4 submitted a proposal for some protocol for 2010.

5 I kind of read through that and tried to get
6 some feedback from the feds about those proposals. So
7 that may be a good place to start. And knowing that,
8 we can go through it kind of section by section and
9 where, not only the feds, but other tribes and tribal
10 organizations have comments, you can raise that as we
11 go through this.

12 But that might be a good way, if you're in
13 favor of that, that we proceed using the NAIHC's
14 proposal, and realizing this is nothing in sand, but
15 it's a proposal that they're putting forward as a way
16 of getting a start on the issue of protocol. We could
17 use that as kind of a template to start from and try to
18 define it as we go along.

19 Also we can do that with the charter because
20 the same organization, NAIHC, has submitted a suggested
21 charter as well.

22 Now, you all are more familiar with the
23 charters and with the protocols than I am. Would you
24 have a recommendation to start with the protocol or
25 with the charter first? What would a wise person do in

1 this situation? And Marvin's raising his hand.

2 MR. JONES: Marvin Jones, Cherokee Nation. Is
3 that somewhat of a legal issue? Is that advice we can
4 get? Generally, I would think it's a charter.

5 THE FACILITATOR: Those of you who are
6 experienced in this matter and have gone through this
7 before, what would you recommend? Starting with the
8 charter first?

9 MALE SPEAKER: Why don't we do the charter.

10 THE FACILITATOR: Charter. Okay.

11 MALE SPEAKER: What charter are we looking at?

12 THE FACILITATOR: Okay. Good question. What
13 would be your choice? We can either look at the 2003
14 charter and ask NAIHC to speak up every time there's a
15 point in that charter from 2003 that they'd like to
16 change or we can start just on their proposal, from the
17 2010 proposal. They're very similar. Any suggestions?

18 Rodger?

19 MR. BOYD: Thank you. I would probably
20 recommend let's look at 2003 and then build on that.
21 This is one that I think a lot of us are very familiar
22 with, and we helped jointly craft that. And then we go
23 from there, and we can have the recommendations, if
24 that's okay.

25 THE FACILITATOR: Okay. Any -- yes, Jason?

1 MR. ADAMS: I just want to point once again
2 that I agree with you, Rodger, that's a good place to
3 start, but the NAIHC product is just a product
4 suggested to the work group. If there's any changes or
5 anything, that is up to the committee. That's not
6 anything that NAIHC is selling, in whole or in part.
7 It's just a suggestion.

8 THE FACILITATOR: Okay. Very good. Maybe we
9 can start with 2003 since that was the charter that was
10 approved by the last working committee on this as an
11 area where there was agreement between the feds and the
12 tribes. And as we get to different points in here
13 where people would like to make amendments or changes
14 to that, you can bring them up at that point. At least
15 we know we're starting somewhere where, in the past,
16 there's been agreement.

17 Does everybody have the 2003 charter in front
18 of them?

19 Yes, Jack?

20 MR. SAWYERS: We have problems with -- do we
21 have copies for the other folks in the room?

22 THE FACILITATOR: Do we have enough copies for
23 the other folks in the room?

24 MR. SAWYERS: It would be good.

25 THE FACILITATOR: It would be good.

1 MS. SPALDING: For those of you who have
2 books -- do you have them?

3 MS. MARASCO: I think they're taking the
4 audience participation in consideration. I think
5 they're asking if we have copies for the people who
6 have shown up as part of the audience participation.

7 THE FACILITATOR: By show of a hand, people in
8 the audience, how many of you would need a copy of the
9 charter? Oh, we've got a good deal of them. Okay.
10 One, two --

11 MS. MARASCO: They're asking us about
12 PowerPoint.

13 THE FACILITATOR: We can put it up on the
14 board. I think that would be best at this point. Can
15 we put a copy of the charter, as we go through the
16 different language on it, on the board here?

17 FEMALE SPEAKER: Yes, we can.

18 THE FACILITATOR: All right.

19 I'm sorry. This will still make it a little
20 bit hard to read. We should be looking at the one
21 that -- on the bottom left corner, as Leon points out,
22 it says "Final Charter, April 30, 2003." That should
23 be on the bottom left corner. And it will be on the
24 screen in a few minutes.

25 Okay. Let's just run through the paragraphs

1 now --

2 MR. COYLE: The charter that you brought up in
3 2003, that refers to the formula side, so we'd have to
4 change that right at the first paragraph.

5 THE FACILITATOR: Okay. We're looking at
6 paragraph 2, "Purpose"?

7 MALE SPEAKER: Yes. That relates to formula
8 only.

9 THE FACILITATOR: Right, right. So we're
10 dealing with something different here. So the first
11 thing that would have to be changed would be in the
12 "Purpose"?

13 MR. ADAMS: I would move that we go to our new
14 chapter, established by National, as a guideline. And
15 that's the last one in the book, I believe.

16 MR. SAWYERS: I second that because they've
17 taken into consideration all -- Jack Sawyers,
18 Utah Paiute. They've taken into consideration all of
19 the other protocols. So if you start with '10 and go
20 backwards, you're going to get a better -- I mean,
21 you'd get a lot better product if you pass through the
22 worst protocol we ever had, which was '03. So,
23 consequently, you're a lot better off looking at the
24 current one and going backwards.

25 That's my suggestion, because they spent a lot

1 of time -- I'm saying National Indian Housing spent a
2 lot of time on this, and they took into consideration
3 the other two. So I think it would be better for us to
4 look at '10 and go back, rather than '03 and go
5 forward. Because a lot of those things, honestly,
6 didn't work, and they've tried to work that out. So
7 that would be my suggestion, if everybody agrees.

8 MS. HENRIQUEZ: Excuse me. Could we turn the
9 lights back up? A couple of people are having
10 difficulty really seeing it. Maybe just keeping the
11 one dimmed in front of the screen might be helpful, but
12 I don't know if that will work.

13 THE FACILITATOR: I think it's very difficult
14 to see the screen anyway unless you can make it a lot
15 bigger. Now the committee can't read their paper, so
16 it doesn't work very well.

17 MR. HAUGEN: If I may, Lafe Haugen. You know,
18 Jack, looking at 2010 there, as Jason noted, these are
19 just suggestions. They're just recommendations.

20 What I was going to recommend is to get the
21 2003, as Rodger noted, and get the 2010, put them side
22 by side, and go down one at a time. Can we do that
23 versus trying to doubt the whole thing, is what I'm
24 hearing Jack saying.

25 And as Jason noted -- let's not keep looking at

1 Jason when we refer to NAIHC. He's just a board
2 member. He didn't develop this himself. But let's go
3 down -- can we do that?

4 THE FACILITATOR: I think that would probably
5 be a good suggestion. Why don't we look at our books
6 side by side. And in this particular sentence, like in
7 paragraph 2, the purpose is definitely clear. It's
8 already been written out. Why don't we do that point
9 by point?

10 Okay. So we'll still work off 2003, but on a
11 paragraph by paragraph basis. For instance, on
12 paragraph 2, as Jack points out, some of the work is
13 already been done here to redefine that the
14 paragraph -- in terms of the purpose of this particular
15 rulemaking.

16 I think that's a good suggestion, Lafe.

17 So in this case -- yes?

18 MR. ADAMS: Can we then get -- are we going to
19 work this as agreed, section by section, too, as we
20 work down?

21 THE FACILITATOR: Yeah.

22 MR. ADAMS: I just wanted to state that so
23 everybody understands that we're agreeing to this step
24 by step, section by section.

25 THE FACILITATOR: We're reading it section by

1 section.

2 MR. ADAMS: Okay.

3 THE FACILITATOR: As Jack points out, the
4 "Purpose," which is Section 2, has to change to reflect
5 the new negotiated rulemaking. So can you please take
6 a look at the proposal that's on the board and the 2010
7 charter and see what you think about that language.

8 Yes, Karin.

9 MS. FOSTER: Karin Foster, Yakama Nation
10 Housing Authority. Were we going to pass by No. 1?

11 MR. FACILITATOR: I'm sorry.

12 MS. FOSTER: Because there's fairly an
13 extensive name in the 2010 version that identifies this
14 committee as dealing with amendments between 1998 and
15 2008.

16 THE FACILITATOR: I see. Okay. You're right.
17 We should start with the first.

18 Any comments on the name of the official
19 determination here -- the official name or the official
20 determination?

21 MR. SAWYERS: It's been pointed out that the
22 lawyers don't have the '03, none of the lawyers that
23 are here. I think that's good, but they don't. They
24 have the 2010, but they don't have the '03. So if we
25 do them back and forth, that would be good because they

1 don't know what we're talking about.

2 THE FACILITATOR: I see.

3 MR. HAUGEN: If I may, Lafe Haugen, Northern
4 Cheyenne. Jack, 2003 is on the board so if someone
5 could read that to the lawyers; that would be great.
6 And then we can go back and forth between 2010.

7 But I'm in agreeance with Jason. Why don't we
8 adopt one section at a time? And I make a
9 recommendation that we adopt No. 1, the official name,
10 from the 2010 proposed from NAIHC.

11 THE FACILITATOR: Any discussion? Blake?

12 MR. KASAMA: Yeah. I just have a concern that
13 with -- no offense to Rodger in terms of 2003. If you
14 study the 2003 charter, it was specific for formula.
15 We're looking at a totally different creature here.
16 There has been a lot of time and energy spent to
17 develop -- whether it was NAIHC, the legislative
18 committee -- to develop this. It's gone through the
19 eyes of many attorneys to make sure that the language
20 makes sense.

21 I'd like to reverse it, if we could, by dealing
22 with the 2010 proposal and see if it fits this group,
23 rather than trying to adapt a 2003 that was specific
24 for formula.

25 FEMALE SPEAKER: I agree.

1 THE FACILITATOR: Okay. I think we've heard
2 both sides of the argument at this point.

3 MS. HENRIQUEZ: Excuse me.

4 THE FAILITATOR: Yes, Sandra?

5 MS. HENRIQUEZ: As published in the Federal
6 Register, the title was "The Native America Housing
7 Assistance and Self-Determination Reauthorization,
8 Negotiated Rulemaking Committee." And that was the
9 official determination name, as posted, so we would
10 offer that.

11 MS. TOOLEY: Darlene Tooley. I would like to
12 suggest that we want to include the 1998 through 2008
13 language because there are a number of changes that
14 happened to the statute that have never reached this
15 forum. And if we strictly limited it to the 2008
16 amendments, we're going to do a disservice to ourselves
17 and to the people that we try to provide the program
18 to. Thank you.

19 MS. MARASCO: Can we get consensus on using the
20 2010 version to adapt? Let's at least come to
21 consensus that the version that we're going to be using
22 is the 2010, and then we can amend that section by
23 section so that we all have a common starting point.
24 If we can just agree to that, I think that's a step
25 forward.

1 THE FACILITATOR: Okay. There's a proposal on
2 the table, just for procedural sake, to start to work
3 off of the 2010.

4 MS. MARASCO: Correct.

5 THE FACILITATOR: Okay. Good. Thank you. So
6 we'll be working off the 2010. Let's put the name
7 first.

8 Sandra, you made a proposal?

9 MS. HENRIQUEZ: I did. However, we will accept
10 this change, as is in the 2010.

11 THE FACILITATOR: Okay. So the feds are okay
12 with the official name. How about other tribal groups?

13 Yes, Marvin?

14 MR. JONES: Marvin Jones, Cherokee Nation.
15 I'm wondering if -- and this is a question to HUD.
16 Even in the name, is this a suggestion of limitation of
17 what we're going to be able to discuss? Even before we
18 get to the name, as long as -- you know, if you had a
19 more generic name, of course, then we wouldn't have to
20 address the issue at this point.

21 But if we're going to talk about the amendments
22 to the law between 1998 and 2008, that somewhat limits
23 what we can discuss. I just wanted to get it out on
24 the table as early as we possibly can to clarify what
25 are we actually going to be able to discuss.

1 THE FACILITATOR: Maybe we should look at the
2 official name and the purpose then.

3 MR. JONES: That would be fine.

4 THE FACILITATOR: Why don't we go on that.
5 Let's look at the official name and the purpose to see
6 if this accurately captures what this committee is all
7 about. What is scope --

8 Yes, Blake?

9 MR. KAZAMA: Based on the PIH notice that HUD
10 provided us, they basically took the amendments, and
11 also work of the NAIHC legislative committee, to come
12 up with some of those items. I'm wondering if the
13 committee is feeling that we have to broaden the scope
14 versus what we have had before us, in terms of PIH
15 notice and the other issues that we're also presented.

16 I mean, this process has been going on for a
17 couple years now. So I'm sure there may be other
18 things that may come to the table besides just the
19 amendment -- is, I think, what Marvin is saying -- and
20 maybe some wiggle room to enter some of those types of
21 discussions.

22 THE FACILITATOR: But isn't that also a matter
23 if the committee is authorized to do that?

24 MR. KAZAMA: Correct. And that's the question
25 I have.

1 THE FACILITATOR: Well, I think the only way
2 we're going to find that out is if we go through what
3 has been proposed and see if this is something that our
4 federal participants feel they're comfortable with or
5 not.

6 So please look at paragraphs 1 and 2 again, the
7 official name and the "Purpose." Some of you may find
8 that too restrictive or others may find that it
9 oversteps what the committee was set up for.

10 MS. FOSTER: Before we go any further then, can
11 we get some clarification, maybe from Rodger, to see if
12 there's anything in here that limits this committee to
13 talk about some of the other issues?

14 MR. BOYD: Well, I think probably what we may
15 want to do as we go through this process in defining
16 the purpose, is if there are other things that people
17 are thinking, then put it on the table, and then we can
18 make a decision from there.

19 THE FACILITATOR: Yes, Darlene?

20 MS. TOOLEY: In the previous two negotiated
21 rulemaking sessions, and indeed for the last 12 years
22 that we've been trying to implement this program, there
23 have been many, many issues brought up. And at the
24 Neg-Reg sessions that were held, we put them on a list,
25 and we called it "the parking lot" or the future things

1 to negotiate. We've never gotten to any of those lists
2 yet.

3 So I guess those are the things that we're
4 talking about that may not be included if this language
5 is left as it is. And there are some of us at least,
6 I think, sitting at the table that would like to be
7 able to address some of those parking lot issues
8 because they make running the program so difficult.

9 Maybe they made sense in 1997, but let me tell
10 you, they're kind of unnecessary, to say it kindly at
11 this point in time. Thank you.

12 THE FACILITATOR: Does everybody know what
13 Darlene is talking about or should it be a little more
14 specific? (Laughter.) I don't know what she's talking
15 about, but that's not important. It's more important
16 that everybody here knows what she's talking about.
17 I'm serious. Is there some assumptions here that --

18 MS. TOOLEY: I don't have a photographic memory
19 of everything that ended up on those lists, but there
20 were things like the program income regulation. There
21 were things like the 1996 operating subsidy thing.

22 You know, I'm sure that other people that were
23 involved in those sessions can think of other issues
24 that they can put out there that were important enough
25 at the time. People were fairly frustrated because

1 they couldn't deal with them, or we didn't deal with
2 them in those last sessions.

3 I don't know if somebody has the minutes or the
4 documents from those sessions, but there were a lot of
5 them.

6 THE FACILITATOR: So, Darlene, you're saying
7 that you would be in favor of having the purpose
8 expanded somewhat to be able to take care of some of
9 these other issues that are maybe not directly
10 addressed here.

11 Carol?

12 MR. GORE: I was just going to say, Darlene,
13 I echo your concerns and frustration.

14 My understanding is the last negotiated
15 rulemaking was specifically for formula issues. Those
16 nonformula issues were put in a parking lot. We're now
17 in a nonformula negotiated rulemaking, as I understand
18 it, but those parking lot issues aren't necessarily in
19 the amendments.

20 And so I guess if I were to pose the question,
21 I would ask that if we can get through our assignment,
22 is there room for negotiation on other nonformula
23 issues that this committee could address, if they're
24 within their timeline, as allowed by HUD? I'm just
25 thinking for myself. I'm not speaking for the

1 committee, but just trying to offer a solution. Thank
2 you.

3 THE FACILITATOR: Yes, Jason?

4 MR. ADAMS: I guess I want to focus in on this
5 purpose language because that's exactly what we're
6 talking about right now, is trying to frame how this
7 committee then progresses from this point forward, as
8 far as the purpose of this committee.

9 I believe that we've captured it in this
10 language, and if anybody doesn't believe that, then
11 maybe we can come up with changes to this language.
12 I think the language contained in this purpose
13 statement is that broad that it can encapsulate any
14 issues, such as what Darlene brought up as far as
15 notice issues and some of those parking lot issues.
16 I believe this language catches that.

17 THE FACILITATOR: How many folks on the
18 committee were a part of working on this NAIHC
19 proposal?

20 MR. ADAMS: Can I explain the process to you,
21 what happened?

22 THE FACILITATOR: Yes.

23 MR. ADAMS: Because everybody keeps looking at
24 me. There's a reason for that. I served as the
25 legislative committee chairman for NAIHC that took on

1 this task.

2 There was a call for the legislative committee
3 membership of NAIHC and open to any member of NAIHC to
4 participate. We have conference calls. We have
5 conference meetings at national conferences. Anyone
6 can participate in that process, and that's what
7 happened with this product. We had conference calls
8 where there were numerous folks who participated. Then
9 there was kind of a workgroup formed off of the
10 committee that went and did the nitty-gritty kind of
11 language negotiating on this product before you.

12 But, again, all of that was just an attempt
13 from the NAIHC membership to put a suggestion out
14 there.

15 THE FACILITATOR: I see.

16 MR. ADAMS: So that's the process that's gone
17 through to this point.

18 A majority of the attorneys that you see in the
19 room have participated in those committee calls to help
20 formulate this document. That is, in essence, what was
21 produced.

22 THE FACILITATOR: Okay. Thank you. Then we'll
23 rely on you to help explain some of this proposals as
24 we go through them.

25 MS. MARASCO: Judith Marasco from Yurok Housing

1 Authority. My concern is that if you're not a member
2 of the organization, your input was not solicited, and
3 certainly you had no say in this document. And that's
4 not to say that this document won't service, and it
5 doesn't meet my purpose, but a lot of us cannot afford
6 the dues, the membership dues, to this organization.

7 And I would caution everybody to make sure that
8 we include all of the tribes in deliberating this
9 document because not that many of the tribes in my area
10 participated in this dialogue.

11 In fact, I didn't even know this dialog was
12 going on because I'm not a member, and we can't afford
13 your membership. So that's just my concern, coming
14 from a tribe that has limited resources. We weren't
15 taken into consideration, nor was there an outreach to
16 those tribes who don't pay you a fee.

17 So my question is: Are we being represented?
18 I think it's a good document to start with, but I think
19 we have to go through it line by line.

20 THE FACILITATOR: Good. And I think it's good
21 that we're all here and that we do have that diversity
22 so that all the voices can have an input on these
23 things.

24 Karin?

25 MS. FOSTER: Karin Foster, Yakama Nation

1 Housing Authority. I think this document is really
2 helpful to try and help focus the issues. I hear what
3 Darlene is saying about not wanting more words to
4 narrow the scope. Because the more words you have, the
5 narrower it becomes.

6 And I guess, you know, not to suggest moving
7 backwards, but if we're wanting to consider a broader
8 statement, you can go back to the 1997 protocol in your
9 packet and see a pretty broad statement there, in terms
10 of purpose.

11 What I see in the 2010 version -- and I
12 appreciate all the work that went into this.
13 Obviously, there was a lot of work that went into
14 this -- is that it is perhaps narrower than needed or
15 desired in that it focuses us only on the statutory
16 amendments to NAHASDA.

17 It's possible that there was a regulation
18 adapted initially that just doesn't work, and maybe it
19 doesn't tie to a statutory amendment to the NAHASDA.
20 Maybe it just doesn't work because it doesn't work as
21 well as we thought it was going to when it was adopted
22 in 1998.

23 So if you have a purpose that ties our action
24 to only those parts of the act that were amended over
25 time, you are perhaps leaving out some issues that are

1 real issues on the ground for the folks who are trying
2 to administer the program.

3 So I guess I toss onto the table another option
4 of actually going back to the original purpose
5 definition, which is very broad, and basically just
6 says that: (Reading) "The Committee is established to
7 advise the Secretary of HUD as to the rules
8 implementing NAHASDA in a manner that reflects the
9 unique trust and responsibility to protect and support
10 Indian tribes and Indian people.

11 "The establishment of this Committee shall
12 provide nonexclusive means of tribal participation,
13 pursuant to the Act." Just another suggestion.

14 THE FACILITATOR: Henry?

15 MR. CAGEY: And, again, I recommend to the
16 committee to keep your terms very simple. Because if
17 you start tying your hands through this charter, those
18 folks in the back, these attorneys on both sides, are
19 going to interpret for you. So, again, keep your
20 purpose very simple.

21 And, again, I appreciate the Housing
22 Authority's work that they did on this, but we want to
23 keep it broad enough so we can go in and have
24 discretion, Sandra, to pick some things that you may
25 have administrative authority to adjust.

1 I think the intent is that we want to go back
2 and revisit some of these things we did in '97 because
3 they're not perfect. So, again, do you have discretion
4 to go back and look at some of these things that some
5 of the tribes are feeling that could be done within the
6 process? Do you?

7 MS. HENRIQUEZ: We do agree. There's lots of
8 words being bantered about in terms of how to change
9 the language. We would see under the "Purpose" part,
10 No. 1, which says "review amendments to NAHASDA." We
11 might offer "to negotiate amendments and other
12 necessary changes to the IHBG program regulations, as
13 agreed to by the Committee, as a whole, on individual
14 items," so we would recognize the parking lot issues as
15 they would come before the committee.

16 MR. CAGEY: So, again, I would recommend that
17 we would keep them very, very simple. Don't tie our
18 hands too tight to the Housing Commission or the
19 Housing Authority. We don't want to tie them too
20 tight.

21 THE FACILITATOR: Henry, are you pressing the
22 button or anything when you're talking?

23 MR. CAGEY: I think so. I don't know.

24 THE FACILITATOR: Did everybody hear Henry?

25 MS. McDADE: I just have one quick

1 clarification, Blake. You said that the 2003 were
2 specifically for the formula. But as I review it, the
3 only section that I see referring specifically to
4 formula is Section 2.

5 Is there something that you can guide us to
6 that refers to formula? Because, I mean, it's only ten
7 roman numerals, and I like the shorter version myself.
8 But can you guide me somewhere that says that if the
9 formula impacts this charter in such a substantial way
10 that we can't get around that?

11 MR. KAZAMA: No. All I was saying is, we
12 developed this particular protocol and charter in 2003
13 for the formula. And so we had that in mind.

14 You know, we also have to understand, this
15 group is designed for things other than the formula, in
16 terms of NAHASDA. So we don't want it so broad that we
17 throw everything in the kitchen sink into this
18 negotiation. Because in 2003, that was the big battle.
19 We could spend months again on formula discussion, and
20 we don't want to go there at this time. I think it's
21 slated for 2012, is what the formula will be.

22 So that's all I was saying is 2003 was specific
23 for the formula, and I think that's great. And this
24 one is something different. It's about NAHASDA
25 regulations, and we should focus on that.

1 THE FACILITATOR: Okay.

2 MS. McDADE: And, again, just for
3 clarifications. Sorry if I'm interrupting. If there
4 is nothing there and -- again, I'm reading it. Instead
5 of us negotiating, if we're not getting past the
6 purpose or even the name, I would look to something
7 that's already been approved.

8 And if there aren't those changes, then I
9 would -- and taking all the comments into consideration
10 with regard to like our small tribe representation, why
11 wouldn't we just work from something that's already
12 been approved?

13 There was no major change, other than one word
14 that I've seen thus far in the "Purpose," because we're
15 working with an approved document versus a proposed
16 document; although, I respect the work that has gone
17 into the draft document by NIAHC. So I would just like
18 to make that suggestion.

19 THE FACILITATOR: Russell. And then Marvin.

20 MR. SOSSAMON: It doesn't matter what document
21 any committee member wants to work from. We're going
22 to create a new document that's a product of this
23 committee. Okay?

24 So you can work from any document here or any
25 other document you want to work from. We just want to

1 create a new document that belongs to this committee.

2 So I say individually we decide what document we want
3 to work from, and let's start and decide a title.

4 THE FACILITATOR: Okay. Marvin?

5 MR. JONES: First, if I heard correctly, the
6 HUD position, I appreciate the effort to expand. I
7 think everybody else here does, too.

8 But in addition to that, I know we have to be
9 mindful of the legal time frame, you know, the October
10 2010.

11 And last, I wanted to, as clearly as I could,
12 describe why we think that the scope should be
13 broadened beyond just the amendment. And it's because
14 we're being required to do things that are not found in
15 the law and not found in any regulation.

16 So some of those issues we want to discuss,
17 either in this format or some format, so we can get
18 those things out and talk about them and get them
19 resolved. So, you know, if it's this format or if it's
20 some other format, that's what I'm mainly interested
21 in.

22 THE FACILITATOR: Okay. Yes, Henry?

23 MR. CAGEY: What's your name again?

24 THE FACILITATOR: Jan.

25 MR. CAGEY: Jan. Again, Jan, we've done this

1 before. What I recommend is that we read the first
2 paragraph. If everybody agrees, put your thumb up in
3 the air. We're done. And then if we agree on the
4 second paragraph, we put our thumb up in the air. We
5 agree. And go right down the line.

6 You've been spending 40 minutes on this issue.
7 And, again, this is only four pages. You know, Jan,
8 I'm getting really a little frustrated to go through
9 this four-page document. It's only four pages. So,
10 again, get us through this. Okay?

11 So, again, if we agree on this first paragraph
12 and we're done, let's put our thumbs up. Second
13 paragraph. And then if we don't agree, then we'll know
14 where we're at. Again, get us through this.

15 THE FACILITATOR: Okay. Let me just sum up.
16 So far I think we have an agreement on the first
17 paragraph. We've got consensus on the first paragraph.

18 MR. CAGEY: The first paragraph on --

19 MS. MARACSO: No.

20 THE FACILITATOR: The one on 210 -- 2010.
21 I think we have agreement on that already. Not an
22 agreement?

23 MS. MARASCO: Nope.

24 THE FACILITATOR: Okay. State the objection.

25 MS. MARASCO: Okay. What I found --

1 THE FACILITATOR: Excuse me. Before I say
2 this, in the consensus process, if anybody has an
3 objection to a proposal that's put forward, that's
4 fine. You all have the right to do that, every single
5 one of you has that veto power, to hold the group and
6 reach concession.

7 But the only obligation to follow is that you
8 have to explain why it is that you're objecting and put
9 forth a proposal that you think may garner the
10 agreement of the group. Okay.

11 MR. MARASCO: Judith with Yurok Housing. I
12 like Sandra's language, the language that she wanted to
13 add to item No. 1. I found that at the last negotiated
14 rulemaking that wordsmithing right on the screen helped
15 us through the process.

16 So if we could ask her to repeat her language
17 because she has agreed to broaden the scope, that we
18 actually go into that first paragraph and add that
19 broadened language, and then agree as to the changes on
20 the screen. So that we're not assuming what the
21 changes are, that they're actually in words on the
22 screen in either color codes, in strike-throughs. So
23 that we would actually form the document as we move
24 through it and not just agree to changes and then move
25 on without actually seeing them in tact.

1 THE FACILITATOR: Put the -- we're working off
2 of 2010.

3 MALE SPEAKER: I believe this is the language,
4 the '97 charter, that they were referring to, the
5 paragraph "Purpose."

6 MS. MARASCO: Why are we going back to that
7 one?

8 MS. FOSTER: Karin Foster, Yakama Nation
9 Housing. I'm not sure that was the paragraph the
10 Secretary was working from. I believe she was working
11 from the 2010.

12 And I would appreciate hearing those words
13 again, as Judith says, because I think that that will
14 respond to the concern that this is potentially only
15 limited to the amendments. And there are a lot of
16 people around the table saying they don't want it to be
17 just limited to the amendments. So I'd like to see
18 that language.

19 MS. HENRIQUEZ: So bear with me and I'll try
20 and read the whole thing as proposed. All right? So
21 it's "Article 2, Purpose."

22 (Reading) "This Charter establishes a
23 Committee, pursuant to Public Laws 101-648, 104-330,
24 107-292, and 110-411, to negotiate with the
25 United States Department of Housing Assistant and Urban

1 Development ("HUD") to --" one change here "--
2 negotiate amendments and other necessary changes."

3 THE FACILITATOR: So we need to change the word
4 "review" to "negotiate"?

5 MS. MARASCO: We'd like to see it struck
6 through and then the proposed change.

7 THE FACILITATOR: Can you track changes on
8 that?

9 FEMALE SPEAKER: We can edit it on available
10 (indiscernible - speaker not using speaker.)

11 MALE SPEAKER: The limitation is only published
12 in scanned image, so we can't edit and try to -- we're
13 recreating it in Word document right now. We tried to
14 do it, and it won't let me.

15 MR. ADAMS: Jan?

16 THE FACILITATOR: Yes?

17 MR. ADAMS: Point of order, I heard Judith
18 mentioning Section 1, that we were going back to
19 Section 1 for HUD's changes to 1. I thought we were
20 done with 1 and on to 2.

21 MS. MARASCO: Well, 1 has -- okay. 2.

22 MS. ADAMS: Okay. So we're on 2, "Purpose"?

23 MS. MARASCO: Yes.

24 MR. ADAMS: I'm just trying to catch up.

25 MS. MARASCO: I'm sorry.

1 MS. FOSTER: Karin Foster. But did we actually
2 approve 1? I think that was what the consensus was
3 being taken, and Judith didn't agree to approve 1.

4 And No. 1 continues to refer to amendments, and
5 amendments only. So No. 1 is perhaps more restrictive
6 than what we want it to be.

7 MR. ADAMS: That's what I just asked the
8 question for, was I thought we had all approved 1.

9 MS. MARASCO: Well, 1 really limits us between
10 1998 and 2008. That was my objection to not voting for
11 1. If we're changing the purpose in 2, then it seems
12 to me you'd have to change that language in 1.

13 MR. ADAMS: I guess my thought on it, though,
14 was that we're just talking in 1 about the name. And
15 we agreed that the name wouldn't limit us to what the
16 discussion would be here, that the purpose would define
17 what we're here for, not the name.

18 MS. MARASCO: Then you would have to strike
19 that very last line on 1 for me.

20 THE FACILITATOR: Let's get it up in Word so we
21 can monkey with it.

22 MS. MARASCO: No?

23 MR. ADAMS: I thought HUD accepted 1, the 2010
24 version, as is, correct?

25 MALE SPEAKER: Jan, was there a second word

1 that we agreed to strike through or a second section?

2 THE FACILITATOR: Can you expand that just a
3 little bit more?

4 MALE SPEAKER: Yes.

5 THE FACILITATOR: Okay. It's kind of hard to
6 see. That's a little too much. Can we look at the
7 first paragraph again?

8 MALE SPEAKER: First paragraph?

9 THE FACILITATOR: Yes.

10 MR. HAUGEN: Jan? Excuse me, Jan?

11 THE FACILITATOR: Yes.

12 MR. HAUGEN: Lafe Haugen, Northern Cheyenne.
13 I want to clarify. We gave the thumbs-up on 1. It was
14 unanimous.

15 THE FACILITATOR: Yes.

16 MR. HAUGEN: Now, if Judith wants to make a
17 point, then she needs to -- she should have made it
18 then. It's my opinion that -- didn't we approve 1?

19 MS. MARASCO: I did make it then. I put my
20 thumb down.

21 MR. HAUGEN: I mean, the majority is we voted
22 for 1. Let's move on.

23 THE FACILITATOR: He's right. We've taken two
24 votes on paragraph 1, which we are actually --

25 MS. MARASCO: But you didn't reach consensus on

1 1 because I didn't put my thumb up on 1.

2 If you had the same parameters in 1, where
3 you're talking about changing related to amendments in
4 NAHASDA Self-Determination Act between 1998 and 2008,
5 you've already set your time frame prior to even going
6 to "Purpose."

7 MR. ADAMS: Judith, if I heard you right when
8 you objected, you said because you wanted HUD changed
9 language in there. But HUD didn't change the language
10 in 1. They accepted change -- they accepted 1 as is.

11 Correct, Rodger? Yeah.

12 And what I understood from the discussion on 1
13 is that we agreed that this was in name only, that it's
14 not going to limit the objective of this committee,
15 which is, the objective is going to be defined in
16 "Purpose," Section 2.

17 MS. MARASCO: How can you say that?

18 MR. ADAMS: That's what we talked about.

19 MR. MARASCO: But if you have set the
20 parameters in 1 to say that we're only going to look at
21 related amendments to NAHASDA between 1998 and 2008,
22 you've set the parameters of the committee there also.

23 When I was speaking about Sandra's language, I
24 was saying that I liked the language. But it needs to
25 relate in 1 and 2, not just 2.

1 MS. FOSTER: That's correct. She's correct.
2 When Judy objected, our facilitator asked her to state
3 her objective, and that's what she went to. She stated
4 her objective to the name, and then he said, "Well,
5 that will affect the purpose." And that was the reason
6 why she objected to it.

7 THE FACILITATOR: Okay. Let's start all over
8 again. All right?

9 I think we did -- you didn't miss anything, but
10 I think we did take -- and maybe everybody wasn't
11 paying attention. We did take a consensus vote the
12 first time around, and I thought we had a full
13 consensus for accepting 1. Okay? You must have missed
14 that.

15 MS. MARASCO: I must have missed that, and I've
16 been sitting right here.

17 THE FACILITATOR: We're not going to railroad
18 anybody here. So I think at this point, let's just
19 reopen that, but say, please, everybody pay attention
20 when we're voting and taking a consensus on something
21 because if you miss it, you miss it.

22 You know, I think everybody else saw that
23 vote -- or almost everybody else saw it. Maybe we need
24 to be a little bit more careful to make sure that
25 everybody -- I catch everybody's thumb as we go around

1 the room. Because I think that was the problem.

2 But let's -- I'd say because there is not a
3 consensus on it, let's go back, and for this one time,
4 reopen that and get what we want on No. 1.

5 MS. MARASCO: Judith Marasco with Yurok. This
6 thumbs up and thumbs down is good, but I'd rather -- in
7 the past, we've always done a roll call vote for
8 consensus, and I'd really like to go back to that
9 format.

10 If there's already confusion about whose thumbs
11 up and whose thumbs down, then let's just call for
12 consensus and go around the table, and we'll know quite
13 clearly whose agreeing with what and when they're not
14 agreeing.

15 THE FACILITATOR: Well, I think maybe it's
16 easier to do it this way. Let's just call for an
17 objection. Anybody who objects to whatever it is.
18 Then it will be very clear because either they can
19 speak or they won't.

20 MALE SPEAKER: Exactly.

21 THE FACILITATOR: Okay. So can we -- yes,
22 Henry?

23 MR. CAGEY: Let me recommend again that -- you
24 know, Yurok is asking us to strike out the 1998 and
25 2008 numbers. That's all they're asking. Can we get a

1 consensus on that? Do we have a consensus on Yurok?
2 Do we have a consensus on the committee? I think
3 all they're saying --

4 THE FACILITATOR: Is there any objection to
5 that?

6 MR. CAGEY: -- is strike those --

7 THE FACILITATOR: Just striking the '99 --

8 MR. CAGEY: -- years. That's all she's saying.
9 Not start over, but striking those two numbers.

10 THE FACILITATOR: Yeah. Yes, Leon?

11 MR. JACOBS: Why don't we change it to state
12 that "all NAHASDA laws and amendments." If we just
13 say -- knocking out the 1998 and 2008, you still got
14 amendments up here, but it doesn't relate to the law.
15 So you want to include "all NAHASDA laws and
16 amendments," wouldn't you?

17 MS. MARASCO: Thank you.

18 THE FACILITATOR: Russell?

19 MR. SOSSAMON: I'm concerned with the language
20 that says, where it goes: (Reading) "The Negotiated
21 Rulemaking Committee on rulemaking changes related to
22 the amendments, any previous negotiated rulemaking
23 bodies have made."

24 Are we negotiating changes to the rules that
25 have been made or establishing new rules for the

1 amendments to the legislation?

2 Because if we're focusing on changes to
3 previous rules, that opens formula wide up. And I
4 don't want to get into formula here. That's not what I
5 was sent here for. That's not what I feel we're
6 authorized to do. So I'd like to change that language
7 or clarify that that's not what it means.

8 THE FACILITATOR: Okay. Any comment to
9 Russell's comments?

10 Carol?

11 MS. GORE: How about a solution? I've been
12 listening to you, Henry, and you said keep it simple.

13 So No. 1 is the official name. I think we're
14 trying to mix the purpose with the name. I would
15 strongly suggest we go back to No. 1 in the 1997
16 charter, which says "Native American Housing Assistance
17 and Self-Determination Negotiating Rulemaking
18 Committee," period. Thank you.

19 MS. MARASCO: Yes. Thank you.

20 THE FACILITATOR: All right. Any objection to
21 that proposal? Okay. That passes. We'll move to --
22 thank you, Carol.

23 MR. CAGEY: And then Sandra has a
24 recommendation from HUD's side that we need to
25 consider. Now we're back under her recommendation on

1 how to adjust the purpose.

2 THE FACILITATOR: Yes. Sandra, can you restate
3 your recommendation?

4 MS. HENRIQUEZ: Thank you, Henry. Okay. Oh.
5 So they're able to strike out. Okay.

6 I'm proposing that Section 2 "Purpose" reads --
7 let's go all the way down to the first strike where
8 you've got No. 1. So it's all the public law
9 citations. No. 1 should be changed to read "negotiate
10 amendments and other necessary changes." I've got "to
11 the IHBG program regulations."

12 THE FACILITATOR: "And other necessary
13 changes"?

14 MS. HENRIQUEZ: Changes. Oh, wait. I'm sorry.
15 It's "negotiate amendments and other necessary changes
16 to the IHBG program regulations." G, as in growl.
17 Next word, program regulations.

18 THE FACILITATOR: Is there anyway you can
19 underscore the new language as you put it in there or
20 highlight it or something?

21 MS. HENRIQUEZ: "Regulations as agreed to by
22 the Committee, as a whole, on each individual item,"
23 period.

24 I'm sorry. That should not be a period. That
25 should be then a semi-colon, and then I would strike

1 what's in between and come back to "and to" remains the
2 same till the end.

3 So I'd strike from there down to "to." Now,
4 before you wipe it all out, because it doesn't show in
5 edit form. Because if people want to discuss it some
6 more -- okay. So if it just shows a strikeout, that
7 would be great. Okay. Terrific. Thank you.

8 THE FACILITATOR: Could you also highlight the
9 new languages there that you put in?

10 MS. HENRIQUEZ: Oh, yeah. Perfect. So that's
11 the proposal.

12 THE FACILITATOR: And the rest will stay the
13 same, Sandra?

14 MS. HENRIQUEZ: Yes. And a small "i" and
15 small -- 1 and 2, yes.

16 THE FACILITATOR: Okay. Yes, Henry?

17 MR. CAGEY: I'm not a lawyer or anything, but
18 what is that 24 C.F.R. 1000? Is that a reference or
19 does that need to be in there or not to be there? I
20 know we're taking it out, but that looks important.

21 MS. HENRIQUEZ: It's the regulations on that
22 section of implementing the program.

23 MR. CAGEY: Should that be referenced anyplace?

24 MS. HENRIQUEZ: The lawyers need to tell me how
25 to do this one, but it's a good point. If we spelled

1 out the IHBG program regulations and gave them a
2 citation where they're found in the yellow highlighted
3 section, then that might be helpful.

4 THE FACILITATOR: Yes, Larry?

5 MR. COYLE: Yes. Also could we interject
6 consensus in either one of those two, "negotiate by
7 consensus"?

8 THE FACILITATOR: I'm sorry. Say it again?

9 MR. COYLE: "Negotiate by consensus" in all of
10 those.

11 THE FACILITATOR: And put it under the
12 "Purpose"?

13 FEMALE SPEAKER: I think that's in the
14 protocols.

15 THE FACILITATOR: I'm a little unsure. If it's
16 in the protocols, do we need to put it in the charter
17 as well? Darlene doesn't think so.

18 MS. TOOLEY: But that's not the main issue over
19 here.

20 Darlene Tooley. I respectfully think we have
21 to have NAHASDA program regulations because IHBG
22 doesn't include Title VI or 184 or some of the other
23 things that are affected by NAHASDA. So if we could
24 put NAHASDA or spell out the act program regulations, I
25 believe that would be better.

1 MS. HENRIQUEZ: That's fine. I think that gets
2 at your issue as well. So if the lawyers are plugging
3 in the right spots and we've got the right citations
4 legally, we'll be good to go.

5 THE FACILITATOR: Yes, Blake?

6 MR. KAZAMA: I'm also concerned that it doesn't
7 limit us from discussion on formula, that it's broad
8 enough -- too broad that it can't incorporate that.

9 THE FACILITATOR: So what would be your
10 recommendation?

11 MR. KAZAMA: We need an exclusion.

12 THE FACILITATOR: Huh?

13 MR. KAZAMA: With an exception or exclusion of
14 the formula.

15 THE FACILITATOR: With exception or exclusion
16 of the formula.

17 MS. HENRIQUEZ: As I understand the language I
18 just proposed, it would include everything. However,
19 understand that because you have to get to consensus on
20 each individual item, while formula might be proposed,
21 you might not get consensus to discuss it in this
22 committee at this time.

23 THE FACILITATOR: If you don't get consensus to
24 discuss it, you're not going to discuss it. So you
25 don't think you need to put it in there, especially not

1 to exclude the section of (indiscernible - simultaneous
2 conversation.)

3 MS. GORE: I was just going to say, with all
4 due respect, we haven't defined consensus yet. So
5 there's too much risk for me to take. I've come
6 prepared for 52 issues that are very important, I
7 think, across the country and especially to the tribes
8 I represent. And I don't want to be distracted from
9 that mission, and I also don't want to get in trouble
10 with my tribe. It's too much risk for me in the
11 absence of a definition of consensus to take that risk.

12 THE FACILITATOR: The definition of consensus
13 would be appearing in the protocol as saying consensus
14 means 100 percent agreement with every single
15 participant.

16 MR. KAZAMA: If we agree to it.

17 MS. GORE: If we agree to it. And there were
18 other consensus discussed at the last negotiated
19 rulemaking, which is why I'm concerned about that.
20 I would support Blake's amendment.

21 THE FACILITATOR: Okay. Anybody have a problem
22 with Blake's amendment, which is to say "with the
23 exclusion of discussion of formula"? Is that a problem
24 for anybody?

25 Is that a problem for you, Henry?

1 MR. CAGEY: I've got a problem with it. Again,
2 it needs to be footnoted someplace. You know, the
3 formula is a big issue. And, again, we're not prepared
4 to deal with it, but it needs to be footnoted in this
5 process. In the end, it needs to be noted.

6 Even though these are nonformula discussions,
7 the formula still needs to be noted with these folks.
8 So, again, they have to understand the importance the
9 formula issues are. It needs to be noted someplace
10 within this rulemaking process so OMB sees it, the
11 Secretary of HUD sees it, and Congress sees it.

12 Again, we can't overlook some of the problems
13 that we still have with the statutes.

14 THE FACILITATOR: We have an issue right now
15 that it's 4 o'clock and that the color guard is due to
16 come back to remove the flags. So do you want to
17 continue discussion after that happens or is that
18 considered bad protocol?

19 Because I have several suggestions about how to
20 take this process forward a little bit, I think we
21 should allow them to -- because the color guard is
22 here. So can we take a moment to let the color guard
23 remove the flags?

24 Can you all stand, please.

25 (Removal of the flags was performed.)

1 THE FACILITATOR: Thank you. Let's finish up
2 on paragraph 2 here. There's a -- I think Henry was
3 talking last.

4 Yes, Ray?

5 MR. DePERRY: Yes. Thank you. I can
6 understand what Carol is saying with regards to the
7 issue of formula and not wanting to -- at this
8 particular time, given that our directives for other
9 purposes of being here. And at the same time, I can
10 also understand what Henry is saying. And I'd like to
11 weigh in on this as well. Perhaps maybe while I do
12 this, I'll put my tribal council elected leader hat on.

13 It's going to be inevitable that we discuss
14 formula because a couple of years will be here soon.
15 But I do agree. I do agree with Henry that it has to
16 have some place as a footnote within this report at
17 some place in time.

18 I know that our charge here is for other
19 purposes. But there's no denying. There's no denying,
20 and we should not deny ourselves that it's going to
21 happen. That it's going to happen.

22 And as an elected leader, I need to think in
23 terms of that as well, too, you know. And I could
24 appreciate that perhaps that is where it goes, in the
25 final reports as footnotes for what we're concerned

1 about. Thank you.

2 THE FACILITATOR: Other comments, Russell?

3 Oh, Jack?

4 MR. SAWYERS: I guess I hope I understand, but
5 I'm not sure because I'm an old football coach, so I'm
6 not sure that I understand. It seems to me like any
7 subject that comes up, we have to have a consensus on
8 to talk about. And I think that's too narrowing.

9 I think that you've got some items here. But
10 you didn't give me the assurance that the items that I
11 want to talk about, other than formula, we have to have
12 a full consensus on. That would eliminate most of your
13 parking lot items, that someone doesn't want to talk
14 about.

15 I'm just saying I think that's too narrow for
16 us. I want to make sure -- maybe I don't understand
17 it. But if I understand it properly, HUD -- if they
18 don't like something or Utah Paiute doesn't like
19 something, which is quite common -- could eliminate a
20 discussion, then I think that's too narrow -- not the
21 Paiute, the other part.

22 THE FACILITATOR: Russell?

23 MR. SOSSAMON: I appreciate the comments and
24 have no objection to a footnote saying there's a
25 concern over formula. And at some point, we're going

1 to address formula. I believe it's already been
2 published in the Federal Register when that is supposed
3 to occur. So I have no problem with that.

4 However, having participated in these
5 negotiated rulemaking in the past, there's a reason
6 there's a room full of lawyers in here. Every word
7 must be considered for its impact. This is defining
8 our purpose. I want it to be clear -- even to a
9 lawyer -- that it's nonformula program regulations.

10 The only thing it limits it to is nonformula.
11 That's the only limitation. It excludes formula
12 regulations. That's already stated. Everything else
13 can be placed before this body for a committee, is if
14 you add two words, "non formula." So that's what I
15 would recommend.

16 THE FACILITATOR: So that's your proposal,
17 Russell, put it as nonformula?

18 MR. SOSSAMON: Yes.

19 THE FACILITATOR: How do other people feel
20 about that? Would that solve the problem? Are you
21 okay with that?

22 MR. SAWYERS: Did that answer my question? He
23 just asked me if it answered my question. I wasn't
24 sure. It doesn't seem like it.

25 Carol, you raised it.

1 MS. GORE: May I make a friendly amendment,
2 Rusty? Nonformula and formula-related issues. As you
3 know, we had many, many -- formula area was maybe one
4 of those issues, and some might define that as a
5 nonformula issue, but it was clearly had impactful
6 decisions to the formula.

7 So if it's nonformula and nonformula-related
8 issues that are the exclusion.

9 MR. SOSSAMON: I'll accept that. I believe
10 it's just further clarification of the point. I don't
11 believe it limits anything, I feel like, this body is
12 authorized to do.

13 THE FACILITATOR: I'm sorry. I didn't
14 understand you.

15 MR. SOSSAMON: I said I would accept that
16 friendly amendment to what I proposed, because I
17 believe it's just further clarification of my point and
18 does not limit any other area that this body is
19 authorized to address.

20 MS. GORE: That was my intent.

21 THE FACILITATOR: So nonformula and
22 formula-related issues?

23 MS. GORE: That was my intent.

24 Thank you, Rusty.

25 MR. ADAMS: Excuse me, Jan. How do we get the

1 language up there? I mean, he made a request, and it's
2 not up there. She asked for a friendly amendment, and
3 it's not up there. How do we get something to be on
4 the board?

5 THE FACILITATOR: Just everybody agree to it.

6 MR. ADAMS: I agree to what Rusty's saying, and
7 I agree to the amendment.

8 MR. SOSSOMAN: Would you like to see where I
9 would insert that language? Jason, is that what you're
10 asking?

11 THE FACILITATOR: Where would you put it,
12 Rusty -- is it Rusty or Russell?

13 MR. SOSSAMON: Either.

14 THE FACILITATOR: Either, okay. Where would
15 you put the language in in the non- --

16 MR. SOSSAMON: I would suggest it go in the
17 yellow highlight after the parentheses, "IHBG," between
18 there and "program."

19 THE FACILITATOR: Nonformula and
20 formula-related issues. I'm sorry. Did you say after
21 the parentheses and before "program"?

22 MR. SOSSAMON: Yes.

23 THE FACILITATOR: And we want to put in there
24 nonformula and nonformula-related issues.

25 MS. MARASCO: Excluding nonformula and

1 nonformula-relating issues.

2 THE FACILITATOR: Okay. Excluding nonformula
3 and nonformula-related issues.

4 MR. CAGEY: I've really got a problem with what
5 we're doing here. You're really not doing your job on
6 trying to manage this meeting. I want to say that
7 because you guys are paid to do this.

8 THE FACILITATOR: All right.

9 MR. CAGEY: And, again, we want to keep this
10 purpose very simple. Don't tie our hands into
11 something that we're trying to do. You only get one
12 swipe at this thing. You only get one swipe to
13 footnote things that we're having issues with HUD.

14 And if you start tying our hands on formula and
15 nonformula issues, that ties our hands with the leaders
16 that are hitting the Hill, with the Secretary, with
17 Congress, with the OMB.

18 Those have to be footnoted someplace. And if
19 you tie our hands here, it doesn't allow us to talk
20 about those things. And, again, you have to be careful
21 with these words that you put in there. Keep it very
22 broad.

23 We've sat in many of these types of meetings
24 before, because the words are very important when it
25 gets down to the "shall, may, or coulds." If you start

1 tying our hands, it becomes very restrictive, and then
2 we can only talk about certain things.

3 There's only a few chances we get to report to
4 the Secretary. There's only a few chances we get to
5 report to Congress. There's only a few chances we get
6 to report to OMB. This is one of them. So, again, we
7 need to take advantage of this opportunity.

8 I recommend, Russell, that we don't want to tie
9 our hands too tight.

10 THE FACILITATOR: So, Henry, you basically
11 object to that language?

12 MR. CAGEY: Yeah, I object to it.

13 THE FACILITATOR: Okay. We need further
14 discussion on it then.

15 Russell?

16 MR. SOSSAMON: Okay. First of all, the word
17 "excluding." That was not my word. It just said
18 "negotiate amendments and other necessary changes to
19 the Indian Housing Block Grant, IHBG." Nonformula and
20 nonformula-related, those are my words.

21 And with all due respect to Mr. Cagey, I
22 appreciate your comments, and I agree with you. In my
23 view, I do not believe this restricts anything that we
24 want to communicate to the Secretary, to Congress, or
25 anyone. What this does is it takes into consideration

1 experience that if we're not careful and clearly define
2 what we're here to address, things that were not
3 auth- -- this committee, I don't believe is authorized
4 to address -- will be brought up and eat up our time.

5 I have no objection to footnoting, but that is
6 a concern because it is a concern, an ongoing concern,
7 and not that it's something that we expect to be
8 attended to in 2012, as was published in the Federal
9 Register.

10 So I have no objection if at some point you
11 want to insert that language to get that message
12 across. However, I want it very clear that our purpose
13 is not to negotiate any formula issues. Thank you.

14 MR. CAGEY: And, again, this is still
15 government-to-government. We all represent our areas,
16 and we all represent our government, not just housing
17 authority. This is government.

18 So, again, my concern is that you only get a
19 few chances to negotiate some of these things and
20 footnote some of these things that we can't talk about,
21 but still we can. As tribes, we have the option to
22 discuss formula. I have the right to go in and talk
23 about formula here because I disagree with some of the
24 formula that we created. It's not a good formula.

25 And I think we need to at least footnote it and

1 make time to talk about -- you know, it's a parking lot
2 issue, I agree. But it needs to be thought through and
3 what are we going to do next.

4 So, again, these opportunities are far and few
5 in between to fix things. And if we're here to fix
6 nonformula issues, that's fine. But, again, my point
7 is, don't tie your hands too tight and keep it very
8 simple and broad enough so that we can discuss these
9 things.

10 If it's in the charter, you can't talk about
11 it. These lawyers are going to say, "You can't talk
12 about it because you put it in the charter." Keep it
13 broad.

14 MR. SAWYERS: Rusty, if you just take Title 3
15 and, say, that subpart D. That's the formula. We've
16 got to realize we've already talked about the formula,
17 so we're not ignoring it. We're going to talk about it
18 again in two years. We have a limited area. So if you
19 just eliminate subpart D, that takes care of all that.
20 You don't have to spell it out anymore. That would do
21 that. And that's my suggestion. And that would take
22 care of what you're saying.

23 But it still doesn't answer the other part
24 which is, what are we going to -- now that I fixed his
25 problem, how are you going to fix my problem?

1 Consensus on each item is not realistic. We
2 need to eliminate that. But we can take one part at a
3 time. Do you agree with that, Rusty?

4 MR. SOSSAMON: Possibly.

5 MR. SAWYERS: That would eliminate the
6 negotiations.

7 MR. SOSSAMON: I would consider that and reply
8 shortly because I don't want to hold us up, but I do
9 want it to be real clear. Not that we want to limit
10 anyone's ability to discuss anything. Let's just be
11 clear that we're not here to reopen the formula and
12 renegotiate.

13 MR. SAWYERS: Right.

14 THE FACILITATOR: Can I make a suggestion
15 here -- just like a process suggestion? Okay? Because
16 I know that people get a little frustrated that we're
17 spending so much time on the first two points here, and
18 we haven't gotten to the protocols yet. And somehow
19 the protocols seem to be an important part of the
20 tribal caucus, in terms of the need for tribal
21 co-chairs and what their responsibilities were and
22 those sorts of things.

23 I think this indicates to me that this whole
24 discussion around purpose and whether we should exclude
25 for sure the discussion around formula or not or leave

1 things open or try to, at some point, put a footnote or
2 even a comment into our conversations, because of the
3 opportunity to have the Assistant Secretary here. I
4 mean, these are normal kinds of concerns. But I think
5 I have to suggest some way to accelerate this process.

6 Those of you who have spoken a lot about the
7 issues today, I'm going to recommend that you get
8 together in a smaller group and go through this, find
9 out exactly what objections the Feds have to any of
10 these proposals that appear that NAIHC put down, and
11 come back to this group with some suggestions for a
12 proposal.

13 I think it has to happen in smaller groups.
14 I just don't think we're using our time well to go
15 through every single page of these proposals and
16 charters as a large group.

17 I think that you know who you can trust or feel
18 confident in to help, you know, kind of pull a good
19 proposal together. I think our time would be better
20 spent if that were to happen in a smaller group than
21 27 people and all of us going through it.

22 Because if that were to happen, then we could
23 have up on the board something -- maybe have the most
24 important components of the NAIHC's proposals as well
25 as the concern that you guys have. That can then be

1 discussed more directly and quickly in a smaller group.

2 We would still have to have full consensus
3 around it. We could give each and every one of us the
4 opportunity to object to something if they saw they
5 didn't like it or they thought something was missing.
6 But I think it would accelerate the process.

7 Yes, Jason's been holding his hand for awhile.

8 MR. ADAMS: I guess I just respectfully
9 disagree with you. I think this is exactly why we're
10 here, and this is the beginning of this session. This
11 is why I questioned why we had three hours on the
12 agenda for this, because this is the essence of what
13 sets the ground rule for all the next meetings.

14 So I don't think a small group would do us
15 justice. We are the small group. We are the ones that
16 are here for this very purpose, to talk these words out
17 from here on out. And so I hope that, you know, if we
18 want to break for dinner here and come back, we should
19 make this a late night and get this done, because this
20 is the essence of why we're here. I don't want to give
21 that to anybody else but this group.

22 THE FACILITATOR: All right. Okay. Marvin and
23 then Henry.

24 MR. JONES: Marvin Jones, Cherokee Nation.
25 I agree with Jason. This is the most --

1 MR. ADAMS: First time (laughter).

2 MR. JONES: Yeah. Thanks, Jason, for the offer
3 of dinner tonight, too. (Laughter.)

4 I think this is one of the, in my mind, two
5 most important issues of this discussion: the scope,
6 and the second is the basis of the decision making, the
7 consensus issue.

8 If we get those two things resolved, however
9 long it takes, a lot of the rest of this is just
10 simply -- you know, I don't think we'll have a whole
11 lot of disagreement if the Alaskans leave. (Laughter.)

12 But I really do think that this is a core issue
13 that we just have to get everybody on board with.

14 MR. CAGEY: I recommend, Jan, let's come back
15 to this section. Let's get through the -- again, this
16 is only four pages.

17 FEMALE SPEAKER: Exactly.

18 MR. CAGEY: Let's get through these four pages
19 and come back to this section, Section 2.

20 THE FACILITATOR: Ms. Tooley?

21 MS. TOOLEY: Thank you. Darlene Tooley.
22 I just want to be sure we don't lose the point of
23 changing IHBG to NAHASDA. Because, again, it limits
24 the other aspects of the legislation that may come up
25 which are not formula. That's all.

1 MS. McDADE: I have one thing. Sharol McDade
2 with Fallon. As I'm reading it and I'm talking with my
3 tribal leaders and understanding that unique situation
4 that the government officials do possess, it appears to
5 me that if you just limit the first three lines and put
6 the period at the end of "Department of Housing and
7 Urban Development (HUD)," period, and then jump down to
8 the very last sentence, "for the purpose of the
9 establishment of this committee provides a nonexclusive
10 means of tribal participation, pursuant to NAHASDA."
11 That pretty much says it all.

12 It doesn't limit your scope. It keeps it open
13 and still allows for the tribal government
14 participation, recognizing that a tribal government
15 leader is never limited in what he can say to the
16 Secretary, within reason. But it still gives the
17 premise of that's what we are. It's a purpose.

18 But all the other verbiage in there, it's just
19 verbiage.

20 THE FACILITATOR: Say it again.

21 MS. McDADE: (Reading) "The Charter establishes
22 a Committee, pursuant to Public Law 101-648, 104-430,
23 107-292, and 110-411, to negotiate with United States
24 Department of Housing and Urban Development (HUD),"
25 period. And then jump to the very last sentence. "The

1 establishment of this Committee provides a nonexclusive
2 means of tribal participation, pursuant to NAHASDA."

3 It takes all the other verbiage out. It allows
4 for it. We're flexible. We can focus.

5 THE FACILITATOR: Yes, Sandra?

6 MS. HENRIQUEZ: So I just want to ask a
7 question. We know that the inclusion of language
8 before our suggestion was formula and
9 nonformula-regulated program regulations would be
10 exempted in this discussion before this committee,
11 knowing that the formula discussion is on schedule for
12 2012.

13 So what you've proposed, I think, is overbroad,
14 unless we can figure out how to do a carve-out that
15 lets us talk about everything. But we know that
16 formula and formula-related issues are being taken care
17 of in two years.

18 MS. McDADE: I agree with what you're saying.
19 Maybe we could put a reference to the 2012 negotiations
20 versus, in this section in parenthesis, referring or
21 recognizing that we will take the formula negotiations
22 in 2012. But, again, I think some of the language in
23 there is just too cumbersome. It's not simple. It's
24 verbiage, and it doesn't need to be there.

25 THE FACILITATOR: Russell?

1 MR. SOSSOMAN: Legal points are made on
2 verbiage. If verbiage has no meaning to some people,
3 then that's okay. This verbiage has meaning to me, and
4 it is not intended to exclude anybody from any right
5 they exercise. It's to clearly define what the purpose
6 of this committee is for. And I think that that
7 language is necessary to clearly define it.

8 We can -- after we clearly define that, if you
9 want to spend a whole section talking about and listing
10 our concerns and when the next opportunity to address
11 it in a negotiated rulemaking setting is going to be, I
12 have no problem with that.

13 That would not, in any way, limit anyone's
14 ability to petition government or anyone else. It just
15 clarifies the purpose of this committee, and that's all
16 I'm asking for.

17 MS. McDADE: With all due respect, I understand
18 where you're going, Rusty. And, again, that's why we
19 have it in Section 1 and Section 2. I think the
20 committee is the purpose. We're here as the committee,
21 and that's what it says, "establishes the committee."
22 That is our purpose. It identifies the law, and then
23 it says "nonexclusive means." Everything in between
24 limits you, as I review it, and that's my opinion.

25 But, again, I'm referring back to the tribal

1 government officials, the leaders, who are saying, "Do
2 not tie your hands." If I'm listening to them and
3 respecting that, I'm not doing to tie my hands here at
4 the committee.

5 THE FACILITATOR: Russell?

6 MR. SOSSAMON: Our purpose is not to establish
7 the committee. The committee is established by the
8 fact that we're here. It was published in the Federal
9 Register and established as published. That is not our
10 purpose.

11 Our purpose is to negotiate regulations. Okay?
12 And I want it clarified what regulations we are
13 supposed to be here to negotiate. I agree we should
14 negotiate any of them that do not deal with formula.
15 That has been dealt with. It is scheduled to be dealt
16 with in another negotiated rulemaking committee that
17 will be established. That is scheduled to be
18 established.

19 So, to me, it is a -- and, again, if her tribal
20 leaders -- I do not believe this limits my tribal
21 leader or any tribal leader from advocating any
22 position that they would like to.

23 THE FACILITATOR: Thank you. Steven?

24 MR. ANGASAN: Steven Angasan. I think we
25 should reinsert 24 C.F.R. Part 1000 where it

1 proposes -- because that's what authorizes the
2 committee. It says that: (Reading) "The primary
3 purpose of the Committee is to discuss and negotiate a
4 proposal that would change regulations for Indian
5 Housing Block Grant, Title VI."

6 It also establishes a negotiated rulemaking
7 committee, pursuant to NAHASDA, as stated in No. 1.
8 I think that would -- I think that might work.

9 THE FACILITATOR: Can you repeat that again,
10 please? I don't think anybody heard it. Put the
11 microphone a little bit more --

12 MR. ANGASAN: Well, you see where he scratched
13 it off in the 2010 changes, where it says "Committee is
14 established..." blah, blah. Under 24 C.F.R. Part 1000,
15 it says that: (Reading) "The primary purpose of the
16 Committee is to discuss and negotiate a proposed rule
17 that would change regulations for Indian Housing Block
18 Grant, Title 6."

19 THE FACILITATOR: Do you think that part should
20 be reinstated, Steven?

21 MR. ANGASON: I think so.

22 THE FACILITATOR: Why is that?

23 MR. ANGASAN: Because it clarifies the position
24 of the committee.

25 THE FACILITATOR: Because it clarifies the --

1 MR. ANGASAN: The reason we're here. And then
2 it leaves out that argument about formula and
3 nonformula. It's a proposed rule for changing
4 regulations. That's why we're here.

5 THE FACILITATOR: So Steven's proposal is to
6 reinstate the part that's been crossed out there
7 under -- in red, and take out the nonformula part.

8 MR. ANGASAN: Well, I just thought reinserting
9 that 24 C.F.R. program part would add clarity to our
10 purpose, as read here in this -- it's No. 1. It's
11 committee information, tab 1, Meeting Notice.
12 24 C.F.R. Part 1000, these are our meeting notes.
13 I think that's why it was in there to begin with.

14 THE FACILITATOR: Jason?

15 MR. ADAMS: Generally, I've just got a question
16 for Sandra. These rules that are going to be
17 negotiated, some of these affect our formula, don't
18 they?

19 MS. HENRIQUEZ: Yes, that's correct.

20 MR. CAGEY: So, again, what I don't understand,
21 Russell, is why you don't want to deal with nonformula
22 issues when you look at these regulations? It affects
23 the formula.

24 So, again, you don't want to tie your hands too
25 tight where you say, "Well, we can't talk about it

1 because these regulations affect our formula." You're
2 saying nonformula. That's why I don't agree.

3 MS. HENRIQUEZ: If I might. I do think that
4 there are things that we can negotiate that should rule
5 right up to the edge of but don't affect the formula at
6 this time.

7 MR. CAGEY: Right.

8 MS. HENRIQUEZ: And maybe the issue is to
9 figure out what the existing parking lot is, negotiate
10 them at this negotiated rulemaking sessions and these
11 sessions going forward. And when we come up against an
12 issue that deals with the formula and touches up
13 against it, then that becomes our new parking lot.

14 So at least we can move through a body of work,
15 get some stuff done, clear up some stuff that's been
16 pending -- it sounds like from Darlene -- a very long
17 time. And then create a new sort of fresher parking
18 lot to take a look at in 2012.

19 MR. CAGEY: That's a good point, Sandra. Some
20 of these do touch up against the formula issues. Some
21 of these are places where we're going to disagree
22 because it does affect our formula.

23 MS. HENRIQUEZ: Correct. And if I --

24 MR. CAGEY: And that's where we need to kind of
25 draw the line and say, you know, this is as far as

1 we're going to go, and you're going to go. But, again,
2 they need to be footnoted. We can't just ignore them
3 and wait for 2012 and expect something to happen. You
4 know, they need to be talked through and what
5 recommendations are we going to make.

6 MS. HENRIQUEZ: Let me make sure I understand.
7 So you would suggest that formula issues be talked
8 about in this session?

9 MR. CAGEY: In certain sections. Again, if you
10 look at these changes, they run against the formula on
11 having to do things with our money that you're going to
12 require -- it would cost money -- it takes it out of
13 our blocker. If we disagree, you know, then we need to
14 disagree on this.

15 But, again, I think there's some formula driven
16 issues in here that need to be talked through for the
17 next committee. I would have liked to have seen what
18 the old committee dealt with. I haven't seen that.
19 So, again, these issues are tied to some of the formula
20 structures.

21 MS. HENRIQUEZ: I think we might be talking the
22 same thing. I'm not sure. I think we're both
23 suggesting -- I hope we're both suggesting anyway --
24 that we again -- those things that deal with formula,
25 we list out. We can hold them. We can be mindful of

1 them.

2 And I think -- I would want to consult with my
3 attorneys. But if we then create a parking lot list
4 that was an appendix to this committee's report, which
5 would then lay out for us an agenda for 2012 on formula
6 discussions, I think that would make some sense.

7 MR. CAGEY: That's what I want to do.

8 MS. HENRIQUEZ: I think we may have a point.

9 MR. CAGEY: That's where I'm getting to.

10 MS. HENRIQUEZ: Thank you, sir.

11 MR. CAGEY: It makes my job a lot easier when I
12 talk to Rodger and talk to the Secretary and to
13 Congress. Because, again, you can't just ignore them
14 and say, well, we're just blindly saying we're just
15 going to deal with these nonblinding issues.

16 MS. HENRIQUEZ: I don't want to ignore them
17 because they are real for everyone. But I think
18 there's a place for dealing with them, in a time and a
19 place, and we're not there yet.

20 MR. CAGEY: If we can go that far, then I agree
21 with the process.

22 But, again, Jan, these words are important and
23 how you shape these things into purpose.

24 MS. HENRIQUEZ: I am interested to know if that
25 does work for the committee.

1 THE FACILITATOR: Let me see if I understand
2 this right. So basically the Assistant Secretary has
3 said that these formula-related kinds of issues and
4 questions can be put -- can be discussed and listed on
5 a new parking lot and with reference made that our
6 issues be negotiated in the upcoming negotiations. But
7 we don't lose track of them, so that they don't go
8 away some place.

9 MS. HENRIQUEZ: I've just been reminded as well
10 that maybe not as an appendix, but we can also maybe
11 think about wording in a preamble, which would put them
12 more squarely front and center, which might give the
13 emphasis that you seek, so that we don't take our eyes
14 off them as an issue in the next two years.

15 THE FACILITATOR: So we actually have two
16 really different issues here, I think, don't we? We
17 have one that you don't want the narrow discussion and
18 being able to talk or have recorded your concerns about
19 the formula-related issues, so it doesn't get lost.

20 We also have the concern here that the
21 committee stays focus in its work, to the work on the
22 regs as they were intending to be done. So I think we
23 can accommodate both of those.

24 Karin?

25 MS. FOSTER: Karin Foster, Yakama Nation

1 Housing Authority. I'd like to make a suggestion.

2 I agree with Henry that narrowing down the Purpose
3 section is too limiting, but I also hear the concerns
4 about formula. I'm looking further down here in our
5 draft on "Role of the Committee," and I think that I
6 would propose that we leave the purpose as is without
7 restricting it, but define the role of the committee to
8 include developing that sort of parking lot list,
9 perhaps, that the Secretary is talking about.

10 Because I think what we're discussing here goes
11 more to the scope and the role of what we're going to
12 be doing than it does to the purpose. I'd like to see
13 the purpose broad, and I prefer to see the nonformula
14 and nonformula-related language out and address that
15 later on in 7.

16 I think that also dovetails well with this
17 "Goals and Objectives" section, which we're going to
18 get to next, I imagine, in No. 3, which identifies our
19 goals as being what is in paragraph 2 and what is in
20 paragraph 7. So I just think that makes more sense.

21 THE FACILITATOR: Thank you. So you're
22 proposing that we remove the part about unformula. Is
23 that what I'm hearing?

24 MS. FOSTER: I would, and I'll make a proposal
25 with language that also takes into consideration the

1 concern we heard down here, in terms of putting back in
2 the reference to 24 C.F.R. Part 1000.

3 And I would suggest that it read this way:
4 "No. 1, negotiate and review --" No, I'm sorry.
5 "Negotiate amendments and other necessary changes to
6 the Native American Housing Assistance &
7 Self-Determination Act Regulations."

8 So I would pick up -- after "changes," I'd say
9 I'd strike "to the Indian Housing Block Grant
10 nonformula, nonformula-related." I'd strike from "to"
11 all the way to "program." And then move that last
12 clause, "regulations as agreed to by the Committee, as
13 a whole, on each individual item," I'd move that down
14 below "NAHASDA." So it said "and other necessary
15 changes to the Native American Housing Assistance &
16 Self-Determination Act, NAHASDA Regulations, as agreed
17 to by the Committee, as a whole, on each individual
18 item," semi-colon, and then go to "and, paren, to."

19 That brings back the site, and I think it also
20 incorporates the Secretary's suggestion.

21 THE FACILITATOR: Yes?

22 MS. GORE: May I make a suggestion?

23 THE FACILITATOR: Yes.

24 MS. GORE: This is very difficult to follow.
25 We've had two or three different amendments, and all we

1 do is we keep going back to the first one and
2 rescribing the first one. So there's really no
3 opportunity to compare the proposals.

4 Karin, with all due respect, I'm not following
5 your proposal. So I'd like the opportunity to see it
6 before I make a comparison. And if we just amend this
7 one, it won't be clear to me. I hope that addresses
8 some questions from the other committee members, too.
9 Thank you.

10 MS. FOSTER: Would it be acceptable for me to
11 communicate what it is to the person who's actually
12 typing it out, because I'm not sure that it's being
13 caught.

14 THE FACILITATOR: Yeah, it's not. Okay.

15 FEMALE SPEAKER: Just type it.

16 THE FACILITATOR: Okay, everybody. Can we take
17 a look at the board, please. We have Karin's purposed
18 statement up there. Take a look. Can everybody read
19 that over there?

20 Judy, can you read it from there?

21 MS. MARASCO: Not now (indiscernible - speaker
22 not using microphone.)

23 THE FACILITATOR: Can you make it a little
24 bigger? A little bigger, yeah. That's better. Thank
25 you.

1 FEMALE SPEAKER: Is that better?

2 THE FACILITATOR: Yeah. It's perfect.

3 MS. HENRIQUEZ: Could I just ask a question, in
4 recognition of my colleagues? The citation for
5 NAHASDA, the 24 C.F.R. Part 1000, did you not want that
6 in? Or do you care?

7 MS. FOSTER: Right after "regulations" -- and
8 thank you for catching that because I don't think I
9 gave it to her there. Right after the word
10 "regulations," would read "at 24 C.F.R. Part 1000."

11 Thank you.

12 MR. ADAMS: Jan?

13 THE FACILITATOR: Yes, Jason?

14 MR. ADAMS: I still want to go back to the
15 issue. I agree with a majority of this, as proposed.
16 I still want to go back to the issue that Jack raised
17 earlier in regards to -- he asked the question, and I
18 don't think it was ever answered.

19 But there's a statement in there that I think
20 really limits what happens here because that
21 statement -- right where the cursor is blinking --
22 states, "as agreed to by the Committee, as a whole, on
23 each individual item."

24 If I read that right, that means that we have
25 to have consensus to bring an item to the floor. I

1 think that really limits us, because if myself or
2 Marvin has a particular issue with one item, then we
3 don't think -- does it get back to the floor if all the
4 rest of you agree to that item? And I don't want to
5 limit us to that degree.

6 THE FACILITATOR: Okay. Judy?

7 MS. MARASCO: Judith with Yurok. As much as
8 I'd like to keep Marvin quiet, I agree that we need to
9 take out from "as" to "item" and just leave Part 1000
10 and "to propose regulations accordingly."

11 THE FACILITATOR: Does anybody have an
12 objection to that? Did everybody hear what Judith
13 said?

14 MS. GORE: Not necessarily an objection, but
15 maybe I'm the only one here that's confused. We seem
16 to be wordsmithing, when I think what we're trying to
17 do is define the scope of the work for the committee.

18 We all came here with the Federal Register that
19 outlined 52 items. The Assistant Secretary has been
20 generous enough to allow an expanded negotiation for
21 this committee, and we've also talked about what
22 nonformula parking lot issues -- or formula parking lot
23 issues we want to consider at least as a referral or a
24 recommendation to the next committee.

25 I think if we could agree on the scope of this

1 committee, the wordsmithing then becomes more simple,
2 at least from my prospective. Because in the absence
3 of understanding what is consensus, agreeing to this
4 without knowing what we're going to define as a role of
5 the committee, I see those two sections as being in
6 conflict with one another.

7 I think what we're really struggling with as a
8 committee is, what is the scope of our work here? I
9 don't know if others are feeling that same sort of
10 anxiety, but I'm feeling that anxiety. I'm feeling
11 like I have to protect the issues that I've been sent
12 here to address, and the issues that I've been
13 specifically asked not to address. Thank you.

14 MS. McDADE: Sharol. Again, I would agree with
15 you 100 percent. That's why I had proposed the first
16 three -- period at the end of HUD and the last sentence
17 because it's too cumbersome. You're getting into
18 details that really don't have to need to be there.

19 The function of the committee -- as
20 Mr. Sossamon pointed out, we're already here as the
21 committee. The roles and the voting and all that other
22 stuff is not the purpose. The purpose here is to
23 negotiate with HUD. That's the purpose.

24 MS. GORE: With all due respect, we need to
25 define the scope of that negotiation. I think that's

1 what we need to define as a committee. I don't
2 disagree with you, but we need some definition.

3 THE FACILITATOR: Yes, Karin?

4 MS. FOSTER: I agree that we need to define the
5 scope. I think that's within what the committee is
6 charged to do.

7 I don't believe that the 52 items were in the
8 Federal Register. I believe they were in a PIH notice,
9 and that has not been -- you know, that was a
10 recommendation. I believe the way HUD said it, it was
11 certain amendments that may be the subject of upcoming
12 negotiated rulemaking. So I don't think that these
13 issues are cast in stone. I think that the committee
14 does need to deal with that issue.

15 But I would like to suggest that the issue of
16 scope is not a part of the purpose statement. I think
17 it's dealt with later on in this document, and I think
18 that we should get past purpose and get into, say, the
19 role of the committee, to define those things. If
20 that's what we need to do is to define those in the
21 charter, I think they should be defined a little later
22 in the document.

23 MR. CAGEY: Jan, I've got a question.

24 THE FACILITATOR: Yes.

25 MR. CAGEY: This is for Rodger. You know,

1 these 52 items that the charge is referring to, who
2 choose those? Did HUD choose those or did we choose
3 those?

4 MR. BOYD: Those are all out of the amendments.

5 MR. CAGEY: Were they selected by HUD or were
6 there contentions with the tribe to look at those?

7 MR. BOYD: I think it was a combination. What
8 we did initially is that we looked at what NAIHC
9 proposed, and then we came forth with our own items.
10 So it's a combination.

11 MR. CAGEY: Was that essentially the housing
12 counsel that selected those with you or the tribe?

13 MR. BOYD: Independently. I'm not sure how
14 NAIHC developed their positions. I understood that
15 they were to go back to all the housing authorities,
16 and through their committees, come up with their
17 positions on the amendments.

18 MR. CAGEY: And the amendments came from the
19 statute?

20 MR. BOYD: That's the basis, yes.

21 MR. CAGEY: But there's not 52 in it. There
22 could be more than 52, if we wanted to?

23 MR. BOYD: Well, I think that's what we're
24 discussing.

25 MR. CAGEY: Yes.

1 So, again, I don't want to tie our hands to
2 what we can discuss and not discuss.

3 That's my biggest concern, Sandra, is the
4 52 items. I didn't count them, but there has to be more
5 than -- if there can be more than 52, let's recognize
6 those other items that were hidden as we move forward.

7 THE FACILITATOR: Okay. So where do we stand
8 with this -- with Karin's proposal at this point? We
9 seem to have some conflict again on that.

10 Russell?

11 MR. SOSSAMON: Okay. In the spirit of
12 compromise and to move forward, I would agree with this
13 language. And when we get to the role of the committee
14 or scope of the committee, then we will specify that
15 we're not here to negotiate -- renegotiate the formula
16 for formula-related issues, even though we do have the
17 latitude to discuss them, identify them, put them
18 forward, classify them, or whatever we want to do,
19 promulgate them so that everyone knows these are still
20 issues, parking lot, whatever you want to call it.

21 But we're not here to negotiate those. Those
22 have been negotiated. This committee's not here to
23 negotiate those as government-to-government, from a
24 tribe to the federal government, or a tribe to another
25 tribe. Because there are tribe-to-tribe negotiations

1 going on here as well. Thank you.

2 MR. ADAMS: Jack --

3 THE FACILITATOR: I was going to say, we still
4 need to address Jack's issue.

5 MR. ADAMS: Well, I have a proposal to address
6 Jack's issue. I have some additional language that's
7 being proposed here that I'm being asked to propose
8 that, again, changes this.

9 Since the item that I asked to be struck
10 wasn't, maybe there's another proposed language here
11 that we can propose that could solve all these issues,
12 and there it is. Do you like that? Like, wow. Snap
13 my fingers, and there it was.

14 MR. CAGEY: I guess from my read of it, that's
15 fairly broad. And, again, a broad purpose for us to --
16 then move on to the role of the committee, that would
17 further define our work here.

18 MALE SPEAKER: Jan, can I recommend you read it
19 out loud so we can all hear it.

20 MR. CAGEY: I can read it, if you want me to.
21 I have it right here. It says, (Reading) "This Charter
22 establishes a Committee, pursuant to Public Laws
23 101-648, 104-330, 107-292, and 110-411, to negotiate
24 with the United States Department of Housing and Urban
25 Development ("HUD") changes to the regulations

1 governing the implementation of NAHASDA, as amended,
2 except that subpart D of 24 C.F.R. Part 1000 shall be
3 excluded from this Negotiated Rulemaking Committee, as
4 such regulations are scheduled for negotiations under a
5 different committee in 2012.

6 "Regulatory proposals identified by Committee
7 members and not accepted by the Committee for future
8 consideration shall be registered for future
9 consideration -- for current consideration." Not
10 future, for current consideration. No, no. That
11 future shall be current. Yes. Sorry. Current.

12 THE FACILITATOR: I guess another point. The
13 committee in its enthusiasm to go overtime here, there
14 is one consequence at 5 o'clock, and that is that we
15 lose our verbatim reporter in the corner there, Cindy.

16 So if you're willing to continue and not have
17 everything recorded verbatim, to try to move through
18 the charter, we're certainly willing to stay here, and
19 we can still maintain the audiovisual stuff up there.
20 The only thing we'll lose at this point is that the
21 reporter has to leave.

22 Is everybody okay with that? Is there any
23 objection to that? Okay. Thank you.

24 MS. HENRIQUEZ: Can I just ask one question?

25 THE FACILITATOR: Yes.

1 MS. HENRIQUEZ: Is there an ability to tape
2 record it in the reporter's absence?

3 THE FACILITATOR: Can we tape record?

4 FEMALE SPEAKER: Yes.

5 THE FACILITATOR: Yes. Okay. Thank you.

6 Okay. Now, let's go back to our subject.

7 (The reported proceedings concluded at
8 5:00 p.m.)

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1 STATE OF ARIZONA)
) ss.

2 COUNTY OF MARICOPA)

3
4 BE IT KNOWN that the foregoing transcript
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16 DATED at Phoenix, Arizona, this 22nd day
17 of March, 2010.

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22 AZ Certified Reporter No. 50763
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