

1 NAHASDA REAUTHORIZATION ACT OF 2008:

2 NEGOTIATED RULEMAKING MEETING

3 Scottsdale, Arizona

4 March 30, 2010

5 8:11 a.m.

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17 REPORTED BY:

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1 NAHASDA REAUTHORIZATION ACT OF 2008: NEGOTIATED
2 RULEMAKING MEETING, taken on March 30, 2010, commencing
3 at 8:11 a.m. at DOUBLETREE PARADISE VALLEY RESORT, 5401
4 North Scottsdale Road, Conference Center, Scottsdale,
5 Arizona, before CINDY BACHMAN and DEBORA MITCHELL,
6 Arizona Certified Reporters, in and for the County of
7 Maricopa, State of Arizona.

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9 COMMITTEE MEMBERS PRESENT:

10 Steven Angasan

 King Salmon Tribe

11
 Carol Gore, President/CEO

12 Cook Inlet Housing Authority

13 Blake Kazama, President

 Tlingit-Haida Regional Housing Authority

14
 Retha Herne, Executive Director

15 Akwesasne Housing Authority

16 Ray DePerry, Housing Director

 Red Cliff Chippewa Housing Authority

17
 Robert Durant, Executive Director

18 White Earth Reservation Housing Authority

 Represented by Mark Butterfield, Alternate

19
 Leon Jacobs

20 Lumbee Tribe of North Carolina

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1 Susan Wicker, Executive Housing Director
Poarch Band of Creek Indians

2 Jason Adams, Executive Director
3 Salish Kootenai Housing Authority
4 Lafe Haugen, Executive Director
Northern Cheyenne Tribal Housing Authority

5 Rebecca Phelps, Development Specialist
6 Turtle Mountain Housing Authority
7 S. Jack Sawyers
Paiute Indian Tribe of Utah

8 Marguarite Becenti, Member, Board of Commissioners
9 Umatilla Reservation Housing Authority
10 The Honorable Henry Cagey, Chairman
Lummi Nation

11 Represented by Diane Phair
12 Larry Coyle, Executive Director
Cowlitz Indian Tribal Housing

13 Karin Foster, Legal Counsel
14 Yakama Nation Housing Authority
15 Marvin Jones, Manager, Housing Oversight
Cherokee Nation

16 Thomas McGeisey, Executive Director
17 Seminole Nation Housing Authority
18 Shawna Pickup, Housing Director/Secretary
19 Eastern Shawnee Tribe of Oklahoma

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1 Russell Sossamon, Executive Director
Choctaw Nation Housing Authority

2 Ervin Keeswood, Member

3 Navajo Housing Authority Board of Commissioners

4 Judith Marasco, Executive Director
Yurok Indian Housing Authority

5 Alvin Moyle, The Honorable Chairman

6 Fallon Paiute-Shoshone Tribe
Represented by Sharol McDade, Alternate

7 Darlene Tooley, Executive Director

8 Northern Circle Indian Housing Authority

9 Sandra B. Henriquez
Assistant Secretary for Public and Indian Housing

10 Rodger J. Boyd

11 Deputy Assistant Secretary for Native American Programs

1 (Commencement of meeting at 8:11 a.m.)

2 THE FACILITATOR: Good morning. Welcome back
3 to sunny Scottsdale. I hope all of your relatives and
4 your communities are surviving. I know there's been
5 some flooding, probably, in some of your communities
6 out there, so we hope that everybody's okay.

7 Lafe?

8 MR. HAUGEN: The stagecoach took a while to get
9 here.

10 THE FACILITATOR: Okay. Tried and true.

11 I'd like to welcome everybody back -- and our
12 audience as well. Welcome to the second Neg-Reg.
13 I think we would like to begin this session, again,
14 with an invocation.

15 (The opening prayer was given by Mr. Adams.)

16 THE FACILITATOR: I know that all of you know
17 each other from our last meeting, but we have one new
18 face at the table today. I don't know if he knows
19 everybody yet, so why don't we go around once quickly
20 and introduce ourselves -- and also for the folks who
21 have come to attend this meeting who are not at the
22 table.

23 Leon, why don't you start.

24 MR. JACOBS: My name is Leon Jacobs. I'm
25 representing the Lumbee Tribe of North Carolina.

1 MR. ANGASAN: Steven Angasan representing
2 King Salmon Tribe from Alaska.

3 MS. PICKUP: Shawna Pickup, Eastern Shawnee
4 Tribe of Oklahoma.

5 MR. KAZAMA: Blake Kazama, Tlingit-Haida
6 Regional Housing Authority.

7 MS. GORE: Carol Gore, Cook Inlet Region for
8 Anchorage, Alaska.

9 MR. SOSSAMON: Russell Sossamon. I serve as
10 the executive director of the housing authority of
11 Choctaw Nation in Oklahoma.

12 MR. KEESWOOD: Good morning. Ervin Keeswood,
13 Navajo Nation.

14 MS. BECENTI: Good morning. Marguarite Becenti
15 with the Umatilla Indian Reservation Housing Authority,
16 Pendleton, Oregon.

17 MR. SAWYERS: Jack Sawyers, Utah Paiute.

18 MR. COYLE: Larry Coyle, Cowlitz Tribe of
19 Washington State, ED.

20 MR. SHURAVLOFF: (Indiscernible -- speaker not
21 using microphone.)

22 MR. ADAMS: Jason Adams with the Salish
23 Kootenai Housing Authority.

24 MR. DePERRY: Ray DePerry with Red Cliff band
25 of Lake Superior, Chippewa, Wisconsin.

1 MR. BUTTERFIELD: Mark Butterfield, executive
2 director of Housing and Community Development Authority
3 Agency in Tomah, Wisconsin, representing Region 2,
4 alternate.

5 MS. PHAIR: I'm Diane Phair, Lummi Housing
6 Authority, executive directive, sitting in for
7 Henry Cagey just for the day.

8 MS. McDADE: Good morning, everybody.
9 Sharol McDade, Fallon Paiute-Shoshone Housing
10 Authority, sitting in for our chairman, Alvin Moyle.

11 MS. MARASCO: Good morning. Judith Marasco
12 with Yurok Indian Housing Authority in northern
13 California.

14 MR. HAUGEN: Lafe Haugen with the Cheyenne
15 Tribal Housing Authority, Lame Deer, Montana.

16 MS. HENRIQUEZ: Good morning.
17 Sandra Henriquez, Assistant Secretary for Public and
18 Indian Housing at HUD.

19 MR. BOYD: Good morning. Rodger Boyd, Deputy
20 Assistant Secretary for ONAP.

21 MS. FOSTER: Good morning. Karin Foster,
22 Yakama Nation Housing Authority.

23 MR. JONES: Marvin Jones, Cherokee Nation,
24 Oklahoma.

25 MR. McGEISEY: Tom McGeisey, Seminole Nation,

1 Oklahoma.

2 MS. HERNE: Retha Herne, Akwesasne Housing
3 Authority, St. Regis Mohawk Indian Tribe.

4 MS. WICKER: Susan Wicker, Poarch Creek in
5 Alabama.

6 MS. TOOLEY: Darlene Tooley. I'm the director
7 at Northern Circle Indian Housing Authority. We're in
8 California.

9 MS. PHELPS: Rebecca Phelps, Turtle Mountain
10 Housing Authority in North Dakota.

11 THE FACILITATOR: I'm Jan Sunoo, one of the
12 facilitators, and Erica Spaulding.

13 We thank you for that. We've received some
14 letters for a few alternates this morning, so we're
15 going to give you guys name cards so we don't have to
16 call you Henry and Robert throughout. Your name cards
17 are being made now, and thank you for coming.

18 We haven't officially adopted an alternate
19 policy. I think that is all part of the protocol here.
20 Since we're kind of in limbo right now, we'll just kind
21 of go on past practice and accept the alternates for
22 the session. I'm sure we'll finish the protocol today
23 by noon. (Laughter.) You're laughing. Well, what an
24 optimistic group.

25 So in terms of just reviewing what happened at

1 the last meeting, I'm going to keep it real short.

2 We did have some regional reps selected, and in one
3 area, not selected. We adopted our charter. It was
4 discussed and adopted. We started our protocol
5 discussion and got as far as about 3(b), and we hope to
6 finish that up today.

7 We had some public comments. And, of course,
8 who can forget the very auspicious opening we had with
9 the Phoenix Oyata singers and the First Nation of
10 Warriors Color Guard.

11 Now I want to cover a few little housekeeping
12 rules -- not rules, housekeeping things. We do have a
13 transcript that was taken from the proceedings of the
14 last meetings. Those are available if anybody wants to
15 read them. They're available here. We have a copy
16 here, and if you need a copy, we can probably give you
17 a soft copy. It's 400 pages. So unless you really
18 feel a need to do some homework, you don't have to do
19 that, but they're available if anybody wants them. We
20 just didn't want to give everybody 400 pages to take
21 back home on the airplane.

22 The meeting notes were taken by Kiana. It's
23 about ten pages, and you all got those. It's been
24 suggested to me that rather than go through a laborious
25 point by point of accepting it and then having the

1 whole group committee do an approval of the minutes,
2 the minutes are basically just to help us keep track of
3 what we're been doing over the course of the days.

4 And what I would suggest is this, that you guys
5 read the minutes, read them through. If there's any
6 correction or anything that you feel is out of order or
7 wasn't taken correctly, please see Kiana, and she will
8 oblige by re-writing and typing in your comments to the
9 minutes so that way we don't have to all go through
10 everything and -- every point of the meeting.

11 To me, they seem pretty accurate, but there may
12 be something she left out that you feel is important to
13 include. They will be put into the set of those
14 minutes, put in red, and it will say who put them in.
15 And that way, if there's a disagreement about what
16 happened, we can have both versions there.

17 But there's really no need. We're not going to
18 take each other to court on these minutes or anything
19 like that. We don't want to make more out of them than
20 they are.

21 They're basically to help people who miss a
22 meeting see what happened. They're to help alternates
23 who have come in for the first time to catch up with
24 things. I'd like to let our public also know they can
25 read that. It's pretty thorough, the ten pages.

1 They can get a pretty good idea of what's
2 transpired at the meetings. But I don't think there
3 would be a need to make it any more official than that.
4 It's just more like a description of what happened in
5 our meetings.

6 What's really important in these meetings, of
7 course, is what we reach consensus on all the
8 regulations, and that's what's going to last out of
9 these meetings. If you think, that's okay, I'd rather
10 not spend -- because sometimes I've been in meetings
11 where people spend hours trying to agree on the
12 minutes, and I really don't think it's necessary
13 because everybody has a right to agree or not agree.
14 We have full consensus capability, and everybody can
15 veto anything they don't like and that goes into our
16 regulations.

17 So are you okay with that way of handling our
18 minutes or meeting notes? Is everybody okay with that?
19 Any objections or opinions? Okay. No objection. Then
20 we'll just handle it that way. I think that will be
21 very useful for us.

22 Kiana, I want to thank you. You did a great
23 job on those minutes, very descriptive and accurate.

24 And, like I said, anybody's welcome to add your
25 two-cents worth or corrections.

1 We have two ladies over here, Cindy and Debbie,
2 who will be transcribing for us today.

3 We will now take a quick look at the agenda.
4 Let's make sure that this is how you guys want to spend
5 your time in these next three days. The agenda
6 basically was put together through a discussion with
7 the facilitators and HUD, but it's just a proposed
8 agenda. So we want to make sure that everyone's okay
9 with it.

10 The first order of business would be to discuss
11 and finish up committee protocols. And, like I said, I
12 was optimistic and said that we could do that by lunch.
13 We still would like to have Rusty give us a
14 presentation on the history of NAHASDA, since half of
15 the members are new here, and also for the benefit of
16 our audience and your facilitators, and then for Jad to
17 do the NAHASDA amendments.

18 Then I think we need to have a meeting to
19 discuss how to organize our work. Some of you have
20 been doing pre-thinking on that already.

21 Yes, Marvin?

22 MR. JONES: When I first saw the proposed
23 agenda, the first thing I looked at was -- and what I
24 thought was one of the most critical things -- how long
25 we are going to have in order to determine which topics

1 to negotiate.

2 And as much as I'm sure we'll all be amazed at
3 Rusty's 30 minutes, this is allowing us 45 minutes to
4 talk about all of the different issues that we're going
5 to negotiate, and I just don't see that as being nearly
6 enough time.

7 THE FACILITATOR: Okay. Point well taken.
8 If it takes more than that, we'll take however long it
9 takes to get that done. And you're right; that's very
10 critical.

11 But in terms of the order of the events, are
12 people okay with that?

13 Yes, Jack?

14 MR. SAWYERS: I agree with Marvin. I'd love to
15 hear Rusty, but I think that the history of NAHASDA is
16 probably not necessary for most folks. I think we need
17 to get into the agenda. I think we could spend the
18 morning a lot more productive. We only have a certain
19 amount of time.

20 I'm just saying that I'd like to hear the
21 history, but I think we've got some issues that we need
22 to control right now. So I would like to suggest that
23 we hold those presentations off until later.

24 THE FACILITATOR: Both of them?

25 MR. SAWYERS: Yes.

1 THE FACILITATOR: Okay, Jack.

2 Yes, Rodger?

3 MR. BOYD: Jack, there were two drafts of the
4 agenda. There is a draft that came out early on that
5 had Rusty and Jad giving those presentations, but those
6 were moved to this afternoon. And the agenda that
7 we're looking at right now is the one that starts
8 immediately with the protocols.

9 MR. SAWYERS: This is the one they gave me this
10 morning, and it still has Rusty in there.

11 MR. BOYD: I know, but this afternoon.

12 MR. SAWYERS: No, it has this morning.
13 I didn't get that one. I didn't get your memo.

14 MALE SPEAKER: He's got it there.

15 MR. BOYD: That's what I thought was going on.
16 When I heard you talk about that, I thought that you
17 didn't want Rusty to talk. I just wanted to mention
18 that there are two different agendas.

19 THE FACILITATOR: He's got it. He just wasn't
20 looking at the right one.

21 Yes, Jason?

22 MR. ADAMS: Jan, I was looking over the agenda,
23 and one thing I noticed, too, was we have an hour at
24 the end of each day for comments from the public. It's
25 not that I'm opposed to that, but I know in the first

1 meeting, we had it at the end of the meeting. And this
2 one, we're doing it every day. That's essentially
3 three hours of comments from the public.

4 As we move forward, time is going to be become
5 very valuable, and that's a three-hour block that we
6 might want to look at reducing down at some point in
7 time.

8 THE FACILITATOR: Okay. Are you thinking
9 perhaps we should save that to the last day?

10 MR. ADAMS: That would be my recommendation.

11 THE FACILITATOR: Okay. How do other people
12 feel about that?

13 Yes, Marvin?

14 MR. JONES: I actually -- again, I'm not
15 picking on you, Rusty, because I'm going to say the
16 same thing about the HUD and the NAHASDA amendments.
17 I'm hoping that everybody that comes here to negotiate
18 already knows all that stuff, and we don't have to go
19 through it. But maybe not.

20 One of the things to Jason's point. Actually
21 this first day, I would like to hear some public
22 comments regarding the scope of the negotiations.
23 I know that there's some people here who aren't
24 directly represented, and they may have some good ideas
25 as far as some of the issues that are out there, that

1 we may want to negotiate.

2 So at least for the first day anyway, I thought
3 it would be a good idea. But I agree with the rest of
4 the point.

5 THE FACILITATOR: Any other comments?

6 MR. ADAMS: I guess, Jan, I mean, the folks
7 here in the room will have a chance to participate on
8 topics we discuss through the meeting. I mean, that's
9 what the protocols -- I believe that's where we're
10 heading. We, as members of the committee, can
11 recognize people to speak on an issue if they have the
12 information germane to the topic.

13 What I saw as far as the public comment section
14 as we ended the last meeting was kind of an overall
15 discussion not really specific to the topics that we
16 talked about. It was just kind of the overall feelings
17 of the meeting.

18 THE FACILITATOR: Marvin?

19 MR. JONES: Could we then have a public comment
20 only on those issues that people want to see negotiated
21 and discussed, and limit it to that?

22 MR. ADAMS: Again, once we get to that portion
23 of the agenda and we start talking about the topics to
24 negotiate, I mean, I think that would be up to us as a
25 committee to recognize those folks, if they have items

1 they want to bring to the table.

2 THE FACILITATOR: Okay. So if I can sum up,
3 Jason. You're recommending then that we still have all
4 of the comments as one public comment at the end. But
5 during, for instance, the discussion of topics, any of
6 the committee people could invite someone from the
7 audience to make some comments at that point pertaining
8 to that particular issue. Would that be okay?

9 Marvin?

10 MR. JONES: Do you want me to say who I am
11 every time?

12 THE FACILITATOR: We have two points of views.
13 I was just trying to --

14 MR. JONES: I mean for the transcribers and
15 people like that.

16 THE FACILITATOR: Yes, yes.

17 MR. JONES: Marvin Jones, Cherokee Nation. As
18 long as our ending protocols and charters don't
19 prohibit and don't limit that, at least for this first
20 part of it, you know, I'm fine.

21 THE FACILITATOR: Okay. Good. Then why don't
22 we do it this way. We'll have a formal public comment
23 at the end of the third day for one hour, but we can
24 also add that during the negotiations as particular
25 subjects come up.

1 If the committee feels that we could enrich the
2 discussion by having someone from the public make some
3 comment, they're allowed to invite them to do so.
4 Would that work for everybody?

5 Jason?

6 MR. ADAMS: Jan, that's actually what we've
7 actually agreed to.

8 THE FACILITATOR: Right. We had agreed to that
9 earlier. Right.

10 I think the only thing there is that everybody
11 has to be mindful that we ask the people who speak to
12 stay right on top. I think that's one of our toughest
13 jobs as facilitators, to keep everybody focused and
14 moving along. And that was some of the feedback we got
15 back from the last meeting.

16 Marvin?

17 MR. JONES: So the agenda could then read at
18 least 3:15 to 5:00, "Committee Meets. Discussion on
19 topics to negotiate and organization of work"?

20 THE FACILITATOR: We can extend that period to
21 what was previously the public comment area, so that
22 would give us an hour and 45 minutes.

23 MS. McDADE: Jan, I understand your agenda, but
24 I know your agenda is subject to modification. Isn't
25 it our intent in all of the things that we're talking

1 about right now to just get the protocol done? Again,
2 you're jumping the gun like we did at the last meeting.

3 Can we get the protocol done, so that way
4 everybody has a clear understanding of why we're
5 proceeding? Because, again, we're talking about public
6 participation and all of the issues that are covered in
7 the protocol.

8 I believe the intent this morning was to get
9 the protocol done, so that way this afternoon, if we
10 wanted to hear Rusty or Jad, then we could move ahead.
11 We're going backwards again. I think the protocol is
12 what we need to work on and get done, and then all this
13 other talk about public participation is covered.

14 THE FACILITATOR: I'm just trying to get
15 approval on the agenda. That's all. I think we're
16 there.

17 So, everybody, we're going to go ahead with
18 this agenda, as amended. Any objections?

19 I wanted to make a few comments just in terms
20 of our procedures and how we can keep working. We've
21 received some feedback and some suggestions from folks.
22 One of the things was that I think everybody came here
23 today for our second session chomping at the bit to
24 kind of get into the meat of the subject, and I think
25 we want to help do that a little bit.

1 So our job as facilitators, we're going to try
2 to keep you on schedule more than we did the last time.
3 One of the things we're going to implement is that when
4 we take breaks, we're going to give you a two-minute
5 warning bell. So we have a gong. Erin has a gong.
6 So two minutes before the session begins, we're going
7 to -- just like you're at a concert someplace -- we're
8 going to ring the gong, and we expect everybody to be
9 here.

10 Now, you've already approved the fact that once
11 we have a quorum, that whoever is here makes decisions.
12 So if you're not at the table after that two-minute
13 warning, that's on your own, if you feel there's
14 something more important to keep you outside the table.
15 But when a decision gets made and you weren't part of
16 that discussion, you can't go back and uproot it.

17 So we're going to give you a two-minute warning
18 bell. We'll call it a two-minute courtesy bell.

19 The other thing is that as we were going around
20 last time, there were some complaints that I wasn't
21 calling on everybody when they had their hands up.
22 Part of the problem is some people put their hands
23 up -- like, I'll never miss some people when they put
24 their hand up like that. Other people put their hands
25 up like that, and I miss them. It's not intentional,

1 but it does happen. So I'll ask you to help us
2 facilitate by making it very clear if you want to
3 speak.

4 When we're facilitating, we're trying to pay
5 respect to the person who's speaking. We're looking at
6 them. You have to drift your eyes around the room to
7 see if anybody else has been caught. So it has to be
8 very clear if you want to speak.

9 Like Judith, sometimes I'm not sure if you're
10 really raising your hand or just scratching your ear.
11 And other people that I'm standing behind, I can't see
12 them very well either sometimes. Part of it is we have
13 to walk around a bit more and see you. But the other
14 thing is you have to help us by just making it very
15 clear if you wish to have the floor.

16 Also we will have discussions as we discuss the
17 protocol about a speaker's clock, and how much time we
18 want to give each other to speak on a subject. And if
19 you need that, we can do that. At this point, we've
20 only restricted ourselves to, I think, one hour --
21 two hours on one subject.

22 MS. GORE: Two hours.

23 THE FACILITATOR: Two hours on one subject.
24 But we haven't really layed down a rule about how much
25 each person can speak. So all these kind of things

1 we're going to work out as we go through the protocol.

2 Later on this afternoon, I will explain to you
3 and give you some hints about how to work with the work
4 groups and how to get our products that we agreed to
5 reached and how to get consensus on them. I will share
6 that with you later.

7 The only other thing that I want to share with
8 you is when we get to the point where we're talking
9 about chairpersons, I have a few examples of functions
10 that chairpersons have had in the past and that might
11 help you with your discussions.

12 So any questions? Do you want to get into
13 protocol?

14 MR. SAWYERS: Sure.

15 THE FACILITATOR: All right. So if you could
16 all take out your protocols that we were working on.
17 There should be a copy -- kind of a clean copy for you
18 that incorporates all the things that we have agreed to
19 so far. I think when we left off we were at
20 "Decision-Making," 3(a), where we had reached consensus
21 on consensus.

22 I forget. Did we finish "Voting" or did we --
23 okay. Is that where we start, with "Voting"?

24 MR. SAWYERS: Right.

25 THE FACILITATOR: Okay. So right now the way

1 the language is presented on our proposals, it says:

2 "No Committee Member may abstain on a
3 vote unless a Committee Member
4 expressly signals his or her
5 opposition to a proposal, that
6 Committee Member shall be conclusively
7 presumed to have consented to the
8 matter being voted upon, and that
9 Member shall not be allowed to request
10 reconsideration or reopening of the
11 matter. Every Committee vote is
12 subject to the good faith requirements
13 of Article 6(a) of these Protocols."

14 Okay. Any comments or suggestions on the
15 voting language?

16 MALE SPEAKER: Are we going to use the thumb
17 again?

18 THE FACILITATOR: Okay. Is there any comment
19 on that at all? Okay. All in favor, thumbs up. All
20 opposed?

21 You didn't find it yet? I'm sorry. We'll do
22 it again.

23 Yes, Darlene?

24 MS. TOOLEY: (Indiscernible -- speaker not
25 using microphone.)

1 THE FACILITATOR: Darlene's question is it says
2 that -- she wants to make explanation on the good faith
3 requirement of article 6(a).

4 MS. TOOLEY: In here it's 5(a).

5 THE FACILITATOR: Is there a numbering problem?
6 It's 5(a) in the thing.

7 The Good Faith article says: "All Members
8 agree to act in a good faith..." Okay. So far, let me
9 say that there doesn't seem to be any objection to the
10 language on voting.

11 Why don't we go down the rest, and when we get
12 to 6(a) on "Good Faith," if there's something we need
13 changed in that, we'll change it. Okay? Because I
14 remember last time we started jumping around, and then
15 we kind of got confused.

16 So with your permission, I'd like to go
17 straight through this list here. And when we get to
18 it, we get to it. If we have to go back and change it,
19 we'll change it. Okay?

20 All right. So we have consensus on "Voting."

21 The next item is the one we've all been waiting
22 for, "Chair."

23 "The Tribal Co-chairs ("Chair") are
24 entitled to vote on any matter, other
25 than a motion to overrule the chair's

1 own parliamentary ruling. The Chair
2 may debate any matter by temporarily
3 assigning the chair to the other
4 Tribal Co-Chair, and then resuming the
5 Chair when his or her comments are
6 completed."

7 Any comments on this? Blake?

8 MR. KAZAMA: We have some additional language
9 we'd like to put up on the board.

10 THE FACILITATOR: Oh, okay. Can you read it
11 for us, Blake?

12 MR. KAZAMA: It reads: (Reading) "The Chair
13 shall be selected by consensus of the Members of the
14 Committee. The Chair's responsibility include ruling
15 on points of order, parliamentary inquiries, enforcing
16 the requirements of these protocols, assuring the
17 Committee discussions remain germane, assuring
18 Committee decorum and the time of completion of the
19 Committee passed, supervising any facilitator, and
20 issuing any order that the Chair finds necessary and
21 advisable to carry out the above responsibilities.

22 "The Chair is entitled to vote on any matter,
23 other than the motion, to overrule the Chair's own
24 ruling. The Chair may delete any matter by temporarily
25 assigning the chairmanship to the other committee

1 member -- to another committee member."

2 THE FACILITATOR: Yes, Sharol?

3 MS. McDADE: I just have a question or a
4 clarification. Why do we need a chair? I mean, we
5 have facilitators, so I was just curious what the
6 intent was. Maybe if one of the other past committee
7 members could explain that.

8 My recommendation would be to remove this
9 section because we have the facilitators. I'm not sure
10 what it does for the committee when everybody's here on
11 the same level.

12 THE FACILITATOR: Okay. Let's summarize a
13 little bit from our past discussions about this. It
14 seemed to me when we were discussing that, there were
15 several concerns that were raised about the chair.

16 One main concern from some folks in the
17 committee was that they didn't want a chair to have
18 more power than anybody else or more influence than
19 anybody else. That was one concern.

20 The other concern was those who were in favor
21 of a chair said, "We need somebody to kind of help
22 coordinate our activities a little bit."

23 So I tried to put --

24 Can we put up those chair things?

25 Just to help your discussion, I put together

1 what were some examples of functions that chairs had
2 played in the past.

3 So to try to answer your question directly,
4 Sharol, what is the purpose of a chair? In the past,
5 the chairs have not had any more influence than other
6 people, but they did play a role in being a focal point
7 for bringing tribal concerns to HUD or to the federal
8 side. They also played a --

9 Yes, Jason?

10 MR. ADAMS: I have a comment. It seemed like
11 in our last meeting, we had somebody raise a point of
12 law, as far as regulation, that was out there that
13 actually -- I believe the language prohibited a member
14 of the committee being a chair. So I don't recall us
15 having a legal opinion as to whether we have to abide
16 by that or not.

17 I guess that would preclude any further
18 discussion here today on this issue if we can't legally
19 have it in our protocols. So I'm just wondering if we
20 ever did get a legal determination on that issue that
21 was raised.

22 THE FACILITATOR: I don't know. Does anybody
23 know the answer to that question?

24 Yes, Blake?

25 MR. KAZAMA: Yeah, I think our legal counsel

1 reviewed that and other language that seemed to
2 indicate that under NAHASDA, we have the ability as
3 Neg-Reg to select a chair. It's kind of conflicting,
4 as they often are in regulations.

5 THE FACILITATOR: Yes, Jack?

6 MR. SAWYERS: Our counsel concurred, and we
7 think that you can have a chair if you want to.
8 I don't think there's any law prohibiting it in this
9 negotiation.

10 THE FACILITATOR: Yes, Rusty?

11 MR. SOSSAMON: It's my understanding that
12 basically the intent of having a tribal chair and
13 co-chair from the committee to run the meeting was to
14 recognize the preeminence of controlling and running
15 the meeting by tribal representatives. I think that
16 was the intent in the past, to make clear that the
17 tribes have a role here and are recognized as such.

18 However, I'm not advocating that we do what we
19 did in the past. I'm just sharing my interpretation of
20 what I believe the intent was. I believe if the
21 committee wishes to have the facilitators or someone
22 else run the meetings so we can focus on our business
23 at hand and engage in the negotiations, I can see some
24 benefit from that.

25 So perhaps it's not necessary to reinforce the

1 preambles of the tribe in that fashion by running the
2 meeting.

3 I'd really be open to what Marvin and some of
4 them suggested, having you guys run the meeting so we
5 can actual participate.

6 THE FACILITATOR: Okay. Yes, Jack?

7 MR. SAWYERS: I feel pretty strongly about
8 having a chair from our own group. We have some people
9 who have been here for all the negotiations. They have
10 the history of NAHASDA. They have the history of our
11 negotiations. They've looked at protocols three or
12 four times. I think there's a real advantage to having
13 one of our own do that.

14 I think you're doing a great job, and I think
15 that a chair would enhance your job. I really do
16 believe that we should have one of the committee, as a
17 tribal representative, be a chair because of the
18 history and because of the knowledge of NAHASDA, and so
19 on, and so on.

20 And the other thing is I think one of our own
21 folks can say, "Shut the hell up" without offending
22 anybody, and you would. And so I think it's just a lot
23 better to have a chair.

24 THE FACILITATOR: Yes, Sandra?

25 MS. HENRIQUEZ: I also notice, as I go through

1 this, that the documents require both my signature and
2 a chair or a co-chair signature. So I think, for me,
3 that states the issue of preeminence. I don't want to
4 sign this document since it's a collective document.
5 It's not HUD's document.

6 So from my perspective, I would encourage you
7 to think about having at least a chair, if not two
8 co-chairs. Thank you.

9 THE FACILITATOR: Yes, Carol?

10 MS. GORE: In case there's any doubt, I'm not
11 an attorney. But I think we're here as a committee,
12 and I don't know that there's any penalty, Marvin, for
13 deciding whether or not we have a chair or not.

14 To me, there's a practicality that we should
15 consider as a committee and that practicality is we
16 have very technical amendments to the program that will
17 be understood by members of this committee and not
18 understood by the facilitator. I think that's an
19 important element of our decision, having a chairman
20 that can help the facilitator navigate those program
21 requirements. It is very important to me.

22 We've set out some parameters for our
23 negotiation. They're prickly requirements. Trying to
24 stay out of the formula and stick with other parking
25 lot and regulatory issues is really important to me as

1 a committee member and to my region. So I'm an
2 advocate for having a chair that sits on the committee.
3 Thank you.

4 THE FACILITATOR: Thank you, Carol.

5 I agree with everything that everybody said.
6 And I think one of the responsibilities of the tribal
7 co-chair is -- I mean, it really does help the
8 facilitator, help us do our job better.

9 Some of the responsibilities that the tribal
10 co-chairs have had in the past, that have been very
11 important to the committee, is they act as a conduit
12 for tribal concerns to the facilitators and to the
13 federal representatives. We have some place to go.

14 And then with us, they help us develop an
15 agenda. The last time we had to develop the agenda, it
16 was only with the federal side because we didn't know
17 who to talk to on the tribal side. We could have
18 called up all the regional representatives, but it
19 would have been much easier if we had had one or two
20 people we could have contacted and run this agenda by
21 them and said, "Is this okay? Do you think the tribes
22 will be happy with this?"

23 Also I think a chair can also help to
24 coordinate the tribal caucuses, if they need to, and
25 also be a gathering point for tribal concerns that need

1 to be discussed among the tribal representatives. So
2 if there's some issues that need to be discussed within
3 the tribe and they don't want everybody else involved
4 with it, it's good to have one person to go to and say,
5 "We need to discuss this. Let's have a meeting on
6 this."

7 So there is some coordinating benefits, I
8 think, to having a tribal co-chair. And whether it's
9 one or two, that's really what your comfort level is.

10 Judith?

11 MS. MARASCO: I think a lot of the concerns in
12 the past were that maybe at times the co-chairs on the
13 tribal side took a little bit of the control that we
14 might not have wanted them to have in the negotiations
15 or in the running of the meetings.

16 So perhaps those who are against having a
17 chair, maybe if we limit their roles and
18 responsibilities and clearly outlined them, that might
19 relieve our concerns as to how much authority they
20 would have.

21 I think that's the issue that you're hearing
22 from some of the people at the table from the last
23 sessions is that once we elected co-chairs, they
24 really, in some instances, overstepped their
25 boundaries. So perhaps we could encapsulate what their

1 roles and responsibilities are and that would relieve
2 our angst.

3 THE FACILITATOR: Thank you. Other comments.
4 Marvin?

5 MR. JONES: I think we do need somebody to tell
6 Jack to shut up sometimes. (Laughter.)

7 I brought up the issue and the language, and
8 the law hasn't changed since three weeks ago. All
9 kinds of interpretations of plain English saying this
10 doesn't say what it says, but I'm fine with that.

11 It does raise a big concern -- another big
12 concern to me is if somebody can interpret that
13 language to not mean what it says. At the end of the
14 day, once we have regulations, who's to say that our
15 plain English is not reinterpreted to mean something
16 other than what we agreed to?

17 But, nevertheless, I also believe that we need
18 somebody not on the committee to run the meetings. I
19 think the law's a good thing. And the reason I say
20 that is because it's an inherently political position,
21 and I think we need to diminish that to the extent we
22 can.

23 However, I think the general feeling of most
24 people here is let's move on to the substance of
25 negotiations, and I agree with that. I don't agree

1 with the various interpretations of the law by all of
2 our attorneys here of what plain English says.

3 However, I'm fine with having chairs,
4 co-chairs, tri-chairs, quadruple-chairs, whatever it is
5 that you all think we want to do, but I think we should
6 move on with the issue unless somebody else has some
7 strong feelings about not having it.

8 THE FACILITATOR: Yes.

9 MR. HAUGEN: I think we've covered this
10 sufficiently. We need to vote and move on.

11 THE FACILITATOR: Okay. Is there a proposal on
12 the floor then for the chair? We had two actually.
13 We had Blake's proposal, and we have the language in
14 this current thing.

15 Do you want to look at Blake's proposal to see
16 if we're --

17 Yes, Jason?

18 MR. ADAMS: I guess I'd just like to hear from
19 Blake, since it's his proposal, why it was reduced down
20 to one chair, essentially is what your language is
21 saying. Because in looking back at the past, in '97,
22 there were four. And in the last two, there were two.
23 And then this one, now we're going to one. I just want
24 to hear your thoughts and why.

25 THE FACILITATOR: Blake?

1 MR. KAZAMA: Yes, Jason. If you recall the
2 last Neg-Reg, we specifically had two co-chairs and a
3 chair, and the two co-chairs were divided into NEEDS
4 and CAS.

5 Mr. Sawyers was one of the co-chairs, I
6 believe. I co-chaired the CAS, and Jack co-chaired the
7 NEEDS. There was a need because there were two
8 separate main issues that were going to be discussed.

9 In this case, I was thinking of just real need.
10 It was out of necessity that we had those co-chairs
11 because they could help facilitate the process. That's
12 why I thought, in this case, just one chair to review
13 what we're doing and sort of guide the meeting along
14 made sense.

15 The co-chair, if I recall, did help in the last
16 go-around with agenda setting. We met and talked to
17 HUD and established the future agendas. We talked
18 about some of the -- I don't know if some of you were
19 involved in that. We were reaching deadlines where we
20 couldn't move forward. We were taking a lot of time
21 with issues, and we were running out of time.

22 So then we instituted this concept of let's
23 time the presentations and limit the presentations to
24 only so many a minutes to help speed things along.
25 That was done as a result of our meetings with the

1 co-chairs and working with HUD.

2 It was like HUD would say, "You know what?
3 We've run out of time. We're run out of money. We
4 don't always want to come back to the table." We're
5 real concerned about that, and, basically, we just
6 talked away until the time ran out. And so the
7 co-chair helped facilitate that process.

8 In this case, I don't think we're that wordy,
9 maybe, as a group. So I think one chair might do the
10 job.

11 THE FACILITATOR: Sharol?

12 MS. McDADE: Again, I'm trying to gain the
13 history here. But as I read Blake's definition, it
14 looks to me like too many responsibilities, that would
15 be a facilitator's responsibilities with regard to
16 running a meeting. When you described it with your
17 four bullet points, you said it acted as a conduit to
18 help with agendas, blah, blah, blah, blah. Wouldn't
19 that be a better responsibility? Or do we have to
20 define all of their responsibilities in that paragraph?

21 Because, again, it looks to me like we're
22 dueling up on responsibilities of a facilitator and a
23 chair.

24 THE FACILITATOR: Ervin?

25 MR. KEESWOOD: I'd like to suggest that we take

1 item (c) "Chair" and put it in No. 7. It seems more
2 appropriate. Where it's located now is under
3 "Decision-Making," but we're actually just verifying a
4 position. If we could put it under 7, at the top, that
5 may work better, where we describe the co-chairs in all
6 areas. Thank you.

7 THE FACILITATOR: Ervin is suggesting we take
8 "Chair," (c) on "Decision-Making" and move it to the
9 section under No. 7, which is "Co-chairs and Regional
10 and HUD Representatives." And just deal with it there,
11 do you mean?

12 Is everybody okay with that, to move it down
13 there and that will be the last thing we deal with
14 before we finish up our protocols? Yes?

15 MR. BUTTERFIELD: Does this have an effect of
16 just deferring this discussion until 7?

17 THE FACILITATOR: I'm sorry?

18 MR. BUTTERFIELD: Is this just booting it to
19 the end, is what I'm asking?

20 THE FACILITATOR: Okay. Well, if no one has
21 any objection, why don't we just take Ervin's
22 suggestion then and put it down at the bottom under the
23 "Regional Reps and Co-Chair." Okay. It works for me.

24 Let's go on to (d) then, "Appeal of
25 Parliamentary Rulings."

1 "Except as provided in Article 6(b) of
2 these Protocols, a parliamentary
3 ruling of the Chair may be overruled
4 by an affirmative vote of: (i) 80
5 percent of the Committee; and (ii) a
6 majority of each Regional delegation."

7 I think those kind of go together there, the
8 Decision-Making, so it maybe can just stay there.

9 Any comments on that? Yes, Marvin?

10 MR. JONES: Can we defer that one, too, because
11 that one talks about regional delegation? If we want
12 to get into the discussion of regional delegation, we
13 can right now, or we can more appropriately --

14 THE FACILITATOR: I'd say they're linked.
15 Okay. Can we move that down to that area as well? Any
16 objections to moving that? We'll skip that for the
17 time being and pick it up again at the end.

18 Okay. Under "Decision-Making," the next one
19 will be "Reconsideration."

20 "A matter on which consensus has been
21 achieved may not be reconsidered by
22 the Committee, except by a consensus
23 vote of the Committee. A proposal
24 with respect to which consensus was
25 not achieved may be reconsidered only:

1 (i) by a request made by a Committee
2 member that opposed the matter on the
3 original vote; and (ii) if the matter
4 received at least an 80 percent
5 affirmative vote from the Committee on
6 the original vote. Once reopened
7 under this paragraph, a matter still
8 requires consensus to be adopted.
9 Except as provided in this paragraph,
10 once a proposal is voted upon and
11 fails to achieve consensus, it cannot
12 be brought back before the Committee."

13 Can I make a suggestion here on this one? Just
14 a thought. Does anybody know the reason that this is
15 put up like this in such a restrictive manner? Who was
16 part of putting this together?

17 Because, to me, it seems very restrictive when
18 it was already decided that if we agree to something
19 later on, that means that if we have to unpack a little
20 bit and change something we've reached consensus on
21 previously, that we can do that.

22 So I'm afraid this -- I'm not afraid -- I think
23 this looks a little bit restricted.

24 MR. ADAMS: There's two issues being covered
25 there: issues that have reached consensus and issues

1 that haven't. And a bigger part of that discussion is
2 on those issues that haven't reached consensus. That's
3 when they can be brought back up.

4 But I would like to have, as we had the last
5 meeting, some members of the legislative committee that
6 worked on these to talk about -- again, a lot of this
7 was developed due to the history of the committee and
8 past negotiations.

9 I don't know if John's willing to speak to this
10 issue and give us some of the history from some of
11 those folks that participated in the drafting of this?

12 THE FACILITATOR: John, could you clarify this
13 for us a little bit?

14 MR. TILLINGHAST: One of the concerns that this
15 section reflects relates back to our discussion about
16 allowing alternates.

17 A lot of people agreed to allow alternates on
18 the ground that this language would stay because they
19 didn't want alternates coming in and saying, "Well, now
20 wait a minute. I haven't heard about this before. I
21 didn't get to vote on it. I want to have another vote
22 on it now that I'm here, and I understand it."

23 This basically says, "No, you can't do that.
24 You weren't here. You weren't here to actively oppose
25 it, and, therefore, you can't. Your request for

1 reconsideration is out of order."

2 Another evil that we were trying to prevent
3 were things that came up last time, in the last Neg-Reg
4 session, is that we would have near consensus on an
5 issue, and let's say that Blake was the only one who
6 voted against it. The committee members would work
7 very hard to negotiate with Blake to get Blake turned
8 around, and they were successful in getting Blake
9 turned around, and now we thought we had consensus.

10 We went back into session, and then all of a
11 sudden, somebody who had not opposed it during the
12 first vote raised their hand and said, "No, I object."

13 We wanted to prevent that by saying, if you
14 have problems with a proposal, you need to show your
15 hand right at the offset and not just let somebody else
16 go with the proposal and keep your vote in your pocket
17 in case you want to use it later.

18 And then the last thing was just reflecting the
19 fact that when this Scottsdale meeting is over, I think
20 we have three meetings left. We're allotting two hours
21 per topic. You can do the math to see how pressed for
22 time we're going to be. And simply because of the
23 enormous number of issues that are presented in HUD's
24 PIH notice and the NAIHC notice, we don't have time to
25 go back and revisit things that we've talked about

1 already.

2 We need to do our job well. And if I say "we,"
3 I know that's presumptuous because I'm not on the
4 committee. The committee needs to do it's job well the
5 first time and move on. We understood that it was
6 restrictive, but the nature of the beast required us to
7 make it that restrictive.

8 THE FACILITATOR: I see. Okay. Thank you,
9 John.

10 Any questions? Any comments on this language?
11 Ervin?

12 MR. KEESWOOD: Just a thought occurred. If on
13 the first day, there's a quorum and the majority of
14 membership is here and an issue is brought up and voted
15 on, according to what we've been discussing later the
16 next day or the day after, there's no quorum
17 requirement.

18 The quorum is initially required the first day,
19 so we'd have a list of people, let's say, on the third
20 day. But to allow people to veto a decision that was
21 made on the first day as long as there's 80 percent of
22 those in the room and sitting at the table, which
23 really becomes unbalanced. I'm just trying to figure
24 out what the rationale behind that thought is.

25 THE FACILITATOR: Your concern is that if

1 something was already passed and then later on, it
2 could be undone by a smaller group?

3 MR. KEESWOOD: Correct.

4 THE FACILITATOR: I think this is for a matter
5 that didn't pass.

6 Jack?

7 MR. SAWYERS: Actually that could happen, and
8 you have responsibility. When you signed up, you said
9 you'd be here every time. If you miss a vote, you're
10 out -- I mean, you voted yes for it. That's how
11 important it is that you're here for votes.

12 So, consequently, that could happen. People
13 could decide not to come if it wasn't important to
14 them, and then all of a sudden, they decided it's
15 important after it's gone. That's one of the
16 responsibilities you have to be here on time.

17 If you have something to talk about, you should
18 do it. You should vote at that time. If you miss it,
19 you miss it. That's just the responsibility we have.

20 So once we have a quorum, that quorum is good
21 for the next three days, and it's your responsibility
22 to be here.

23 THE FACILITATOR: Thank you.

24 Russell?

25 MR. SOSSAMON: If that's true, then I would

1 suggest on your agenda at the end of the day, you put
2 "recess" instead of "adjourn". If you're adjourned,
3 you're actually closing your meeting, and you have to
4 reestablish quorum every day. So if that's true,
5 I would suggest you change that language.

6 THE FACILITATOR: Thank you. We will. I think
7 that's a good point.

8 Any other consideration on the reconsideration
9 clause? Any other comments you would like to make?

10 Ervin?

11 MR. KEESWOOD: Just one more thought. In the
12 previous meetings, negotiated meetings, how many times
13 did this occur? I guess I'm asking why the necessity
14 of the language? If it was evident that it kept
15 recurring, I can understand. But if we just want to
16 write something down, that's a whole different issue.

17 THE FACILITATOR: Ervin's question was, in the
18 past has this ever been a problem? Did it come up
19 before?

20 Blake?

21 MR. KAZAMA: This is real risky thing for me to
22 entertain that question, but, yes, it has happened in
23 the past. There were times towards the end when we had
24 all reached consensus, basically, but the alternate
25 came in and said, "I really haven't had a chance to

1 read any of this stuff, so I can't vote on it." Well,
2 because there's anonymous consent, it died right there.

3 We thought that was kind of unfair because we
4 had been working on this for months. That was one
5 incident.

6 Another one -- actually everyone had consensus
7 but HUD. HUD said, "Absolutely not. We can't go along
8 with this." And at the final hours, they changed their
9 vote. Do some of you remember that? And we said,
10 "Great." But then I'm not sure what happened. We sort
11 of lost control of the meeting because then everybody
12 said, "Since you voted for it, we're not going for it,"
13 or something like that.

14 So you can see these things do occur, and I
15 just wanted to share that.

16 THE FACILITATOR: So it does look like language
17 born out of semantics.

18 Yes, Sharol?

19 MS. McDADE: I have just a quick clarification.
20 We're talking about reconsideration, and we're talking
21 about consensus. When you go back into consensus, it
22 refers to article 6(b), but there's nothing in article
23 6(b). So did we miss something? Is it still 5(b) and
24 not 6(b)? Because (a) and (b) both say 6(b) and then
25 6(a).

1 THE FACILITATOR: "Safeguards for the Committee
2 Members" has been renumbered 6.

3 MS. McDADE: So it's consensus -- all decisions
4 within the Committee shall be made by consensus,
5 subject to article 6 -- 5(b)?

6 THE FACILITATOR: Yeah. Okay. Any other --
7 Yes, Karin?

8 MS. FOSTER: I think when we started talking
9 about this, we recognized that there are two issues
10 here. There are matters on which consensus has been
11 achieved, and then there are proposals with respect to
12 which consensus was not achieved.

13 I've heard some of the comments and some of the
14 history about situations where consensus had been
15 achieved and then was upset. And that seems to me to
16 be something that we do need to be concerned about, you
17 know, making sure that that finality is preserved.

18 On the other hand, as to the section about --
19 or it's a sentence about proposals, with respect to
20 which consensus was not achieved, I'm not quite as
21 comfortable with that, and I don't see the necessity of
22 it. I think it's too restrictive.

23 I wonder if we would get into a situation where
24 we were trying to decide whether a proposal had been
25 presented or not, if you make one word change in a

1 proposal, does that make it a new proposal? I just
2 think that we could get bogged down in the
3 parliamentarian difficulties with that.

4 So I would be fine with the first sentence of
5 this paragraph, but I would suggest the second sentence
6 come out, unless somebody has a real good reason that
7 they think we need it.

8 THE FACILITATOR: Any thoughts on Karin's
9 proposal?

10 MS. TOOLEY: Essentially, the rest of the
11 section, except the first sentence, would be deleted.
12 Is that what your recommendation would be, Karin?

13 MS. FOSTER: Well, I think the third sentence
14 talks about, "Once reopened, a matter still requires
15 consensus to be adopted."

16 So you can reopen matters where consensus has
17 been achieved by consensus. And then once you reopened
18 a matter by consensus, then you have to, then again,
19 get consensus for it to be adopted. So I think that
20 that third sentence would still work and may be
21 necessary to go with the first.

22 THE FACILITATOR: So you're suggesting the
23 first sentence and the last sentence?

24 MS. FOSTER: I'm suggesting that the second
25 sentence come out, and, I guess, the last sentence,

1 yes.

2 THE FACILITATOR: Okay. So you want this
3 "Reconsideration" just to read the first sentence and
4 the last sentence of (e). Am I right?

5 MS. FOSTER: I think it would be the first and
6 the third. Thank you, Susan.

7 THE FACILITATOR: First and the third.

8 MS. FOSTER: And the second and the fourth
9 would come out.

10 THE FACILITATOR: I see. Okay. There's a
11 proposal on the floor here. Any comments?

12 Carol?

13 MS. GORE: I guess I'm not in disagreement with
14 Karin. I think I understand your approach. I just
15 want to make sure the committee understands that means
16 an issue can be brought up 50 times. And if that's
17 what it takes to reach agreement and this committee is
18 willing to do that, I just want to make sure that we
19 all clearly understand we're opening a door where we
20 have unlimited time. I'm not opposed to that. I just
21 want to make sure we're clear. Thank you.

22 THE FACILITATOR: Yes, Marvin?

23 MR. JONES: This is a question. I think this
24 does relate back to the limitation of time. If we
25 limit an issue to two hours and don't reach consensus,

1 then the only way you can continue with the issue is
2 through this part of the protocol; is that correct?
3 That's what this is intended to do?

4 THE FACILITATOR: Blake?

5 MR. KAZAMA: Probably not, Marvin. We would
6 give an additional two hours on the reopening or the
7 balance of the two hours on that issue.

8 THE FACILITATOR: Yes.

9 MR. KAZAMA: I'll help the committee out.
10 I guess I would say if we have time, we'd go the two
11 hours. But it would be tackled at the end of the
12 session, is my understanding, after we completed or
13 before reviewing -- are we looking at it at the end of
14 the day? There's a lot of structure things that I'm
15 missing here.

16 THE FACILITATOR: Let me just share something
17 right here. I think the assumption here is that we
18 don't want to waste the full committee's time rehashing
19 something that has been hashed through already, and you
20 want to limit that because of time.

21 What my proposal is, in terms of just
22 organizing the work, is that once we break into work
23 groups, that we will be breaking into work groups that
24 deal with particular -- maybe two work groups or three
25 work groups that are mixed, both with federal and with

1 tribal representatives, to deal with different aspects
2 of the amendment and the regulations.

3 In those mixed work groups, people will have to
4 come to consensus. The work group itself will have to
5 come to consensus before it can present anything back
6 to the large committee.

7 And so all these kinds of things may not be
8 quite as important because if we adapt -- the way it's
9 worked in the past and has been very successful -- has
10 been the large committee breaks into small work groups
11 to work on different parts of the regulations. And
12 each small committee is consisting of both tribal and
13 federal representatives who are the most knowledgeable
14 about that area.

15 That committee, if it can reach consensus on a
16 particular item, can actually write out the regulation
17 the way they want it. Then they would meet in federal
18 caucus and in tribal caucus to share it with the rest
19 of their colleagues.

20 If someone in that federal caucus says, "I
21 don't like it. You've got to go back and work in that
22 subcommittee some more to get it worked out," they'll
23 have to do that. But it seems what's been most
24 successful is that we don't let things come to the
25 large committee until they've reached consensus within

1 the small committee.

2 That way when something does come up to the
3 large committee, it's already seen. Everybody has
4 already seen it, either in a federal caucus, a tribal
5 caucus, or in that small committee. So it may not be
6 quite as necessary to have such worries about these
7 kinds of things happening.

8 Yes, Marvin?

9 MR. JONES: I want to clarify. I was asking
10 the question: Was that the intent of this particular
11 provision is that if we have a time limitation on an
12 issue, that once that time issue expires and there's no
13 consensus, then it's done and finished unless this
14 provision is enacted and then additional time can be
15 added to discuss it? That was my question.

16 THE FACILITATOR: We don't have an answer for
17 it right now.

18 MR. JONES: Okay. Who wrote it?

19 THE FACILITATOR: I think Blake wrote it.

20 Yes, Karin?

21 MS. FOSTER: So if the intent then is to read
22 those two together, wouldn't it be appropriate then to
23 say in the second sentence -- if the second sentence
24 should stay in, and I'm still lukewarm on that idea --
25 "a proposal with respect to which consensus was not

1 achieved within the time limitations on debate"?

2 So that if it was not achieved within two
3 hours -- I mean, I just think that if a proposal could
4 be put forth, it could be discussed very quickly and
5 dispensed of. Then maybe it really is a good idea, and
6 people should think about it if you haven't considered
7 it for two hours or whatever, you know, if there's
8 still more time than that.

9 So I guess the suggestion is that after the
10 word "not achieved," after those words, you'd insert
11 "within the time limitations on debate."

12 THE FACILITATOR: Within the time
13 limitations --

14 MS. FOSTER: Within the time limitations on
15 debate.

16 THE FACILITATOR: On debate.

17 MS. FOSTER: I'm looking back at paragraph
18 2(h). It's called "Time Limitations on Debate."

19 THE FACILITATOR: Right. Is that okay?

20 Yes, Blake?

21 MR. KAZAMA: I guess just a procedural thing.
22 How do you want to handle it when there's tribal
23 amendments or amendments through -- should the person
24 who -- I mean, should anytime any of us asks for a
25 consensus on this language before we proceed or how do

1 you want to handle that?

2 THE FACILITATOR: I think the most effective
3 use of our time would be to just go through it piece by
4 piece. We ask for a consensus on a piece of language.
5 Later on, you might think of a friendly amendment that
6 everybody has no problem with, and we can just go back
7 and do it.

8 MR. KAZAMA: I just wondered because -- to help
9 expedite our discussion.

10 THE FACILITATOR: So Karin's friendly amendment
11 to your reconsideration language was within the time
12 limitations allotted.

13 Any other comments on this?

14 Yes, Jason?

15 MR. ADAMS: Jan, just to talk about what you
16 mentioned as far as work groups. My recollection in
17 the last negotiated rulemaking committee was that our
18 work group worked on a majority decision, not
19 consensus. There were times when there was a heated
20 issue that would barely pass in the committee. Then it
21 would come to the floor, and there would be the debate,
22 subject to the limitations and debate on the committee
23 level.

24 THE FACILITATOR: I think when we get to the
25 discussion about how work groups operate and operating

1 procedures, we should discuss that because I've got
2 other experiences I think might be more useful. I'd
3 like to see these things ironed out within the work
4 group themselves rather than in a large group.

5 If you can iron it out in the work group, then
6 everybody kind of consulted with all your tribal
7 representatives, and everybody consults with all their
8 federal representatives, and then it doesn't have to
9 waste the time in the large committee.

10 People in the work group are usually the most
11 passionate about that issue. They know it the best.
12 So they need to refer it back to the work group to get
13 them to work it out there. If it's just a majority
14 vote, that just kind of divides up the group and
15 doesn't really keep us linked into working things out
16 through consensus, which I think we have to do.

17 Yes, Blake?

18 MR. KAZAMA: I just see this as a safety net
19 language, so I would ask for consensus on this.

20 THE FACILITATOR: Okay. All those in favor of
21 this language, as friendly amended by Karin, thumbs up.
22 Any objection? One objection.

23 MR. BUTTERFEILD: I'm objecting because I don't
24 think what's up there is exactly what -- I would like
25 clarification, basically. I don't like voting on

1 something I'm not clear about.

2 So as I understand Karin's proposal, it's
3 sentence 1 and sentence 3, minus sentence 2 and 4. But
4 then there was something said about a limitation having
5 to do with time, and I don't see that up there.

6 THE FACILITATOR: That refers to a previous
7 thing we adopted, which said that any item could be
8 discussed for a maximum of two hours.

9 MR. BUTTERFIELD: I understand that. That's
10 not in the written thing that we're supposedly voting
11 on.

12 MR. ADAMS: Jan, I think what needs to happen
13 is the change should highlight just what's different
14 between the two.

15 THE FACILITATOR: Oh, just highlight "within
16 the time limitations on debate."

17 MR. ADAMS: I think that's the only thing
18 that's different between the two, is it not?

19 THE FACILITATOR: Yes. Just highlight "within
20 the time limitations on debate." Okay. Thank you.

21 Mark?

22 MR. BUTTERFIELD: So this is not exactly as I
23 understood it. So she put back in the issue regarding
24 things we've not achieved?

25 THE FACILITATOR: Right.

1 MR. BUTTERFIELD: Because originally Karin had
2 suggested that we remove that.

3 THE FACILITATOR: Right.

4 MR. BUTTERFIELD: So, again, I'm just asking
5 for clarification on this.

6 THE FACILITATOR: (Reading) "A matter on which
7 consensus have been achieved may not be reconsidered by
8 the Committee, except by a consensus vote of the
9 Committee", period.

10 "A proposal with respect to which consensus was
11 not achieved within the time limitation on debate -- "
12 that means within the two hours. So maybe consensus
13 was not achieved within one hour -- "may be
14 reconsidered only by a request made by a Committee
15 Member that opposed that matter on the original vote;
16 and if the matter received at least 80 percent
17 affirmative vote from the Committee on the original
18 vote.

19 "Once reopened under this paragraph, a matter
20 still requires consensus to be adopted. Except as
21 provided in this paragraph, once a proposal is voted
22 upon and fails to achieve consensus, it cannot be
23 brought back before the Committee."

24 So they're saying if you have time left over in
25 that issue -- let's say you have an hour left, and some

1 of the people who voted no on it before wants to raise
2 it again, you can continue to debate for an hour.

3 Is that the gist of the proposal, Jason?

4 THE FACILITATOR: Karin, what have you done?

5 MS. FOSTER: For clarification, I had suggested
6 that sentence 2 and 4 come out, but I wasn't hearing a
7 whole lot of other comment on that, and I thought that
8 we needed to move. So that was why I then suggested as
9 an alternative proposal that we insert that language.

10 My intent with that proposal is, just as the
11 facilitator stated, that I thought that we shouldn't
12 shut off additional discussion on an issue if there was
13 still time within those two hours. I'm looking at this
14 language and hoping that would accomplish that goal.
15 I'm not sure that it does.

16 THE FACILITATOR: So this language will
17 accomplish the goal that if someone who voted no on it
18 had a change of heart and 80 percent of the rest of the
19 people voted yes on it, they would give them additional
20 time to raise it and say, "Let's talk about it a little
21 bit more. I may reconsider," within the time frames.

22 MS. FOSTER: My desire would be to set up a
23 rule whereby if the two hours had not yet expired, this
24 sentence 2 would not apply.

25 THE FACILITATOR: I'm sorry. Say it again.

1 If the two hours had not expired?

2 MS. FOSTER: Yes.

3 THE FACILITATOR: Yes, Marvin?

4 MR. JONES: The way it's written is within the
5 time limitations. The time limitation is two hours, so
6 that provision doesn't come into effect until the two
7 hours is gone.

8 THE FACILITATOR: Rusty?

9 MR. SOSSAMON: Karin, what I interpret you're
10 trying to accomplish is, whether we achieve consensus
11 on an item or not, if this body votes by consensus to
12 reopen an item, they can; is that correct? Whether
13 it's achieved consensus or not, whether it took two
14 hours, we can't exceed two hours on an issue.

15 But regardless of how long we've taken, if this
16 body votes by consensus to revisit and reopen an issue
17 that either achieved consensus previously or didn't, I
18 think they should have the authority to do that. Is
19 that what your intent is?

20 MS. FOSTER: My intent was not to require a
21 full consensus to reconsider a proposal that had not
22 received consensus prior. I mean, I wasn't suggesting
23 that there be a consensus requirement in order to bring
24 something back -- a full consensus requirement in order
25 to bring an issue back to the table that had not

1 reached consensus already.

2 I guess I'm troubled by the second sentence.

3 I think it's very restrictive. I think that you could
4 have a five-minute discussion on something and not
5 reach consensus on it. Maybe there hadn't been the
6 opportunity to really talk about it away from the
7 table. Maybe it's actually a very good idea, but it's
8 not very well understood. And if you had only spent
9 five minutes on it, you might lose a very good idea.

10 So if an idea's been discussed or a matter's
11 been discussed for two hours, I think you probably have
12 gotten a pretty good debate, and I feel comfortable
13 with that. But I'm trying to avoid a situation where
14 something's only been discussed for five minutes. It
15 hasn't reached consensus, and it could never come back
16 to the table. That's what my thought is.

17 THE FACILITATOR: Does this language do it?

18 I think Blake's language was really to not have
19 things regurgitated over and over and over again by one
20 person who just disagrees, unless certain conditions
21 were met.

22 And, Karin, you put a restriction on the
23 overall length of debate and just said as long as the
24 two-hour requirement has been met. So you're actually
25 adding a requirement there.

1 MS. FOSTER: I suggest instead of "within the
2 time limits on debate not achieved," "after the time
3 limits on debate have expired." Is that clearer?

4 THE FACILITATOR: Jack?

5 MR. SAWYERS: Jan, I think we have our first
6 test. Most people agree. One or two people do not
7 agree. This is the time we should have those folks try
8 to fix it so we can agree on it, not just ask the
9 question. How would you fix it if you don't agree with
10 it?

11 THE FACILITATOR: Okay. Whoever doesn't agree
12 with what's up there, give us a fix.

13 Judith?

14 MS. MARASCO: I'll give you a fix. How about
15 we just say sentence 1? I think it's as simple as
16 that, that the committee needs to agree by consensus to
17 bring any matter back to the table. That's how we
18 function. The rest of it's just -- to echo Henry's
19 phrase, "Keep it simple." That's my suggestion for
20 sentence 1.

21 THE FACILITATOR: Lafe?

22 MR. HAUGEN: I agree. Again, if we keep up
23 with this pace, Committee Members, we're not going to
24 get this done by Thursday, this protocol. So if we can
25 move forward, we have a lot of things to do today.

1 Let's quit grandstanding. Let's get it done.

2 THE FACILITATOR: Leon?

3 MR. JACOBS: I make a recommendation on the

4 last two sentences, that we take out the paragraph.

5 That just doesn't fit. If we change the language and

6 say "once reopened under reconsideration" and the next

7 sentence "except as provided in reconsideration."

8 I just don't feel that paragraph fits when

9 we're talking about reconsideration.

10 THE FACILITATOR: Okay. I'm going to go

11 through these one by one. First of all, we have what's

12 up there on the board. Does anybody disagree with

13 what's up there?

14 FEMALE SPEAKER: Disagrees?

15 THE FACILITATOR: Disagrees. Proposal 1,

16 "Reconsideration".

17 Okay. And then the second thing we had was a

18 proposal by Judith, which was let's just cut everything

19 out and just leave the first sentence up there. How

20 many people like that? Anybody disagree with that,

21 just to leave the first sentence up and make it very

22 simple? Does anybody disagree?

23 Darlene?

24 MS. TOOLEY: I like to keep it simple, but I do

25 think that perhaps we need to take at least a portion

1 of sentence No. 3 and just say "Once reopened, a matter
2 still requires consensus to be adopted." Just to be
3 really clear.

4 THE FACILITATOR: So Darlene's friendly
5 amendment is just the first sentence and then leave in
6 "Once adopted --"

7 MS. TOOLEY: "Once reopened."

8 THE FACILITATOR: "Once reopened, a matter
9 still requires consensus to be adopted." So we have a
10 two-sentence proposal.

11 Yes, Jason?

12 MR. ADAMS: Under the original proposal, there
13 were two things being covered in "Reconsideration".
14 The first thing was those items that have reached
15 consensus, how you reopen those. That's the first
16 sentence.

17 Then the next sentences 2, 3, and 4 deal with
18 issues that originally didn't reach consensus. Now,
19 the proposal No. 3, as I see it, doesn't deal with the
20 second half of the issue, issues that haven't reached
21 consensus.

22 THE FACILITATOR: Right.

23 MR. ADAMS: So that's why I oppose it.

24 I guess my concern is we were almost at
25 consensus with Karin's proposal, and there was

1 disagreement on a couple of words. And in that
2 disagreement, we've reopened the whole section.

3 THE FACILITATOR: Okay. Let's go back to
4 Karin's proposal again then and take one more last look
5 at that. Darlene opposed it.

6 Sandra?

7 MS. HENRIQUEZ: I'm really confused, so bear
8 with me for just a second. If we've reached a matter
9 by consensus, why is it reopened or reconsidered?

10 THE FACILITATOR: It would only be reopened
11 through a consensus of the group to reopen it.

12 MS. HENRIQUEZ: But if it's reached consensus,
13 why would we come back and reopen it? Because of
14 something we've done later on?

15 THE FACILITATOR: Yeah. That would be the only
16 reason.

17 MS. HENRIQUEZ: Okay. To fix what we've done
18 earlier, based on something we've done later on in a
19 session. Okay. I get that.

20 And then if we have not reached consensus on an
21 issue within the two-hour limit, which is the previous
22 time frame that we've all agreed to -- I'm looking at
23 the first proposal here. So we would then say the
24 person who opposed it the first time around could bring
25 it back to reach consensus on it a second time -- to

1 try to get to consensus.

2 So somebody who objected before says, "I want
3 to talk about it some more." The clock is a new two
4 hours?

5 THE FACILITATOR: That's unclear.

6 MS. HENRIQUEZ: Because my sense is, if we
7 really tried and struggled with it, we would have
8 probably gone to the time limit and not reached a
9 consensus. There might have been some other meetings
10 going on. Someone might come back and say, "I opposed
11 it before. I'd like to bring it back. I'd like to
12 reopen it," which the committee would then vote to say,
13 "We'll reconsider."

14 But it seems to me, the clock would start
15 ticking again on that debate. That's not clear.

16 THE FACILITATOR: Yeah, it's not clear
17 because --

18 MS. HENRIQUEZ: Because I'm not clear about
19 either.

20 THE FACILITATOR: There's two situations there,
21 Sandra. One could be that they didn't use their full
22 two hours, but it was dismissed, you know, very
23 quickly.

24 MS. HENRIQUEZ: Highly unlikely, I think.
25 That's personal, but it's all right.

1 THE FACILITATOR: But the language, as proposed
2 by Blake, has a safety valve so that everything
3 wouldn't be regurgitated too often unless very
4 stringent requirements were met.

5 Rebecca?

6 MS. PHELPS: I was just looking at the
7 proposal. The highlighted area, if that was dropped
8 down as one of the restrictions, provided that the time
9 frame had not been met and the remaining time is used?
10 I don't know if that's the language, but...

11 THE FACILITATOR: Karin, you can answer that.
12 Restate your question, Rebecca.

13 MS. PHELPS: Looking at the highlighted part,
14 rather than putting it in that area, bring it down as
15 one of the restrictions, as maybe No. 3, that provided
16 that if the time line had not been used up and that
17 remaining time could be used on this matter.

18 THE FACILITATOR: Yes, Darlene and Marvin?

19 MS. TOOLEY: So if we're trying to deal with
20 the two specific issues. One being a matter that has
21 reached consensus is to be reopened, and one being a
22 matter that has not reached consensus to be reopened.
23 Why don't we simply put the sentence in there, "A
24 proposal with respect to which consensus was not
25 achieved may be reconsidered by a consensus vote of the

1 Committee"?

2 Then we have to police ourselves in the middle
3 of it. But at least we've given ourselves a way to
4 deal with things that already passed and things that
5 need to pass.

6 THE FACILITATOR: Any comments on Darlene's
7 proposal?

8 Russell?

9 MR. SOSSAMON: I would agree with Darlene and
10 just add the words at the end of it "for a time
11 specified by the committee." Because if we reopen
12 something, we can say, "Okay. We're going to reopen
13 it. You've got five minutes or ten minutes, not the
14 two hours." So we have addressed consensus items,
15 non-consensus items, and the time limit.

16 THE FACILITATOR: Good. Any other comments on
17 Darlene's proposal?

18 Yes, Karin?

19 MS. FOSTER: Can we see Darlene's proposal up
20 on the board?

21 MS. TOOLEY: We've got the first sentence. And
22 then we have a second sentence that would say "A
23 proposal with respect to which consensus was not
24 achieved may be reconsidered by a consensus vote of the
25 Committee."

1 And Rusty wanted to add "with the time limit
2 established by the committee -- by a consensus vote and
3 time limit established by the committee," or something
4 like that.

5 THE FACILITATOR: Do you want to add something
6 to that?

7 MS. TOOLEY: And then the third sentence would
8 be: "Once reopened, a matter still requires consensus
9 to be adopted." And that goes for everything.

10 FEMALE SPEAKER: What was the last one,
11 Darlene?

12 MS. TOOLEY: The third sentence in this section
13 would be: "Once reopened, a matter requires consensus
14 to be adopted."

15 So that applies to both of the things that have
16 already passed and those that haven't passed, if it
17 ever gets reopened by consensus of the committee and
18 the time limit agreed to by the committee.

19 THE FACILITATOR: Let's just finish this.
20 We're almost there. We're almost there.

21 Yes, Marvin?

22 MARVIN JONES: There was an original question.
23 Rebecca asked a question.

24 As I read it, that language clearly says
25 "within the time limitations on debate." If it hasn't

1 reached the two hours, there isn't any need for the
2 provision because you still have time to reach
3 consensus on an issue. This provision is only if the
4 time has elapsed, and somebody needs additional time
5 because they've gone back and talked to everybody, and
6 they say, "Now we can't do it. We need five minutes."

7 THE FACILITATOR: Okay. You know what's a
8 little frustrating here is I think everybody wants the
9 same thing, but we're just trying to figure out how to
10 put it into language to make it happen. You don't want
11 things regurgitated over and over again. If it's ready
12 to discuss, you don't want it to be brought up again
13 once a decision has been made. But you do want the
14 flexibility if there's a change of heart among one of
15 the people to reach that consensus. Can we see what we
16 have up here?

17 MR. SOSSAMON: To address the issue that Marvin
18 brought up, in Darlene's language, in the second
19 sentence, after it says -- the third line down, "which
20 consensus was not achieved," if you'll just put in
21 "within the two hour time limit." I think that will
22 address his issue.

23 THE FACILITATOR: "Within the two hour time."

24 "A proposal with respect to which

25 consensus was not achieved within the

1 two hour time limit may be
2 reconsidered with a consensus vote and
3 time limit set by the Committee. Once
4 reopened, a matter still requires
5 consensus to be adopted."

6 Marvin?

7 MR. JONES: I just wanted to make it clear.

8 I was trying to ask a question of what it meant. I
9 don't have an issue with any of it.

10 THE FACILITATOR: Rebecca, is that all right
11 with you? We're looking at No. 4, proposal 4.

12 "A matter on which consensus has been
13 achieved may not be reconsidered by
14 the Committee, except by a consensus
15 vote of the Committee. A proposal
16 with respect to which consensus was
17 not achieved within the two hour limit
18 may be reconsidered with the consensus
19 vote and time limit set by the
20 Committee. Once reopened, a matter
21 still requires consensus to be
22 adopted."

23 Everybody okay with that? All right. Anybody
24 opposed? Okay.

25 MS. FOSTER: Yes.

1 THE FACILITATOR: I thought you were voting.
2 I'm sorry.

3 MS. FOSTER: I was voting opposed, and only
4 because I would suggest "may only be reconsidered."
5 So that proposal where the two hour time limit has not
6 run or not encompassed, in the sentence. I think it
7 needs to say: "A proposal with respect to which
8 consensus was not achieved within the two hour time
9 limit may only be reconsidered with a consensus vote."

10 So that's it's a limitation simply on those
11 that have not been achieved within the two hour time
12 limit. Insert "only" after "may."

13 THE FACILITATOR: After "may" insert "only."
14 "May only be reconsidered with a consensus vote in a
15 time limit set by the Committee."

16 MS. McDADE: Can we get clarification, Jan?
17 Which proposal? 4?

18 THE FACILITATOR: 4. Proposal 4. I'm sorry.

19 MS. McDADE: Well, again, we're adding more
20 words to something that is fairly simple. And, again,
21 can we just keep it simple, please.

22 THE FACILITATOR: Can you live with it? That's
23 the question, because we're not going to please
24 everybody 100 percent. Can everybody live with
25 proposal No. 4? Anybody that can't live with that?

1 Okay. Thank you.

2 That's the definition of consensus. When you
3 can agree with it 70 percent, you have to support it
4 100 percent.

5 Do you guys want to take a break?

6 MR. SAWYERS: No, thanks. I just did.

7 (Laughter.)

8 But I would like to say, this is the example of
9 consensus that we need, and this is if someone
10 objects -- everybody else agreed but one person. It
11 wasn't really an objection; it was a question. All the
12 other discussion was unnecessary because everybody
13 agreed. If you had asked this person, "Why do you
14 object and how are you going to fix it?"

15 They talk about the fix, and then we discuss
16 the fix. We don't discuss the whole damn thing again.
17 We just discuss the fix, because somebody had some
18 heartburn over one thing, not the whole deal. So why
19 do you go back to the whole deal and put our
20 fingerprints -- some people have had their fingerprint
21 on every item that goes through.

22 And I'm saying, you're not going to get
23 anything done unless you work on the fixes and not on
24 the whole elephant.

25 THE FACILITATOR: Thank you. Everybody agree

1 with Jack? All right.

2 Okay. 15-minute break.

3 (Recess from 9:53 a.m. to 10:34 a.m.)

4 THE FACILITATOR: Let's go. Next item (f) work
5 groups.

6 "f. Work Groups. Smaller Work
7 Groups may be formed by the Committee
8 from Committee Members or their
9 designees to address specific issues
10 and to make recommendations to the
11 Committee. No more than six Work
12 Groups may be formed at any one time,
13 and each Work Group shall be chaired
14 by a Regional Representative, who
15 shall establish procedures for conduct
16 of the Work Group in order to expedite
17 the Work Group's work. The Work Group
18 shall appoint a designated secretary
19 to accurately record the Work Group's
20 efforts. Work Groups are open to any
21 Committee Member or the Member's
22 designee. Interested persons and
23 members of the public are permitted
24 and encouraged to participate in Work
25 Group proceedings. Each Work Group

1 must include a HUD representative.

2 Work Groups are not authorized to make

3 decisions for the Committee as a

4 whole. The agenda for each Work Group

5 shall be distributed with the Agenda

6 for the Committee meeting under

7 Article 3(e) of these Protocols. The

8 Regional Representative shall report

9 any Work Group recommendation to the

10 Committee, which recommendation must

11 take the form of specific proposed

12 language (if any regulation or

13 regulation change is proposed),

14 together with proposed draft preamble

15 language to accompany that language.

16 At the end of each Work Group session

17 day, the Regional Representatives and

18 HUD's representative shall meet to

19 review progress made at each Work

20 Group session and the Work Group's

21 agenda."

22 MR. JONES: This, of course, has the

23 regional representative, and unless we take that

24 wording out or -- I will object to it if that wording

25 is in there. I don't care if a region has a

1 representative, and they happen to chair a meeting,
2 that is irrelevant. But to require it in this section,
3 I will object to that.

4 THE FACILITATOR: How would you want to fix it
5 to make it more acceptable?

6 MR. JONES: Take it out.

7 THE FACILITATOR: Just take out regional? So
8 the work group shall be chaired by -- not a regional
9 representative, but by whom?

10 MR. JONES: A person selected by the work
11 group, selected by the committee.

12 MS. FOSTER: Could it be a committee member
13 (indiscernible -- speaker not using microphone.)

14 THE FACILITATOR: Okay. So you want to fix it
15 by saying take out the word regional representative and
16 add in the work group shall be chaired by a person
17 selected by a committee member, selected by the work
18 group?

19 THE FACILITATOR: Yes, Susan.

20 MR. WICKER: It could just state committee
21 member.

22 THE FACILITATOR: The work group shall be
23 chaired by a committee member.

24 MS. WICKER: Within the work group.

25 THE FACILITATOR: By a committee member

1 selected by the work group? Within the work group? So
2 now the proposal is that all language -- each work
3 group shall be chaired by the committee member within
4 the work group.

5 Darlene?

6 MS. TOOLEY: So when it says designee, does
7 that mean your alternate, or does that mean your
8 attorney, or what does that exactly mean? Anybody you
9 decide to have with you on the work group? I just want
10 to know. It's a question.

11 THE FACILITATOR: Does anybody have an answer
12 for Darlene?

13 Yes, Judith?

14 MS. MARASCO: At the previous committee meeting
15 (inaudible) -- I would like to see it here that our
16 alternates can participate in the work groups. If it
17 just says and/or, I think that would make it clear that
18 an alternative could participate in the work groups.

19 THE FACILITATOR: Okay. So Judith --

20 MS. MARASCO: As a committee member. Of
21 course, I want to be part of all of the committees, but
22 I can't do that. So this way at least I can
23 participate.

24 THE FACILITATOR: So in the first sentence, add
25 in smaller work groups may be formed by the committee

1 from committee members and/or their alternates?

2 MS. MARASCO: Yes.

3 THE FACILITATOR: Does anybody have any
4 objection to that language change?

5 MR. BUTTERFIELD: I have a question
6 regarding -- I'm not sure what Darlene meant by
7 alternate, because there is a designated meaning for
8 alternate of this committee, and then I believe that
9 the word here was designee, would be to allow
10 participation by attorneys and other people that the
11 committee wishes to work on various issues. So I just
12 wanted to see that clarified.

13 And then while I have the mic, I think the
14 bottom where it says article 3(e), it should reflect
15 the change that it is now 2(e).

16 THE FACILITATOR: Right. So Mark, you're
17 saying -- okay. The way I read the first sentence
18 right now would be smaller groups may be formed by
19 committee from committee members and/or their
20 alternates or their designees. Because with HUD, you
21 only have two committee members, so they would have to
22 have designees at some of these work groups.

23 Rodger?

24 MR. BOYD: That raises one of my questions as
25 well, just for further clarification on HUD

1 representatives. My sense of it is that a HUD
2 representative could be staff in addition to the HUD
3 committee representatives.

4 THE FACILITATOR: Okay.

5 MR. BOYD: The other question I would have is,
6 in these working groups -- and we talked about reaching
7 some kind of consensus or an 80 percent vote, whatever
8 you think it might be. And with this kind of
9 participation, which is, I think, good to be open to
10 the public, to other representatives that would be
11 interested in participating. When it gets down to the
12 consensus vote though, I think it should only be the
13 members within their respective committees that would
14 be doing the voting.

15 THE FACILITATOR: Okay. I think Rodger is
16 setting out assumptions about the work groups. Does
17 anybody have any problem with those, that the people --
18 it would be fairly open, that people could send both
19 tribes as well as federal representatives, could ask
20 their staff or their specialists to participate in
21 that, but that when it came down to reaching consensus,
22 only the committee members themselves can vote on the
23 consensus part. It is an assumption. I don't think we
24 put that in.

25 Karin?

1 MS. FOSTER: I'm not sure why the words "or
2 their designees" is necessary. If only the voting
3 members of a work group are going to be committee
4 members, then putting in "or their designees" seems to
5 me to confuse that issue. And we've already said later
6 on that the public, any member of the public, is
7 encouraged to participate. So I don't think it would
8 be necessary for a committee member to actually
9 designate his or her attorney to be participating on
10 the work group in order to accomplish that.

11 I also want to respond to Judith's note about
12 including a reference to alternates. I think the
13 section we have already adopted on participation, 1(b),
14 that talks about designated alternates is broad enough
15 to cover alternates already without having to mention
16 them in this section.

17 It says they will have the same rights,
18 responsibilities, duties, and functions as a committee
19 member during work group and committee participation.
20 So I think that would allow the alternate to vote as a
21 member of the work group if the committee member wasn't
22 here.

23 THE FACILITATOR: So you're saying that you
24 don't think we need and/or their alternates?

25 MS. FOSTER: It don't think it's necessary to

1 say the committee members and/or their alternates may
2 form a work group, because I think that the alternates
3 already ascend to the committee member's duties, rules,
4 obligations, in the absence of the committee member.
5 And in terms of participation, it sounds like what I am
6 hearing is that the committee members would be the only
7 voting members on a work group. So everybody else
8 falls into the public category.

9 THE FACILITATOR: Jack.

10 MR. SAWYERS: In the past, we've always had
11 everyone -- anyone from in the committee could vote on
12 any -- participate in any vote or any discussion. It
13 gives us a broad group of folks, folks who are
14 interested in what we are doing. So we have always
15 just had -- we've never had to have consensus to bring
16 it back to the main group. The downside of that, of
17 course, is we start all over again.

18 So I would be willing to do -- if we ask for
19 consensus of the members, that would be good. But I
20 really do believe we get a lot of benefit from having
21 the tribal members in the discussion and even in the
22 votes, even though you just count the committee members
23 if you want consensus in that committee.

24 The problem you have is you are still going to
25 come back to this committee and everybody will want to

1 touch it. And so what I'm saying is there's got to be
2 a lot of good faith. If we're worried about that, then
3 we have to have some faith in our other committees.
4 Because if we come back, and it's an open discussion
5 again, as it has been in the past, then you haven't
6 wasted time, but you certainly discuss the same thing
7 over and over.

8 So consequently, I suggest that anybody can
9 participate in the committees. However, that if we try
10 to get consensus in that committee, and then we bring
11 it in as a consensus item, and unless there's a real
12 strong heartburn, we pass that. And that will speed
13 things up a lot.

14 THE FACILITATOR: Thank you.

15 Suppose we added one step, Jack. That after --
16 I agree, that within the work group committee, the
17 committee members reach consensus on a particular
18 language, but we add one step to that before we bring
19 it back to the full committee. And that is, that after
20 it's reached consensus within a work group, the tribal
21 members of that -- the tribal committees of that work
22 group take it to a tribal caucus to seek a consensus
23 from all their colleagues in the tribal caucus.

24 And at the same time, the federal members of
25 that work group take it to a federal caucus and try to

1 seek consensus among their federal colleagues. And
2 then when we bring it back to the large committee,
3 you're not going to have all of that kind of arguing,
4 because it will already have been vetted through these
5 processes.

6 That is what we've done in the past, and it
7 works quite well, because everybody gets a chance to
8 see it. The downside is that if you don't reach
9 consensus within a committee, and you have important
10 issues that you want to raise, then how can we bring
11 that back to the large committee in a way that doesn't
12 waste the committee's time and rehash everything?

13 THE FACILITATOR: We've got Jason, then
14 Rusty. Judith, do you want to speak?

15 MS. MARASCO: No. I think that answers my
16 question.

17 THE FACILITATOR: Jason, then Rusty and then
18 Mark.

19 MR. ADAMS: Comments on what you are saying. I
20 disagree that -- again, just talking about time, if
21 we're going to talk about issues in our work group and
22 try to get consensus there, and if we can achieve it
23 there and then bring it to the caucus of tribal folks
24 and try to reach -- that's just taking up way too much
25 time, I believe.

1 My theory is that if we leave consensus up to a
2 work group, I'm not going to have the opportunity to
3 sit in on every work group. So if there are dissenting
4 positions in a work group, it should be brought back to
5 the main committee so we can all hear both positions
6 and then make a decision, because the committee makes
7 the decisions, not the work groups. That's my first
8 point.

9 The other issue I want to bring up is, in our
10 last meeting when we discussed the issue under
11 decision-making consensus, part of the work that we did
12 there was supposed to be moved down to (f), and we
13 haven't done that yet, to this paragraph.

14 THE FACILITATOR: Thank you.

15 Rusty, did want to speak?

16 MR. SOSSAMON: I agree with Jason. It doesn't
17 say anything about consensus. Obviously, that's what
18 we want to work for, but sometimes you're not going to
19 have it within the work group. Whatever those varying
20 opinions are, they need to be presented to this body
21 for it to work out and make the final decision on it.

22 I think it is just trying to achieve something
23 this is understood that we're trying to achieve, and
24 then don't add any of these other layers into it. We
25 all understand we've got to get everybody on board for

1 consensus ultimately. So I think just the way the
2 language is is fine.

3 MR. BUTTERFIELD: I was looking at the wording
4 in (f), work groups. It doesn't say anything about
5 consensus. And to quote Jack, we don't need to reach
6 that because that is all in (g). I am fine with the
7 language in (f), other than 2(e). And let's move on to
8 the discussion about consensus, which is in paragraph
9 (g), at least in my version.

10 THE FACILITATOR: Carol?

11 MS. GORE: I just want to follow up on Marvin's
12 comments in reference to regional representatives,
13 which I agree with. There's also reference to regional
14 representative in the last two sentences of the same
15 paragraph, and I want to make sure it is consistent,
16 because I agree with Marvin.

17 Secondly, I want to just make a comment that my
18 understanding of this paragraph is that it is intended
19 to be permissive, that this committee would have
20 permission to create work groups, not an obligation to
21 do so. And I just want to be clear that my view is the
22 negotiation happens in this committee, and the
23 decisions happen in this committee. And the permissive
24 nature of this is a convenience to the committee to
25 help us with our time frame.

1 So I don't want to get walked around consensus
2 with work groups and that sort of discussion when they
3 should have less rules, and we're trying to be keeping
4 this simple. I just wanted to add that comment. So I
5 hope we don't get down a tangled path. Thank you.

6 THE FACILITATOR: Yes, Jason.

7 MR. ADAMS: What I have in my notes from the
8 last meeting was under consensus, we had a statement
9 that says work groups may report to the committee both
10 (1) decisions reached by consensus; and (2) decisions
11 reached by a majority vote as long as a summary of any
12 dissenting position is included in the report.

13 That was supposed to be added to that.

14 THE FACILITATOR: That was supposed be added to
15 work groups, wasn't it?

16 MR. ADAMS: Right.

17 THE FACILITATOR: Does everybody see that?
18 It's under organizational protocols. It says, work
19 groups may report to the committee both (1) decisions
20 reached by consensus; and (2) decisions reached by a
21 majority vote as long as a summary of any significant
22 dissenting position as determined by the -- as
23 determined by the --

24 MR. ADAMS: Jan, all that was changed.

25 THE FACILITATOR: Yeah.

1 MR. ADAMS: Again, what I have is a summary of
2 any dissenting position is included in the report.

3 THE FACILITATOR: Okay. And then just cross
4 out the last. So we're going to move that down to the
5 work groups? So why don't we do that first. We will
6 look at the work groups language as a whole. So they
7 will put the language in so we can look at the work
8 group language as a whole.

9 Yes, Ervin?

10 MR. KEESWOOD: Just looking at the language
11 under work groups and also standing committee, a lot of
12 this is referred back in general under 7 also. It
13 would seem that the function would fall under 7 rather
14 than under decision-making. I think decision-making
15 has been covered to a greater degree under this one,
16 under (a), (b), and (e), which I assume is the new (c),
17 under decision-making. This one with (f) and (g) seems
18 to fit better under 7.

19 MR. ADAMS: Jan, I have a question, then. Are
20 we moving all of work groups down under 7, co-chair and
21 regional and HUD representatives? Is that the
22 proposal? I am unsure.

23 THE FACILITATOR: I'm sorry. I am a little bit
24 confused by Ervin's proposal. Could you state that
25 again?

1 MR. KEESWOOD: Yes. Reviewing the language
2 under (f) and (g), those basically refer to the
3 function of the representatives and committee members
4 and not necessarily is it, or should it be, under
5 decision-making. The decision-making issues have been
6 dealt with and agreed to, as I understood it, by (a),
7 (b), and the new (c), which is currently (e) under
8 decision-making.

9 So it seems like decision-making has been dealt
10 with based on this language here. So items (f) and (g)
11 would better reflect if they were under 7 where it
12 talks about functions as it relates to whether it is
13 regional or just representatives in general. So what
14 I'm suggesting is to move it to 7.

15 THE FACILITATOR: Both (f) and (g) moved to 7?
16 Is that what you are suggesting?

17 MR. KEESWOOD: Yes.

18 MS. MCDADE: I agree to a point with
19 Mr. Keeswood, but wouldn't it be easier to just put
20 another section there and renumber it and just put work
21 group/standing committees and create a Section 4 and
22 then renumber it? That's all I'm saying, instead of
23 moving it to the bottom, just create another section,
24 Section 4, renumber it, and go from there, working
25 group/subcommittee, or something to that effect.

1 THE FACILITATOR: So are you saying that you
2 think those two sections are not appropriate under
3 decision-making, but if you maybe take Sharol's
4 suggestion and say put it under work groups and
5 standing committee?

6 MR. ADAMS: Jan, maybe if we can have some of
7 the guys that were working on the committee that worked
8 on this explain the rationale why we have this in here.

9 John, would you be willing to do that? Why we
10 have work groups and standing committees as part of
11 decision-making?

12 MR. TILLINGHAST: Do you want me to address
13 both work groups and standing committees?

14 MR. ADAMS: Please.

15 MR. TILLINGHAST: With respect to work groups,
16 they're in there because they worked so successfully
17 last time. We have big groups of issues. I will just
18 take one by example. We have the whole issue of
19 enforcement, all of the changes that have been made to
20 HUD's enforcement authority and hearings and when you
21 can take people's money away from them.

22 There are a group of people both on and off the
23 committee who were particularly interested in the
24 subject and have some expertise in the subject. And to
25 allow that little subset to get together and brainstorm

1 and come up with maybe one, two, or three issues and
2 bring them back to the committee, ended up being a lot
3 more effective for us than to take a complicated set of
4 issues like that and bring them to the committee cold
5 and say, here they are; you solve it. And so we felt
6 that work groups in the long run save time.

7 The drafting and standing committee -- and
8 really standing committee is plural; there are only
9 two. And actually, we're going to have a proposal to
10 reduce it to one. There was last time a drafting
11 committee and a standing committee. No matter what is
12 done, it's got to be turned into proper regulatory
13 language. The HUD attorneys had expertise in that,
14 private attorneys have worked on it.

15 And we appointed last time a drafting
16 committee, whose job it was to put your decision into
17 language that fits with what regulations are supposed
18 to look like. And, obviously, it comes back to you and
19 say, no, that isn't what we had in mind, or yes, that
20 does articulate what we had in mind.

21 The other standing committee was the preamble
22 committee. Once the regulations are done, they have to
23 be published in the Federal Register. With the
24 publication in the Federal Register comes a preamble
25 that says, here's why we did everything we did.

1 Now, we did it last time in a way that was very
2 inefficient. We didn't start the preamble committee
3 until we were all done. And last time we were here for
4 two years. And so when we sat down to write the
5 preamble, we said, okay, here's the first thing we
6 reached consensus on. Why did we do that? And nobody
7 could remember.

8 And we thought, well, why don't we do it with
9 each proposal as it is adopted by the committee. We
10 come with a single committee. We're proposing
11 combining the drafting and preamble committees, because
12 they tended to be the same people on both committees,
13 because they're both just drafting committees
14 essentially. It would write up the precise regulatory
15 language and the proposed insert in the preamble that
16 says here's why we did what we did.

17 So when the committee makes its final decision
18 on an issue, you'll have a complete package to say yay
19 or nay on. You'll have the exact regulatory language,
20 and you'll have the proposed here's-why-we-did-what-we-
21 did language. The committee then makes whatever
22 changes it makes to that.

23 THE FACILITATOR: So was the reason the work
24 groups and the standing committee ended up under
25 decision-making was because that was like the final

1 thing that was done, the writing and that kind of
2 thing?

3 MR. TILLINGHAST: Well, the policy
4 recommendations and the folks in the committee who said
5 no, you don't have to get consensus from the work group
6 are correct. Sometimes you would end up with two,
7 three, four different recommendations coming out of the
8 work group. The work group would agree that Jim would
9 present Option A, and I would present Option B. And so
10 the committee would have the benefit, if you want to
11 call it that, of a debate that had been refined through
12 many arguments and debate among ourselves. And then
13 they could make a decision from within those to do
14 something entirely different.

15 The drafting committee would take these
16 resolutions of the Jim versus John, or Jim versus John
17 versus Lafe fight, and reduce it to regulatory language
18 and add a preamble to it and then bring it back to the
19 committee for final approval.

20 THE FACILITATOR: Thank you.

21 Karin?

22 MS. FOSTER: I have a question for John.

23 John, would you see anything wrong with taking
24 the work group section and the standing committee
25 section and putting them into a new -- putting those

1 paragraphs into a new section? Would that change
2 anything significantly for you? I think that that is
3 what has been recommended by Ervin and down at the
4 other end of the table here. I think that would make
5 sense.

6 MR. TILLINGHAST: Unless I misunderstood you,
7 you were talking about the working group. If there's
8 any reference to standing committees in the work group
9 session, there shouldn't be, because they are
10 different.

11 MS. FOSTER: They're not decision-making,
12 correct? They're recommendations. The work group and
13 standing committee are recommending?

14 MR. TILLINGHAST: Everybody is recommendations.
15 The only people to make decisions is this committee.

16 MS. FOSTER: The suggestion was to move work
17 groups and standing committee into a new Section 4 and
18 take it out of the decision-making, Section 3.

19 MR. TILLINGHAST: Oh, I see.

20 MS. FOSTER: Do you see a problem with that?

21 MR. TILLINGHAST: No, not at all. The only
22 reason it is in decision-making was because it refers
23 to the decision-making process. There are Steps 1 and
24 2 in the process. It wasn't to imply that either one
25 of these groups get to make decisions, because they

1 don't. So that is fine.

2 MR. COYLE: This may be all good discussion,
3 but it seems that we're almost ready to reach some
4 consensus on work groups. We're side-tracked on where
5 we want to put it when we haven't even reached the
6 language we're trying to get to. I personally don't
7 care where we put it. But if we can at least get to
8 finish this portion before we move on and figure out
9 where it's got to go.

10 THE FACILITATOR: Thank you, John.

11 Yes, Judith.

12 MS. MARASCO: I agree with Ervin. If you put
13 it under decision-making, it gives those committees
14 authority. Nobody is arguing that these aren't
15 important parts of what we are doing. But I think it
16 is important in where we place them. And I think they
17 need to be moved out of decision-making into a
18 subcategory. I don't think anybody has any issues with
19 that.

20 THE FACILITATOR: I don't think anybody has an
21 issue with that either.

22 MR. SAWYERS: As long as we do it now.

23 MS. MARASCO: That's right, Jack.

24 THE FACILITATOR: So the proposal is just to
25 put them into their own category called a work group

1 and standing committee. Everybody in favor? Any
2 opposed? Okay. Now we have some language.

3 MR. ADAMS: Did you call for consensus on the
4 language yet?

5 THE FACILITATOR: We're going to get back to
6 that.

7 Yes, Darlene?

8 MS. TOOLEY: To go back to Carol's point,
9 there's two references to regional representatives in
10 the last two sentences that should probably be changed
11 to work group chairs. That's simple. Earlier on we
12 fixed the chair issue.

13 THE FACILITATOR: Yes. She says if a committee
14 member within the work group. It can also be work
15 group chairs. So the proposal is to substitute
16 wherever it says regional representative, you are
17 saying to work group chair?

18 MS. TOOLEY: In the last two sentences.

19 THE FACILITATOR: In the last two sentences.
20 Okay. Any other comments on the language here as
21 amended?

22 Yes, Marvin?

23 MR. JONES: I just want some clarification. I
24 think HUD stated a position that they wanted only
25 members voting for consensus or not. Did we include

1 any language in there? Are we going to discuss it here
2 or someplace else? That's a question.

3 THE FACILITATOR: Rodger, go ahead. Do you
4 want to address that for Marvin?

5 MR. BOYD: Well, part of my discussion was to
6 bring it to everybody's attention that this -- we may
7 want to consider this. I mean, that is why we are all
8 brought to this committee whether it be the full
9 committee or whether it be at the working subgroup
10 level.

11 And I think at the full committee, as we have
12 done in the past, any person from the public has a
13 right to make their comments known, but they go through
14 the committee members to make it known. And so I was
15 just thinking, well, shouldn't that prevail at the
16 working group level? Certainly they will have a lot of
17 input with the committee members at the work group
18 level in forming their opinion and making sure their
19 interests and their concerns are addressed.

20 But at that level, to have consensus or to have
21 a majority vote, shouldn't that only come through the
22 representatives of this committee? If that is true,
23 then maybe that could be addressed under the topic of
24 consensus, which we have already taken a look at. But
25 that may be an appropriate place to address if this

1 committee feels the same way.

2 THE FACILITATOR: Yes, Rusty?

3 MR. SOSSAMON: It's my understanding that with
4 Jason's language at the end, it was moved from the
5 consensus language to this particular place to address
6 that very thing. So I think for me anyway, that
7 language added solves the issue raised by Rodger.

8 THE FACILITATOR: Okay.

9 Yes, Karin?

10 MS. FOSTER: I would like to take the opposing
11 view, if it is opposing. It's kind of a strong word.
12 I would like to present another perspective. In the
13 last rulemaking, I was not on the committee. There was
14 nobody from Yakama on the committee, but we did
15 participate in the work groups. It was a wonderful
16 opportunity for someone who was not directly
17 represented on the committee to be able to do that.

18 So I guess that I would favor a process where
19 folks who take the time to come here and involve
20 themselves in work group discussions to be able to
21 participate in reaching a consensus. And I don't think
22 I would see them having to participate through a
23 committee member on the working group.

24 I understand the necessity of the public,
25 obviously, needing to participate perhaps through a

1 committee member at this table. But in a work group, I
2 think that the public should be able to participate and
3 be able to participate in consensus. I thought that
4 was one of the issues that was just raised.

5 Jason is looking at me funny, so maybe not.

6 MR. ADAMS: I'm just trying to figure out which
7 language prohibits it.

8 MS. FOSTER: It doesn't. But it was raised
9 just now. The point was raised whether committee
10 members would be the only ones that voted in work
11 groups. I understood that to be an issue that was just
12 discussed, but maybe I missed something.

13 In terms of language changes, I would wonder
14 about the word decision in work groups may report to
15 the committee both decisions reached by consensus and
16 decisions reached by majority vote. And I would
17 suggest perhaps recommendations reached by consensus
18 and recommendations reached by majority vote since the
19 work group does not actually make decisions.

20 THE FACILITATOR: Before we leave Karin's
21 point, does anybody have a problem with changing
22 "decisions" to "recommendations" in the language there?
23 Or do you want to leave it as decisions? Just to
24 comment on that. Recommendations, is that okay? Or
25 decisions? Any objection to that?

1 Can you change the words decisions to
2 recommendations by the other.

3 The other point that Karin raised, and this is
4 a larger question, is on the work groups themselves,
5 who is authorized to participate and be part of the
6 consensus decision-making process, whether it should
7 just be committee members, or if you want to open it up
8 to anybody that participates in the working group. I
9 think that was your question.

10 Any comments on that particular issue?

11 Steven?

12 MR. ANGASAN: I was thinking we could scratch
13 committee member or members and insert any public
14 Neg-Reg participant. And that would be like -- that
15 would take care of it. I mean, that's what happens
16 anyway.

17 THE FACILITATOR: So anybody --

18 Yes, Jason.

19 MR. ADAMS: Are we all in agreement to work off
20 of this, what is on the board now?

21 THE FACILITATOR: Yes.

22 MR. ADAMS: And the changes made to that?

23 THE FACILITATOR: Yes.

24 MR. ADAMS: Okay. So we're tracking the
25 changes there? So Steven just asked for some changes.

1 I don't know where that is at up there as far as which
2 changes you're making to the language on the screen.

3 MR. ANGASAN: Work group -- let me put my
4 glasses on. I don't have very long arms either.

5 Work groups are open to any committee member
6 (indiscernible -- speaker not using microphone.)

7 THE FACILITATOR: Okay. I just want to make
8 sure -- let me restate the feelings of the group here.
9 Is everybody here okay, then, with the consensus
10 decisions on work groups being open to the public, that
11 they would be active participants in the consensus
12 building? Anybody opposed to that?

13 Yes, Sharol.

14 MS. MCDADE: I just need a clarification,
15 because I've heard so many comments on it. But, again,
16 that paragraph is getting too long for me to
17 understand. So my recommendation would be right in the
18 middle where it says the agenda, maybe you did have
19 another subsection that refers to the agenda for the
20 work groups. You're making a huge paragraph out of the
21 working paragraph that shouldn't be so huge.

22 And I thought that when Karin talked about it,
23 she had talked about the consensus, but what happens if
24 they don't reach a consensus? I heard earlier that
25 this committee said whether they agree or disagree, it

1 needs to come here to come to a vote.

2 And I thought that's what Rodger was trying to
3 clarify with regards to how a decision comes to
4 conclusion. If I am missing that, please correct me.
5 That was what my understanding was. The work groups
6 are there to help us progress, even if they agree or
7 not. Whether they agree to disagree, that has to come
8 here, and we would determine this is their points of
9 view, but as a committee, this is what we would see.
10 We would have to take opposition, not consensus.

11 THE FACILITATOR: I want to first finish up
12 this one point about changing the language to make it
13 clear that you want to have the public be involved with
14 your consensus and decision-making within the work
15 groups.

16 Steven was proposing to take out the word -- or
17 take out the sentence that work groups are open to any
18 committee member or members' designee, so that it would
19 just say interested persons and members of the
20 committee are permitted and encouraged to participate
21 in work group proceedings.

22 Would that be all right with everybody? Does
23 anybody have an objection to that?

24 Okay. Can you take out the sentence, work
25 groups are open to any committee member or member's

1 designee.

2 MR. SOSSAMON: Okay. And, Sharol, on yours,
3 the part about the agenda simply points out that the
4 work group agendas are to be distributed daily. So I
5 think that is a protocol that is useful to know.

6 And then as far as anybody voting for consensus
7 in that last sentence, basically all of these folks
8 that are participating in it have an opportunity to
9 vote. And if you get consensus, that is reported. If
10 you don't get consensus, that is reported with the
11 non-consensus positions.

12 That's what that last sentence says. They're
13 not making decisions. They're making recommendations
14 to this body, and this body votes on it. Okay? So I
15 think that addresses it. Thank you.

16 THE FACILITATOR: Anything on this language?
17 Any further comments or changes made on this language
18 here on the board on the work groups?

19 MS. TOOLEY: I still have a question. In the
20 very first sentence that we're leaving out, "or their
21 designee," because we're just deciding each of us is
22 going to decide what that means? Okay. As long as I
23 understand, then I understand. But I just don't want
24 it to not be clear.

25 THE FACILITATOR: I think it is pretty open,

1 that the work groups are pretty open.

2 Karin?

3 MS. FOSTER: I have a question in the last line
4 there where it says, "as determined by the assigned
5 committee member within the work group," is that
6 intended to mean the work group chair?

7 THE FACILITATOR: That was regional
8 representative before.

9 MS. FOSTER: Because the regional
10 representative was previously going to be the work
11 group chair?

12 THE FACILITATOR: Yes. One of the regional
13 representatives was going to be the chair.

14 MS. FOSTER: So for clarity, wouldn't it be
15 better to substitute the assigned committee member as
16 determined by the work group chair? That would be my
17 suggestion.

18 THE FACILITATOR: Work groups may report to the
19 committee both recommendations reached by consensus and
20 recommendations reached by majority vote, as long as a
21 summary of any significant dissenting position as
22 determined by the assigned committee member within the
23 work group is included.

24 MS. FOSTER: Be assigned by the work group
25 chair?

1 THE FACILITATOR: I'm sorry. What are you
2 suggesting, Karin?

3 MS. FOSTER: I was just suggesting that -- I
4 wasn't sure how the assigned committee member came in.
5 It's the first mention of the assigned committee
6 member. So I'm thinking it would be better reading as
7 determined by the work group chair, just for clarity.

8 THE FACILITATOR: As determined by the work
9 group chair.

10 MS. FOSTER: Strike out assigned committee
11 member and insert the work group chair.

12 THE FACILITATOR: Does anybody have a problem
13 with that?

14 Mark?

15 MR. BUTTERFIELD: It seems to me that that
16 allows the committee chair to assign the dissenting
17 opinion to the person who is dissenting so that they
18 can more eloquently state their position. If you
19 don't agree with it, assigning it to the person who's
20 in the majority may not be the best idea, so it gives
21 you that flexibility. That's the way I would see it,
22 anyway.

23 THE FACILITATOR: How would you word it?

24 MR. BUTTERFIELD: I don't have a problem with
25 the way it is right now, because it does give that

1 flexibility. So if the work group chair assigns
2 someone to do the dissenting opinion, who is also on
3 the committee, that seems to work for both sides.

4 THE FACILITATOR: Okay.

5 MS. FOSTER: Withdraw my recommendations.

6 THE FACILITATOR: Does anybody else have a
7 problem with this? Take a good look. Disagree? Agree
8 with that? Any objections?

9 Okay, good. Moving on. Standing committees.

10 "g. Standing Committees. The Committee
11 shall appoint a Drafting Committee and a
12 Preamble Committee, each consisting of no more
13 than 14 persons, and which shall include two
14 persons selected by each Regional
15 Representative --"

16 -- and we're going to change Regional
17 Representative to say --

18 MALE SPEAKER: Work group chair.

19 THE FACILITATOR: -- work group chair. Change
20 regional representative to work group chair.

21 "-- and at least one HUD
22 representative. Appointees need not be
23 members of the Committee, and shall be
24 chosen based on demonstrated drafting
25 ability. As Work Groups or the

1 Committee reach consensus on an issue,
2 the matter shall be referred to the:
3 (i) Drafting Committee for preparation
4 of precise regulatory language; and
5 (ii) Preamble Committee, for
6 preparation of the preamble insert
7 required for each proposal under
8 Article 4(f) and Article 5(a) of these
9 Protocols. The Preamble Committee
10 shall also be responsible for
11 preparing a proposed final,
12 comprehensive preamble for
13 presentation to the Committee. The
14 Drafting Committee shall elect its own
15 chair by a 2/3 vote of the members of
16 that committee. The Preamble Committee
17 shall be chaired by a representative
18 of HUD. Both the Preamble and Drafting
19 Committees shall act by consensus.
20 However, the chair of the standing
21 committee shall rule out of order an
22 objection that the chair finds is an
23 attempt to depart from, or alter, the
24 underlying Work Group or Committee
25 consensus, and that objection shall

1 not prevent achievement of standing
2 committee consensus. The chair's
3 ruling may be appealed to the full
4 standing committee, which may reverse
5 the chair on a consensus vote, not
6 counting the vote of the chair.

7 Matters on which the standing
8 committee cannot reach consensus may
9 be referred back to the Work Group or
10 Committee for resolution, with all
11 competing drafting proposals presented
12 to the Work Group or Committee."

13 THE FACILITATOR: Leon?

14 MR. JACOBS: Where does the number 14 come
15 from?

16 THE FACILITATOR: Where does the 14 come from?
17 Carol?

18 MS. GORE: In the spirit of listening to this
19 committee in the last meeting and this meeting, we have
20 a proposal to simplify what has been presented in the
21 package. And let me just state the goals.

22 The goals are to, number one, allow the
23 committee to combine the preamble and the drafting
24 committee. Practically speaking, it is the same
25 people. They might have separate meetings, but one

1 committee needs to know what the other committee is
2 doing anyway. They can't act independently without
3 understanding what the other is doing. So having one
4 committee would simplify it.

5 Also, to strike the limitation of the number of
6 participants. Frankly, the folks that participated
7 last time came because they had knowledge to bring to
8 the table, and it seemed to work just fine without a
9 limitation. So I make that proposal.

10 John has specific language. I'm not going to
11 speak to the specifics, but just to the intent to try
12 to get this to a simpler place. And I'm hoping we've
13 struck some chords with some folks here. Thank you.

14 THE FACILITATOR: Do you have language worked
15 out already? This one here? The one on the right or
16 the left?

17 I'm sorry. Marvin, and then Sharol.

18 MR. JONES: In the original version, I just
19 wanted to point out, if we're doing the original
20 version, I don't think the work group chair works in
21 this regard. It ought to be the committee deciding who
22 is going to be on the drafting committee and the
23 preamble committee, not work group chairs.

24 THE FACILITATOR: Yes, Sharol.

25 MS. MCDADE: Can someone clarify, then, the

1 difference between the work group and the committee?

2 Is it necessary to have work groups and committees?

3 I'm just curious, because, again, it looks like we're
4 getting to three levels of consensus and approval
5 before it gets back up to the committee, so I'm just
6 curious.

7 THE FACILITATOR: Darlene.

8 MS. TOOLEY: The work groups work out the deal.
9 The drafting committees or whatever we're going to call
10 them, however many people there are, put the words on
11 paper that are in the format and hopefully following
12 the intent of the work group solution to whatever the
13 issue was. So they are separate functions.

14 MS. MCDADE: Can they be combined into one
15 function, or does it not work?

16 MS. TOOLEY: Well, it is cumbersome because you
17 have -- some people are really good at putting words on
18 paper, maybe the lawyers and people that know how to do
19 that. The rest of the people working in the work group
20 have to come up with the idea to get it reduced to the
21 right words. And it can happen concurrently so that
22 it's not -- it isn't like follow -- it's happening at
23 the same time that they come up with an idea that the
24 drafting committee can put it into the right words to
25 submit to everybody.

1 MS. MCDADE: It seems to me that the lawyers
2 when they get together and with NAIHC put their draft
3 protocols together, they were together in one
4 committee. Again, I'm just trying to do it for some
5 simplistic purposes. Reading all this is just all over
6 the place. I understand, but I thought we were
7 supposed to be progressive.

8 But, again, if we're being progressive, then I
9 think it would be in our best interests to limit it or
10 at least combine the duties so that it is one work
11 group, and this is your function, versus another
12 committee and another committee and another committee.
13 It's just a suggestion.

14 THE FACILITATOR: Jack?

15 MR. SAWYERS: If we're going to finish, we're
16 going to have to have some committees. We're going to
17 have to go through and assign certain things to certain
18 folks, and that's a committee. The drafting -- the
19 standing committee is the drafting and preamble
20 committee. They are mostly the lawyers and folks who
21 are gifted at putting this into the regulations.

22 So consequently, there is a difference between
23 a committee because, hopefully, we're going to be
24 divided into two committees so that we can discuss some
25 of the issues and bring it back to the full group. And

1 that is one of the committees that we have.

2 But the standing committee has got to be the
3 folks who put it into the regulations. So there's
4 really not a conflict here. It may sound like it, but
5 I think we could end up with five committees. But we
6 would only have one standing committee.

7 THE FACILITATOR: Karin?

8 MS. FOSTER: I share that concern of the work
9 groups -- I'm sorry, of the drafting committee maybe
10 having a little more of a role in preparation of
11 language than I -- I have a concern with that. Maybe
12 it's because I'm an attorney, and I'm comfortable with
13 language, and I know that words have meaning. I know
14 when you get a group of lawyers together, and I am one
15 of them, you can hash out a lot of issues that never
16 actually end up -- you know, wouldn't be obvious to the
17 rest of us on review.

18 So I guess, first of all, I would say I think
19 that the word "shall" in "as work groups or the
20 committee reach agreement on an issue, the matter shall
21 be referred," I would rather make that permissive and
22 say may, because there may be a work group that comes
23 up with the language that they would like the language
24 to go straight to the committee, and they don't want to
25 refer it off to the drafting committee to develop the

1 language. So the drafting committee serves as a
2 resource but not necessarily as a gatekeeper.

3 And what was my other suggestion -- oh, for
4 preparation of precise regulatory language, I guess I
5 like the word recommended in there somewhere. So I
6 suppose it could be for preparation of recommended
7 regulatory language.

8 THE FACILITATOR: Jason.

9 MR. ADAMS: Just for my clarification, are we
10 working off of this new proposed language or the
11 original language? I don't remember this new language
12 being proposed or brought to the table.

13 MS. FOSTER: Jason, I proposed it.

14 MR. ADAMS: So we are working off of the new?

15 MS. FOSTER: I think so.

16 THE FACILITATOR: Is everybody in agreement
17 that we are going to -- can we agree that we will work
18 off of the new language? We didn't actually vote on
19 it. Is anyone opposed to that? No?

20 MS. MARASCO: Can you read it to us.

21 THE FACILITATOR: (Reading.)

22 "There is established a drafting
23 and preamble committee. Members need
24 not be members of the committee and
25 should possess demonstrated drafting

1 ability. As work groups or the
2 committee reach agreement on an issue,
3 the matter -- as now proposed -- may
4 be referred to the drafting and
5 preamble committee for preparation of
6 precise recommended regulatory
7 language. And the preamble insert
8 required for each proposal under
9 Article 4(f) and Article 5(a) of these
10 protocols. The preamble committee
11 shall also be responsible for
12 preparing a proposed final
13 comprehensive preamble for
14 presentation to the committee. The
15 drafting and preamble committee shall
16 elect its own committee liaisons.
17 Matters in which the drafting and
18 preamble committee cannot reach
19 consensus may be referred back to the
20 work group or committee for resolution
21 with all competing drafting proposals
22 presented to the work group or
23 committee."

24 MS. MARASCO: The issue I have with that is why
25 would you refer something to a drafting committee prior

1 to it coming to this table?

2 THE FACILITATOR: Darlene, isn't that your
3 issue?

4 MS. MARASCO: Answer me, Darlene.

5 MS. TOOLEY: Okay, Judith. I will.

6 I think it is just an opportunity for the work
7 group to have their idea put into some language before
8 it is presented to the full committee. That was my
9 understanding of it.

10 MS. MARASCO: Okay.

11 THE FACILITATOR: Rusty?

12 MR. SOSSAMON: That is my understanding too.
13 Again, the drafting committee is someone who has the
14 expertise to put it into regulatory language, precise
15 regulatory language, to be considered by the full
16 committee.

17 MS. MARASCO: As long as it is considered by
18 the full committee, I don't have a problem.

19 MR. SOSSAMON: Yeah. And that is what it will
20 state in here.

21 MS. MARASCO: All right.

22 MR. SOSSAMON: But basically where it refers to
23 a drafting committee and a preamble committee, I think
24 what I am hearing is we want that to be one committee,
25 just a drafting committee that will work on regulatory

1 language and preamble language that will be presented
2 for this body to consider and vote on. Okay? And
3 where the work groups can send their product to be
4 transformed into that language to be brought before
5 this body.

6 And what I would suggest is that perhaps the
7 drafting committee be designated as a subcommittee.
8 Because down here later, it talks about the committee.
9 Which one? The full committee or the drafting
10 committee? You can call it a subcommittee, or each
11 time they are referring to the drafting committee, then
12 state drafting, so that we can distinguish between the
13 full committee and the drafting committee.

14 THE FACILITATOR: Can we go back just a minute
15 to Jason's point. Are we in agreement that we are
16 working off of this document to the left? Any
17 opposed?

18 MR. KEESWOOD: (Indiscernible -- speaker not
19 using microphone.) In the document that is in front of
20 us and not that one up there, it speaks to the preamble
21 committee being chaired by HUD. What was the rationale
22 behind it? It's not in the proposed language, but it
23 is here. So what was the rationale for why that was
24 inserted?

25 MR. ADAMS: If you're asking me, I would defer

1 that to our folks that worked diligently to the details
2 in this.

3 John, maybe you would like --

4 MR. KAZAMA: The way it worked was after the
5 committee did its work, we were told by HUD, now we're
6 going to go do a preamble. One of the things we wanted
7 to do was have the preamble committee work
8 simultaneously. What HUD did the last time was they
9 said, well, we would be sort of the person who would
10 bring forward the preamble to OMB for their review, and
11 so it made sense that they had a committee person that
12 could do that.

13 But I don't see the need to have a HUD person
14 to do that. I think we could among ourselves; the
15 drafting committee could select its own chair. And you
16 say they (indiscernible -- speaker not using
17 microphone) to HUD take this to the OMB and it get
18 reviewed. That's why that was there.

19 MR. HENRIQUEZ: Just a question. I am
20 assuming, so correct me if I am incorrect, that on both
21 this drafting and preamble committee, there would be a
22 HUD person, at least because writing something and
23 telling us to take it to OMB, even if we write it, it
24 may not come back in the way it was intended.

25 MR. KEESWOOD: Yes.

1 MS. HENRIQUEZ: Okay. Thank you.

2 THE FACILITATOR: Ervin, did you get your
3 question answered?

4 Any other comments? Are we in agreement?
5 Karin?

6 MS. FOSTER: I'm reading the last sentence
7 there. Maybe it's just implied from our discussion,
8 but is it clear here? Do you think that matters on
9 which the drafting and preamble committee can reach
10 consensus also come back to the committee for
11 resolution? That kind of sounds like only the matters
12 where they can't reach consensus come back to the
13 committee for resolution. And I just want to make sure
14 that the drafting and preamble committee doesn't have
15 more authority than we want to give it.

16 MS. MARASCO: That was my concern. Thank you.

17 THE FACILITATOR: Carol.

18 MS. GORE: Let me just respond to that
19 question. I'm jumping ahead of Rusty here.

20 I think it's covered in the two sentences prior
21 if I could read that sentence to you. At least that is
22 the intent of the sentence. The sentence says,

23 "The drafting and preamble
24 committee shall also be responsible
25 for preparing a proposed final

1 comprehensive preamble for
2 presentation to the committee."

3 The intent is that it wouldn't be presented if
4 it weren't to ask for consensus from the committee on
5 that language. If you want to clarify that, I think
6 that's fine. But that is the intent. Thank you.

7 THE FACILITATOR: Any other comments?
8 Sharol?

9 MS. MCDADE: I just have clarification on the
10 first sentence. "There is established a drafting and
11 preamble committee." What does that mean? Or is it
12 the committee shall (indiscernible -- speaker not using
13 microphone) is it supposed to be there is -- there will
14 be? That doesn't quite make sense to me. There is
15 established? There is established a drafting and
16 preamble committee. That's the language?

17 THE FACILITATOR: Is your question is there
18 already one established? Is that your question?

19 MS. MCDADE: No. I'm just trying to understand
20 what the first sentence means. Is there a word
21 missing? Is it the committee shall appoint a drafting
22 and preamble committee? It doesn't quite jive for me.

23 THE FACILITATOR: Rusty?

24 MR. SOSSAMON: Okay. If I could, let me try to
25 add and change some language in the one we are working

1 off of. And I think it will answer her question and
2 hopefully get us to a consensus.

3 Right after it says -- I would take out "and
4 preamble committee" or "and preamble" from the title.
5 We're just talking about a drafting committee. Okay?
6 One committee. All right. Then after that say, the
7 full committee may establish --

8 THE FACILITATOR: Wait a minute. Where are
9 you, Rusty? Do you want us to take out preamble?

10 MR. SOSSAMON: Right, take out "and preamble."

11 THE FACILITATOR: Just have it be drafting
12 committee?

13 MR. SOSSAMON: Yeah, just a drafting committee.
14 It is understood they will work on drafting regulatory
15 language and preamble language. Okay. So it's just a
16 drafting committee.

17 And then right after the title, we want to say
18 the full committee may -- and take out "there is" and
19 put in "the full committee may."

20 THE FACILITATOR: Hold on. They're doing it
21 while you speak.

22 MR. SOSSAMON: "The full committee may
23 establish a drafting committee," period.

24 THE FACILITATOR: They are changing it, Rusty.

25 MR. SOSSAMON: Okay. After it says drafting

1 committee instead of a period there, place "of which at
2 least one member will be a HUD representative."

3 THE FACILITATOR: Okay. We got it.

4 MR. SOSSAMON: Okay. It says -- okay. Where
5 it says as work groups, right after "the," I believe
6 you are referring to the full committee again. You
7 want to put "full" in there.

8 THE FACILITATOR: As work groups of the full
9 committee reach agreement on an issue?

10 MR. SOSSAMON: Right. The matter may be
11 referred to the -- take out the number one and just put
12 drafting committee. Take out after the words "be
13 referred to the," take out the semicolon and take out
14 the one.

15 THE FACILITATOR: Okay. Got it.

16 MR. SOSSAMON: To the drafting committee for
17 preparation of precise recommended regulatory language.
18 Take out the semicolon, and leave the word "and," and
19 take out the number two, and the preamble language --

20 THE FACILITATOR: Take out insert?

21 MR. SOSSAMON: No. Just after preamble insert
22 language required for each proposal. I'm not sure
23 about these articles. You might have to check those.

24 THE FACILITATOR: Yeah. We may have to check
25 that.

1 MR. SOSSAMON: You may just want to end it
2 after "insert language required," period. We will
3 think about that. The drafting committee shall also be
4 responsible for preparing a proposed final
5 comprehensive preamble for presentation to the full
6 committee.

7 THE FACILITATOR: Presentation to the full
8 committee. Preparing a proposed final comprehensive
9 preamble for presentation to the full committee.

10 MR. SOSSAMON: Full committee. Then we go on
11 to say the drafting committee shall elect its own
12 committee liaison.

13 I'm not sure what that is or if they are
14 electing a chairperson. But I don't have any problem
15 with that language. I don't know what it is, but I
16 don't object to it.

17 Matters on which the drafting -- and take out
18 "and preamble" -- cannot reach consensus may be
19 referred back to the work group or full committee,
20 then, resolution with all competing drafting proposals
21 presented to the work group or full committee.

22 THE FACILITATOR: That's a lot of committees.

23 Okay. Carol.

24 MS. GORE: Let me see if I can go back to
25 trying to keep this simple.

1 First of all, let's go back. We have to have a
2 preamble. That is part of the work of this group. And
3 the last negotiated rulemaking, HUD was responsible for
4 the preamble. We asked for permission to participate.
5 When the preamble committee did its work, it was after
6 the committee completed its work. And it was very
7 difficult to remember what happened in the first
8 meeting, the second meeting, the third meeting.

9 So the intent of this language is not to allow
10 the committee to create -- this committee to create the
11 standing committee, but ask that you create it within
12 the protocol so that it starts with the first work of
13 this committee.

14 If we say "may create," and we don't establish
15 that committee in the very beginning, we miss the
16 opportunity as committee members to, number one, be a
17 participant, and, number two, to start our work from
18 the very beginning, which is the intent of this
19 language. The intent is not to create more work, but
20 to say we have to do this work anyway.

21 Let's embrace that today and make sure that we
22 are full participants and as a committee we have
23 something to say about the preamble. It is an
24 incredibly important part of our work here. And so I
25 would ask that Rusty consider that in his

1 recommendations so that we can get to some consensus.

2 It is certainly my goal that this committee be
3 a high-level participant in both the drafting and the
4 preamble. I am fine if it's understood that those are
5 the same thing and that the preamble not be addressed
6 separately in this language, so long as the committee
7 understands that that is the goal.

8 The drafting committee is meant to be a
9 resource to this committee. The preamble is a separate
10 function. If we understand them as working together, I
11 am okay with that. But it better be understood by the
12 committee. That is my intent of the language. Thank
13 you.

14 THE FACILITATOR: Rusty.

15 MR. SOSSAMON: Yeah. I believe it does that.
16 This language recognizes the drafting committee as
17 doing both functions, drafting the regulatory language
18 and the preamble, which can be done as they go along.
19 Now, if you want to require this committee to establish
20 it, then we just need to change the fourth word "may"
21 back to "shall." That was the word that Karin said
22 this is kind of forcing us to do this, which you two
23 need to get together on that. It makes no difference
24 to me. I think we will do it one way or the other,
25 regardless of which word is in there, we'll establish

1 the committee.

2 MS. FOSTER: Can I respond directly? I don't
3 have any problem with changing the fourth word "may"
4 back to "shall." My "may" was down in about the sixth
5 line there, and instead of shall be referred should be
6 may be referred. But I'm fine with "shall" in the
7 fourth word.

8 THE FACILITATOR: So in the first sentence,
9 we'll change it back to shall.

10 Darlene.

11 MS. TOOLEY: The second sentence that says,
12 members need not be members of the drafting committee.
13 Who should it be, committee members, or full committee?

14 THE FACILITATOR: Full committee.

15 MS. TOOLEY: And then when we go down to where
16 it says (indiscernible -- speaker not using
17 microphone.)

18 THE FACILITATOR: Insert the preamble language?

19 MS TOOLEY: Okay. So I think what we're trying
20 to do (indiscernible -- speaker not using microphone.)

21 THE FACILITATOR: Regulatory language and
22 insert --

23 MS. TOOLEY: Recommended regulatory language
24 and required preamble language, maybe. And that's
25 clear that those are the two functions of that drafting

1 committee.

2 THE FACILITATOR: I'm just trying to look for
3 the beginning of the sentence. As work groups of the
4 full committee reach agreement on an issue, the matter
5 may be referred to the drafting committee for
6 preparation of precise recommended regulatory
7 language --

8 MS. TOOLEY: And required preamble language.
9 That's it.

10 THE FACILITATOR: And required preamble
11 language.

12 MS. TOOLEY: (Indiscernible -- speaker not
13 using microphone.)

14 THE FACILITATOR: Does everybody agree with
15 that?

16 MS. TOOLEY: And required preamble language.
17 We're saying that the preamble is required.

18 THE FACILITATOR: Recommended regulatory
19 language and the required preamble language.

20 MS. TOOLEY: Right.

21 THE FACILITATOR: This is why we need a
22 drafting committee.

23 MS. TOOLEY: One other thing. Liaison maybe
24 doesn't have the same meaning, but maybe just change
25 that to spokesperson so that the drafting committee is

1 deciding (indiscernible -- speaker not using
2 microphone.)

3 THE FACILITATOR: Does anybody have a problem
4 with spokesperson replacing liaison?

5 Is that it for you, Darlene?

6 MS. TOOLEY: Yes.

7 THE FACILITATOR: Any more comments on this
8 language?

9 MR. HENRIQUEZ: Just one, and it's drafting.
10 On the full committee, the third word should be a
11 capital C. It's not any old committee. It's this
12 committee. It's just a drafting thing. Thank you.

13 THE FACILITATOR: Okay. Anything else? Who
14 agrees with this language so that we can move on?

15 MS. MCDADE: Wait, one clarification. On the
16 full committee and what the Secretary is talking about
17 is that it needs to be clearly defined on the committee
18 whether it's the negotiated rule making committee or
19 the drafting committee. That's all we're saying on
20 that particular section, so that it's clearly defined
21 when we are reading the entire paragraph.

22 THE FACILITATOR: The full Neg-Reg Committee?
23 Does that do it? After every "full"?

24 Karin?

25 MS. FOSTER: This really is more a matter of

1 form, I guess. In the second sentence --

2 THE FACILITATOR: Let me say one thing. We
3 have established the word "Big C" committee to mean the
4 committee. I don't think we have to put Neg-Reg. Big
5 C, committee is the committee. It's all of you guys
6 here. That is our reference.

7 Go ahead, Karin.

8 MS. FOSTER: If I understood Darlene's
9 suggestion on the second sentence, I thought it was
10 supposed to be -- it should read "members need not be
11 members of the full committee." Was it supposed to be
12 full?

13 THE FACILITATOR: It is. We missed that.

14 MS. FOSTER: So it shouldn't start out with
15 full committee members. That full committee should
16 come off the front of the second sentence, and then
17 drafting should be changed to lowercase committee.

18 THE FACILITATOR: The full committee in red in
19 the second sentence needs to come out. It just needs
20 to start with members need not be members of the full
21 committee, right?

22 MS. FOSTER: Right.

23 THE FACILITATOR: Okay. Now are we there?
24 Thumbs-up? Thumbs down? Any opposed? Okay.
25 Agreement.

1 Judith?

2 MS. MARASCO: I just want to remind ourselves
3 that under Mr. Keeswood's suggestion that we gave this
4 a subtitle and not leave it under decision-making. I
5 don't want that to be forgotten.

6 THE FACILITATOR: We agreed that both -- I see,
7 drafting committee as well. That would be good. We
8 put this under the new section.

9 MS. FOSTER: I think it has been moved to 4(a)
10 and 4(b). I think 4(a) was work groups, and 4(b) was
11 drafting committee. It's under its own separate
12 section, not under decision-making.

13 MR. ADAMS: Its own section entitled what?

14 MS. FOSTER: I think it was the title of work
15 groups and drafting committee.

16 MS. MCDADE: Right. Work group/drafting
17 committee or standing committee. That was the original
18 title.

19 THE FACILITATOR: Is that okay?

20 "a. Product of Negotiations. The
21 intended product of the negotiations
22 is a preliminary report setting forth
23 any proposed regulations, or changes
24 to regulations, that the Committee
25 finds necessary, desirable or

1 convenient with respect to any
2 Statutory Amendment. The report shall
3 be in the form of a written statement
4 developed by the Committee Members on
5 behalf of the Secretary of HUD and
6 Tribal Committee representatives, and
7 shall include both proposed rule
8 language and an accompanying proposed
9 preamble. As the Committee makes
10 decisions on individual rulemaking
11 proposals, each such individual
12 decision shall consist of both exact
13 rulemaking language and a proposed
14 accompanying insert into the preamble.
15 The Secretary agrees to use the
16 Committee's preliminary report and any
17 proposed regulations and preamble as
18 the basis for any proposed rule
19 implementing or relating to any
20 Statutory Amendment. Prior to the
21 publication of any proposed rule, the
22 PFO will provide the Committee with
23 notice and an opportunity to negotiate
24 any changes in the proposed
25 regulations. This process shall be

1 done separately for Phase 1 and Phase
2 2 rules, as provided in Article 1 of
3 these Protocols. "

4 We took out Phase 1 and Phase 2, correct?

5 Okay. Comments or agreement (a), product of
6 negotiations?

7 MS. MARASCO: Certainly take out the last
8 sentence.

9 THE FACILITATOR: Yeah. The last sentence we
10 took out before. Okay.

11 Karin?

12 MS. FOSTER: The first sentence, the last
13 clause with respect to any statutory amendment, I think
14 needs to come out, because we dealt with that earlier
15 on. We're not defining our committee just as the
16 committee on the amendments. The language beginning
17 with "with respect to any statutory amendment" would
18 come out.

19 THE FACILITATOR: So a period after convenient,
20 Karin?

21 Is that okay with everyone? What else?

22 Yes, Sandra?

23 MR. HENRIQUEZ: (Indiscernible -- speaker not
24 using microphone) the fourth line from the bottom -- or
25 the fifth line. It was implementing or relating to any

1 statutory amendment should also be struck with a period
2 after "any proposed rule," period.

3 THE FACILITATOR: For any proposed rule?

4 MS. HENRIQUEZ: Period. Yes. That would be
5 consistent with the other strikeouts.

6 THE FACILITATOR: So the Secretary agrees to
7 use the committee's preliminary report and any proposed
8 regulations and the preamble as the basis for any
9 proposed rule, period.

10 MR. HENRIQUEZ: And then in the next sentence,
11 I would propose "subject to OMB approval, prior to the
12 publication of any proposed rule."

13 THE FACILITATOR: I'm sorry, Sandra. Can you
14 repeat that?

15 MR. HENRIQUEZ: We just need to strike out --
16 let me see. It starts with, "the Secretary agrees to
17 use the committee's preliminary report and any proposed
18 regulations and preamble as the basis for any proposed
19 rule," period.

20 And then I would like to propose starting in
21 the next sentence, "subject to OMB approval, prior to
22 the publication of any proposed rule, the PFO..."
23 Because as we've said before in the charter, things
24 have to go -- we can agree here that we do need to take
25 it to OMB before it is a, quote/unquote, a done deal.

1 THE FACILITATOR: Does that look right, Sandra?

2 MR. HENRIQUEZ: Yes. Thank you.

3 THE FACILITATOR: Is everybody okay with that?

4 Darlene?

5 MS. TOOLEY: I want to be really clear. So
6 this gives us an opportunity to review any recommended
7 OMB changes before it actually gets published as a
8 proposed rule, which is very important, very important.
9 Is that the intent?

10 MR. HENRIQUEZ: Yes.

11 THE FACILITATOR: Yes, Karin.

12 MS. FOSTER: As written, subject to OMB
13 approval, it sounds like the OMB would be able to
14 decide whether we get notice and an opportunity to
15 negotiate. So I think maybe following OMB approval or
16 something after.

17 THE FACILITATOR: Rusty.

18 MR. SOSSAMON: Yeah, on that one, if you would,
19 where it says "subject to OMB approval, prior to the
20 publication of any proposed rule," if you'll put a
21 period there and take out "be" -- or capitalize "be"
22 and start a new sentence. I think that will address
23 Karin's concern.

24 THE FACILITATOR: Subject to OMB approval prior
25 to the publication of any proposed rule.

1 MR. SOSSAMON: I don't think it changes what
2 the Secretary intended.

3 THE FACILITATOR: I don't think that's a whole
4 sentence though, Rusty.

5 MS. FOSTER: Can I make another suggestion?
6 How about -- Madame Secretary, how about, prior to the
7 publication of any proposed rule, parenthesis, which is
8 subject to OMB approval, close paren, the PFO will
9 provide the committee with notice of an opportunity to
10 negotiate. I'm just concerned that the OMB not have
11 approval over whether we get notice. So the suggestion
12 is prior to the publication of any proposed rule,
13 parentheses, which is subject to OMB approval, or could
14 be, comma, which is subject to OMB approval.

15 THE FACILITATOR: Sandra?

16 MR. HENRIQUEZ: I need to talk to counsel for a
17 moment.

18 Let me describe this in a nonlegal way, because
19 it's something I am learning having come to government.
20 There are times when we can have sort of ongoing back
21 and forth like this committee in making proposals and
22 talking about language, et cetera. I refer to it as
23 the curtain opens, and the curtain closes.

24 So the curtain is open, and we have this free
25 exchange. We settle on language, and not just around

1 negotiated rulemaking, but a variety of other things
2 that impact the HUD world or the federal government
3 world.

4 Then we send it to OMB for their approval. I
5 refer to that as the curtain is closed. The curtain
6 remains closed until OMB then provides feedback to us
7 and literally is able to tell us what is public and
8 what is not. So it is our intent to have full
9 disclosure and full dialogue with the committee. But
10 having the language switched around this way, it is OMB
11 that ultimately has the final say.

12 And so by way of example, we agree here at the
13 table, and we go back and we propose to OMB what we've
14 talked about and what the language is and how we want
15 that language to move forward. The curtain closes.
16 OMB does its thing. The curtain opens. And OMB will
17 say, this is what will move forward.

18 Now, it's this dynamic of going back and forth,
19 back and forth. But there may be times that I cannot
20 disclose fully everything that has gone on behind the
21 curtain. And that is troubling sometimes to me. And
22 in the issue of full disclosure, I need to leave it on
23 the table to all of you as we move this process
24 forward.

25 There will be lots of back and forth behind the

1 curtain. It is certainly our intent to get to the
2 language that we agreed to at this table. So that is
3 why we proposed "subject to OMB approval." It is just
4 a legal thing that I'm just not sure of how all that
5 will play out.

6 THE FACILITATOR: Darlene?

7 MS. TOOLEY: And I respect the situation that
8 HUD finds itself in being subject to OMB approval. My
9 concern is that whatever comes out of the final OMB
10 review, that they think is going to get published in
11 the Federal Register as a proposed rule is reviewed by
12 this committee before that happens. Because we may
13 have, and have in the past, had definite issues with
14 some of the things that were changed.

15 And if we didn't have the opportunity to
16 discuss that with whoever we had to discuss it with, it
17 would've been a bigger mess than it got to be. So I
18 think that is the concern that I have that at least
19 whatever -- maybe we don't get to know all the ins and
20 outs of why they changed it to something, but I think
21 the committee should insist that we get to review the
22 final OMB proposed ruling before it gets published.

23 THE FACILITATOR: Jack?

24 MR. SAWYERS: I realize that OMB is never going
25 to truly recognize the government-to-government

1 relationship. That's just not going to happen. But I
2 would suggest that somewhere in there, we say that we
3 have negotiated with HUD and OMB. Any changes prior
4 to -- if they are going to change -- any changes on our
5 proposals. We would like to open that discussion with
6 HUD and OMB, because we still are lacking that one
7 thing, and that is the government-to-government
8 relations.

9 So can we put that, Karin, some way cleverly in
10 there that says we have the ability, or we would like
11 to negotiate with HUD and OMB before any changes to the
12 regulations?

13 THE FACILITATOR: Go ahead, Marvin.

14 MR. JONES: How about we take that sentence and
15 go back to the original, and at the end of it where it
16 says negotiate any changes in the proposed regulations
17 and add, once OMB comments to the extent possible, or
18 something like that, and put those things at the end of
19 that sentence.

20 THE FACILITATOR: Rusty.

21 MR. SOSSAMON: Well, I don't see -- to me, this
22 language accomplishes what we want to accomplish.
23 Because prior to the publication of it, we are going to
24 have an opportunity to negotiate any of the changes in
25 the proposed regulations. And the changes would be

1 those that OMB makes doing their review of it.

2 Now, to negotiate with OMB, my understanding of
3 what the Secretary said is they can do that behind the
4 curtain. But I don't think OMB is going to step out
5 from behind the curtain and negotiate with us or
6 anybody else.

7 THE FACILITATOR: Steven.

8 MR. ANGASAN: In the next paragraph, it
9 addresses HUD and OMB. So maybe we just delete those
10 sentences.

11 THE FACILITATOR: Are you talking about under
12 final report?

13 "The committee will review all
14 comments and any clearance issues
15 including those of HUD and the OMB
16 received in response to any proposed
17 rule and will submit the final report
18 with recommendations to the Secretary
19 of HUD concerning any proposal for
20 change to the proposed rule. This
21 process shall be done separately --"

22 MR. ANGASAN: Strike that.

23 THE FACILITATOR: Yeah.

24 "-- without regard to Phase 1 or Phase 2."

25 Does that cover it?

1 Sandra?

2 MS. HENRIQUEZ: Will you read that once more,
3 or where is that language?

4 THE FACILITATOR: On B, the final report.

5 "The Committee will review all
6 comments and any clearance issues,
7 including those of HUD or the OMB,
8 received in response to any proposed
9 rule and will submit a final report
10 with recommendations to the Secretary
11 of HUD concerning any proposal for
12 change to the proposed rule."

13 Sandra, go ahead.

14 MR. HENRIQUEZ: Help me understand. How do we
15 get from A to B?

16 THE FACILITATOR: Steven's point is that it was
17 kind of covered.

18 Was that your point, Steven, that the issue
19 might have been covered?

20 MR. ANGASAN: OMB is in the next paragraph.

21 THE FACILITATOR: OMB is discussed in the next
22 paragraph was his issue. That's how we got there.

23 MR. HENRIQUEZ: I see. The issue is no one can
24 commit -- I cannot commit OMB in any way, shape, or
25 form. And OMB is the vehicle that really speaks for

1 the President and the administration, so I don't have
2 it in my power nor does the Secretary of HUD have it
3 within our powers to insert our will, if you will, on
4 OMB in that regard.

5 So the struggle I have with A is it is our
6 intent to try and be as forthcoming as possible. I can
7 commit what HUD would like to do and wants to do. But
8 that is subject, again, to OMB. We have made the case
9 to OMB before. And we're going to try to make a call
10 at lunch to see if indeed anything has moved. I would
11 guess probably not, is their posture with every federal
12 agency.

13 But we wish to get greater clarification about
14 this. So I don't want to hold up our drafting or
15 approving of this, but would like to go back to what we
16 originally proposed in A.

17 THE FACILITATOR: To your originally proposed
18 language, which was --

19 MR. HENRIQUEZ: Which was subject to OMB
20 approval.

21 THE FACILITATOR: Subject to OMB approval prior
22 to publication.

23 MS. HENRIQUEZ: I can tell you that language
24 represents my intent and HUD's intent. It does not
25 represent OMB's intent. And indeed if something were

1 proposed from this committee back to OMB, they could
2 say, we approve it all, not a problem, go forward.
3 They could say, we like all of this except this one
4 piece. Here is what we want as the second piece, and
5 it is not subject to negotiations.

6 And more times than not it is not subject to
7 being revealed prior to publication. That is the real
8 problem. And so we will continue to lobby and to push,
9 but I cannot promise that it will change.

10 THE FACILITATOR: Darlene, do you have a
11 comment?

12 MS. TOOLEY: So really if we had subject to OMB
13 approval prior to publication, the PFO will provide the
14 committee with notice and opportunity to negotiate,
15 that's your real problem, is the opportunity to
16 negotiate any changes. Is that correct?

17 MR. HENRIQUEZ: That is correct, because I
18 could be told no negotiation and not be given a reason
19 why. Or we could negotiate, and it would go back to
20 OMB, and we would be in this ever spinning cycle of
21 negotiation and negotiating and getting approval to
22 each point.

23 MS. TOOLEY: So if we just inserted to review
24 and/or negotiate any changes? Because then you're not
25 committing to negotiate, but you are committing to let

1 us see what they're proposing, what they say it has to
2 be before it gets published, which was the issue that
3 we were trying to address.

4 MR. HENRIQUEZ: I need to ask counsel. Just a
5 second. Sorry.

6 MS. TOOLEY: And then I think the point B, B is
7 after the fact. B was intended to -- after we received
8 public comment, that we again had the responsibility
9 and the opportunity to review (indiscernible -- speaker
10 not using microphone.) That is my understanding of it.

11 THE FACILITATOR: Okay.

12 MR. KAZAMA: While they are discussing that, to
13 humor Jack, I was wondering if we could put in the
14 center, as the committee makes government-to-government
15 decisions, right in the center of the paragraph.

16 THE FACILITATOR: After what, Blake?

17 MR. KAZAMA: As the government makes
18 government-to-government decisions on individuals who
19 make the proposals, and continue on.

20 MR. SOSSAMON: Can everybody agree with that?
21 No?

22 Sharol.

23 MS. MCDADE: I cannot agree with that. This
24 committee is not technically government-to-government.
25 It's a committee appointed as such and that is left in

1 the hands of the tribal government. It's not our
2 (indiscernible -- speaker not using microphone) to
3 include that kind of language.

4 THE FACILITATOR: Blake, did you have a
5 comment?

6 Jack?

7 MR. SAWYERS: I really disagree with that. You
8 are here representing your government and your tribe
9 and so on. And you do have a government-to-government
10 responsibility. Whether you are a tribal leader or
11 not, you are chosen by your tribe to negotiate at this
12 table. And so I wholeheartedly disagree with you. I
13 think that it is a government-to-government
14 negotiation. That's why we are here.

15 THE FACILITATOR: Thank you.

16 Sandra.

17 MR. HENRIQUEZ: I would beg the committee's
18 indulgence. We're going to try to get some -- see how
19 close we can get. But we need to spend some time at
20 lunch making some phone calls. So I would like, if
21 possible, to defer this one. I am sorry.

22 THE FACILITATOR: It's lunchtime anyway. Why
23 don't I make a suggestion that we break for lunch now.
24 And we can come back with some answers perhaps. Over
25 lunch perhaps some of you can discuss government-to-

1 government, and some of you can discuss OMB.

2 THE FACILITATOR: Ervin.

3 MR. KEESWOOD: I just want to make some
4 comments before we go to break. It is difficult to
5 believe that there would be no interaction between HUD
6 and OMB. And I guess the point I'm trying to make here
7 is, while tribal leaders and tribal representatives
8 here are here at the table to negotiate, there is a
9 possibility because of past experience of all of the
10 tribes here, that HUD could use this conversation with
11 OMB as a veto over what is agreed to at this table.

12 And I am -- that's the interesting issue. How
13 do we get beyond that? We've seen that over and over
14 again prior to this administration. So how do we see
15 that in all good faith and beyond that HUD doesn't use
16 OMB as a tool to veto what it has agreed to at this
17 table and say that it is out of our hands?

18 The language is subject to OMB's approval. And
19 it could be used in that point, and the tribal nation
20 can say well, we tried. We put every effort; however,
21 it fell through. What do we have to go back to our
22 tribes and say that we tried, but OMB, subject to their
23 approval, disapproved of what we wanted for you. No
24 matter whether we're tribal leaders or representatives,
25 it would have fallen on deaf ears, if you will.

1 THE FACILITATOR: Response?

2 MR. HENRIQUEZ: If I might. There's nothing
3 that I can -- first of all, I can't undo the history.
4 I cannot make up for what my predecessors may or may
5 not have done and acted in bad faith or otherwise.

6 All I can do is to tell you that I give you my
7 word. That is not where I am. That is not where this
8 administration is. And there is nothing that I can
9 show you other than maybe asking you just to check me
10 out with people who have done business with me
11 throughout my career.

12 And check out Secretary Donovan and the new
13 assistant secretary and all of us. You have my word.
14 You have good faith. I have my integrity, and that is
15 all that really, when all is said and done, makes any
16 difference for me in this world and this business.

17 Other than that, people could tell you that I
18 know the deputy director of OMB really well and will
19 lean on him a lot, but ultimately, that is all I have
20 to offer you.

21 THE FACILITATOR: Yeah, Marvin?

22 MR. JONES: I think it is really -- it is a
23 tribal function to deal with OMB in this particular
24 case because of those reasons cited. There's nothing
25 that prevents the tribes from talking to OMB directly

1 and figuring out whether or not OMB is falling under
2 the President's tribal consultation directions or not.
3 And this may be an ideal case to see whether in fact
4 they are. But I don't think it's this particular
5 federal agency's responsibility, again, for the reasons
6 cited. It is incumbent upon us tribes to be talking
7 directly to the executive branch and engage directly
8 with them.

9 THE FACILITATOR: Darlene?

10 MS. TOOLEY: A final comment. I agree with
11 Marvin. I think our responsibility is to get their
12 side, their case, their words, their issue. And then
13 if we have to deal with it on a different level without
14 language in here that says we're expecting HUD to do
15 it, then that's how we have to compensate. But unless
16 we know what their position is, which was I thought the
17 intent of the discussion, we won't know enough about
18 (indiscernible -- speaker not using microphone.)

19 THE FACILITATOR: For the closing before lunch,
20 Rusty.

21 MR. SOSSAMON: Well, I appreciate what Darlene
22 is saying. And I think what I hear the Secretary
23 saying is that she can't guarantee you that she can
24 provide feedback from OMB before it's published.
25 Because if OMB says, no, we're publishing this just

1 like this, and you are not going to have an opportunity
2 to review it before it's published, her hands are tied.

3 And what I also hear her saying is that she's
4 going to make every effort to allow us and give us
5 feedback from OMB that she can. So I think this
6 probably to me seems like the best deal that we can
7 get. And we go home and deal with our administration,
8 and they say it's this way, that's how it is. And I
9 don't have any problem before we leave if we could just
10 approve this language and be done with that and start
11 with the next section when we come back.

12 THE FACILITATOR: I think one thing -- I'm just
13 going to add to that discussion. Anybody around this
14 table, you're basically here for the same purpose.
15 It's to work out something that is workable and
16 effective and helps the tribes and their housing
17 situations. The commonality is here.

18 As we go through this negotiation, everybody
19 knowing that they have a consensus vote at the table,
20 and that there's more to be gained through transparency
21 and openness and sharing of information to help each
22 other, I think by the time we're through with these
23 negotiations, you end up in a place where you have
24 that. You will have built up some better thoughts to
25 promote each other and how best to deal with stuff like

1 OMB.

2 MS. FOSTER: I agree with Rusty about calling
3 for a vote on Section (a), product of negotiations, and
4 also the final report to finish up this section, if the
5 committee's up for that.

6 MS. MCDADE: I have a question. If that's the
7 case, is this the language as it is, not the section
8 that includes the government-to-government? Because I
9 don't see that, and I want to make sure that is not
10 what we're including in that.

11 MS. FOSTER: My intention is that it not be the
12 government-to-government language. It would be just
13 what is on the board.

14 MS. MCDADE: (Indiscernible -- speaker not
15 using microphone.)

16 THE FACILITATOR: Okay. All in favor? Any
17 opposed? Did we just vote on final report as well? So
18 we are done with this section. We have a page and a
19 half to go, folks.

20 Okay. Lunchtime. Back at 1:52.

21 (Recess from 12:22 p.m. until 2:01 p.m.)

22 THE FACILITATOR: Ladies and gentlemen, let's
23 reconvene. We've got about a page and a half to go
24 here, folks. We can do it. Okay.

25 Let's take a look at -- we've finished

1 "Agreements," and now we're on "Safeguards for the
2 Committee Members." The first item is 6(a) "Good
3 Faith."

4 "All Members agree to act in a good
5 faith effort to reach consensus in all
6 aspects of these negotiations by
7 encouraging the free and open exchange
8 of ideas, views, and information.

9 Personal attacks and prejudiced
10 statements will not be tolerated. If
11 a Committee member opposes a proposal,
12 he or she shall: (i) state the reason
13 for that opposition; and (ii) propose
14 an alternative to the proposal that
15 meets that Committee member's
16 concerns."

17 Yes, Leon?

18 MR. JACOBS: The person that has the objection,
19 if they have to come up with a solution, does that
20 constitute consensus or should it come back to the full
21 committee or anyone else who might have an idea how to
22 straighten out the concern?

23 And if you only require the person that has the
24 concern, then does it provide for a better solution?
25 This is just the concern I'm having, but I don't know

1 how it can be fixed.

2 THE FACILITATOR: I think, Leon, this is part
3 of a very normal consensus philosophy when we're trying
4 to reach consensus. That means everybody around the
5 table has veto power. Anybody can stop the process
6 with their power.

7 But along with that veto power, comes the
8 responsibility to offer a suggestion that if you don't
9 like it, it's your responsibility to propose something,
10 you know, to say what you would need to change to make
11 it work for everybody. It doesn't mean that nobody
12 else can help and add in their own two-cents worth.
13 But it does means that you just can't say no and then
14 not offer some constructive way to approach it -- some
15 other approach.

16 It doesn't mean that you're the sole
17 responsibility for making a change. But it does mean,
18 don't say no unless you have a positive way to try to
19 push things forward. That's basically what I think
20 consensus is.

21 Do other people understand the same?

22 MR. KAZAMA: I don't have a problem with making
23 a recommendation to straighten out the problem. But at
24 the same time, there's 24 others here that may have a
25 better solution. And if they don't have an opportunity

1 to speak on it, you won't have that benefit.

2 THE FACILITATOR: No, there's nothing to
3 prevent anybody else from helping that person. It's
4 just says if you've got an objection and you don't
5 agree with what's up there, you're the person that has
6 to give some proposal or counter why -- you have to say
7 why you don't accept the language, and then try to
8 offer something that you think would improve it, that
9 would make it acceptable to you and everybody else.
10 But you don't have the sole responsibility for that.

11 THE FACILITATOR: Yes, Karin?

12 MS. FOSTER: I think we should be able to talk
13 about the issue as a committee, rather than -- I'm
14 sorry. I think you're really doing a great job, but I
15 think we're talking about something substantive in the
16 protocol that the committee members should be
17 addressing rather than the facilitator, in terms of
18 whether this language should stay in or stay out.

19 I hear the concern Leon's expressing. As I
20 understand it, not everybody's going to be able to
21 propose alternative language. They may have a concern,
22 but they may need the rest of the committee's help to
23 come up with the best language.

24 I also understand the intent to sort of move
25 things along by requiring everyone to propose language.

1 If the person who has to propose language doesn't
2 propose very helpful language, that could actually be
3 less efficient, having No. 2 in there. I hear that
4 concern myself.

5 THE FACILITATOR: Do you have a suggestion,
6 Karin, on how that might be addressed?

7 MS. FOSTER: Well, one way to address that, if
8 we wanted to, would be to strike No. 2 and just say "he
9 or she shall state the reason for that opposition,"
10 period. That would be one way to address it.

11 THE FACILITATOR: Steven?

12 MR. ANAGASAN: I think you should just put "and
13 may propose alternative to proposals."

14 THE FACILITATOR: Jack?

15 MR. SAWYERS: It's been my experience that that
16 doesn't do very much when you say why you're against
17 it. You don't have to propose the language, but you
18 have to tell us why you object to it.

19 In other words, we have enough folks in here
20 that can -- I don't think you've taken anything I've
21 ever said and put it on the board, and probably won't.
22 But I think you hear my objections, and you know how I
23 feel about an item.

24 So what I'm really saying is, it's important if
25 you have an objection -- not only that you have an

1 objection, but what gives you heartburn with it. And
2 that's the thing. How would you fix it? Then we have
3 other folks that can put it up on the board.

4 But I think that's the gist of this thing. And
5 don't overlook that part because that's a big part of
6 this thing.

7 THE FACILITATOR: Any other comment?

8 Yes, Carol?

9 MS. GORE: I guess if I understand the
10 language, Leon, the intent is to encourage negotiation,
11 not stop it. And for a committee member to just say,
12 "I'm opposed to this" and not give a reason, just halts
13 the negotiation for the committee and leaves the
14 committee with no opportunity to engage.

15 So I think the intent of this is to encourage
16 that committee member, who may not agree with the
17 current proposal, to give good reason, so the committee
18 can continue the negotiation instead of having someone
19 that might just stonewall the negotiation and say, "I'm
20 just not going to vote for it." And we've seen that in
21 the prior committee. So I just wanted to speak to the
22 intent of the language.

23 I'm not sure, Karin, your proposal really gets
24 us there. But I think as long as we have the intent to
25 continue the negotiation, I'm in support.

1 THE FACILITATOR: Yes, Leon?

2 MR. JACOBS: I actually don't have a problem
3 with stating the reason and so forth. But at the same
4 time, if I don't come up with a reasonable situation
5 here, all of these other ideas that everybody else has
6 should be placed on the table as well, you know, and
7 let's see what's the best.

8 The way I read this, I oppose, and now I have
9 to come up with the alternative proposal, and the other
10 folks don't have an opportunity to get involved. So I
11 think some language needs to be added here.

12 Steven's suggestion, I think, is okay and state
13 the reason and so forth. But at the same time,
14 everybody else should be able to contribute if they
15 come up with a better alternative.

16 THE FACILITATOR: Yes, Jack?

17 MR. SAWYERS: That doesn't prohibit anyone from
18 making other suggestions. It's not saying that -- it's
19 not enough to say I'm against -- I've tried it both
20 ways. We've been there both times.

21 Just to say "We object to it because it doesn't
22 work for us" is not an answer. You should really carry
23 that one step farther and say, "I would like to suggest
24 that we do this, this, and this." And then that brings
25 the negotiation forward.

1 We found out last time that we didn't have that
2 little item in there, that it was pretty frustrating
3 when somebody says, "I object." And then they say,
4 "Why?" And they say, "It just doesn't work for me.
5 And that's the reason, by the way." And then they
6 don't give you any suggestion of how we could fix it.

7 Because what we're really trying to do here is
8 fix these things, not just agree or disagree. So I
9 think that's really important, and I think you'll find
10 in the next few weeks, that's going to be a real big
11 issue.

12 THE FACILITATOR: Yes, Darlene?

13 MS. TOOLEY: It sounds like the concern Leon
14 has is that we don't have an additional sentence or
15 something that says "the alternative proposal will be
16 considered by the committee" or something like that.
17 Is that --

18 MR. JACOBS: Yeah.

19 MS. TOOLEY: Or the language that Rebecca has
20 is just after "concerns" to put "for further
21 consideration of the committee" so that the proposed
22 alternative isn't out there, and it does get discussed
23 by the committee, and it just doesn't lie there and die
24 because nobody else agreed with whatever.

25 So there's commitment, I guess, is what you're

1 looking for, for people to actively get engaged in
2 discussing the proposed alternative.

3 MR. JACOBS: Right.

4 MS. TOOLEY: So we would propose to add after
5 the word "concerns" make a comma and then just say "for
6 further consideration of the committee." So then the
7 committee could talk about it.

8 THE FACILITATOR: Karin, do you still want to
9 keep your proposal in there for adding "may propose"?

10 MS. FOSTER: I think that was Steven's
11 suggestion.

12 You know, I'm looking forward down -- I know we
13 haven't gotten to (b). Under (b) we have the chair
14 ruling and an objection out of order if it doesn't
15 satisfy (a). So that means that if you objected and
16 you didn't propose something else at the same time, you
17 wouldn't be heard. So I think it is an important
18 question.

19 I like Steven's suggestion "may propose" but,
20 again, you know, I kind of favor as open a process as
21 possible here because I think that when we do discuss
22 issues on the table before we actually put language up
23 there, sometimes we end up with better language.

24 THE FACILITATOR: So are we considering both
25 pieces here? Are you saying "may propose an

1 alternative to the proposal that meets the committee
2 member's concerns for further consideration of the
3 committee"?

4 MS. FOSTER: I'd support Steven's
5 recommendation of "may," yes.

6 THE FACILITATOR: Okay. Does anybody else have
7 a problem with "may" at all, to put "may propose an
8 alternative"?

9 Yes, Jack?

10 MR. SAWYERS: I do because I really think
11 that's a simple no. I just think that you really need
12 to explain more than just -- not only that it doesn't
13 work for you, but how can you fix it? In other words,
14 an alternative proposal that leads to that discussion.

15 And I promise you that this is a big enough
16 deal right now to spend some time on, because, to me,
17 there's only a couple of issues that are really
18 important, and this is one of them.

19 If you object, you need to say why and then
20 what gave you heartburn about this thing. I'd like to
21 suggest you do this, this, and this, and that leads to
22 a discussion. And I promise you that it's going to
23 work for you a little later on.

24 THE FACILITATOR: Jason?

25 MR. ADAMS: As I understand Leon's initial

1 objection or concern was not necessarily that No. 2 was
2 there, but that it would be just him trying to
3 articulate his change in language that would meet his
4 concern --

5 MR. SAWYERS: All right.

6 MR. ADAMS: -- and not having the ability of
7 the rest of us to help in that circumstance.

8 Now if that's, in fact, the situation by adding
9 "may" to No. 2, totally blows this thing out of the
10 water. I totally agree with Jack. No. 2, by changing
11 that and adding "may" is a significant change in how we
12 will conduct business, because somebody can just flat
13 say no.

14 We can spend hours and hours working on an
15 issue, and for somebody to just come to this table and
16 say no, is very frustrating. Because from the past,
17 we've had that very instance happen. That's what we're
18 trying to avoid here.

19 So if we're trying to approach Leon's objection
20 or wanting some change there, I think that the "further
21 consideration of the committee" meets his objection.
22 I don't think the inclusion of "may" there does. I
23 think it opens more doors than we're trying to close.

24 THE FACILITATOR: Okay. So you would prefer to
25 have --

1 MS. MARASCO: So if we take out "may," does
2 that answer your problem?

3 MR. SAWYERS: Partly it does. Except I still
4 think that you still have the responsibility as a
5 committee member not to wordsmith it, but to say,
6 "These are the things I would like to see in this
7 proposal" and that brings the discussion up.

8 In other words --

9 MS. MARASCO: But that's what it says, Jack, if
10 we take out "may".

11 MR. SAWYERS: Maybe I'm reading it wrong.
12 I definitely wouldn't say "may."

13 But all you're saying is, if I object and I
14 tell you why I object, and it might be, "It doesn't
15 work for me." Then you say, "Well, we'll have further
16 discussion from the group." We've already discussed it
17 for two and a half hours. What we really want to know
18 is what's your problem and how can you fixed it?

19 We have lawyers that can put it on the board.
20 I just wanted to let you know that this would be a lot
21 better than what you have here. Then that brings the
22 discussion out, Darlene, that we want to talk about it.

23 So I'm just saying that it's important that if
24 an individual -- because you have to take the
25 responsibility as an individual. If you vote no and

1 everybody else is yes, then "Why did you vote no? And
2 how can you fix it so we can get this all put
3 together?"

4 MS. McDADE: Okay, Jack. Is it my
5 understanding that you want the original language and
6 the "may" and the "for further consideration" to be
7 taken out? Because I do agree with you to a point.

8 We've already gone over the time frame with
9 regard to issues and reconsideration, so they would
10 still be -- as long as it's within the two hours, is my
11 understanding of what we already approved, correct?

12 Didn't we already approve the two hour time
13 limit so that if somebody came in and opposed, that it
14 was within that time? And what you're saying is, if we
15 take that out, the red out now, that you don't get
16 additional discussion as long as it's within the time
17 frame because we're already approved that, right? So
18 you want original language?

19 MR. SAWYERS: Yeah, I like the original version
20 much better.

21 MS. McDADE: Okay. Because it is not
22 consistent here. "He or she shall" and then go to
23 "may," it doesn't make sense. So if I'm understanding
24 you correctly, take out the red underlined?

25 MR. SAWYERS: Take out the "may."

1 MS. MARASCO: You're happy with just the "may"
2 out?

3 MR. SAWYERS: (Indiscernible -- speaker not
4 using microphone.)

5 THE FACILITATOR: Yes, Lafe?

6 MR. HAUGEN: I would recommend that we take
7 "may" out and proceed so we can get going.

8 MS. MARASCO: Isn't that what I just said three
9 times?

10 THE FACILITATOR: Okay. Let's try it without
11 "may". Let's take the "may" out. Can people live with
12 this statement?

13 MS. MARASCO: Yes.

14 THE FACILITATOR: All in favor? Any objection?
15 Okay. Thank you.

16 (b) is "Committee Member Diligence."
17 "It is the responsibility of each
18 Committee member to remain constantly
19 abreast of developing Committee and
20 Working Group proposals. Committee
21 members may not object to a proposal
22 on the ground of unfamiliarity,
23 missing discussions pertaining to the
24 proposal, the need to consult other
25 persons, or on a ground that violates

1 the duty imposed by Article 6(a) of
2 these Protocols. If the Chair finds
3 clear evidence that an objection is
4 based on such a ground, he or she
5 shall rule the objection out of order,
6 and the objection shall not be counted
7 in determining the existence of
8 consensus. The ruling of the Chair
9 under this subsection may be overruled
10 by a consensus vote of the Committee,
11 not including the Chair."

12 Comments?

13 MS. McDADE: I have a question. It says that a
14 committee member may not object to a proposal, but
15 didn't we just cover that? Do we need that additional
16 language in there? "May not object to a proposal on
17 the ground of unfamiliarity."

18 What was the -- and, again, I would think I
19 would object to something that I needed more
20 clarification on. So why is that sentence there?

21 And if that's the case, we've already approved
22 that they have to provide an alternative anyway. So it
23 seems to me like additional language.

24 THE FACILITATOR: Some committee members have
25 strong feelings on that.

1 So, Jack, do you want to talk?

2 MR. SAWYERS: Would you write that down; I
3 agree with you.

4 THE FACILITATOR: Any other comments on this
5 section?

6 Yes, Karin?

7 MS. FOSTER: I just have a question. When it
8 refers to "working group proposals," I'm assuming that
9 means working group proposals that have been made to
10 the committee?

11 I mean, all the committee members are not going
12 to be familiar with everything that's going on within
13 the working groups. So that if something comes up on
14 the floor from a working group, you know, one might
15 say, "Jan, I'm not familiar with that. I need to
16 discuss it some more."

17 It means after -- proposals that have been made
18 to the committee? If that's generally understood, then
19 that's fine with me.

20 THE FACILITATOR: Jason?

21 MR. ADAMS: If I heard Sharol right, she was
22 making a suggestions for some change. Is that --

23 MS. McDADE: Yes. The section that says -- if
24 we could remove "may not object to a proposal on the
25 grounds of unfamiliarity," I don't understand why that

1 would be there. And I think Karin said the same thing.
2 I would object to something that I wasn't familiar
3 with. I would want clarification.

4 MR. ADAMS: I mean, Jan, it seems like
5 sometimes somebody says something and it happens, and
6 then somebody else says something and nothing happens.
7 So what prompts something to happen?

8 THE FACILITATOR: I'm sorry. I did not
9 understand your proposal correctly, Sharol. You want
10 to take out "may not object to a proposal on the ground
11 of unfamiliarity, missing..."? How about the other
12 ones, too, "missing discussion" or do you want to leave
13 that in?

14 FEMALE SPEAKER: (Indiscernible -- speaker not
15 using microphone.)

16 THE FACILITATOR: What's fine?

17 FEMALE SPEAKER: (Indiscernible -- speaker not
18 using microphone.)

19 THE FACILITATOR: Okay. You want to take out
20 "unfamiliarity."

21 FEMALE SPEAKER: Yeah. (Indiscernible --
22 speaker not using microphone.)

23 THE FACILITATOR: You want to take out
24 "unfamiliarity". How do people feel about that?

25 Yes, Steven?

1 MR. ANGASAN: (Indiscernible -- speaker not
2 using microphone.)

3 THE FACILITATOR: Your mic's not on. Please
4 start again.

5 MR. ANGASAN: Okay. The way this reads is if a
6 person votes no and they give a reason but they don't
7 have a solution yet, then they could be declared out of
8 order by the chair, and it won't count?

9 THE FACILITATOR: So you're saying that:
10 "If the chair finds clear evidence that an objection is
11 based on such a ground, he or she shall rule the
12 objection out of order, and the objection shall not be
13 counted in determining the existence of consensus"?

14 MR. ANGASAN: Is there like a deadline for an
15 alternative? What I'm getting at is, how long do you
16 get to give an alternative?

17 MS. McDADE: I thought it was within the two
18 hour time frame. Am I missing that? Again, I thought
19 that when we brought something to the table, we had two
20 hours, and if somebody objected, as long as it was
21 within the two hours. Is that right? That's my
22 understanding of how that's worded with regard to
23 bringing up reconsidered items.

24 MR. ANGASAN: I think we should put "time" in
25 the (a) portion, so that it's clear, and "propose an

1 alternative within the time limit." Otherwise, it just
2 doesn't seem right.

3 THE FACILITATOR: Does anybody have some
4 suggestions how to deal with Steven's concern?

5 Yes, Karin?

6 MS. FOSTER: Didn't Steven just recommend some
7 language? I heard him say something about language
8 after "alternative." Did I not hear language?

9 MR. ANGASAN: I guess my whole argument is out
10 of order.

11 THE FACILITATOR: No.

12 MS. FOSTER: I think -- I'm sorry. I thought
13 that --

14 MR. ANGASAN: How do you vote no? If you vote
15 no, the chairman can call you out of order if you don't
16 have a solution? I mean, I kind of feel like, you
17 know, what he was saying earlier.

18 MS. MARASCO: We haven't even decided if we're
19 going to have a chair.

20 MR. ANGASAN: Create a -- discussion will come
21 anyway following all these.

22 THE FACILITATOR: So, Steven, are you objecting
23 to the language about the chair calling an objection
24 out of order?

25 MR. ANGASAN: Well, just because it references

1 6(a).

2 THE FACILITATOR: Larry?

3 MR. COYLE: What is the justification behind
4 this paragraph here? Is it a veto? Why do we need it?

5 MS. MARASCO: We don't.

6 MS. COYLE: We've covered completely before
7 that. There's nothing in here except that the chairman
8 can veto. We have to have a chairman before we can
9 veto. So why have it?

10 MS. MARASCO: We're not even going to have a
11 chairman.

12 MR. COYLE: Yeah. Just wipe it out.

13 THE FACILITATOR: So you're saying drop the
14 whole (b)?

15 MS. MARASCO: Yes.

16 THE FACILITATOR: Would that be your proposal?

17 MS. MARASCO: Yes.

18 THE FACILITATOR: Okay. There's a proposal
19 about dropping (b).

20 Jason?

21 MR. ADAMS: I would be okay to the extent of
22 maybe just the first paragraph. I think that's the
23 diligence part of this paragraph. The first sentence
24 says: (Reading) "It is the responsibility of each
25 Committee member to remain constantly abreast of

1 developing Committee and Working Group proposals."

2 That's saying we have to do our work. We have
3 to be diligent in educating ourselves. I would say at
4 a minimum, Larry, if we could keep that.

5 THE FACILITATOR: Sharol, are you okay with
6 that?

7 MS. MCDADE: Well, I agree with Jason, but I
8 think that's covered under "Good Faith." So maybe
9 instead of having a whole section, you could take that
10 sentence and put it up into section (a) at the end. I
11 mean, it's all acting in good faith. It's still our
12 responsibility. I think we're just making more
13 paragraphs.

14 THE FACILITATOR: Yes, Larry?

15 MR. COYLE: I'm all for the first paragraph,
16 but, my gosh, we've already said it two or three times
17 before: consensus is consensus. If you've got a
18 reason, you have to come back -- or if you have a
19 reason for voting against something, you've got to have
20 a reason behind that. I just can't see -- that's a
21 veto, as far as I'm concerned.

22 THE FACILITATOR: I think the question is, do
23 we want to keep "Committee Member Diligence," the first
24 sentence, as a separate piece or add it to "Good
25 Faith"? What's your pleasure on that?

1 MR. COYLE: I'm with Jason on that. We're
2 putting a lot of words in here that are kind of
3 wishy-washy. I'm listening to Jack too much.

4 THE FACILITATOR: Lafe?

5 MR. HAUGEN: I recommend we just basically
6 delete the rest of that paragraph, like Jason noted,
7 and leave it as is. Let's move on.

8 THE FACILITATOR: Leave it where it is with
9 "Committee Member Diligence" and just make it a short
10 one?

11 MS. MARASCO: Leave the one statement.

12 THE FACILITATOR: Okay. Any objection to that
13 proposal to just leave it as it is but just make it a
14 one sentence, "Committee Member Diligence," first
15 sentence. Can everybody live with that?

16 FEMALE SPEAKER: I can live with that.

17 THE FACILITATOR: Yes, Carol?

18 MS. GORE: Just to clarify. I promise it'll be
19 quick. I assume this means alternatives, because this
20 language was incredibly important to get support from
21 the Alaska region to accept alternate language. And it
22 was a big issue at the last negotiated rulemaking that
23 alternatives could come in, be unfamiliar with the
24 subject matter, and stop the work of the committee.

25 So I just want to make sure that the group here

1 understands my expectation for our region is that
2 alternates would do their homework before they come to
3 this committee.

4 THE FACILITATOR: Everybody agree with that?
5 So as committee people, it's your responsibility to
6 keep your alternates informed.

7 MS. GORE: Thank you.

8 THE FACILITATOR: Okay. Any objection to (b),
9 the way it's stated? Okay. Thank you.

10 Let's move to (c), "Cooperative Communication."

11 "Committee members, Working Group
12 members, and other advisory staff are
13 strongly encouraged to discuss and
14 exchange ideas and information prior
15 to the first and all subsequent
16 meetings of the Committee with the
17 intent of exploring common positions
18 on any issues that may be considered
19 by the Working Groups and/or voted on
20 by the Committee in formal session.

21 In this way, formal Committee
22 activities and Working Groups will be
23 made more productive and less
24 controversial in nature."

25 Any comment or questions about this?

1 MS. MARASCO: Let's leave it there and just
2 move on.

3 THE FACILITATOR: Okay?

4 FEMALE SPEAKER: Sounds good.

5 THE FACILITATOR: Sounds good?

6 MALE SPEAKER: Yep.

7 THE FACILITATOR: Thumbs up. Any objections?

8 MS. MARASCO: It doesn't do a damn thing, so
9 leave it there.

10 THE FACILITATOR: Okay. Good. Thank you.

11 MR. HAUGEN: One comment. That could also be
12 taking place in the bar later over drinks.

13 THE FACILITATOR: The best place to reach
14 consensus.

15 (D) "Information."

16 "1) The Members of the Committee agree
17 to exchange information in good faith.

18 2) Members of the Committee will
19 provide information called for by
20 subparagraph (1) above in advance of
21 the meeting where such information is

22 necessary. 3) All Members of the
23 Committee agree not to divulge
24 information shared by others in
25 confidence. 4) The media release

1 spokespersons, comprised of the two
2 Co-Chairs, will provide Committee
3 communications with the media. The
4 media is welcome to attend Committee
5 meetings, but must identify and
6 display their media credentials."

7 Any comments on "Information"?

8 MS. MARASCO: It's still an issue. Co-chair is
9 still an issue.

10 THE FACILITATOR: Let's leave co-chairs alone.
11 How about the first three?

12 MR. SAWYERS: Let's leave them in until we vote
13 them out.

14 THE FACILITATOR: Just leave them in until you
15 vote it out?

16 MS. MARASCO: But we never come back, Jack.

17 THE FACILITATOR: Anything else besides the
18 co-chairs here that gives anybody any concern? So can
19 we agree on this, and we will come back and adjust
20 co-chair to whatever we agree on later when we get to
21 the co-chair section. Okay? All in favor? Any
22 disagreement or questions?

23 Karin?

24 MS. FOSTER: I keep raising my hand. I
25 apologize. (Reading) "The members of the Committee

1 agree to exchange information in good faith" and then
2 "any information that's going to be considered at a
3 meeting needs to be presented to the members in advance
4 of the meeting."

5 What kind of information are we talking about?
6 Does that mean if I bring some information forward at
7 the table during the meeting, if I haven't brought it
8 forward before the meeting -- I guess I just don't --
9 I'm not quite understanding what's intended. It seems
10 kind of broad to me. Can someone explain that? That's
11 my objection.

12 THE FACILITATOR: Can somebody explain that to
13 Karin?

14 MS. GORE: I don't think there's any intent to
15 limit the information or when it's presented, but just
16 if folks have information that's been requested and
17 it's in between meetings, that the intent be it's
18 shared when it's available.

19 I don't have any objection to what you're
20 stating. I don't think there's an intent. I think
21 it's intended to be broad, but I understand why you're
22 reading it the way you are.

23 THE FACILITATOR: Okay. Does anybody have any
24 suggestions?

25 Yes, Darlene?

1 MS. TOOLEY: Can we change "will" to "may"
2 under -- "Two Members of the Committee may provide
3 information in advance if they have it," or something,
4 so you're not required.

5 THE FACILITATOR: Or "will attempt"?

6 MR. ADAMS: Excuse me, Jan.

7 THE FACILITATOR: Yes.

8 MR. ADAMS: Karin, you weren't asking for a
9 change anywhere. You were just asking for an
10 explanation, correct?

11 MS. FOSTER: Yeah, I was laying it on the
12 table. I guess I didn't make specific, but if you want
13 me to make a specific recommendation as an alternative,
14 I can.

15 MR. ADAMS: Well, I heard her reply, and I was
16 just wondering if there was going to be a proposed
17 change or if you're okay with the explanation given?

18 MS. FOSTER: Actually, I would yield to Darlene
19 to suggest a change to respond to my concern.

20 THE FACILITATOR: So, Darlene, you wanted to
21 put "may"?

22 MS. TOOLEY: I think if we just take out the
23 word "will" and put "may," it's optional then. So it's
24 clear that you don't have to provide it in advance if
25 it just occurs to you in the moment, in the middle of

1 the discussion.

2 THE FACILITATOR: Is everybody okay with "may"
3 instead of "will"? Any opposition to that?

4 Yes, Leon?

5 MR. JACOBS: I felt also Karin was asking for a
6 definition of the information, right? What kind of
7 information are we talking about here? Is it all
8 relating to the rulemaking? It should be, I guess.

9 MS. MARASCO: This harkens back to the formula
10 committees when they were doing the runs, basically,
11 and it talked about how much money everybody was
12 getting. Everybody wanted to make sure that they got
13 that information in advance.

14 THE FACILITATOR: Oh, I see.

15 MS. MARASCO: That was a rather contentious
16 group.

17 THE FACILITATOR: Yes, Carol?

18 MS. GORE: Just to add one more comment. For
19 me, what's important are the issues that might be in
20 the parking lot and that the committee members have an
21 opportunity to digest any new issues that aren't within
22 the PIH notice today.

23 But I think good faith is enough. But I think,
24 for me, I'd want to know if there's a complicated issue
25 coming, and if I'm expected to vote on it, I'd want an

1 opportunity to see that information in advance, if it's
2 in that parking lot that we haven't defined yet.

3 So that's my only reservation. I think "may"
4 kind of responds to that, but not really.

5 THE FACILITATOR: Yes, Sandra?

6 MS. HENRIQUEZ: I just want to follow up on
7 Carol's comment. If you change the word from "will" to
8 "may," what you're really saying is that "you may
9 provide information in advance of the meeting where
10 such information is necessary."

11 So if I've got information that I think is
12 necessary for a conversation and I have it in advance,
13 I can decide whether I'm going to share it in advance
14 or not, if the word "may" is there.

15 If I decide not to share it because the word
16 "may" is there, am I acting in good faith, which is
17 required in No. 1? I think not.

18 So I would suggest that we leave the word
19 "will" if, indeed, we're going to try and really say
20 that we're acting in good faith. So if you have
21 something in advance, you ought to share it. Then it
22 also takes you off the hook about "Should I share it?
23 Should I not? With whom shall I share it? How should
24 I share it? When should I share it?"

25 So that would be the point that I would urge us

1 to leave "will" in.

2 THE FACILITATOR: Yes, Darlene?

3 MS. TOOLEY: And I think the other side of that
4 position is, you may not have the information in
5 advance. You may not get the information until you're
6 at the table, and so you haven't met the requirement to
7 give it in advance if you didn't -- you know, you may
8 not be willingly withholding it. You just may not have
9 it in advance. That was the point I thought we were
10 addressing. That's all.

11 THE FACILITATOR: Karin?

12 MS. FOSTER: I'd like to propose that No. 2 be
13 stricken and that we just go 1, 2, and 3.

14 THE FACILITATOR: Lafe?

15 MR. HAUGEN: Why?

16 MS. FOSTER: Why?

17 MR. HAUGEN: Yes. Why?

18 MS. FOSTER: Because I think that we have a
19 good faith requirement. We agree not to divulge
20 information shared in confidence. We have a media
21 release section. And No. 2, to me, just complicates
22 the process.

23 As Darlene says, do we have to have the
24 information in advance and provide it? Who do we
25 provide it to actually, is my question, too. Does that

1 mean if we have any information that's going to be
2 considered at a meeting or that we're going to ask that
3 it be considered at a meeting, do we have to send it
4 out to all of the committee members in advance so that
5 they can consider it? And how far in advance?

6 I mean, what is good faith? I think it's just
7 difficult, that section 2. And that's why I propose
8 that we not include it.

9 THE FACILITATOR: Okay. What's your feeling
10 about that?

11 Yes, Carol?

12 MS. GORE: My only concern is the parking lot.
13 So I could agree with this if we're going to deal with
14 the process of the parking lot issues, and there's a
15 commitment from this committee to do so. Because I
16 think that's got to be really important.

17 That's my only concern, Karin. Otherwise, I
18 can support your recommendation.

19 THE FACILITATOR: Any other comments? Are we
20 ready to take a vote on this? Does anybody object to
21 taking out No. 2?

22 Yes, Carol?

23 MS. GORE: I'd like to get a response to the
24 question I posed before I vote. Thank you.

25 FEMALE SPEAKER: I don't understand the

1 question.

2 MS. GORE: My question was, is there some
3 concurrence by the committee members here that we're
4 going to deal with how we share information for the
5 parking lot issues, so that we have an opportunity to
6 do homework within our regions about those parking lot
7 issues?

8 We're familiar with the issues that are in the
9 PIH notice, or at least we've made a commitment to
10 those we represent to do that, but the parking lot
11 issues are yet to be described. I don't know what they
12 are. And I want to make sure I'm able to meet my
13 commitments.

14 I want just a good faith nod of the head from
15 committee members here that there will be a process for
16 sharing information about those parking lot issues in
17 advance of having to vote on them. That's my only
18 concern.

19 THE FACILITATOR: I'm looking for nodding
20 heads.

21 Darlene?

22 MS. TOOLEY: I don't know what the mysterious
23 parking lot issues are either. I brought that to the
24 discussion because when we had the session in December
25 in Las Vegas, there were three people who stood up and

1 talked about the same issue in the regulations that
2 didn't make any sense to them, and they wanted to know
3 if the Neg-Reg committee would address it at this
4 quorum.

5 It was program income -- you know, whatever
6 that programming income calculation is. That was the
7 three comments that three different people from three
8 different parts of the country -- I think, Mark, you
9 were one of them -- brought it up and just was like,
10 "Is that going to be something that was addressed at
11 Neg-Reg?"

12 So that was the reason I thought we should have
13 the flexibility of bringing those kinds of issues to
14 the negotiated rulemaking quorum, because this is the
15 only place we can look at regs and see if they make
16 sense or not. Maybe they made sense in 1997. Maybe
17 they still make sense. I don't know.

18 So I don't know how we incorporate that. I
19 mean, there's going to be a work group, maybe a work
20 group or some group will deal with parking lot issues.
21 And they have the same responsibility to bring those
22 back with some suggestions, as any other work group for
23 any other topic.

24 So I don't know how we deal with it otherwise
25 at this point in time.

1 THE FACILITATOR: Carol?

2 MS. GORE: I'm in agreement. We have not, as a
3 committee, responded to how we're going to handle those
4 parking lot issues. I'm recognizing that and
5 acknowledging that we don't know that yet. I'm in
6 agreement. I'd like to address other issues, too.

7 I'm just looking -- not for language. I'm just
8 looking for members of the committee to say, when that
9 happens, if we have specific language, that, as much as
10 possible, we have advance notice of any language
11 changes so that we can do our homework as committee
12 members. That's all.

13 I'm not looking for language or a change in the
14 protocol. I just want a nod of the head that we're on
15 the same page. That's all. Thank you.

16 THE FACILITATOR: Yes, Judith?

17 MS. MARASCO: We've already stated in "1" that
18 the members of the committee agree to exchange
19 information in good faith. We haven't encapsulated
20 that statement. As far as I'm concerned as a committee
21 member, that's a broad statement that covers everything
22 that we do. Unless we say "just" or classify that
23 statement, I think that's a blanket statement in how
24 we're going to proceed.

25 We've decided you get to be head of parking

1 lot.

2 THE FACILITATOR: Jack?

3 MR. SAWYERS: If we set the agenda, what items
4 we agree to look at up front, then that becomes a
5 non-issue. In other words, if we have parking lot
6 issues and a whole bunch of issues, we're only going to
7 be able to do so many things.

8 So I think we need to set that agenda up front
9 and not add to it as we go along. And then that would
10 eliminate what you're saying, Karin. Then there's no
11 need to worry about advance notice because we will
12 already know those parking lot issues will be in our
13 agenda. So, consequently, that would answer that.

14 I think that we all realize that when we have
15 so many things to talk about, we're not going to talk
16 about what we discussed at the last negotiated session.
17 So if you have that on your agenda, there would be no
18 need for No. 2. I think that's what -- we have to
19 proceed that way.

20 THE FACILITATOR: Okay. Marvin?

21 MR. JONES: Carol, I'm nodding my head.

22 MR. GORE: Thank you, Marvin. That's all I
23 needed.

24 THE FACILITATOR: Okay. Good. Any other
25 discussions on point 2?

1 MS. MARASCO: Hey, we nodded.

2 THE FACILITATOR: Everybody's nodding.

3 Any further discussion on point 2? Can we
4 remove that then and vote on the rest? Okay. All in
5 favor? Any objection?

6 Okay. We'll move ahead, and we'll deal with
7 co-chairs when we get down to co-chairs.

8 (e) is "HUD Assistance to Committee Members."

9 "HUD will provide requested information
10 and technical assistance needed for the
11 work of the Committee," period.

12 Any comment? Any objection? Okay. We'll move
13 ahead.

14 (f) "Facilitators."

15 "The Committee may utilize a
16 facilitator selected pursuant to 5
17 U.S.C. sec. 566(c). The role of the
18 facilitator includes impartially
19 facilitating Committee and certain
20 Work Group discussions, assisting in
21 the development of draft agendas,
22 working to resolve any impasses that
23 may arise, preparing meeting records,
24 assisting in the location and
25 circulation of background materials

1 and materials the Committee develops,
2 and other functions the Committee
3 requests. The facilitator will take
4 no position on the issues before the
5 Committee and serves at the will of
6 the Committee."

7 Yes, Marvin?

8 MR. JONES: I think we should take out the
9 wording of the first sentence, and it would read:
10 "The Committee may utilize a facilitator," period.
11 Because if we leave that "selected pursuant to 5 U.S.C.
12 sec. 556(c)", then I'm going to ask, how come we don't
13 have 566(d), which specifies the duties of the
14 facilitator, which is chairing the meetings of the
15 committee in an impartial manner?

16 MR. SAWYERS: Do you know how slick he brought
17 that in.

18 That's great, Marvin.

19 THE FACILITATOR: Any other comments? Marvin
20 is suggesting to take out "select pursuant to 5 U.S.C.
21 sec. 566(c)."

22 Any other comments on that facilitator section?

23 Yes, Sandra?

24 MS. HENRIQUEZ: I would propose that the
25 language be, "The committee will utilize a

1 facilitator," period.

2 And then the last sentence would be that
3 "Committee members, including co-chairs" -- and I'll
4 bracket that until we resolve that issue -- "may not
5 serve as facilitators."

6 THE FACILITATOR: Okay. Did everybody hear
7 that? Are we okay with that?

8 FEMALE SPEAKER: Could you speak up a little
9 bit, Sandra? We can't hear you over here.

10 MS. HENRIQUEZ: The change would be to change
11 the "may" to "will." "The Committee will utilize the
12 facilitator," period, "as proposed" -- or facilitators,
13 sorry, period.

14 And then an additional last sentence as shown,
15 "Committee members, including co-chairs, may not serve
16 as facilitators."

17 THE FACILITATOR: Okay. I think behind
18 "facilitator," we should just put the "s" in brackets.

19 MS. HENRIQUEZ: Okay.

20 THE FACILITATOR: Okay. All right. Everybody
21 comfortable with that? Any objections? It passes.
22 Thank you.

23 Okay. "Co-Chairs and Regional and Hud
24 Representatives." Let's get to it.

25 "Six (6) regional representatives, one

1 each from the Eastern/Woodlands,
2 Northern Plains, Southern Plains,
3 Southwest, Northwest and Alaska
4 Regions shall be selected,
5 respectively, by Committee Members
6 from each such region. The role of
7 the regional representatives includes
8 developing draft agendas with the PFO
9 and facilitator, chairing Work Group
10 discussions, working to resolve any
11 impasses that may arise, reviewing
12 meeting summaries, assisting in the
13 location and circulation of the
14 background materials and materials the
15 Committee develops, and other
16 functions the Committee requests. The
17 Regional Representatives will
18 represent positions of the full
19 Committee and serve at the will of the
20 Committee Members from the region that
21 the Regional Representatives
22 represent. The Regional
23 Representatives shall designate two
24 tribal co-chairs to chair Committee
25 meetings. The Regional Representatives

1 and/or other representatives of the
2 Committee may be authorized by the
3 Committee to negotiate Tribal
4 positions with the PFO and shall
5 report the results of any negotiations
6 to the full Committee for further
7 action and/or ratification. Meetings
8 of the Regional Representatives shall
9 be open to the Committee."

10 Okay. Marvin?

11 MR. JONES: I think all that language should be
12 wiped out, including the title. And instead have
13 "co-chairs" and have wording as to how they are
14 selected and what their duties might be.

15 THE FACILITATOR: Any responses to Marvin's
16 proposal?

17 Yes, Mark?

18 MR. BUTTERFIELD: I'd just like to know why.
19 If you say an objection, you're supposed to say why you
20 object.

21 MR. JONES: My objection is that each committee
22 member was selected. We could just as easily have
23 large tribes, small tribes, medium tribes as
24 representatives. We have regional representatives.
25 I don't think either one is necessary for our work.

1 Which doesn't mean to say that if a region
2 wants a representative, they can choose to have a
3 representative and say, "This person or these people
4 are going to be representing the four of us" or however
5 many "for these particular purposes." There's no issue
6 with that. But this is giving a subgroup authority
7 over the committee itself.

8 THE FACILITATOR: Jason?

9 MR. ADAMS: I was just going to ask Marvin.
10 Earlier on in a previous section, we talked about
11 "chair." That whole section talks about co-chairs.
12 Are you bringing that language into the discussion at
13 this time or are you bringing -- we've had no language
14 on co-chairs yet.

15 MR. JONES: I don't have any specific -- I'm
16 just saying that this is all related to regional
17 representatives and that we can replace it with some
18 appropriate co-chair language at this point.

19 MR. ADAMS: Okay.

20 THE FACILITATOR: Yes, Marguerite?

21 MS. BECENTI: Can you remind me how many
22 regional reps we have already?

23 THE FACILITATOR: I think we have -- do we have
24 four or three? Four? Four and then one region chose
25 not to have a rep. Do we have five? Okay. I'm sorry.

1 There's five regional reps and one region chose not to
2 pick a rep at this time but just use whoever they
3 wanted to use, who was most appropriate for a
4 particular task.

5 Yes, Darlene?

6 MS. TOOLEY: We've carefully deleted every
7 reference to anything the regional representative would
8 be called upon to do throughout this whole document.
9 So I think probably Marvin's right. We must have
10 decided we don't need them if we've taken out the
11 reference to them and substituted other ways to deal
12 with whatever the issue was.

13 THE FACILITATOR: Yes, Jack?

14 MR. SAWYERS: I don't necessarily disagree with
15 how you choose your representative, but I think that
16 each section of the United States should -- each area
17 should be represented. If it's no more than setting
18 agendas and those kinds of things and working with HUD
19 on those logistic things, I think how a region does
20 that is up to them.

21 But I still think that this is a really good
22 way to represent the entire country and all of the
23 tribes. So I like the idea of having the
24 representatives.

25 I don't think it says here how you elect them

1 or if you have them part time or we have co- or
2 whatever in a region. But I do believe that that's a
3 really good idea because HUD doesn't want to deal with
4 the whole committee on every point.

5 And as we go along, there's going to be a lot
6 of selection. It would be good to sit down with those
7 co-chairs, or whatever you call them, the regional
8 reps, and put the agendas together. It's worked other
9 times, and it would work now.

10 But I don't think that because one area decides
11 not to have one that -- I think they could work
12 something else out. I just think that it would be good
13 to have each region have some kind of a representative.

14 THE FACILITATOR: Marvin, do you want to talk?

15 MARVIN JONES: Yes.

16 I'll agree with that as long as the five
17 regions get to have one representative, and our region
18 gets to have four representatives then.

19 MR. SAWYERS: That's the way it's been ever
20 since we've been here. I don't want it to change,
21 Marvin.

22 THE FACILITATOR: Rusty?

23 MR. SOSSAMON: In this section, can I propose
24 some language, and then we can kind of go from there
25 and consider it, please?

1 THE FACILITATOR: Okay. Can you read it first
2 so we can just get the sense of it.

3 MR. SOSSAMON: Excuse me?

4 THE FACILITATOR: Just read the whole thing out
5 first so we can hear the flow of it.

6 MR. SOSSAMON: Okay. (Reading) "Tribal
7 Co-Chairs and HUD Representatives. (a) Tribal
8 co-chairs shall be selected, respectively, by Committee
9 members. The role of tribal co-chairs include
10 developing draft agendas with the PFO and facilitator,
11 chairing work committee discussions, working to resolve
12 any impasse that may arise, reviewing committee
13 summaries, assisting in the location and circulation of
14 background material and materials the Committee
15 develops, and other functions the Committee requests.

16 "The Tribal co-chairs will represent positions
17 of the full committee and serve at the will of the
18 Committee. Members and/or other representatives of the
19 Committee may be authorized by the Committee to
20 negotiate -- or the Tribal co-chairs and/or other
21 representatives of the Committee may be authorized by
22 the Committee to negotiate tribal positions with the
23 PFO and shall report the result of any negotiations to
24 the full committee for further action and/or
25 ratification. Meetings of the Tribal co-chairs shall

1 be open to the Committee."

2 THE FACILITATOR: Would you like to see that up
3 on the screen?

4 MS. MARASCO: No, we don't want to see it on
5 the screen.

6 MS. McDADE: Not to take away from what you're
7 saying, Rusty, but I thought there was already a
8 proposal that Marvin had to object to any of the
9 language. And now you're going to propose a new one?
10 Are we going to vote yes or no on Marvin's?

11 THE FACILITATOR: No, Marvin -- that wasn't his
12 proposal. Marvin's proposal was he wanted to strike
13 this and come up with something simple that dealt with
14 co-chairs and their functions.

15 MS. McDADE: Was that Rusty's --

16 THE FACILITATOR: That's what Rusty was trying
17 to do.

18 MS. McDADE: Okay. I just wanted to make sure.

19 THE FACILITATOR: So we'll take a few minutes
20 and let Rusty help get that typed up. Do you guys want
21 to take five minutes?

22 (Recess from 2:56 p.m. to 3:08 p.m.)

23 THE FACILITATOR: Let's try to incorporate the
24 concerns that Marvin raised about co-chairs. Let's
25 take a look at that and see if we can work with this.

1 For those of you way in the back, I'll read it.

2 Tribal co-chairs shall be selected
3 by committee members. The role of the
4 tribal co-chairs includes developing
5 draft agendas with the PFO and
6 facilitator, chairing committee
7 discussions, working to resolve any
8 impasses that may arise, reviewing
9 meeting summaries, assisting in the
10 location and circulation of background
11 materials the committee develops, and
12 other functions the committee
13 requests. The tribal co-chairs will
14 represent positions of the full
15 committee and serve at the will of the
16 committee members. The tribal
17 co-chairs and/or other representatives
18 of the committee may be authorized by
19 the committee to negotiate tribal
20 positions with the PFO and shall
21 report the results of any negotiations
22 to the full committee for further
23 action and/or ratification. The
24 meetings of the tribal co-chairs shall
25 be open to the committee.

1 Jason?

2 MR. ADAMS: Ever since I've seen this on the
3 screen, I've been trying to figure it out, and I can't
4 recall when we had some of this work done previous to
5 the meeting here through NAIHC, what the gist was of
6 the one sentence that talks about the tribal co-chairs
7 and other representatives of the community may be
8 authorized by the committee to negotiate tribal
9 positions with the PFO.

10 I don't recall why we included that. I
11 really have concern with that statement being in there
12 for the mere fact that we are then delegating our
13 responsibility to a smaller group. I don't know if
14 John or Dave or Jim or somebody that was part of that
15 committee that drafted this original language can
16 remember what the reasoning was for that statement.
17 But that statement concerns me.

18 THE FACILITATOR: Would one of you guys like to
19 respond to that one, that concern or why it's in there?

20 MR. SAWYERS: I would like to yield my time to
21 Dave Heisterkamp.

22 THE FACILITATOR: You need a microphone. Just
23 a minute.

24 MR. HEISTERKAMP: I think that dates back to
25 the very first committee. There was a need at the end

1 when a critical issue arose as to whether the money was
2 going to be block granted in a lump sum or in some
3 other fashion. And it literally was raised in the last
4 meeting or two of the last committee. And the only way
5 to deal with it was there was a group of, I think
6 depending on what you remember, five or eight people
7 from the committee who were asked to go meet with
8 Jackie Johnson and a smaller group of HUD
9 representatives to bring a proposal back to the
10 committee to get some agreement on whether this
11 particular slate of items contains any issues that
12 might end up like this as unknown. But if you're
13 looking for the history, I think that was a safety
14 mechanism used since the first Neg-Reg.

15 THE FACILITATOR: Okay. Thank you.

16 MR. ADAMS: Then in light of that, I suggest
17 that that be struck.

18 THE FACILITATOR: Jason is suggesting that we
19 strike that line, the tribal co-chairs and/or other
20 representatives of the committee may be authorized by
21 the committee to negotiate tribal positions with the
22 PFO and shall report the results of any negotiations to
23 the full committee for further action and/or
24 ratification.

25 How do you feel about that? Would you like to

1 have it stuck? All in favor of having that struck?

2 Anybody opposed to having that struck? Okay.

3 Can you take that sentence out, please.

4 Any other comments?

5 MS. HENRIQUEZ: In the interests of full
6 disclosure, since I am the PFO, I might not be the one
7 that will be developing draft agendas. It might be
8 Rodger. I just want people to understand that. I will
9 see them, but I might not be actually developing them.

10 THE FACILITATOR: Can we say HUD?

11 MS. HENRIQUEZ: No. The language is fine. I
12 just want people to understand that it may not be me
13 directly.

14 THE FACILITATOR: Okay. Is everybody okay with
15 that? Any other comments?

16 FEMALE SPEAKER: And what is the number implied
17 with co-chairs? On the handout in front of us, it has
18 six representatives. What is the number implied for
19 representatives and co-chairs?

20 THE FACILITATOR: Can somebody answer that
21 question?

22 Jack.

23 MR. SAWYERS: In the past we've had two
24 co-chairs. And then we have had regional reps or the
25 regional chairs, but two co-chairs. The reason they

1 talk about two is because if you have an issue with
2 your chair, if you have an issue, you can turn it over
3 to your other chairman. And you can express your issue
4 without everybody thinking that you have a preference,
5 and you're going to push it through your chairmanship.
6 And so that is the reason for two.

7 THE FACILITATOR: Thank you.

8 MS. MARASCO: I'm really uncomfortable with
9 this whole thing. I would like to strike from the
10 third line where it says facilitator and just include
11 developing draft agendas with the PFO and her designee
12 and facilitator, period. I would like to strike the
13 rest of the paragraph. I don't want them to have the
14 authority that they have had in the past. It has not
15 served us well, in my opinion.

16 THE FACILITATOR: So what part do you want
17 struck, Judith?

18 MS. MARASCO: Everything from facilitator in
19 the third line down.

20 THE FACILITATOR: Everything from facilitator
21 in the third line down.

22 MS. MARASCO: (Indiscernible -- speaker not
23 using microphone.)

24 THE FACILITATOR: Okay.

25 MS. MCDADE: For clarification purposes, I

1 agree with Judith. She has had her experience in the
2 committee in the past, and I believe that is what
3 Marvin was saying initially. But can you tell me a
4 little bit about what your role as a facilitator is?
5 Because some of this stuff and some of the roles that
6 I've seen as some of the definitions come forth is more
7 facilitation, not necessarily what a chair would do.

8 So that's -- it just doesn't -- there is no
9 balance between what the facilitator is supposed to be
10 doing and the co-chairs are doing. You're getting into
11 two different areas and trying to combine one task,
12 which definitely won't work.

13 THE FACILITATOR: I had earlier put up a couple
14 of points on the board of examples of what co-chairs
15 have done in other Neg-Regs that I have been involved
16 in. And those are the things that I didn't think the
17 facilitator should do.

18 MS. MCDADE: Well, can I ask for clarification?
19 Who put the agenda together for the first meeting and
20 the second meeting?

21 THE FACILITATOR: HUD in consultation with us.

22 MS. MCDADE: So the only thing we would be
23 doing is adding the third party, which is the tribal
24 representation, right?

25 THE FACILITATOR: Yeah.

1 MS. MCDADE: It seems to be working so far.

2 THE FACILITATOR: The other examples of
3 responsibility that I've seen for co-chairs in the past
4 was as a conduit for tribal concerns and facilitator
5 for tribal representatives. So rather than have us
6 deal with 25 different tribal representatives and going
7 around asking everybody their opinions about stuff, it
8 was just helpful to have someone who's kind of central
9 who could work that role.

10 Yes, Judith.

11 MS. MARASCO: I think you need to earn your
12 money and deal with all of us.

13 THE FACILITATOR: As much as we love all of you
14 equally.

15 Marguarite.

16 MS. BECENTI: I like Judith's suggestion, but
17 if we could add that last sentence, meetings shall be
18 open to the committee members.

19 THE FACILITATOR: Oh, the last sentence?

20 Is that all right, Judith?

21 MS. MARASCO: That is fine.

22 THE FACILITATOR: Okay. We'll add it to
23 Proposal No. 2.

24 Let's add the last sentence. Thank you.

25 MS. MCDADE: I need clarification. Again, it

1 sounds to me like we're getting caught up in the title.

2 And for the limited role that we are giving the tribal
3 co-chairs, or whatever you want to call them, wouldn't
4 it make more sense to call them a liaison, then, versus
5 giving them a title?

6 MS. MARASCO: Somebody has to sign the
7 document.

8 MS. MCDADE: Well, a tribal liaison can sign
9 the document. It seems redundant.

10 THE FACILITATOR: Jack.

11 MR. SAWYERS: I object to taking out the last
12 portion of the co-chairs' duty. I think the duty of
13 the co-chair should be to run the meetings, and not
14 you. I think there are some real issues here. I think
15 one of them is history. The background of where we
16 have been and the background of NAHASDA and our
17 association with each other, I truly believe that
18 co-chairs should run the meetings. I think that they
19 should do all of the other things also.

20 But if you're asking for a vote to limit the
21 co-chairs and take all of that out, I object to it. I
22 think they have -- we have had the same experience
23 differently. We went to different schools together. I
24 think the co-chair system works very well. And so I
25 object to taking that out.

1 THE FACILITATOR: You want to leave in the
2 language about chairing meetings?

3 MR. SAWYERS: That's right.

4 THE FACILITATOR: Co-chairs chair meetings.
5 Okay. So we have different opinions about that.

6 Darlene?

7 MS. TOOLEY: I think we should add the number
8 of co-chairs that we're talking about somewhere in the
9 thing here so that we understand. Is it two tribal
10 co-chairs?

11 MS. MARASCO: 24.

12 MS. TOOLEY: Do I hear 12? Oh, 25. Whatever
13 it is, we should designate the number in there.

14 MS. MARASCO: Make it 25, and I'll agree, Jack.
15 You're not going to get me to agree.

16 MS. MCDADE: I have a question. Again, it
17 seems like we're getting caught up in the title. Maybe
18 if you put the agenda together and limit what you have
19 already identified with what you said that the chairs
20 do, maybe we can include it on the agenda at the last
21 part of the day with all 25, consensus or not, for the
22 next agenda. Again, we're getting caught up on titles,
23 and we shouldn't be.

24 MS. TOOLEY: Let's just say it out loud.

25 THE FACILITATOR: Yeah. The issue is that

1 several folks have experiences that they don't want to
2 repeat with co-chairs. Other folks have had very
3 positive experiences working with co-chairs. So I
4 think this is a clear honest difference of opinion
5 about the role you want co-chairs to play in this
6 committee.

7 Yes, Mark.

8 MR. BUTTERFIELD: I agree to some extent with
9 Jack. I think there is a need for a co-chair or a
10 chair. I think the way it is written now under
11 Proposal No. 2, the co-chair does virtually nothing.
12 It doesn't add anything to the meeting. And I think
13 there are points which have already come up where it
14 would be helpful to guide the discussion a little bit
15 through an impasse. I have seen several people who are
16 currently on the committee that have the ability to do
17 that. But just to say, "No, I won't agree with you; we
18 need 25," is not proposing a very good solution.

19 MS. MARASCO: Come on, Marvin.

20 THE FACILITATOR: Yes, Karin.

21 MS. FOSTER: I have a question. I'm not sure
22 what that next-to-the-last sentence means. Tribal
23 co-chairs will represent positions of the full
24 committee. Represent positions of the full committee
25 to whom? I'm not sure I understand that. If I need to

1 make an alternate proposal, if I don't understand it,
2 that's the reason for striking it. But then I might
3 run afoul of the good-faith. It doesn't say who they
4 will represent positions to. So rather than to
5 delegate to the tribal co-chairs to represent the full
6 committee in any way, I would suggest that it be
7 stricken.

8 MR. ADAMS: At least for my clarification on
9 that point, Karin, is that in the good-faith clause for
10 the co-chairs? As co-chairs, they will represent
11 everyone. They won't represent just themselves or
12 their regions.

13 MS. FOSTER: In what context would they need to
14 represent the full committee? Is that with HUD?

15 MR. ADAMS: With HUD during the meetings as
16 business is conducted. I think Judith's heartburn with
17 the past is that we've had people that couldn't
18 separate themselves from being a co-chair and
19 representing their own issues.

20 That's why I was hoping we'd have enough
21 description in here that it would define that. And I
22 am not sure that even A does it well enough. I was
23 hoping if we are going to have co-chairs that we would
24 have it fully described. I think someone mentioned
25 earlier, in history we have had co-chairs that we have

1 had to replace, if my memory serves me correctly,
2 because they could not do that. It is not a perfect
3 system. But I think we have to have somebody fill the
4 role. And the role needs to be better defined.

5 THE FACILITATOR: Karin?

6 MS. FOSTER: I've heard reference to
7 difficulties people have had in the past with the
8 chairman or co-chairman system. Can someone describe
9 for me what it was that a chair offered in the past,
10 why there needs to be a chair? Tell me something
11 positive about what a chair did that we're lacking
12 right here. I am not sure I see it. I see us working
13 through impasses. I am not sure I see the benefits.

14 MR. ADAMS: From my experience in the past, if
15 we don't have somebody, then HUD makes all of the
16 decisions. I don't think that is necessarily a bad
17 thing, but I think we all deserve to have somebody --
18 we deserve to have somebody to carry our banner, so to
19 speak. I mean, that's the necessity, at least in my
20 opinion, of having co-chairs.

21 THE FACILITATOR: Jack.

22 MR. SAWYERS: I don't want to beat the horse to
23 death, but I really do believe that one of the positive
24 things that you have with this group is that we have a
25 common goal that other folks do not have. We

1 understand each other's situation. We also understand
2 that each tribe has their own area that they feel
3 pretty sacred about. And I think that, as a member of
4 this committee, that a chairman can guide this work a
5 lot better than -- I think it's better within the
6 group.

7 I think we have -- first of all, we have a
8 history. We have knowledge of NAHASDA. We have a
9 background of our association with HUD. We have a lot
10 of things that, as good as you are, you don't have.
11 And I'm sorry about that. But I just think we have a
12 lot more to offer with the co-chair than you would.

13 Also, it keeps you employed, because we have
14 fired quite a few folks in the same situation, if you
15 will remember. So I'm just saying that I think that
16 it's good for you, and I think it's good for us.

17 THE FACILITATOR: Sharol?

18 MS. MCDADE: Again, I'm fine with
19 Proposal No. 2. I don't think it takes away from the
20 body. It's right where it needs to be. I understand
21 where Jack is coming from. I don't know who the past
22 committee chairs were.

23 Jack, were you one of them?

24 MR. SAWYERS: (Indiscernible -- speaker not
25 using microphone.)

1 MS. MCDADE: But I don't get any indication
2 from the Secretary or from Rodger that they are going
3 to be here negotiating in bad faith. I haven't seen it
4 thus far in my two sessions. But I would like to move
5 on Proposal No. 2.

6 MS. MARASCO: Let me quote you, Jack. "When
7 pigs don't fly," that's what you used to tell us -- or
8 when pigs fly or something. Every time we would bring
9 an issue up, you would say "when pigs can fly."

10 MR. SAWYERS: That's what you think about
11 co-chairs.

12 THE FACILITATOR: There are some strong
13 opinions about this. Would it be beneficial to have a
14 tribal caucus to discuss this in more detail without
15 people listening in?

16 MS. MARASCO: No. We are all right here.

17 MR. SAWYERS: A wrestling match perhaps.

18 MS. TOOLEY: (Indiscernible -- speaker not
19 using microphone.)

20 MS. MARASCO: There is a request to vote on
21 Proposal 2. Can we do that?

22 THE FACILITATOR: We've already heard an
23 objection to it.

24 MS. MARASCO: Who objected?

25 THE FACILITATOR: There were several objections

1 to Proposal 2, I believe. Jason indicated he would not
2 vote on it.

3 MR. SAWYERS: Yeah. You mean Proposal 2
4 instead of A. Is that what you're saying?

5 THE FACILITATOR: Proposal No. 2, I said --
6 Judith was asking me to call a vote on it, but I know
7 there are people who have already objected to it.

8 You had objected to it.

9 MR. JONES: Shouldn't we hear the objection of
10 all of these people who objected to it, the reason and
11 their alternative?

12 MS. MARASCO: That's true.

13 MR. JONES: I was trying to be facetious,
14 because I don't want to hear them.

15 MS. MCDADE: Besides Jack, who else is opposing
16 it? Do they have an offer?

17 THE FACILITATOR: Who cannot agree with
18 Proposal No. 2? Can I see your hands? We have a
19 number of people. And if it hasn't been said yet about
20 why you feel the necessity for co-chairs to play that
21 role, can anybody add to that? Can anybody add to what
22 has been said?

23 Yes, Jack.

24 MR. SAWYERS: You haven't been listening. I
25 think we need co-chairs because I think -- again, I

1 think we understand the process. We know the history.

2 And we have enough leadership here that, even though
3 you have your own agenda perhaps, if you do co-chairs,
4 you will have two people. You could excuse yourself,
5 and the other person can take over.

6 And I truly believe that we will get a better
7 product, because I think there is a whole bunch of
8 things that have gone into today, a lot of history.
9 And I don't think -- I think only the members of the
10 committee understand the history. Whether you have
11 served before or this is your first time, you still
12 have the history of NAHASDA. You still have the
13 association with HUD and all of those things that, like
14 I said before, that they do not have.

15 So consequently, if you're asking for a reason,
16 that's it. And I think there should be a chair. You
17 are probably -- you think we can have co-chairs that
18 don't do anything.

19 THE FACILITATOR: Yes, Judith.

20 MS. MARASCO: You know, I don't disagree with
21 what you are saying, Jack, but I interpreted it
22 differently. In the past, people who have co-chaired
23 have used their position in adverse effect to the
24 committee as a whole. That's what I've seen. So I'm
25 saying you're correct in what you're saying. It's how

1 they are applying it that I am disagreeing with.

2 When they apply their position and develop a
3 relationship with HUD, it always goes back to bite the
4 rest of us. And that is what I have an issue with. So
5 what you're saying is correct. But you and I are
6 looking at the application from two different sets of
7 eyes. My tribe was on the losing end of those
8 situations.

9 So I am saying if we are all selected to be at
10 this committee level, then we need to participate
11 fully, and delegating our responsibility to one or two
12 individuals that are clearly here representing their
13 tribal views is not in my best interests or in the best
14 interests of the Nation.

15 Now, I am here, and I'm ready to perform my
16 duties. And I can act, and I can facilitate, and I can
17 decide. And I don't need you appointing somebody to
18 say the words for me. I just don't see a reason for
19 co-chairs that are going to act in our place as the
20 committee.

21 So if you want to appoint co-chairs, then you
22 appoint every one of us, because then we have equal
23 standing as Neg-Reg committee members. And if you put
24 somebody else above me in this position, then I'm going
25 to object. Because it has not worked for the benefit

1 of all tribes in the past. And that is my history, and
2 that is my knowledge. I'm not objecting to what you
3 say. But my interpretation of what has happened in the
4 past is that process has worked against us.

5 MR. BUTTERFIELD: I appreciate Judith's
6 comment. It seems to me there is a difference between
7 procedure and substance. I see the chairs being
8 instrumental for the procedural work of the committee.
9 And I think that what I heard her say is, I don't like
10 them representing the substance of what the committee
11 says to the PFO and not to take any sort of substantive
12 position in direct negotiation.

13 And I'm okay with that, but I do think that the
14 chair has to perform some sort of procedural role in
15 moving the committee's business forward here when it
16 gets to a point of contention.

17 And so I appreciate your thinking, and with
18 that understanding, I agree. But I still think there
19 should be someone to facilitate the actual business
20 here, if not representing the substance of what the
21 committee wants to negotiate with the PFO.

22 MS. MARASCO: Okay. So I understand what
23 you're saying. But let me tell you historically what's
24 happened. If we've had an adverse opinion to the
25 co-chair, what they've done in the past is simply

1 ignored your request to be heard. And that was
2 constant and continual.

3 That is why I object to having a co-chair that
4 has that kind of authority. Because in the past, if
5 they knew we were objecting to something that was on
6 the floor, they simply would not call on us. They
7 would not hear what we had to say. And they would not
8 take into consideration any of our concerns.

9 And that is what happens when it gets down to
10 the nitty gritty. They shut you out of the system.
11 And I don't want to even allow them to have a door to
12 do that this go-around.

13 THE FACILITATOR: Sharol.

14 MS. MCDADE: Okay. I'm fine with
15 Proposal No. 2. But I still think we're getting
16 caught up in the title. If we're only going to allow
17 the co-chairs to work on the agenda and have minimal
18 duties, then a liaison is what we're looking for, not
19 someone to oversee the meeting. Because, again, we're
20 combining duties. The facilitators are here to get us
21 through the contentious parts. They are the neutral
22 party. That's my understanding of what a facilitator
23 does.

24 So if we allow a chair or co-chair to come
25 forth and facilitate these meetings, then the role

1 needs to be more clearly defined. That is not what
2 we're trying to do here. That is not my understanding
3 of what the co-chair is, based on the bullet points
4 that you presented and some of the discussion.

5 So if all we're trying to do is have a liaison
6 to work with HUD and work with the facilitators to
7 establish an agenda and to establish what we're going
8 to do, otherwise we need to get into true Robert's
9 Rules or whatever you want to do. And I don't think
10 that's what we're trying to do. Am I missing it?
11 We're getting caught up on title again. It just needs
12 to be a liaison.

13 MS. MARASCO: It's not title; it's power. It's
14 just like when you have a maintenance man, and you make
15 one of them the supervisor. All of a sudden, they
16 don't think they have to work. We are all here at the
17 same level. Let's keep it that way. Let's keep a
18 level playing field.

19 MS. MCDADE: That's why I'm saying, let's go
20 with Proposal No. 2 unless there's something else
21 that's an alternative.

22 MR. JONES: I want to ask a procedural
23 question. The only way that we can have co-chairs or
24 whatever you want to call it, is by saying that we're
25 going to have co-chairs. So the presumption is that we

1 won't have them. Is that correct? To clarify, only by
2 consensus can we include something in here, and there
3 is no presumption that there are co-chairs. So we will
4 have to positively put in the protocols that there will
5 be co-chairs. Is that correct?

6 MS. MARASCO: That is correct.

7 MS. MCDADE: We took the language out.

8 MR. SAWYERS: Just the opposite. You have to
9 take co-chairs out. Co-chairs are listed throughout
10 this whole process. You have to take co-chairs out,
11 not vote to put them in.

12 MS. MARASCO: No.

13 MR. SAWYERS: Would it help if, since the
14 co-chairs would serve at the will of the committee,
15 instead of representing a position or any of those
16 kinds of things, I think we've got -- I don't think
17 we're going to get consensus on this item. But I think
18 we have co-chairs, and we have had them all of the way
19 through. And I don't think that you have to have
20 consensus to have co-chairs.

21 THE FACILITATOR: Jason. You pass?

22 Let's get back to Marvin.

23 MR. JONES: I think except for maybe one or two
24 instances, every time a regional representative for the
25 co-chairs came up, we deferred those discussions except

1 for one or two times, I think, until we got to this
2 particular discussion. So it's not throughout that the
3 co-chairs were agreed to, if I recall correctly.

4 THE FACILITATOR: Yeah. I think that's the way
5 it happened.

6 MS. MARASCO: I just want to follow Marvin's
7 train of thought. Forgive me. You can't force us into
8 having co-chairs. We're going by the draft. But
9 unless we approve the language that says we want
10 co-chairs, there won't be any, Jack. We're looking at
11 this document that NAIHC or whoever drafted, and we're
12 using that as a template. But Marvin is right. We've
13 taken that out of the entire document as we have sifted
14 through. In order to get it in, you're going to have
15 to get consensus on it.

16 THE FACILITATOR: Larry has a point.

17 MR. COYLE: I am all for co-chairs. However,
18 can't we set it up so that we have a facilitator maybe
19 open meetings with the co-chairs and then turn it over
20 to facilitating the whole meeting? And we can use the
21 co-chairs strictly for certification or a
22 non-certified way and still be completely involved with
23 the committee here, and the facilitators do all the
24 work. That way, Marvin won't knock me down like he did
25 the first shot.

1 THE FACILITATOR: Carol, do you have a comment?

2 MS. GORE: I have to admit that I have never
3 worked with a group this size that didn't have a chair.
4 But that's a different idea for me. At the same time,
5 in the spirit of trying to move this forward, I would
6 say if a co-chair has a why-bother job description,
7 then why bother? Let's just strike it.

8 If we can't -- if this is an impasse for the
9 committee, we need to get on about our work. If the
10 committee does not want co-chairs -- and from what I
11 can tell, this is pretty divided. I personally think
12 there is a job for a chair, but maybe we will figure
13 that out as we go along.

14 But I'm not in favor of language that is why
15 bother. It makes me feel very bad about the leadership
16 of this committee. I don't want language that means
17 nothing in the protocol. Thank you.

18 THE FACILITATOR: Mark?

19 MR. BUTTERFIELD: I think that what I heard
20 from Judith was a concern about majoritarian
21 oppression. I think the point -- if the co-chairs
22 start to act outside of that procedural safeguarding
23 role, that's why I believe there is language in there
24 subject to the will of the majority or subject to the
25 will of the committee members, with the idea that some

1 mechanism could be plugged in that if they feel a
2 particular viewpoint is being ignored by the existing
3 co-chair, that they have a procedural way of breaking
4 that and not being ignored.

5 So the idea of good faith, as I think what was
6 breached in the past, if I understand your concern
7 correctly, and that is not supposed to occur under this
8 protocol. So I think there could be a way to give the
9 minority a procedural protection and still move on with
10 the business of the committee.

11 So I would propose something along those lines
12 that, subject to the will of the committee members, the
13 co-chair can be dismissed if they abuse their
14 authority.

15 THE FACILITATOR: Leon?

16 MR. JACOBS: I wonder if we put some language
17 in that says if the need arises for a co-chair, the
18 tribal co-chair should be -- may be selected by the
19 committee. And it would be a time frame for that
20 particular meeting or what have you rather than an
21 ongoing appointment.

22 THE FACILITATOR: Any feedback on Leon's
23 suggestion?

24 MS. MCDADE: I'm sorry, Leon. I didn't get to
25 hear your proposal. Can you please repeat it?

1 MR. JACOBS: I was just saying that if we put
2 language in that says if the need arises for a
3 co-chair, the co-chair would be selected by the
4 committee for that particular meeting that we are
5 conducting. It has a time frame and so forth. And if
6 something comes up tomorrow, and you need a co-chair,
7 then you would appoint one. That way everybody is
8 possibly going to be selected.

9 MS. MCDADE: Other than some of the bullet
10 points that were brought up and what the Secretary had
11 indicated about the signature on the charter and the
12 protocols, are there any other duties that the chair
13 would do? They are not running the meeting or anything
14 like that. Again, I just want full clarification
15 before I say yes or no, because at this point, I don't
16 think we need one.

17 MR. JACOBS: Well, on Thursday when we start to
18 leave, we can appoint somebody to work on the agenda
19 for the next meeting and so forth, rather than an
20 ongoing appointment.

21 THE FACILITATOR: I just got another request
22 for a tribal caucus. Would you like to take one, or
23 would you like to continue the discussion?

24 MS. MCDADE: I think that's a good idea. Maybe
25 we can get some fresh ideas.

1 THE FACILITATOR: Last point, Jack.

2 MR. SAWYERS: What if we say -- it's not
3 exactly what I want, but co-chairs will not run the
4 meetings, but they will serve the will of the
5 committee. The reason I said that is because that is a
6 real compromise for me.

7 MS. MARASCO: That is a compromise for Jack.
8 Add that to 2?

9 THE FACILITATOR: Add that to 2.

10 MS. MARASCO: You've got a deal, Jack.

11 THE FACILITATOR: Say it again, please. Read
12 it once more.

13 MR. SAWYERS: I was talking about the duties.
14 It says that co-chairs will not run the meetings, but
15 they will serve the will of the committee.

16 THE FACILITATOR: And add that to
17 Proposal No. 2?

18 MR. SAWYERS: But give it a little more finesse
19 than I've given it, but that's the idea.

20 MS. MCDADE: Can we add Jack's proposed
21 language and then do the regional caucus?

22 THE FACILITATOR: Do you want it at the end of
23 No. 2 or the beginning of No. 2, Jack?

24 MR. SAWYERS: It would be at the end of 2,
25 right?

1 THE FACILITATOR: Add it to the end of No. 2.
2 How long of a caucus do you want?
3 MS. MARASCO: You can't change your mind, Jack.
4 MR. SAWYERS: I think we better have a caucus.
5 THE FACILITATOR: We will reconvene and check
6 with you guys at 4:00.
7 (Recess from 3:37 p.m. until 4:19 p.m.)
8 THE FACILITATOR: Can someone report on the
9 results of your meeting?
10 MR. HAUGEN: Jack, we all decided that we're
11 going to go with A, co-chairs up there as spelled out.
12 And we want to get moving.
13 FEMALE SPEAKER: Are we going to take a vote?
14 THE FACILITATOR: Okay. Other comments? Any
15 opposition?
16 There is one small thing that we have to raise.
17 That is the 3(c) and (d), which we parked down here,
18 but we have not dealt with. Let's quickly see if we
19 can run through that. Or has that been dealt with?
20 Rusty?
21 MR. SOSSAMON: Yeah. On this last one, now I
22 would like to say it for the record to go in the
23 transcript. I am not opposing this. Okay? I want to
24 make that distinction. Thank you.
25 MR. JONES: I hate to even bring this up, but

1 we did have at least some discussion on the regional
2 representatives, and this language does not include
3 that. And I thought that we were having some people
4 who were wanting to include that back in, in some way.
5 So if that's not the case, then that's great.

6 THE FACILITATOR: Yes, Jason?

7 MR. ADAMS: I think you just mentioned that we
8 are moving to (c) and (d). Did we eliminate (b), PFO
9 and HUD representatives?

10 THE FACILITATOR: I was looking under
11 decision-making. We were doing decision-making. We
12 took (c) and (d) and said we would move them down to
13 talk about them in this last section.

14 MR. ADAMS: I am working off of this draft that
15 was put on my book this morning. And it has the latest
16 updates. And (c) and (d) were moved to the bottom here
17 in this last section. But there is a (b) also.

18 THE FACILITATOR: Oh, I see.

19 MR. ADAMS: PFO and HUD representatives. Can I
20 emphasize that this is the last section.

21 THE FACILITATOR: So now we are at the very
22 last two sections, PFO and HUD representative, and then
23 chair and appeal of parliamentary rulings. Is that
24 where we are? Did we approve PFO and HUD already?

25 Yes, Sandra?

1 MS. HENRIQUEZ: I just have a point of
2 clarification I think on (b). Maybe it's a typo. When
3 it refers here to a HUD representative, representative
4 is capitalized. So does that mean that's Rodger? I
5 mean, in other places, like on working groups, it talks
6 about the work groups will have a HUD representative,
7 lowercase R. I just don't want us to get confused as
8 to the definition. And I just want clarification as
9 people understand it, if there is a difference, what is
10 the difference?

11 THE FACILITATOR: Are you saying it should be
12 lowercase R?

13 MS. HENRIQUEZ: I don't know. It says -- this
14 suggests to me that with a capital R that it is
15 intended to be a specific person. And it could be my
16 designee. It could be the HUD representative,
17 capital R. And that would be fine. In the working
18 group language, it is HUD representative with a
19 lowercase R. I am assuming that includes HUD staff
20 persons. I see heads shaking. I just want to make
21 sure we're all on the same page and understanding it
22 the same way.

23 THE FACILITATOR: Is it more appropriate to use
24 the lowercase R? The work groups might be a different
25 thing. Work groups should be a lowercase R.

1 MS. MCDADE: Can we go back to the first
2 section that we approved? Because I thought we just
3 had it titled co-chair. If we keep the definition of
4 co-chair, that already includes the HUD
5 representatives, because they are part of the
6 committee. Is section (b) still needed? The way I
7 read this section is that, under the terms of the
8 definition of committee, they too can be the chairs as
9 we have already agreed to it, unless I'm
10 misunderstanding the section we have approved.

11 THE FACILITATOR: Good point. I will ask a
12 little assistance from our HUD representatives on that
13 one.

14 MS. MCDADE: I just want clarification. If we
15 have already approved it, then the section is not
16 needed.

17 MS. HENRIQUEZ: Two tribal co-chairs.

18 MS. MCDADE: Oh, two tribal co-chairs. So then
19 we still need to define HUD's role and the co-chairs
20 for the next meeting?

21 MS. TOOLEY: They can be tribal co-chairs.

22 MS. MCDADE: I understand that. But they are
23 part of the committee. So are we just defining their
24 role?

25 THE FACILITATOR: In the last meeting, they

1 declined to wanting to be a co-chair.

2 MS. MCDADE: HUD?

3 THE FACILITATOR: Yes.

4 MS. MCDADE: Okay. So then do we need that
5 section?

6 MS. TOOLEY: (Indiscernible -- speaker not
7 using microphone.)

8 THE FACILITATOR: Big R or little R?

9 MS. HENRIQUEZ: I think in Section (b) that
10 leaving it with a capital R is correct. I think that
11 refers to Rodger. I would say that is a capital R,
12 because it says "the HUD representative." The work
13 group language is "a HUD representative," with a
14 small R. And that's fine. So this one, I'm going to
15 suggest refers to Rodger in this one as the HUD
16 representative, capital R. And in the work group
17 language, a HUD representative means a person from HUD.

18 THE FACILITATOR: Thank you for the
19 clarification. So (b) is all right with everybody?
20 Any objection? Okay. We are done.

21 How do you want to handle (c)?

22 The tribal co-chair or chair are
23 entitled to vote on any matter other
24 than a motion to overrule the chair's
25 own parliamentary ruling. The chair

1 may debate any matter by temporarily
2 assigning the chair to the other
3 tribal co-chair and then resuming the
4 chair when his or her comments are
5 completed.

6 Are we okay with that? Any questions or
7 dissension? All right.

8 MS. TOOLEY: (Indiscernible -- speaker not
9 using microphone.)

10 THE FACILITATOR: Good question. Do the chairs
11 have the power for parliamentary ruling? Can we go
12 back to (a).

13 MS. TOOLEY: They don't have any parliamentary
14 ruling power.

15 THE FACILITATOR: So, Darlene, what are we
16 going to do, take that out?

17 MS. TOOLEY: (Indiscernible -- speaker not
18 using microphone) tribal co-chairs are entitled to vote
19 on any matters.

20 THE FACILITATOR: Okay. Darlene is suggesting
21 that we take out parliamentary ruling, and it just says
22 the tribal co-chairs are entitled to vote on any
23 matter. The chair may debate any matter by temporarily
24 assigning the chair to the other tribal co-chairs and
25 then resuming the chair when his or her comments are

1 completed. Okay?

2 MS. GORE: It would be helpful if we can go
3 back to the language we just approved about the
4 co-chairs. It would be useful to me as a committee
5 member.

6 THE FACILITATOR: It's right up there. Okay.

7 MS. GORE: Thank you. I'm sorry. I missed
8 that.

9 THE FACILITATOR: Is everybody okay with this?
10 Any dissension? Good. One more to go.

11 Appeal of parliamentary ruling. Do we need
12 that? Is there a motion to remove it? Okay. Jack
13 makes a motion to remove Article (d), appeal of
14 parliamentary ruling. Is everybody in agreement?

15 MR. BOYD: Put it back up and give us time to
16 read it.

17 THE FACILITATOR: Oh, I'm sorry. It's right
18 there, Rodger, appeal of parliamentary ruling.

19 Susan, what was that?

20 MS. WICKER: (Indiscernible -- speaker not
21 using microphone.)

22 THE FACILITATOR: I thought we did that. On
23 (c) we got rid of other than a motion to overrule the
24 chair's own parliamentary ruling. Okay. Has everybody
25 had a chance to see it? So we're looking at (d).

1 MS. HENRIQUEZ: I am confused. Is someone
2 suggesting it should be removed?

3 THE FACILITATOR: Removed.

4 MS. HENRIQUEZ: Can someone explain to me why?
5 I am confused.

6 THE FACILITATOR: Jack, that was your motion.

7 MR. SAWYERS: I would like somebody to explain
8 to me why it's in there.

9 MS. HENRIQUEZ: I asked my question first.

10 THE FACILITATOR: Darlene.

11 MS. TOOLEY: It doesn't look like -- going back
12 to what we think we've approved that we have anywhere
13 in here where we discussed a parliamentary ruling. And
14 so we don't need a way to appeal a parliamentary ruling
15 since there's not going to be any, apparently. We
16 don't have any in here anywhere by anybody.

17 THE FACILITATOR: Rusty.

18 MR. SOSSAMON: Well, my understanding is the
19 parliamentary ruling that we're going to operate under
20 is the protocol. And if someone departs from the
21 protocol, the way I read (a) is that the tribal
22 co-chair will tell them that they are not consistent
23 with the protocol. Then the committee, by 80 percent
24 or more, can overrule that call, is the way I
25 understand (d) and the purpose for (d).

1 THE FACILITATOR: Okay.

2 MS. MCDADE: Is that in the correct section of
3 the protocol? If you're talking about an appeal of a
4 decision, is it technically in the right place?

5 THE FACILITATOR: Let's take another look at
6 (a) here.

7 MS. TOOLEY: It doesn't say we get to enforce
8 the protocols, Rusty. That's not what it says.

9 MS. HENRIQUEZ: As I read this, I think (d)
10 informs (c), which says in part because a chair can
11 make a parliamentary rule, which is to enforce the
12 protocol, if we think of these as the parliamentary
13 procedures we're following, and so the only thing a
14 chair can't do is vote to overrule his or her own
15 decision on a ruling being made.

16 So you need to have (d) to talk about how the
17 committee can overturn such a decision if it thinks
18 that decision is inappropriate. It seems to me it goes
19 to temper -- my word, not Judas but the spirit of Judas
20 in my head -- heavy handedness potential of a chair.

21 MS. TOOLEY: We took that language out of (c).

22 THE FACILITATOR: The language that was taken
23 was other than a motion to overrule the chair's own
24 parliamentary ruling. That part was taken out. Can we
25 see (c)?

1 MS. HENRIQUEZ: So does (C) read starting with
2 the chair may debate any matter? Is that what you're
3 saying? Oh, I'm on the wrong side. Forgive me. I am
4 sorry.

5 THE FACILITATOR: Rusty?

6 MR. SOSSAMON: In (a) if the chair is chairing
7 the tribal discussion, and someone is not complying
8 with the protocols, who's going to call him on it?
9 Who's going to call that point of order, and then who
10 is going to stop the person who is not going by the
11 protocol? Is it not the chair? Or is it the chair?
12 Who is it?

13 MS. TOOLEY: They're not chairing the meeting
14 (indiscernible -- speaker not using microphone.) Wait
15 a minute. Go back to (a).

16 MS. MCDADE: It says when the need arises.
17 Didn't we take that -- didn't we include that in there?

18 MS. TOOLEY: We defined the role of the tribal
19 co-chairs as the ability to draft agendas, chairing
20 committee discussions, so is that what you're saying?
21 You're saying that chairing committee discussions is
22 enforcing the protocols is implied. I'm just trying to
23 clarify what the issue is.

24 MR. SOSSAMON: I am too. Historically that's
25 what the chair does. I don't think this is a chair

1 that anybody has ever seen before. That's what I'm
2 trying to do is figure out what this chair does.

3 MS. TOOLEY: Not much, Rusty.

4 MR. SOSSAMON: If they don't do it, and
5 somebody has violated a protocol, who's going to call
6 that? I can make a point of order, but if nobody is
7 there to say, hold it; I agree with you. You need to
8 stop or do this, if there's no traffic cop, who's going
9 to do that?

10 MS. MCDADE: Can I make a suggestion? Instead
11 of taking the language out in Section (c) then let's
12 put it back in there, the parliamentary ruling, and
13 then (d) would apply. That's all we have to do.

14 THE FACILITATOR: There is a proposal that we
15 leave (d) as is and put the language back in (c) that
16 talks about other than a motion to override the chair's
17 own parliamentary ruling.

18 Yes, Karin.

19 MS. FOSTER: I'm not sure I know what Article
20 5(b) is anymore. Which section is it that has been
21 referred to now? Does anyone know? Is it due
22 diligence? It appears to me that that Section 4(b)
23 that would have applied here is no longer. It was all
24 stricken out. So I guess except as provided in Article
25 5(b) of these protocols, I would suggest that should

1 not be a part of this.

2 THE FACILITATOR: So you're suggesting that we
3 just cross out the first part, Karin?

4 MS. FOSTER: All of the way to the comma.

5 THE FACILITATOR: So then (d) would just read
6 starting with a parliamentary ruling of the chair may
7 be overruled by an affirmative vote of 80 percent of
8 the committee and the majority of each regional
9 delegation.

10 MS. TOOLEY: I don't think we need "and the
11 majority of each regional delegation," because we
12 already have 80 percent of the committee, if somebody
13 can tell me what 80 percent of 25 is.

14 THE FACILITATOR: The way that (d) is being
15 proposed by Darlene is to read "a parliamentary ruling
16 of the chair may be overturned by an affirmative vote
17 of 80 percent of the committee."

18 MR. ADAMS: Can you say that again? I'm trying
19 to follow along and looking back to my original draft
20 of these. In the original draft, that was 6(b), which
21 is committee member diligence, which hasn't been
22 struck.

23 THE FACILITATOR: Can we just take a minute.
24 Kiana is going to explain the numbering. I think
25 everyone is a little bit confused. She can do it

1 better than I can. She's been writing all of this.

2 MS. LAUCETTE: Originally, 5(b) was final
3 report. 5(b) is now final report again, because in the
4 morning session, you added a Section 4, which was work
5 groups and standing committees, which then made all of
6 the numbering concise again. So 5(b) that is being
7 mentioned in this particular section is final report.
8 I will put it on the screen right now so that you all
9 can read it.

10 MR. ADAMS: I don't know if this was mentioned,
11 but the part of originally 6(b), which is now 5(b),
12 that section of that that was talking about the role of
13 the chair has been dropped, not the whole section, but
14 just that section that was germane to that discussion.
15 So I think that's probably -- like I said, while I
16 wasn't paying attention, but that's essentially -- I
17 don't think it matters anymore.

18 THE FACILITATOR: 5(b) doesn't matter anymore?

19 MR. ADAMS: Right.

20 FEMALE SPEAKER: (Indiscernible -- speaker not
21 using microphone.)

22 MR. ADAMS: Committee member diligence is just
23 the one statement now. All of the rest of it that
24 talked about the chair is gone.

25 THE FACILITATOR: So should we leave (d) and

1 amend it to take off any reference to Article 5(b) and
2 any reference to the majority of each regional
3 delegate? And it would then read, "A parliamentary
4 ruling of the chair may be overruled by an affirmative
5 vote of 80 percent of the committee." Is that what we
6 want? Any other comments on (c) and (b)?

7 MS. FOSTER: I have a comment. This is the
8 only place we actually vote. We have consensus
9 everywhere else. I guess I like the idea of decisions
10 being made by consensus. And it says up here that all
11 of the decisions will be made by consensus. I am
12 thinking about what one of our members said about
13 consensus some time ago in our last meeting. And so we
14 have gone to a vote here.

15 MS. TOOLEY: Under decision-making in 3(b), we
16 talk about voting. We have a whole paragraph on
17 voting. I don't know if we meant to.

18 MS. FOSTER: But it says a vote, but it also
19 says that all decisions of the committee shall be made
20 by consensus.

21 MS. TOOLEY: I don't know. (Indiscernible --
22 speaker not using microphone.)

23 THE FACILITATOR: So do you want to change
24 that, Karin, to consensus?

25 MS. FOSTER: I won't stand in the way of

1 consensus on it, but it's the first place where we're
2 actually talking about a -- it's not a simple majority.
3 It's 80 percent.

4 MS. TOOLEY: (Indiscernible -- speaker not
5 using microphone.)

6 MS. MCDADE: I think we had another section in
7 a previous one that refers to 80 percent. We didn't
8 strike that, did we? It's still there? So it would be
9 consistent.

10 THE FACILITATOR: Let's see if there's any
11 objections to the way it is now with 80 percent. How
12 many would like to leave it the way it is, "A
13 parliamentary ruling of the chair may be overruled by
14 an affirmative vote of 80 percent of the committee"?
15 Do we have agreement on that? Any objection? Then I
16 think that's the way it is. Are we done with
17 protocols?

18 MS. WICKER: I was listening to what Jason was
19 saying, and under Section 6(b), committee member
20 diligence, it was my understanding that we got down to
21 one sentence. The draft that I received after lunch,
22 it still has four or five sentences. I wanted to
23 clarify that before we said okay, print it.

24 THE FACILITATOR: Not all of the changes were
25 made. Did you guys agree on that before lunch?

1 MS. WICKER: Yes.

2 THE FACILITATOR: They are looking at committee
3 member diligence, 6(b).

4 MR. ADAMS: It looks like we stopped.

5 THE FACILITATOR: So under 6(b), we just kept
6 the first sentence. It is the responsibility of each
7 committee member to remain constantly abreast of
8 developing committee and working group proposals,
9 right? So let's correct that.

10 FEMALE SPEAKER: No, we did it after lunch,
11 Jan. We started after lunch with this one.

12 MS. MCDADE: Can I make a quick suggestion?
13 There are a lot of us that are confused about what we
14 had as far as draft language, some of the words. Would
15 it be possible for this to be rewritten and for us to
16 review it the first thing in the morning so that we
17 make sure the language is there?

18 THE FACILITATOR: They will do that. They
19 would have it ready for you guys anyway.

20 MS. MCDADE: Well, again, when we're coming
21 back from breaks, some of us are going off the working
22 documents that we have in the binder. And then there's
23 working documents being placed on our spaces, and we
24 don't know which ones to refer to. And nobody gave us
25 any clarification as to what those were.

1 THE FACILITATOR: They're just trying to catch
2 you up on what you did in the morning.

3 MS. MCDADE: That's fine. But we need to know
4 that.

5 THE FACILITATOR: Yes, Marvin.

6 MR. JONES: Who's going to sign this? I
7 propose that all 25 of us do this, since we don't have
8 co-chairs. And that we are all like the President, we
9 all sign it with a whole bunch of pens, and it takes
10 forever.

11 THE FACILITATOR: Is that it?

12 Yes, Ervin.

13 MR. KEESWOOD: I don't think we're quite done
14 yet. I think under (d)4 it was also moved to create a
15 new section or paragraph at the end. We have not done
16 that yet.

17 THE FACILITATOR: I'm sorry. Which one did we
18 move to the bottom?

19 MR. KEESWOOD: d(4). We haven't dealt with
20 that.

21 THE FACILITATOR: Right. d(4). Thank you.

22 The media release spokesperson
23 comprised of the two co-chairs will
24 provide committee communications with
25 the media. The media is welcome to

1 attend committee meetings but must
2 identify and display their media
3 credentials.

4 MS. MARASCO: I think that we skipped over it
5 because we hadn't decided on the co-chairs. And now
6 that we've decided on that, is that one okay to stand?
7 I'm asking you.

8 MR. ADAMS: Is that what we have on the board?
9 I thought that's what we approved. 4 became 3, and
10 that's what we approved.

11 THE FACILITATOR: Yes. We approved it. It was
12 contingent upon the co-chairs, getting some agreement
13 on co-chair language. So I think that's why everybody
14 looked at it again.

15 MR. SAWYERS: So it stands the way it is.

16 THE FACILITATOR: Yes. Because now we have
17 co-chairs.

18 Anything else we need to clean up on this?

19 MS. HENRIQUEZ: I hate to do this. But I need
20 clarification. So now we have what I will describe, as
21 I understand it, rotating co-chairs? Okay. So in this
22 particular language on the media spokespersons, do they
23 rotate as well, since the chairs rotate? Does that
24 mean that someone, the co-chairs who were presiding
25 over a specific session at a specific time, are the

1 only ones that can talk to the media about that
2 specific issue or the issues that came up in the
3 session? Is that what you mean? Okay. I just want
4 you to think about how potentially unwieldy that might
5 be.

6 THE FACILITATOR: Is there room within the
7 co-chair language for the committee to select the same
8 co-chairs for months at a time? Is there anything that
9 prevents that? If we find two good co-chairs that want
10 to do the job, is there anything to prevent you from
11 reassigning those co-chairs for every meeting? There
12 isn't? Okay. So I think you guys just have to work
13 that out.

14 Carol, do you have a comment?

15 MS. GORE: I was just going to make a
16 suggestion that we delete the first sentence of (d) and
17 leave language that says it's open to the media. I
18 don't know that this has ever been an issue for the
19 committee to talk to the media, and striking that first
20 sentence seems pretty harmless to me.

21 MS. MARASCO: This came about when we met --
22 where did we meet -- was it here or at some resort, and
23 the media got a hold of that, and it was just a
24 nightmare. Waste, fraud, and abuse. So that's when
25 they kind of implemented this gag order.

1 THE FACILITATOR: This might be our first test
2 of our consensus decision-making thing. You're trying
3 to reopen something that has already been agreed to,
4 right? I think it's in the documents already. We
5 would need consensus of the group to open that.

6 FEMALE SPEAKER: (Indiscernible -- speaker not
7 using microphone.)

8 THE FACILITATOR: Are there any other concerns
9 about our protocol?

10 Yes, Jack.

11 MR. SAWYERS: I think we should add No. 8.
12 This won't take very long. We need to set an agenda
13 for what items we're going to talk about it. I think
14 that is part of the protocol, is it not? Or would we
15 handle that someplace else? It's my understanding that
16 we would put our agenda together and all of the issues
17 that we're going to look at, and I think that has to be
18 part of the protocol. If not, then we can do it some
19 other time. But it's my understanding that we have to
20 do it at that time.

21 THE FACILITATOR: So it's your understanding
22 that the content of what we will be negotiating should
23 be the protocol as well?

24 MR. SAWYERS: Yes.

25 THE FACILITATOR: I don't know.

1 What do you think?

2 MS. MCDADE: I just have a clarification. Have
3 we approved this protocol then? Some are saying no and
4 some are saying yes. I thought we were going to wait
5 for all of the correct language to be inserted and have
6 it there in the morning. We're jumping around. Some
7 of the language is not there, and we are going back.
8 And are we still approving it by certain sections? At
9 the last meeting, you said when the document was done,
10 you would approve it all in whole.

11 MR. ADAMS: No.

12 THE FACILITATOR: That's absolutely not what we
13 said.

14 MR. SAWYERS: We said when the item was done,
15 we would approve it. We have gone that route before.
16 It does not work. If you have approved it, you have
17 approved it. You may want to tweak it a bit with a
18 little language, but we have lawyers that can do that.
19 Once you approve it, it is approved. Please don't go
20 back and say, well, we're going to do the whole thing.
21 We've been there before, and it does not work.

22 MS. MCDADE: I'm not saying that. I'm saying
23 some of the language of what the changes have been made
24 which was pointed out by Mr. Adams is that some of the
25 language was not correctly identified and some of the

1 things that we approved, and that's why I'm asking. I
2 just want clarification. If we agree to it, and we
3 show up tomorrow, and it wasn't what we had, then we
4 are defeating the purpose again.

5 THE FACILITATOR: No. Then we will correct it.
6 I will agree with Jack that we have approved it point
7 by point, paragraph by paragraph. It's done. We will
8 look at the final copy, of course. If we see problems
9 or mistakes that were made in what we thought we agreed
10 to, we will raise those, of course. We're not going to
11 trap you into something that was written wrong.

12 MR. ADAMS: My clarification was on an item for
13 discussion. It wasn't something that was previously
14 decided on.

15 THE FACILITATOR: Thank you.

16 MR. SOSSAMON: My understanding was, what
17 Jason's concern was, actually language had been
18 approved after lunch, but he didn't have a copy of it,
19 but we did approve it on the screen. So the language
20 has been approved all except this last part, which is
21 still what I think what Sharol is referring to as needs
22 to have additional language inserted here or there or
23 somewhere else, because it's real fuzzy. That's my
24 understanding.

25 But everything up until the last three items, I

1 believe that the language has been approved. But I
2 think it's unclear in this last part when the committee
3 votes by 80 percent, and the chair can't vote on
4 overruling his own. Well, that's in conflict with the
5 previous rule that says no committee member may abstain
6 from a vote. So which one of those takes precedence?
7 The chair is a committee member. But there's no
8 reference back to that or an exception in the one
9 previously to another protocol in the back for the
10 chair.

11 THE FACILITATOR: Are you saying it contradicts
12 something that we may have agreed to earlier?

13 MR. SOSSAMON: Yes. There's no exception in
14 the previous one that says no committee member may
15 abstain from a vote. Now we come back and say the
16 chairman can't vote in this. Well, that's abstaining
17 from a vote.

18 So there needs to be something under voting,
19 3(b) as Darlene pointed out earlier, and I believe (a)
20 as well, that recognizes the exceptions to those
21 protocols when the chair makes a parliamentary ruling.
22 Then they will be able to be consistent with one
23 another.

24 MS. FOSTER: I guess I suggest that maybe an
25 abstention is a choice. You can abstain from a vote if

1 you have the right to vote in the first place. So if
2 it says that no member may abstain, are you referring
3 to those who actually have the right to vote? And
4 we've said that the chairman doesn't have the right to
5 vote on his own parliamentary objection. Is that
6 right?

7 MR. SOSSAMON: But we also said each committee
8 member has a right to vote.

9 MS. FOSTER: But not if he or she is serving as
10 a chairman. It's restricted.

11 MR. SOSSAMON: That's all I'm saying. That's
12 fine, but the previous one needs to have a reference to
13 the latter one and say "except for" and cite the
14 exception to it. There is an exception.

15 MS. FOSTER: Can I suggest that perhaps in
16 the morning, we have an opportunity to correct
17 clerical errors, and then also if there are direct
18 inconsistencies that we find real problems, that that
19 is an opportunity to look at those if you come up with
20 the proposed language. But otherwise we are final.

21 MR. KEESWOOD: How long would it take to get a
22 clean copy ready? I'm sure they're pretty caught up.
23 It would be good if we could do it now and let everyone
24 take it with them, and they could have all night to
25 approve the document. It would be much better for all

1 of us. Otherwise we will sit here half the day again
2 going over the subject matter.

3 THE FACILITATOR: They could have it in about
4 20 minutes.

5 MR. KAZAMA: Since we adopted the use of a
6 drafting committee, maybe we can get them started on
7 this to look at the flow of the entire document and see
8 if there's conflict, and then have them report back to
9 us. So we have to appoint them. Thank you.

10 THE FACILITATOR: Someone mentioned you wanted
11 to appoint chairs? You need to agree on that still
12 whether you want chairs for this session or not.

13 Can we do this? Can we ask for a couple of
14 volunteers to review this for consistency and give us
15 any suggestions in the morning?

16 MR. HAUGEN: I believe that would be
17 appropriate. I volunteer Karin.

18 MS. FOSTER: That sounds like a draft.

19 THE FACILITATOR: What anybody like to help
20 Karin?

21 MS. FOSTER: I would like to request the help
22 of Rusty. Since he's found an inconsistency, I would
23 like his help.

24 MR. ADAMS: I've just got a clarification.
25 Since we approved protocols, and we have a section on

1 this, which is drafting, those are the folks. They are
2 approved. I don't think we have to do this. I think
3 it is done.

4 THE FACILITATOR: We have to appoint the
5 drafting committee. I'm just trying to get it started.

6 MR. ADAMS: So whoever wants to participate.
7 That's the language we have in that section, is it not?

8 MS. TOOLEY: It says the committee will appoint
9 a drafting committee.

10 THE FACILITATOR: All those in favor of wanting
11 to be on the drafting committee, raise your hand, and
12 we will give you copies, and you can read through this.

13 MS. MCDADE: I need clarification. I'm sorry
14 to have to go back. What are we approving the drafting
15 committee to do? To go over the protocol?

16 THE FACILITATOR: To review the protocol for
17 inconsistencies and mistakes, and that is basically it.

18 MS. MCDADE: I made a recommendation that we
19 all do it as a committee and approve it in the morning.
20 Karin made the same suggestion, so why are we going
21 back to the drafting committee now? So you want the
22 drafting committee now to review the protocol tonight?

23 MR. SAWYERS: No. Just to fix up a few things
24 that need to be changed. Some clarification, not to
25 draft the whole protocol and revote on it.

1 MS. MCDADE: That's what needs to be clarified,
2 because you're asking the committee to do --

3 MR. SAWYERS: I just did that. You're not
4 listening.

5 MS. MCDADE: I'm trying not to be -- okay. I
6 just want to be clear. The drafting committee is only
7 going to review for inconsistencies in the typed
8 sections.

9 MR. SAWYERS: Right.

10 THE FACILITATOR: That is all.

11 MR. SAWYERS: Hold on. I want to talk about
12 this No. 8 before you leave it. So don't run off. It
13 is important, I think, as part of the protocol that we
14 talk about what we are going to be looking at. And so
15 I would really like to talk about that before we close
16 the protocol.

17 THE FACILITATOR: With your --

18 MR. SAWYERS: We have a draft, by the way, on
19 the board when you are ready.

20 MR. ADAMS: I have a question. He refers to an
21 8. Is that a new Section 8, or is that a change? Is
22 that a rental house that we're paying rent on?

23 THE FACILITATOR: Without reopening what we
24 have already agreed on, I think Jack has a proposal to
25 include a section on the protocol.

1 MR. SAWYERS: I hate to call it Section 8, but
2 that's what it is. I think it is very important,
3 because we want to have that in our protocols if we
4 can.

5 THE FACILITATOR: Can you explain it?

6 MR. SAWYERS: I will have Jim Waglander talk
7 about this if you will.

8 MR. WAGLANDER: Well, this is like I'm the
9 sacrificial lamb. You all want to end this protocol
10 discussion, and unfortunately, several members of the
11 committee have recognized that there is possibly an
12 issue that has been omitted both on the agenda and in
13 the draft protocol. So please bear with me.

14 The title has been changed several times. It's
15 basically the process for selecting the negotiated rule
16 making issues. If I can ask you to go back and recall
17 what was done with the charter at the very first
18 decision you made was to strike the language of the
19 official name of the committee so that you were not
20 limited to amendments to consider just amendments to
21 the NAHASDA act.

22 That the discussion and the agreements by this
23 committee was to address issues that arose through the
24 amendments to NAHASDA since 1998, as well as to
25 consider other changes in the regulations that the

1 committee wanted to propose, that the only thing
2 excluded from that list were the formula issues. And
3 you addressed all of that in your charter.

4 And if you go to the section of the charter, it
5 is Article 7, role of the committee. And it is
6 Sections 1 through 7. Probably the important ones are
7 1 through 4 and No. 7.

8 As you have demonstrated today, it is not a
9 given as to what issues you are going to wish to
10 address by this committee. The legislative committee
11 of NAIHC produced this package that has 85 proposals
12 for regulations that just involve statutory changes to
13 NAHASDA.

14 If you selected all of those, then you also
15 have agreed that you would at least consider other
16 changes to the NAHASDA regulations. It appears that by
17 the agreements you have reached so far, all of those
18 decisions have to be made by consensus with all of the
19 committee members.

20 So this proposal talks about what changes will
21 be made, how they will be made, and when the decisions
22 will be reached. If you leave this out of the
23 protocol, you have not reached an agreement as to how
24 you're going to select those topics to address. You
25 have not agreed as to when you will select those topics

1 to address. And you have not agreed on how you're
2 going to select those topics to address.

3 So you will recall in the charter, you also
4 acknowledged and agreed that there were certain
5 noncontroversial regulations that could be handled
6 pretty much administratively. They would still come
7 before the committee, but they would be drafted in an
8 expedited manner.

9 And the concept was, though there was some
10 discussion, it was proposed that that decision-making
11 would be made early in the process so you could clear
12 the deck of those noncontroversial issues. At the same
13 time, you would be proving to yourselves that you could
14 actually agree on changes at the beginning of the
15 process and not push all of that decision-making to the
16 end of the process. And hopefully it would inspire you
17 and keep you optimistic that you can agree on issues.

18 And so this is an imperfect proposal. It's
19 drafted by a number of different committee members and
20 their staffs. And it is an attempt to set out the
21 process that you will have to agree by consensus what
22 issues to place on the agenda. And it will say when
23 those issues have to be addressed. And it will set a
24 limit as to when that decision has to be made. And so
25 that is what this is.

1 I would honestly like to make a suggestion that
2 I think people are tired. I think this is an important
3 enough issue to allow folks to take a look at the full
4 section. Only part of it is up there. Maybe we can
5 scan to the second part of it so everybody can see
6 that, Part 2. And there is no longer three parts.
7 There are two parts. And part 2 is divided into an
8 A and B section.

9 So our recommendation as discussed a moment ago
10 back here, is that this issue be identified as the last
11 remaining issue on the protocol, that people study it
12 tonight and it be the first topic tomorrow. And then
13 it would hopefully end with the protocols being
14 finished.

15 THE FACILITATOR: Thank you.

16 Marvin.

17 MR. JONES: I don't know how to answer the
18 protocol issue necessarily, but I thought that we
19 agreed on the agenda that we were going to hear Rusty's
20 stimulating speech here for 30 minutes at some point.
21 And then the NAHASDA amendments, and then a break, and
22 then the discussions or topics to negotiate, and that
23 we were going to get to that. Now, whether we need to
24 keep the protocol open until that stuff happens, and
25 then have that kind of discussion, I thought that that

1 is what we agreed to in the agenda. Is that incorrect?

2 MR. WAGLANDER: Let me just make one
3 clarification. This is not to select the issues. This
4 is not to choose the topics. This is to set out the
5 procedures in the protocol to make those selections.
6 This is to set the guidelines and the process.

7 Obviously, it should be in the protocol.
8 Everything else, all of the other procedures, are in
9 the protocol. Please separate it from the actual
10 selection of the issues. That is a whole other topic,
11 a whole other arena which will be obviously very
12 important for everybody.

13 MS. MCDADE: I just have a quick clarification.
14 If you are suggesting that this is supposed to be part
15 of the protocol, why wasn't it suggested earlier? We
16 are at the end of the protocol.

17 MR. WAGLANDER: It is to be placed at the end
18 of the protocol, and it was decided by the committee
19 members to raise it at the end and not in the middle of
20 the process. There's nothing that you have covered
21 that has addressed this issue. This is a proposal that
22 has been developed all day long, and people were
23 believing that the appropriate time to raise it would
24 be when all of the issues that had been previously
25 discussed were done.

1 MS. MCDADE: I'm confused, then, because I
2 don't recall agreeing to that. We are at the end, and
3 now you're saying you want to add another section. Are
4 you saying you want to add another section? Is that
5 what I'm hearing?

6 MR. WAGLANDER: Yes. That is the proposal from
7 several members of the committee.

8 MS. MCDADE: Who? I mean, again, we just
9 talked about --

10 MR. WAGLANDER: Alaska developed it. The
11 Plains -- Northern Plains concurred in it, discussed it
12 and agreed to put it on the agenda.

13 MS. MCDADE: I'm sorry, but I don't recall
14 that. Did I miss something? I thought I had been here
15 all day. Did it just get bypassed? I mean no
16 disrespect to the regions. It just would have been
17 nice if we had known about this. We could have
18 discussed it. I think we are all in the same place.
19 We thought we were done. I thought that section
20 concluded us talking about protocol.

21 THE FACILITATOR: Jason?

22 MR. ADAMS: Jan, I think we're spending a lot
23 of time discussing something that I haven't even had a
24 chance to look at. So I would like to go with the
25 recommendation that we get a paper copy made of this so

1 that we can all look at this and digest it tonight and
2 see where it fits in, whether it is a protocol issue or
3 whether this is the first order of business that we
4 handle as far as a structure of dealing with all of the
5 rest of the business at hand.

6 I have no problem with that. But just to have
7 this brought in, I think I'm sharing Sharol's concern.
8 This is new to me. I did not see this before this
9 time, and I am in the Northern Plains Region.

10 THE FACILITATOR: We will make copies for
11 everyone to look at.

12 Leon, do you have comments?

13 MR. JACOBS: I have the same concerns as Jason
14 and everybody else. We just approved a section on
15 information sharing. And this information I heard has
16 been here all day, and you haven't shared this with us
17 until 6:00 at night. That really bothers me.

18 MR. SAWYERS: How can it be bothering you?
19 We're talking about doing it tomorrow.

20 THE FACILITATOR: Marvin.

21 MR. JONES: I think an earlier issue, the only
22 way that you can include this in the procedures is by a
23 unanimous consent to include it. So if we choose to
24 say no, we're not going to put that in there. Or if we
25 choose to amend -- if people here want to choose to

1 amend the protocol, that will be the only way that it
2 gets in there. Is that correct?

3 THE FACILITATOR: Rusty.

4 MR. SOSSAMON: I agree with Marvin. I also
5 think it's a good idea to have that information shared
6 with all of the committee members, and then tomorrow if
7 a member wishes to put that forward as a proposal
8 during the time that they think is the most
9 appropriate, whether it's before the protocols are
10 closed out or when we are discussing it, then I think
11 that is the proper way to do it.

12 Under 2(b) it does refer back to the charter.
13 It says what the scope of this committee is for, and I
14 believe that what Jim brings up was going to be looked
15 at under the discussion on topics to negotiate and
16 organization of the work.

17 But it is up to the individual members if they
18 want to introduce it into the protocols or at this
19 point in the agenda. That is just my understanding of
20 where we are at in this process.

21 One further thing I would like to ask consensus
22 by the members, is that the history of NAHASDA that
23 Marvin has been so enamored with all day -- now we know
24 how easy it is to stimulate Marvin. And I believe
25 earlier his comment was that how he would be -- I

1 forget his term -- but that seems to be fairly easily
2 triggered as well. I would ask that the committee
3 amend the agenda to allow that to be tonight after we
4 recess for those who want to see it.

5 Because Marvin recognizes that there's many of
6 the members that do have an understanding of the
7 history of NAHASDA. And I wouldn't want them to get in
8 front of Marvin and block his view on any of this and
9 reduce the thrill. So if that is okay with the rest of
10 the committee, that is what I would like to do this
11 evening. And then it won't eat up committee time
12 needlessly. Okay?

13 THE FACILITATOR: Thank you for that kind
14 offer. What time would you like to do that tonight?

15 MR. SOSSAMON: As soon as we recess. If you
16 want to take a small break, we can go right into it.
17 It wouldn't take more than 30 minutes.

18 THE FACILITATOR: I think that is possible.
19 Thank you for making that offer.

20 I have a housekeeping question. Sharol, you
21 mentioned and everyone agreed that you wanted a clean
22 copy of the protocols or what we thought were the
23 protocols. Do you want a clean copy or a working copy?

24 MS. MCDADE: A working copy would be better.

25 THE FACILITATOR: With the strikeouts and that

1 sort of thing?

2 MS. MCDADE: Right. So we can see what we did,
3 and if we did it incorrectly, then we need to be able
4 to make that clarification. But, again, I think my
5 question is I asked earlier if the protocols were
6 approved. Have I gotten that answer? Are they
7 approved or not?

8 THE FACILITATOR: Yes.

9 MS. MCDADE: Okay. Then why are we bringing in
10 this other discussion? Is it because we're doing a
11 point of order, and we're saying, yes, we're going to
12 entertain the proposed section being added to the
13 protocol? I want to be clear.

14 THE FACILITATOR: The committee is being asked
15 to entertain an addition to the protocol. You can look
16 at what they present to you. We will give you copies,
17 and you can look at it. If you want to do that, you
18 can come back tomorrow and let us know. You take a
19 vote, and you let us know. If you don't want to do it,
20 no one is forcing you to do it.

21 MS. HENRIQUEZ: A red-line copy would be
22 helpful, but for me, some people might feel better
23 working off of the clean copy as well. I hate to do
24 this, but sometimes you can see the flow better rather
25 than what was in and out. Can we have it both ways?

1 THE FACILITATOR: Two versions, a clean copy
2 and a strikeout version.

3 MS. HENRIQUEZ: Thank you.

4 MS. TOOLEY: And we're going to receive a copy
5 as well of the Section 9 that we might be getting in
6 the morning?

7 THE FACILITATOR: Yes. We'll also give you
8 copies of what Jack has asked to prepare. Can we just
9 say we will put them out here by 7:00, something like
10 that? They will be outside on the table by 7:00 this
11 evening, so you can come by and pick up your copies.

12 Yes, Marvin.

13 MR. JONES: Can we tentatively set -- we need
14 to reset the agenda for tomorrow. Can we tentatively
15 do that as to what we anticipate how much longer we
16 want to guess that we'll spend on protocols before we
17 go into the next caucus?

18 THE FACILITATOR: I think we still need to have
19 Jad's NAHASDA amendment presentation. I think we just
20 have to readjust the timing on it. And based on
21 whether the committee approves to add Section 9 to the
22 protocol, we will have to schedule that in. But I
23 think we will see what we weren't able to accomplish
24 today and add it in tomorrow.

25 I'm sure that tomorrow at some point, we will

1 be discussing the topics to negotiate and how to
2 organize the work, defining what kind of work groups to
3 divide the group up into. And hopefully you'll get
4 going on the work groups as well.

5 MR. ADAMS: I think if Rusty has offered his
6 history of NAHASDA as an option this evening, can I
7 suggest that the NAHASDA amendments be added as an
8 option this evening also for some of us? At some point
9 in time, we've got to get to the real work here at
10 hand. If you look at this agenda, we're not doing it.
11 We had originally scheduled for Wednesday morning some
12 time to talk about successful negotiations. And we're
13 just not getting to the issues that we are here for.
14 Our time is ticking.

15 MS. MCDADE: No disrespect to Jad or Rusty, but
16 is it really needed? I think we want to get to the
17 core of what we all are here for.

18 THE FACILITATOR: Tonight is voluntary. So
19 whether it's really needed or not, I think some people
20 feel it is, and some people may feel like they don't
21 need it. It is up to you. I'm talking about the
22 presentation of the history of NAHASDA that Rusty is
23 being asked to do and then also the NAHASDA amendments
24 presentations that Jad has been asked to do.

25 MS. MARASCO: So that would be this evening

1 from what time until what time?

2 THE FACILITATOR: We don't have the audiovisual
3 to keep going that late.

4 Well, for sure tonight, we'll have Rusty. And
5 if any of you want to work with us on the agenda, why
6 don't you come and see us after we adjourn, and we can
7 figure out whether we can do something with Jad as
8 well. Right now it's still on the agenda. Is there a
9 motion then?

10 MS. MCDADE: May I propose that we meet at
11 7:30, then? Again, because we deviated 100 percent
12 from our agenda today, so I think we're all kind of
13 frustrated with what has happened. Can we do it when
14 we're kind of fresh thinking in the morning instead of
15 dragging it on and on? It's just a suggestion.

16 MR. SAWYERS: Excellent suggestion.

17 THE FACILITATOR: Rusty is going to do his
18 thing for those that want to stay. I don't think we
19 can keep the folks here that run the equipment after
20 6:00 by contract.

21 MR. JONES: I just want to make sure that the
22 NAHASDA amendments is a necessary thing that we need to
23 spend an hour on. That is a question to HUD, I guess.

24 MS. HENRIQUEZ: I would say yes. It may not go
25 the full hour, but particularly for people who are new,

1 it really does set the tone and the pace for the kind
2 of work that we're going to have to do for the rest of
3 the sessions both today and moving forward.

4 (Continuing discussion of agenda.)

5 Court reporter dismissed at 5:27 p.m.)

6 * * * * *

1 STATE OF ARIZONA)
) ss.

2 COUNTY OF MARICOPA)

3
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20 _____
21 Debora Mitchell

22 AZ Certified Reporter No. 50768
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