



April 17, 2020

Dear Tribal Leader:

I am grateful to tribal leaders for your attention to Indian gaming regulatory matters during this demanding time. For your awareness, I want to update you on three topics related to the coronavirus pandemic's impact. First, the National Indian Gaming Commission (NIGC) is taking measures to preserve its budget resources. Second, the NIGC continually updates informational resources to help you and your tribe's gaming regulatory bodies to ensure Indian gaming operations remain protected during this time of temporary closures and moving forward. Third, a recent NIGC memorandum to staff addresses advisory opinions on potential management and sole proprietary interest violations that can exist in financial and other partnership agreements—this information may assist your tribe and its partners when resolving questions related to declination letters.

NIGC Budgetary Impacts from Coronavirus Pandemic – The NIGC is taking and may continue to take cost saving measures as fee submissions are delayed. Cost saving measures will not undermine the NIGC's regulatory responsibility.

As the coronavirus pandemic impacts the Indian gaming industry in an unprecedented way, the NIGC is addressing the uncertainty in the current NIGC fiscal year budget created by these impacts. The NIGC is able to operate because of fees your tribe submits every quarter, and because NIGC expenditures are made according to a Commission approved budget. The NIGC is taking steps as a result of the anticipated delays in fee submissions. These steps include: instituting a hiring and promotion freeze, canceling in-person regional training conferences for the remainder of the year, and limiting travel and purchase expenditures to only mission critical items that are subject to heightened scrutiny.

I anticipate the NIGC will need to take additional measures to preserve resources in the future. And, I am aware that your tribe's regulatory and operations staff have had to make similar and in some cases more severe sacrifices. A recent assessment of fee submissions due on March 31, 2020 showed that the NIGC has not received all fee submissions. With an extensive amount of temporary closures, I understand there might be additional delays in fee submissions during the current quarter and next quarter. In order to assess the longer term impact of these delays on the NIGC budget, the NIGC region office staff will begin the process of contacting the operations for which NIGC has not received the most recent fees to follow up on the payment status.

Unlike other Federal agencies, the Commission's authorizing legislation does not provide for full funding at the beginning of each fiscal year. Instead, the Commission typically receives quarterly payments equal to approximately one quarter of each gaming operation's projected annual fee assessment. Therefore, the NIGC maintains a carryover transition balance to absorb the cash flow variations so the agency's operation can be continuously funded. We are exhausting this transition balance while experiencing delays in receiving fee payments from the gaming operations during their temporary closures. I will keep you updated as the Agency closely monitors fee submissions, its operation costs, its transition balance, and any additional cost saving measures.

An important note about cost saving measures related to the NIGC budget—these measures are based on an assessment of how the NIGC can operate in a responsible way. As a federal regulator, the NIGC is charged with protecting tribal assets and promoting tribal self-sufficiency. This remains a priority as our regulatory responsibilities continue even amid the unparalleled number of temporary shutdowns across the Indian gaming industry and the uncertainty these closures create.

NIGC Resources and Responses During the Coronavirus Pandemic – A collection of NIGC resources to help with your decision making related to COVID is available at www.NIGC.gov. The NIGC email account COVID.Resources@NIGC.gov helps the NIGC respond to tribal leaders and regulators' questions.

The NIGC regularly updates its online resources to support Indian country's responses and planning related to the coronavirus pandemic. These resources include memoranda, responses to frequently asked questions, and Dear Tribal Leader Letters. The NIGC resources list includes guidance materials and resources available at www.NIGC.gov and highlighted on NIGC social media.

The tools on the NIGC website respond to the needs raised by Indian country and recommend considerations for tribal law makers, regulators and operators. The resources reflect the NIGC regional offices and subject matter experts' insights. The resources are also an important tool to communicate the NIGC position on relevant regulatory matters and provide updates on significant developments in NIGC operations. The Commission and a team of NIGC leaderships from across the NIGC's regions and divisions review these resources together. Our daily review ensures the resources are reliable and add value to your decision-making processes. Please do not hesitate to let me know if there are additional resource that will help advise you in your important work as a tribal leader.

I want to bring your attention to some of the topics these resources address.

Flexibility in Submission Requirements – The NIGC resources include memoranda to inform NIGC compliance oversight in areas such as fee, audit related reporting, and background submissions in order to provide tribal decision makers with the ability to focus on public health and safety determinations while protecting gaming operations and complying with federal requirements.

NIGC Operation Status – The NIGC is currently using maximum telework flexibility to help protect staff and ensure its operations remain open. If technology limitations or health and safety needs warrant, the NIGC resource list will update any significant modifications to regular services such as fingerprint submissions for background checks, investigations related to management contract reviews, or advisory opinions.

Securing Facilities and Operations – To protect gaming operation assets, the NIGC resources consider the requirements of NIGC and tribal internal controls, and the special attention that may be necessary for security and surveillance functions as well as investigations, audits and patron disputes.

Tribal Gaming Regulatory Staffing – The NIGC resources identify considerations for tribal leaders and gaming authorities on topics such as technology, surveillance, security, and other topics that are likely relevant during a temporary closure; as well as the responsibilities a tribe and its gaming regulatory authority may have in advance of a reopening.

Current Operation Closures – The NIGC maintains a tally of gaming operations that have chosen to temporarily close. As the Indian gaming industry prepares to return to a more normal level of operation, the NIGC will continue to maintain this information through the NIGC region directors' ongoing outreach to tribal regulatory bodies.

Federal Public Health and Safety Resources – The NIGC resources provide summaries and direct links to federal public health tools managed on www.CDC.gov. These tools can help government leadership assess local public health risks and execute health crisis communication plans.

Background and Licensing Considerations – In addition to modified submission deadlines, the NIGC resources consider gaming regulatory authorities' responsibility to protect criminal history information, and advise on how to address employee license expirations during a closure.

Reopening Considerations – The NIGC is developing best practices for reopening gaming operations. This guidance will help tribal gaming regulatory authorities plan for their responsibilities during a temporary closure as tribes anticipate reopening operations. The guidance addresses internal control considerations as well as sample assessments to help the gaming operation meet the tribe's environment, public health and safety standards at the time of reopening.

If at anytime you need assistance with interpreting or locating the information related to NIGC's COVID response resources, please reach out directly to the NIGC email account maintained for tribal leadership and tribal gaming regulatory authorities' questions on this topic. Any inquiry sent by tribal leadership will receive a follow up response by the next business day. Please email COVID.Resources@NIGC.gov and indicate that you are making a request as a tribal leader.

Direction to NIGC Staff Regarding Declination Letters – Recent guidance to NIGC staff can help tribal decision makers and their partners better understand considerations related to potential management and sole proprietary violations that may or may not arise if a tribe amends its agreements. The NIGC is prioritizing requests for declination letters.

The NIGC's Office of General Counsel provides advisory opinions to tribes entering into agreements. These opinions can help provide clarity regarding potential statutory and regulatory requirements that can involve the NIGC. Specifically, this assistance helps to advise tribes and their partners on whether an agreement might implicate the management of a gaming operation or violate sole proprietary interest requirements. The types of agreements reviewed typically include, but are not limited to: development agreements; loan agreements; security agreements; promissory notes; bond indentures; employment agreements; independent contractor agreements; and, depository account agreements. This review is not required by the Indian Gaming Regulatory Act, is offered by the Office of General Counsel as a courtesy, and is ultimately not binding on a Chairman's decision.

With regard to declination letter requests; in response to conditions created by the coronavirus pandemic, I am aware that parties may be amending their existing agreements. I have worked with the NIGC General Counsel to identify ways that the declination letter review process can move as expeditiously as possible. Timely responses from the NIGC before an agreement is finalized are important and will continue to remain a priority.

I am attaching to this letter a recent internal memorandum from the General Counsel to help you and your partners understand how a declination letter may or may not be necessary to help advise tribes and their partners. The memorandum also demonstrates that the Office of General Counsel is prioritizing certain declination letter requests and has made changes to its internal procedures to expedite review where possible. I encourage you to share this NIGC Office of General Counsel memorandum as you deem appropriate.

Your dedication as a leader is invaluable. I remain prayerful that you will each continue to receive the wisdom necessary to navigate the decisions tribal leaders face. The NIGC is dedicated to being a responsive federal regulatory resource as you defend your community's health and protect Indian gaming assets.

Sincerely,



E. Sequoyah Simermeyer
Chairman



MEMORANDUM TO THE OFFICE OF GENERAL COUNSEL

From: Michael Hoenig, General Counsel *MH*

Re: Declination letter priority

Date: April 17, 2020

As of the date of this memorandum, nearly 100% of tribal gaming operations across the United States have closed due to the COVID-19 pandemic. Due to these closures, some tribes and tribal gaming operations are considering new financing options or are reviewing their existing financing agreements to minimize the economic impact. To assist Tribes and gaming operations during this unprecedented time, I am directing the Office of General Counsel to prioritize requests for declination letters for financing agreements as discussed below.

Requests for declination letters for finance documents are to be prioritized unless another assignment has a statutory deadline or your direct supervisor has instructed you otherwise. Our standard deadlines for completion of review, a final recommendation memorandum and declination letter for my signature (where appropriate) are suspended. The initial call to the point(s) of contact identified in the submission to inform them that you have been assigned the review are to be made the same day you receive the assignment, or first thing the following day if after normal business hours. All work should be completed as soon as possible, with your direct supervisor being kept informed of progress.

An unfortunate side effect of the prolonged closures is that some financing agreements may go into default not for lack of payment, but because covenants in the agreements require the facility to remain open and function as a gaming facility. As a result, parties to these agreements may be submitting Limited Waivers for review. In most cases, it is unlikely that a simple waiver of default will implicate management or violate IGRA's requirement that a tribe maintain the sole proprietary interest in its gaming operation. To the extent the parties do feel the need to submit these agreements for review and a declination letter, though, the standard memorandum to the General Counsel is not required. Unless the waiver grants any party additional authorities or adds new terms to agreements that have already received a declination letter, as opposed to waiving existing terms/requirements, a simple memorandum to me setting forth the extent of the waiver and a recommendation as to whether to issue a declination letter is sufficient.

Memorandum to the Office of General Counsel

Re: Declination letter priority

April 17, 2020

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Finally, I want to acknowledge the dedication and professionalism of every member of the Office of General Counsel; from the Attorneys that perform the review, to the Legal Staff Assistants that compile records, maintain complex files, and help ensure information flows. It is because of the experience and expertise you have developed that we are able to provide this vital service to the tribal gaming industry.