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NATIONAL INDIAN GAMING COMMISSION MEETING
THURSDAY, FEBRUARY 15, 2018
10:00 AM – 11:36 AM

CAPITOL HILTON HOTEL
1001 16TH STREET, NW
WASHINGTON, DC 20036

Reported by: BEVERLY D. EARLY, CSR .

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(EXTERNAL CALL-IN PHONE LINE AND ADOBE CONNECT
LINK ESTABLISHED)

>> JONODEV CHAUDHURI: Welcome everybody.

Before my fellow Commissioners and I get started with formal consultation, in keeping with our traditions at NIGC, and the fact that we are here in conjunction with the National Congress of American Indians, we will start with the blessing today. And Secretary Greg Abramson from the Spokane Tribe has offered to provide us with a blessing before we begin.

(OPENING BLESSING.)

>> JONODEV CHAUDHURI: Thank you so much, Secretary.

So, my name is Jonodev Chaudhuri. I serve as Chairman of the National Indian Gaming Commission. I am joined by my fellow Commissioners, as well as many senior staff at the Agency. And I want to welcome everybody here today. I know a lot is going on during NCAI, there are other consultations going on and a lot of travel considerations that everybody --

1 everybody has. Traffic was horrible. So, I am just very
2 thankful for those of us who are here for today's
3 consultation, and I want to thank you all for making the
4 time to come join us today. We are going to hear from
5 subject matter experts, who will lay out the background
6 for each of our topics, but beyond the specifics of what
7 we are here to discuss today, I think it's important that
8 the form and process that we are undertaking is
9 important.

10 As an Agency, we have been committed for many,
11 many, many years, from our inception, to be actively
12 engaged in meaningful consultation, and today's
13 discussion is an extension of that. For us, what that
14 means is working hand in hand, not just to get buy-in
15 on the final product, but to get buy-in before we put
16 pen to paper. So, we are actively trying to work on
17 positive deliverables to -- to issue from the
18 Commission. And the topics we are hearing today, the
19 reason we are here discussing these topics, we heard
20 from Indian country through continuing consultations
21 three topics that provides areas of opportunity to
22 improve the gaming landscape.

23 I want to welcome everybody here today as
24 Muskogee Creek, member of the Bear Clan, it's an

1 honor to have a consultation here in conjunction with
2 NCAI.

3 I will turn it over to my Commissioners, who will
4 share opening comments.

5 >> KATHRYN ISOM-CLAUDE: Thank you. Good
6 morning. I am Kathryn Isom-Clause, Vice Chair of the
7 Commission.

8 I would like to thank you for being here today. As
9 the Chairman mentioned, it's a busy day, busy week.
10 We know you have competing interests for your time,
11 we thank you for being here. This is kind of a special
12 consultation for us because while we usually like to be
13 in person face-to-face, that's preferable, we know
14 that's not always possible for folks. So we have Adobe
15 Connect going today. We have people joining us online
16 through the phone lines. So we are really excited we
17 can offer that as well today.

18 Tribal consultation is primarily a means for us to
19 listen to tribes, not only to honor the
20 government-to-government relationship, but in
21 recognition of the role of tribes.

22 As primary regulator, it's very important to
23 acknowledge when you start out. It's also a time for us
24 to present ideas, how we can strengthen our regulatory

1 partnerships to make our work more efficient. With
2 our topics today we are hoping to do exactly all of
3 those things, make the processes more efficient, and
4 work a little bit better together in partnership.

5 I would like to note that while our time with this
6 current Commission may be somewhat limited, we are
7 continuing stability on policy initiatives that we have
8 been working towards. Those will be reflected in our
9 strategic plan, which is coming out very shortly now
10 this month, you will be able to see that online pretty
11 soon.

12 And just to sum up, we are really looking forward
13 to hearing from you all and sharing your ideas as well.
14 Thank you.

15 >> SEQUOYAH SIMERMEYER: Good morning. I am
16 Sequoyah Simermeyer. I am Coharie, my Tribe's
17 community is in eastern North Carolina. I am the third
18 member of the National Gaming Commission and I
19 have served a little over two years, of my three-year
20 term.

21 I am going to join my colleague in saying thank
22 you for being here. There is a lot going on, we
23 appreciate everyone engaging in this.

24 I want to briefly, just as part of the introduction,

1 share a bit about my approach to the Commission, and
2 then my colleagues will share.

3 In the work that I do with the Commission I try to keep
4 three considerations in mind: First, that the
5 Commission has an obligation to follow the Indian
6 Gaming Regulatory Act, it sets up the framework for
7 how tribal gaming operates today, and importantly,
8 articulates policy objectives that helps to ensure tribes
9 are the primary beneficiary of the over \$31 billion
10 industry.

11 I also keep in mind the importance of seeking the
12 institutional knowledge and expertise that exists
13 among the regulatory community, including the dozens
14 of compliance officers, auditors, financial analysts and
15 attorneys that work within the Gaming Commission, as
16 well as the approximately 6,000 members of the tribal
17 regulatory bodies and the institutional knowledge
18 exists across the many state regulatory bodies as well.
19 As a matter of good governance and improved
20 partnerships, it's important that we look to these
21 resources in how we develop the decisions.

22 And finally, it's important to make the
23 Commission diplomatic in decision processes. The
24 tribes best execute what is best for the people. And a

1 part of that is being respectful to intergovernmental
2 relationships and tribes engaging, whether between
3 tribes of the federal government or state governments,
4 so it's important, I think, that the Commission is
5 diplomatic in how we make a decision. I think that
6 improves our ability to do your mission. Engaging in
7 consultation sessions, like this today, is an important
8 way for the federal agencies not only to make sure that
9 the appropriate decision-makers are at the table
10 engaging in discussions, and not only provide more
11 transparency and more informed decision making, I
12 think, importantly, the gaming consultation helps to
13 define and give meaning to the
14 government-to-government relationship that exists
15 between tribes.

16 I want to say thank you for being here, and
17 drawing my colleagues in our appreciation today.

18 >> JONODEV CHAUDHURI: Thank you fellow
19 Commissioners.

20 So, we always try to recognize members of the
21 NIGC family when we can. I want to recognize Liz
22 Homer, former Vice Chair, as well as Paxton Myers, a
23 former Chief of Staff from NIGC.

24 We are going to do introductions a little bit

1 differently today, given the fact that we have so many
2 competing concerns. We have a lot of staff here today.
3 We also ask the audience to introduce themselves when
4 they make comments, that will help today's
5 conversation flow a little bit more smoothly and move
6 things along.

7 So with that, if we could introduce ourselves,
8 whoever is providing subject matter background,
9 please begin. Traci.

10 >> TRACI SANTILLANES: Good morning, Traci
11 Santillanes from the audit manager and I'm Shoshone
12 Band.

13 >> TANA FITZPATRICK: Good morning, Tana
14 Fitzpatrick, staff attorney with the Commission and I'm
15 Crow Montana.

16 >> YVONNE LEE: Good morning, Yvonne Lee,
17 manager of finance of the NIGC.

18 >> TOM CUNNINGHAM: Tom Cunningham,
19 Assistant Director of Compliance. I am Seminole
20 Nation of Oklahoma.

21 >> JONODEV CHAUDHURI: We have an open
22 door, open phone line policy at the Agency. And
23 beyond today's back and forth open dialogue I want to
24 encourage anybody to reach out to NIGC at any time

1 with any questions, comments or concerns. Before we
2 get into the housekeeping section, of the consultation,
3 again, recognizing people have other things to do,
4 planes to catch, if anybody needs to get a statement on
5 the record now, we will afford time and opportunity to
6 do that before we actually jump into the specific
7 subjects.

8 Anybody need to get on the record before we
9 start? Okay.

10 With that, again, we very excited to have this
11 consultation, not only be a live consultation, or
12 in-person consultation but, also, to be accessible by
13 Adobe Connect. This is part of our technology and
14 outreach initiatives. We are committed to staying
15 ahead of the technology curve wherever and whenever
16 possible, not only in the training and technical
17 assistance that we do but also internally in our Agency
18 operations. So, we are excited to be able to livestream
19 this and have it accessible through Adobe Connect.
20 Additionally, we recognize the expense involved in
21 traveling to consultations, and so we are excited to
22 have the opportunity for people to attend from -- from
23 home or from their office, wherever that may be.
24 I am going to turn it over to Mr. Cunningham at this

1 time to go over some housekeeping matters before we
2 get into the topic discussions.

3 >> TOM CUNNINGHAM: Thank you, Chairman.

4 As the Chairman said, the meeting is scheduled to
5 go from 9 to 12 p.m. -- yes, 12 p.m. However, if all
6 topics have been covered, and all comments from the
7 tribes have been received, we may end early.

8 The meeting will be transcribed, so if you stand to
9 make a comment, please state your name clearly so the
10 transcriptionist can hear it. Also, tell them what party
11 you represent, what tribal government you are here
12 representing.

13 We have an additional consultation on February
14 21 at the Potawatomi Hotel and Casino in Milwaukee,
15 Wisconsin.

16 Questions and comments will be taken after each
17 topic, so please hold your questions until the subject
18 matter expert has completed their speaking.

19 Our topics for today are: Management Contract, Audit
20 Submissions, and Management and Sole Proprietary
21 Definitions. The time period for written comments and
22 topics will end February 28, 2018.

23 >> JONODEV CHAUDHURI: Okay. So the structure
24 of today's consultation, again, is going to be a little bit

1 different than our purely live consultations. We will
2 hear from each subject matter expert, who will provide
3 background, and then we will open up the floor for
4 questions, comments and concerns from both the
5 in-person audience, as well as those attending via
6 Adobe Connect. I would ask folks who are -- who have
7 any questions or comments, to work with our
8 moderator, and -- and what was the process? You
9 hit -

10 >> (Inaudible)

11 (Discussion off record.)

12 >> JONODEV CHAUDHURI: Okay. The
13 moderator will prompt those attending online to ask
14 questions.

15 So, with that, we will begin with our first topic of
16 consultation. Our presenter for that will be Yvonne Lee,
17 our Director of Finance.

18 >> YVONNE LEE: Thank you, Chairman. Under
19 the regulations tribes wanting to engage a third party to
20 manage their operations are required to enter into a
21 management agreement with a third party that must be
22 approved by the Chairman of the National Indian
23 Gaming Commission. Following the NIGC's 2017
24 consultation sessions, the Commission carefully

1 reviewed its regulations, and the Agency's internal
2 procedures for reviewing and approving management
3 contracts. As a result of that review, and based on
4 comments received during the consultations, the
5 Commission believes that changes to our management
6 contract regulations will improve the efficiency of the
7 contract review process and ensure consistency with
8 IGRA's requirements regarding term limits. I
9 will provide some background on this topic, including
10 current regulations, Agency concerns, and the
11 Commission's proposed amendments to the regulations.

12 The Chair of the NIGC may only approve a
13 management contract if it does not exceed a term of five
14 years, or in rare circumstances, seven years. NIGC
15 regulations reflect that stipulation and management
16 contracts are not approved unless they comply with all
17 requirements of IGRA, including term limits.

18 After management contracts have been
19 approved, tribes and their management contractors may
20 amend their contracts by following the streamlined
21 procedures for review and approval of contract
22 amendments found in NIGC regulations, 25 CFR Part
23 535. Part 535 provides an expedited process within
24 which federal sessions are only required if the third

1 party individual and entities responsible for the contract
2 have changed, and no new business plan or updated
3 financial information is required. The expedited process
4 is designed to allow the parties to sustain their
5 relationship in a dynamic business environment while
6 maintaining the integrity of the Chair's initial
7 management contract review and approval.

8 The safeguards found in NIGC's management
9 contract review process serve to assure IGRA's primary
10 policy goals are met, including protecting Indian gaming
11 and ensuring the tribe is the primary beneficiary of the
12 gaming operation.

13 A thorough review of past practice reveal parties
14 using Part 535's expedited process have submitted
15 amendments to the initially approved contracts that
16 have extended the term of the approved contract by an
17 additional one to five years resulting in a contract that
18 extends beyond the explicit term limits of IGRA.

19 Thus, the Commission believes it is important to
20 update regulations to maintain IGRA's mandate.

21 The proposed amendments clarify the
22 regulations by explicitly noting that amendments that
23 extend the approved management agreement beyond
24 the term limits permitted by IGRA, which is five or seven

1 years, will be reviewed under the full requirements of a
2 new management contract under Part 531.

3 So, for example, if an approved contract with a
4 five-year term is nearing the end of its term, and the
5 parties are happy with the relationship and simply wish
6 to extend it for an additional five years, they may do so,
7 but it may not be reviewed as an amendment. Because
8 IGRA limits contract terms to five or seven years, the
9 Chairman will review the agreement under Part 531, and
10 the entire requisite information that 531 requires must
11 be submitted.

12 For another example, though, if a management
13 contract had a one-year term and the parties wanted to
14 amend the agreement to extend it for an additional year,
15 for a total term of two years, the Chair would review the
16 amendment under Part 535 because the term limit
17 would still be within the statutory limit of five or seven
18 years.

19 The Commission understands this change may
20 affect the timing and expense of updating background
21 investigations for making suitability determination of
22 management contractors. And independent of the
23 changes discussed above, the Commission received
24 comments during the last round of consultation that the

1 background investigation process was time-consuming
2 and expensive. As a result, the Commission has done a
3 thorough review of its background investigation process
4 and is proposing changes to our internal procedures to
5 make the process more efficient, thereby reducing the
6 cost of investigations.

7 Under the new process, NIGC staff will review
8 the background investigation applications and divide
9 them into different investigative groups based on the
10 level of risk. This process will allow the Agency staff to
11 focus their investigative resources on the most vital
12 individuals and entities. This replaces a
13 one-size-fits-all model that scrutinizes all applicants
14 the same.

15 For example, under the current process, the top
16 direct financial interest goes through the same
17 background investigation as the smallest indirect
18 financial interest. But under the new process entities
19 and individuals with a direct financial interest, holding
20 the highest level of risk to the tribe, will have a more
21 in-depth background investigation completed versus
22 those entities or individuals who have an indirect
23 financial interest.

24 In addition, the Commission has proposed

1 changing the individuals and entities that are required to
2 submit background applications under the regulations
3 to those that have 10% or greater financial interest. This
4 proposed change should significantly reduce the costs
5 to the management contractors in submitting full
6 applications on smaller investors.

7 Further, this proposed change will also better
8 align the Agency's requirements with other regulatory
9 agencies.

10 This change should not increase the risk to
11 tribal gaming as the Commission will retain
12 discretionary authority to conduct background
13 investigations on the owners with even the smallest
14 interests, who may pose a threat to the industry.

15 In addition, the Commission is proposing a
16 regulatory change to clarify "the reduced scope of the
17 investigation" provision to reduce the burden of
18 background investigations for those who qualify. To
19 further reduce the time and cost of background
20 investigations, the Agency will no longer use the Office
21 of Personnel Management, or OPM, to conduct part of
22 the background investigations. Instead, we will process
23 fingerprint checks through FBI and perform credit
24 checks through other more efficient alternatives.

1 Lastly, to reduce the up-front financial burden
2 and timing concerns, the proposed amendments to the
3 regulation removes the requirement of a deposit before
4 the background investigations begin. Instead, the
5 Agency will bill the management contractors regularly as
6 the investigation proceeds.

7 I would now like to turn it back over to the
8 Commission to lead the discussion. Thank you.

9 >> JONODEV CHAUDHURI: Thank you, Miss Lee.
10 I am going to turn it over to my fellow Commissioners
11 for a little bit more background.

12 >> SEQUOYAH SIMERMEYER: Thank you. This
13 is Sequoyah Simermeyer. The management contract
14 review process is conducted by the Chair, not the full
15 Commission, unless there is an appeal. And it's
16 generally, it's rare that a Chairman's management denial
17 comes up on appeal to the Commission.
18 However, as a full Commission, we are hoping some of
19 the proposed changes will provide more efficiency to
20 help avoid backlogs and improve stewardship of the
21 tribal fees that support the Agency. Efficiencies in the
22 process will ensure it does not create unnecessary
23 burdens on the tribes when they are trying to seek
24 partnerships they deem are necessary for their success.

1 So specifically, not using OPM, removing the \$25,000
2 deposit, and creating tiers of background investigation
3 to help assure the work for suitability determinations
4 should create a more efficient, less costly, and less
5 burdensome review process.

6 Finally, it's important to me that these changes
7 do not exceed what IGRA requires for management
8 contract terms and any Agency changes can be
9 reconciled with the Agency's past interpretations of
10 IGRA.

11 It's helpful to see what works for tribes with
12 management and non-management services like
13 financing services to make sure the changes don't
14 unintentionally hinder the processes that tribes use
15 while at the same time helping NIGC to be more efficient
16 and remain in-line with IGRA.

17 >> KATHRYN ISOM-CLAUDE: Thank you. I
18 would certainly echo Commissioner Simermeyer's
19 comments on that. The
20 changes proposed to the background investigation
21 process is really moving from a blanket approach to a
22 more targeted approach where we use our resources
23 and our Agency time and we really hope that will result
24 in a lot of efficiencies for the industry.

1 I want to thank the staff, to think through the
2 processes and how we go about it and looking at our
3 regs, the management contracts is one we have been
4 talking about quite a while going around with a lot of
5 different creative ideas. So I just, again, want to thank
6 our staff for doing that. Thank you.

7 >> JONODEV CHAUDHURI: Thank you fellow
8 Commissioners.

9 So these proposals, I think, have the potential of
10 advancing the ball an important way at the Commission.

11 Let me just give a little background about why we are
12 consulting on the management agreements.

13 For several years now, we have been operating under
14 some core initiatives at the Agency. One of those
15 initiatives is protecting against gamesmanship on the
16 backs of tribes, which is a fancy way of restating our
17 mandate under IGRA to protect the primary beneficiary
18 status of tribal nations, and to ensure that the sole
19 proprietary interest requirements of IGRA are met.

20 Management agreements are an important part of that.

21 The backgrounding that the Agency does that's part of
22 the management agreement review, helps -- helps
23 ensure that we work hand in hand with tribes to protect
24 the industry but protect generally against any third party

1 threats to assets or operations.

2 So, the fact that we are considering, in my view,
3 aligning our management agreement process to be
4 more in keeping with the intent of IGRA's timeframes
5 involved, namely, the five and seven-year timeframes,
6 goes a long way towards furthering one of our key
7 initiatives, but also fulfilling our mandates under IGRA.
8 In addition to those initiatives, we have an ongoing
9 commitment to good governance and promoting sound
10 economic development as well as sound regulation. I
11 believe these recommendations that come from staff
12 come from Indian country; they go a long way to
13 streamline the process without sacrificing regulatory --
14 regulatory duties.

15 So, with that, we are going to turn -- turn the
16 floor over to the audience as well as those attending
17 online.

18 Please -- moderator, please open up the lines
19 for any questions. If we don't have any questions
20 that's -- there is never any crime in finishing early, as I
21 always say, but we will open the floor up now for
22 question, comments, concerns.

23 >> MODERATOR: Thank you. If you would like
24 to ask a question, please press star 1, please unmute

1 your phone and record your name, tribal affiliation or
2 organization fully and clearly when prompted. Your
3 information is required to introduce our question.
4 Again, that is star 1. One moment, wait.

5 >> JONODEV CHAUDHURI: Going once? Going
6 twice?

7 >> MODERATOR: At this time we have no
8 questions.

9 >> JONODEV CHAUDHURI: All right. Okay. Any
10 questions or comments from attendees in the room?

11 Bingo. Okay.

12 (LAUGHTER)

13 >> JONODEV CHAUDHURI: Well, I'm sorry, the
14 time closed.

15 >> ELIZABETH HOMER: No, no, I am right here,
16 Elizabeth Homer. I don't really have a comment, I think
17 that my clients will be sending their written comments in
18 to you, but I do have a question.

19 You know, I think that, you know, reviewing
20 the -- the management contract process is really
21 important, you know. My question is -- is a logistical
22 one. You know, I am a former member of the
23 Commission, as you know, and you know, even back in
24 our day, we -- the Commission was criticized by the

1 amount of time that it took to do management contract
2 review.

3 And I understand a large part of that is due to
4 the time it took to do investigations, the background
5 investigations.

6 So, my question is: As you all know, a lot of
7 Tribal Governments are creating entities that are, you
8 know, actually providing management services to other
9 tribes. And some years ago in the regulations, there
10 was a provision dropped in that said that, you know, for
11 tribal management contractors could have an expedited
12 process.

13 And that has really never kind of been fleshed
14 out to my knowledge. I don't know, maybe you guys
15 have you know talked about that. So,
16 long question, but it really boils down to this, is: Have
17 you all thought about adding some kind of more meat
18 on the skeleton of this tribal management contractor?
19 And what are you thinking in terms of, you know, the
20 scope of a background of a tribal entity? So that's my
21 question.

22 >> JONODEV CHAUDHURI: Thank you
23 Miss Homer. Excellent question.

24 So, I should add, in addition to our subject

1 matter expert, we are joined by the Chief of Staff and
2 general counsel here today Christinia Thomas and Mike
3 Hoenig, respectively, who may weigh in at various times.
4 Excellent point. Excellent question. Yes, we absolutely
5 see the benefit of sister tribe investment in Indian
6 country; we want to encourage that at every step.
7 However, some of those streamlinings are cooked in our
8 process as it exists, but also will be cooked into the
9 process moving forward.

10 So, as Miss Lee discussed, there is kind of two
11 parts to this. There is -- there is a change in how we
12 are -- how often we are going to be doing these
13 reviews. And basically, you know, moving away from
14 the amendment approach to trying to stay closer to
15 IGRA's five to seven-year spirit is part of that.
16 But there is also internal operational tweaks that we are
17 making. And Miss Lee mentioned the three tiers of
18 backgrounding that we are going to be working off of.

19 Well, those three tiers of backgrounding are
20 aligned with risk. When you are figuring out how to
21 streamline within those tiers the presumption is tribal
22 nations who have a longstanding track record of
23 regulation will -- their risk levels will be assessed in that
24 process. So, that on the backgrounding side, you know,

1 the assumption is that there will be some overlap in
2 some of the key officials who will be -- will be
3 backgrounded in the sister arrangements. But, also, on
4 the management agreement review side, you know,
5 there may be streamlining there as well, so some of that
6 is cooked into the process already.

7 And that's kind of the point of having the
8 different tiers of risk deciding -- controlling how much
9 backgrounding will take place.

10 It's very difficult to -- to anticipate all situations
11 that would come up under management agreements
12 because every agreement, every transaction is different.
13 And so, in terms of creating blanket processes, the best
14 that we can do is streamline the categories that we are
15 operating under and recognize that every agreement is
16 different and every backgrounding involves different
17 individuals.

18 So, I don't know if any members of our team
19 want to add to that, but that's an excellent, excellent
20 point. We want to encourage sister -- sister tribe
21 investment at every stage.

22 >> MICHAEL HOENIG: Hi, this is Michael
23 Hoenig, general counsel at NIGC. One of the things the
24 regs allows and IGRA allows is certain entities to -- that

1 includes tribal government and institutional investors, in
2 the draft regulatory change will be put out, we tried to
3 clarify a little bit who can make the request. I know
4 internally and our Chief of Staff, Yvonne, might talk
5 better to this, internally we are trying to figure out what
6 that would look like and what that means for actually
7 how we would process the background investigation.
8 This is certainly something we are thinking about as we
9 go forward.

10 >> ELIZABETH HOMER: Thank you.

11 One other question has jumped into my mind. If anyone
12 else has something, come and grab the mic from me.

13 The other question is logistical because these
14 backgrounds do take a long time. And -- and you
15 know, if you are coming up on a hard date this contract
16 ends like today, and your process, because you are
17 treating this like a brand new submission, is not
18 finished, that poses a logistical and a major problem for
19 tribal gaming operations that is under, you know, a
20 particular management contract.

21 So, is there a way to build in some timeframes
22 or some kind of process where maybe you are at the end
23 of, you know, something, and maybe a few days are
24 going to, you know, go over where the contract is

1 expired so that, you know, tribes are not facing a
2 shutdown or the loss of their management team or, you
3 know, that kind of thing? I guess any time you do
4 regulations, the devil is in the details. I really worry
5 about the deadlines here.

6 >> JONODEV CHAUDHURI: And thank you,
7 Miss Homer, that's an excellent point. And in practice,
8 we do quite a bit of coordination with tribes to work
9 together to manage upcoming deadlines. In my opinion,
10 you know, I am only one of three commissioners that
11 would vote on any regulatory change, but in my opinion
12 this will help bring clarity to the industry because the
13 way that the Agency has typically functioned in the past
14 is through the amendment process and through the
15 extension process. It's a little bit ad hoc. And bringing
16 some clarity to the -- the time periods management
17 agreements and the deadlines they are absolutely maybe
18 some growing pains in the short-term, but I think in the
19 long-term clarity does help people predict what -- you
20 know, predict upcoming deadlines -- I mean, the impact
21 of upcoming deadlines passing. And I -- it is my hope
22 that that additional clarity will help the industry work
23 to -- to not be in a situation where workarounds have to
24 be developed to get around IGRA's five to seven-year

1 period through amendments or one-off ad hoc
2 extensions.

3 And, so, over time the hope is there will be
4 clarity in the industry, that folks will work together. But
5 certainly in the short-term as the -- any new changes
6 are implemented we are always aware of growing pains
7 and our team will work with -- work with folks who have
8 upcoming deadlines to process the best that we can.

9 Additional comments, questions, concerns?

10 Mr. Abramson?

11 >> GREGORY ABRAMSON: I will come to the
12 table here so -- is it on? Yes. Spokane Tribe of
13 Indians.

14 We have just gone through this process, and we
15 are very appreciative of NIGC. As you know, a lot of
16 times when I catch some of you, as kind of like a fly
17 bothering you completely all the time there, so it's as
18 there does seem to be tedious and a long time. I do
19 appreciate the regulations that we have to go through.
20 And one thing that with our tribe is we buck that we are
21 the primary regulators there. And that's one thing that I
22 don't like to see is that we have to duplicate our -- we
23 are on the same page when we go through a FBI
24 background or FBI prints and stuff there, if the tribes, if

1 our tribe is on the same -- I don't know if there are
2 different FBI sites that you go to, to be able to find it out
3 if one is more in-depth than the other, and I know that
4 our tribe, we go through that there, getting the
5 fingerprints and going through that there. But one thing
6 when -- I first wanted to thank the Commission there as
7 we went through this, and the staff. The staff is the one
8 that had to deal a lot with our attorneys and had to deal
9 a lot with that there. And Michael and others, we know
10 that because we did have deadlines.

11 And Liz stated too when you have these
12 deadlines and stuff we want to try to hit them and you
13 guys did assist and help us, and even though we are
14 right down to the very last day and stuff there of getting
15 them accomplished.

16 But I guess my main portion is duplicative
17 things, but we do believe that our regulatory body is the
18 main regulatory people and we do know that you guys
19 have oversight on it there. And we do appreciate it
20 there, so --

21 >> JONODEV CHAUDHURI: Thank you very much
22 Secretary Abramson. Thanks to you and the Spokane
23 Tribe for collaboration and coordination in terms of
24 working with us, getting whatever we needed, and

1 meeting the deadline at hand with Spokane.

2 To answer the question, I am going to -- in
3 terms of the backgrounding, we try to avoid duplication
4 wherever possible, but I don't know if Christinia or
5 Yvonne want to add anything more to how we kind of
6 use readily available information, and we do try to do
7 that but Yvonne, did you --

8 >> YVONNE LEE: For background investigation
9 there are actually, you know, two main categories. One
10 are the entities and the other ones are the individuals.
11 So, for individuals, yes, you know if you already have
12 gone through the FBI and all of those fingerprint check,
13 of course we do more than that. But if you have already
14 gone through that you can send us the results and we
15 definitely will review those documents and we won't
16 duplicate those efforts that's already been done. But for
17 entities we have to kind of, you know, if it's a brand new
18 entities, we do have to look at their corporate
19 organization, their, you know, their holding status and
20 their financial statements and all of that, that's a little
21 bit different, yeah.

22 >> GREGORY ABRAMSON: Okay.

23 >> JONODEV CHAUDHURI: But Secretary
24 Abramson, your point is absolutely well taken, and I

1 think echoed from -- in terms of our philosophy. Tribes
2 are the primary regulators at their gaming -- we have an
3 important role to play hand-in-hand with the tribes to
4 strengthen the regulatory structure of Indian gaming,
5 but we always recognize and respect tribal regulators
6 and tribal leadership because that's where it starts and
7 ends.

8 Thank you very much for --

9 >> GREGORY ABRAMSON: Now, yield my time
10 from my gaming chair, he was supposed to be here, but
11 will see you next week in Milwaukee there.

12 >> JONODEV CHAUDHURI: Wonderful.

13 >> GREGORY ABRAMSON: He will probably be
14 up here making more comments next week.

15 >> JONODEV CHAUDHURI: Wonderful,
16 wonderful.

17 That's an excellent point. Our comment period
18 goes through February 28? February 28.

19 I want to encourage everybody if -- this isn't the only
20 opportunity to get comments, and we welcome and
21 encourage comments in any form, whether they are
22 written or statements on the record that will be
23 transcribed later. But we look forward to seeing your
24 Chairman, your gaming commissioner. So, thank you

1 very much, Secretary.

2 >> GREGORY ABRAMSON: Thank you. Thank
3 you.

4 >> JONODEV CHAUDHURI: So any additional
5 comments, questions, concerns on this topic?

6 >> SEQUOYAH SIMERMEYER: Before we go on,
7 this is Sequoyah Simermeyer, I want to say I appreciate a
8 lot of the comments that are being made because for me
9 there is two -- on this particular issue, kind of two
10 things that will be helpful to consider in the coming
11 weeks during our conversation series.

12 One is what is being proposed, or is there anything else
13 that we are not thinking of that will make this process
14 more efficient.

15 And, secondly, is what is being proposed able to
16 reconcile with the intent of IGRA or the practices we
17 have had that Indian country has come to expect from
18 our Agency and provide better clarification in that area.
19 So thank you for the comments and ideas that spoke to
20 those today, and any more that will come in will be very
21 much appreciated.

22 >> JONODEV CHAUDHURI: You want to?

23 >> KATHRYN ISOM-CLAUDE: (Shakes head side
24 to side.)

1 >> JONODEV CHAUDHURI: So, Amanda, if we
2 can ask the virtual audience one last time if there are
3 any additional questions before we move on to the next
4 topic?

5 >> MODERATOR: Thank you. As a reminder if
6 you would like to ask a question, please press star 1.
7 One moment.

8 At this time we have no questions.

9 >> JONODEV CHAUDHURI: Okay. Thank you.
10 So with that, we will move on to our next topic, which is
11 audit submissions, I will turn it over to our audit
12 manager.

13 >> TRACI SANTILLANES: Thank you, Chairman.
14 I am Traci Santillanes.

15 Under IGRA and current NIGC regulations,
16 gaming operations, regardless of income, are required
17 to submit an annual audited financial statement,
18 completed by certified public accountants, to the
19 Commission within 120 days of their fiscal year end.
20 These audits may be encompassed within existing
21 independent tribal audit systems.

22 Submission of the annual audit report is critical
23 to the NIGC's mission to protect the integrity of Indian
24 gaming and provides a certain level of assurance as to

1 the safekeeping of tribal gaming revenues. The audit
2 report prepared and submitted on a timely basis is
3 evidence of, among other things, the integrity of the
4 gaming operation and, more specifically, of the
5 adequacy of the books and records, the functioning of
6 the internal financial controls, and the disclosure of
7 information having a bearing on the financial
8 statements.

9 The Commission, however, recognizes that
10 small or charitable gaming operations often struggle
11 with the cost of these requirements. With this in mind,
12 the Commission is seeking feedback and
13 recommendations on whether changes are needed to
14 the audit submission regulations. Specifically, we want
15 input on what level or levels of audit should be required
16 for smaller gaming operations or charitable gaming
17 operations.

18 A gaming operation earning less than \$2 million
19 in gross gaming revenue annually can request from the
20 Commission to submit a CPA reviewed financial
21 statement, if it has submitted an audited financial
22 statement for three consecutive years. A reviewed
23 financial statement must be completed by an
24 independent CPA and conform to statements on

1 standards for accounting and review services of the
2 gaming operation.

3 In fiscal year 2016, only 80 operations earned
4 less than \$2 million in gross gaming revenue. Of those
5 80, only six submitted the lesser financial statement
6 review. Small or charitable gaming operations often
7 produce less than \$100,000 in gross gaming revenue
8 annually, some less than \$10,000. Contracting a CPA
9 firm perform an annual audit can prove cost prohibitive,
10 and as a result, may deter tribes from pursuing these
11 gaming opportunities.

12 NIGC reviewed statutes and regulations from a
13 number of jurisdictions and agencies concerned with
14 financial entities, including the State of Nevada, the
15 Federal Deposit Insurance Corporation and the
16 Department of Interior. We found no consistency in the
17 audit requirements. For example, Nevada gaming
18 regulations require audits of financial statements for
19 operations grossing more than \$5 million, but maintain
20 the right to require audits, compiled statements or
21 reviews of financial statements of those operations
22 whose gross revenue is less than \$5 million. Interior
23 exempts nonfederal entities from their audit
24 requirement if the entity spends less than \$750,000 per

1 year. As NIGC considers altering its own regulations, it
2 recognizes that there are currently 95 tribal operations
3 that produce less than \$3 million in gross gaming
4 revenue. Further, the Commission is aware that tribal
5 operations comply with the most regulations from their
6 own governments as well as state and federal entities.
7 Our hope through this consultation session is to discuss
8 opportunities or receive feedback and recommendations
9 on how to amend this regulation while still ensuring we
10 are supporting financial stability and maintaining a high
11 level of protection of tribal gaming operations. Thank
12 you for listening, and with that, I will hand the floor back
13 over to the Commission to lead the discussion.

14 >> JONODEV CHAUDHURI: Turn it over to my
15 fellow Commissioners for comments

16 >> SEQUOYAH SIMERMEYER: Thanks, Chairman.
17 This is Sequoyah Simermeyer, thank you for the
18 presentation.

19 Like with the management contract review
20 process that we just discussed, what the Commission is
21 looking at with regard to audit is making sure that any
22 changes in process comply with the IGRA requirements
23 that tribes submit an annual independent audit.
24 In whatever changes to auditing the Commission

1 considers, we need to make sure that the Agency
2 supports IGRA'S expectations and that these
3 requirements are going to promote financial stability
4 and enhance tribes' regulatory capacity. Many tribes'
5 regulatory bodies already have a very sophisticated level
6 of capacity to conduct audits and to ensure
7 independence and integrity.

8 It's also the case that the high cost of
9 independent audits can make a small gaming operation
10 not profitable for a community, or worse, can create a
11 disincentive to comply with any audit submissions, or it
12 can create a disincentive to small gaming operations
13 opening up unfortunately. It would be helpful to hear
14 about tribe's experience with the NIGC's auditing
15 requirements compared with a tribe's own auditing
16 practices. It will also help to hear and to know more
17 about why tribes may or may not want to participate in
18 lesser financial statement reviews. As was mentioned,
19 in fiscal year 2016, only six of potentially eligible 80
20 operations submitted lesser financial statement reviews.
21 And finally, it would help to hear about how increasing
22 the \$2 million threshold, or providing more
23 customized technical assistance, or drafting new
24 guidance might help to incentivize or dis-incentivize

1 tribes from participating in those reduced reviews or
2 more efficient processes.

3 >> KATHRYN ISOM-CLAUDE: So this topic aligns
4 with our rural outreach initiative because we know that
5 the burden can be especially heavy on smaller
6 operations, but we also, of course, have to recognize the
7 need for audit. So, as Commissioner Simermeyer
8 mentioned, we are interested in your feedback on
9 different ways that we can kind of meet both of those
10 goals, you know, still having the audits that are
11 required, and to the extent that they were required and
12 how we can make it more efficient for smaller
13 operations. You know, we have a couple of more
14 questions. I think Commissioner Simermeyer went over
15 most of them, but we are very happy to have an
16 open-ended discussion too, related to these questions.

17 >> JONODEV CHAUDHURI: Thank you Vice
18 Chair.

19 And I just want to echo my fellow
20 Commissioners' comments. This is really an extension
21 of our commitment to doing whatever we can to support
22 smaller operations in recognition of the fact that
23 everybody involved in Indian gaming, we are in it
24 together, we want to make sure that small operations

1 are able to meet that balancing point that is so
2 important for all of us. Which is, not inhibiting the
3 entrepreneurial spirit of tribal nations while ensuring
4 sound regulation at the same time.

5 The proposals that are being discussed today are an
6 attempt to hit that balancing point, but we are
7 absolutely open to comments or concerns about
8 whether or not it's -- this is the right approach.

9 So, at this time, we are going to turn it over to
10 the floor for questions and comments. But as I always
11 say, there's no shame in finishing early either. We will
12 ask Amanda at this time -- Amanda, do you mind
13 polling the audience to see if there are any questions on
14 the phone or online?

15 >> MODERATOR: Yes, of course.

16 As a reminder, if you would like to ask a question,
17 please press star 1. One moment, please.

18 >> JONODEV CHAUDHURI: And while we are
19 waiting, we always try to put our consultation tables up
20 as close to the circle as possible with the idea of being,
21 you know, this is a group discussion. I mean, anybody
22 that wants to sit right at the table and chairs are free to.
23 Of course, you are welcome to sit wherever you would
24 like.

1 >> MODERATOR: At this time we have no
2 phone questions.

3 >> JONODEV CHAUDHURI: Okay.
4 So, turn it over to the in-person audience. Questions,
5 comments or concerns?

6 >> ELIZABETH HOMER: Just a question. Have
7 you all considered the possibility of making this a
8 permissive rule and allowing the tribe, through its
9 regulatory Agency, to determine, you know, what level
10 of review and then you just kind of set the upper
11 threshold and let them decide if they are going to, you
12 know, want, you know, a full audit or what kind of
13 standard that the tribe wants to set?

14 >> JONODEV CHAUDHURI: Well, thank you,
15 Miss Homer. That's the type of feedback we absolutely
16 welcome, and we want to hear.

17 So, I think one of the slides discuss whether or
18 not our current threshold really reflects the full universe
19 of smaller operations out there. We also, as I said, this
20 is an attempt to set the right balancing point between
21 those two issues. If there are specific recommendations,
22 please feel free to weigh in in writing or here in further
23 detail. But that's certainly one approach that we would
24 love to hear more about. Additional

1 questions, comments, concerns?

2 Okay. Well, thank you.

3 We will move on to our third and final topic,
4 which is Management and Sole Proprietary Definition,
5 and for that, we have Tana Fitzpatrick.

6 >> TANA FITZPATRICK: Good morning,
7 everyone. My name is Tana Fitzpatrick, and I am staff
8 attorney with the Commission.

9 As previously discussed, IGRA provides that a
10 tribal gaming operation owned by the tribe may either
11 be managed by the tribe or by a management contractor
12 subject to a management contract approved by the NIGC
13 Chair. This applies to any arrangement in which a
14 contractor manages all or part of an Indian gaming
15 operation. To provide better clarity, the Commission is
16 considering developing regulations clearly setting out its
17 standard for what constitutes management, as well as
18 its criteria for evaluating when a sole proprietary interest
19 violation has occurred.

20 With this in mind, I will provide some brief
21 background information of these terms and then pass it
22 back to the Commission to open the floor for questions
23 and discussion.

24 To assist tribes in determining whether an

1 activity constitutes management, NIGC Bulletin No. 94-5
2 explains that the term encompasses activities such as
3 planning, operating -- excuse me -- organizing,
4 directing, coordinating, and controlling all or part of a
5 gaming operation. In addition, the NIGC Office of
6 General Counsel issued an opinion letter expanding on
7 these terms by providing examples of management
8 activities.

9 However, to date, the Commission has not
10 issued a regulation formally defining management. The
11 Commission believes that, in consultation with tribes,
12 developing a regulatory definition consistent with past
13 interpretations would help provide greater certainty to
14 the tribal gaming industry regarding what constitutes
15 management. The Commission recognizes that the 7th
16 Circuit has also recommended that the Commission
17 provide more guidance.

18 A stated purpose of IGRA is "to ensure that the
19 Indian tribe is the primary beneficiary of the gaming
20 operation." Seeking to serve this purpose, IGRA requires
21 that the gaming ordinances provide that tribes have the
22 sole proprietary interest and responsibility for the
23 conduct of any gaming activity, unless the gaming
24 activity is individually owned.

1 >> SEQUOYAH SIMERMEYER: Thanks.

2 This is Patrick -- this Sequoyah Simermeyer.

3 As the presentation mentioned, the Agency's
4 guidance and legal opinions as well as Federal case law
5 informed the management definitions in the past.

6 As a member of the full Commission I would not make
7 the determination that an unauthorized management
8 occurred or that there was a violation of sole proprietary
9 interest, that is a determination made by the Chair.

10 However, as a member of the Commission, we could
11 hear an appeal to review the Chair's decision. It is
12 hoped that promulgating a standard would support the
13 transparency and good governance practices at both the
14 initial decision stage and at the appeal stage.

15 I also hope that promulgating a definition where one
16 does not already exist could help to provide more
17 certainty to the partners working with Indian country
18 and reduce the costs associated with making these types
19 of arrangements.

20 For example, in 2017 NIGC's Office of General
21 Counsel provided 60 declination letters for tribe's
22 financial agreements in order to bring certainty to the
23 question of whether financial agreement might
24 constitute management of a tribal gaming operation.

1 It's important to provide assistance with declination
2 letters, and there's no reason that should stop, but it
3 adds time and associated transaction costs for gaming
4 operations and their partners.

5 Finally, promoting a definition can improve
6 general awareness about the sole proprietary interest
7 and management contract provisions within IGRA, and
8 the Chair's ability to make enforcements. There have
9 only been a small number of actions by the Agency or
10 Chair over the NIGC's history. And nobody hoped for
11 enforcement action, but that there is additional ways for
12 the full Commission to articulate the definition of these
13 issues.

14 So thanks for everyone's feedback today and in
15 the coming weeks on this topic.

16 >> KATHRYN ISOM-CLAUDE: So, this topic, we
17 have had, you know, several years to think this through
18 within our own Agency as well as the courts have
19 interpreted this for us. So we believe that the proposed
20 definitions that we are putting forth captures all of those
21 ideas, as much as we can, but just in one place, so you
22 are not kind of hunting all over for these different ideas
23 of the definition.

24 So, as Commissioner Simermeyer mentioned, we

1 hope that it will provide more clarity to the industry and
2 overall make relationships more efficient because you
3 don't have to have any uncertainty. One question that
4 came up in a previous session was whether by doing this
5 we intend to kind of back away from doing declination
6 letters, and that is certainly not the case. We really
7 appreciate that service that the Office of General
8 Counsel provides and we would continue to do that, but
9 this would also just provide some parameters on the
10 definition.

11 >> JONODEV CHAUDHURI: Thank you, Vice
12 Chair.

13 I just want to expand on my fellow
14 Commissioners' statements. I agree with everything
15 they said. But you know, also tie this proposed -- or
16 this proposal to our gamesmanship initiative.
17 As I mentioned before, one of our tent pole initiatives is
18 protecting against gamesmanship on the backs of
19 tribes, essentially that's doing what we can to work hand
20 in hand with the primary regulators of gaming to protect
21 tribal assets and operations. It flows from our
22 responsibilities in IGRA, that flows from our work in
23 every aspect of operations. And that's -- it's an
24 important initiative to us.

1 How this proposal is tied into that, obviously
2 bringing clarity to the industry regarding sole
3 proprietary interest regarding management will assist
4 tribal nations in the conduct of their own reviews to
5 protect their own operations.

6 So, while there is nothing earth shattering in
7 terms of these definitions, I mean, we are basically
8 codifying various pieces of law that have been
9 pronounced in different arenas and putting them in one
10 place, we do think this will go a long way to protecting
11 the integrity of Indian gaming so that tribal regulators,
12 tribal nations, can clearly point to regulation when
13 raising any concerns about any outside threats to their
14 assets or operations.

15 So, this is an extension of what we are about as
16 an Agency. I am very excited by this proposal, in the
17 sense that, in addition to good governance and
18 transparency, it also furthers one of our tent pole
19 initiatives.

20 So I really want to thank our team, as well as our
21 partners in Indian country who worked hard to come up
22 with some workable definitions in these areas. So, with
23 that, we are going to turn it over to the floor for
24 questions, comments, and concerns. And Amanda, if

1 you could poll the folks online, we would appreciate it.

2 >> MODERATOR: Thank you.

3 As a reminder, if you would like to ask a question please
4 press star 1. One moment, please.

5 >> JONODEV CHAUDHURI: Thanks.

6 >> MODERATOR: At this time we have no
7 questions.

8 >> JONODEV CHAUDHURI: Okay. Thank you. In
9 person questions, comments or concerns?

10 Yes.

11 >> WILDA WAHPEPAH: Thank you. I am Wilda
12 Wahpepah, W-i-l-d-a, W-a-h-p-e-p-a-h, attorney at
13 Sheppard, Mullin, Richter and Hampton, from Norman,
14 Oklahoma.

15 I have a question about the language for Part
16 573, which is the sole proprietary interest draft
17 regulation. There is a list of seven factors here, and my
18 question is about number 7.

19 So the lead-in says that "in determining whether
20 sole proprietary interest mandate has been violated, the
21 Chair can take any of the following factors, including a
22 single factor into consideration."

23 And number 7 says, "The provision or
24 assignment of tribal rights to the third party, including

1 but not limited to, the third party's right to access to
2 records or financial information regarding the gaming
3 operation or part thereof; the right to place gambling
4 devices that are controlled by a third party in the
5 gaming operation or part thereof; and the grant of
6 security interest in the gaming operation."

7 So, if you look at this from a tribal gaming
8 finance perspective involving, let's just say, a
9 commercial lender, a federally recognized national bank,
10 it would be not uncommon to see in the covenants the
11 borrower, a tribal borrower agreeing to provide its
12 audits. For example, year-end audit to the lender or a
13 quarterly audit to the lender. That's a customary
14 provision that you see, a market provision.

15 And with respect to C, the grant of the security
16 interest in the gaming operation, also in this commercial
17 tribal finance perspective, it's customary to see that a
18 security interest in the revenue and personal property of
19 the gaming authority, for example, that's entering into
20 the lending contract, is a security interest that's being
21 granted because that's the collateral for the loan.

22 So, I was wondering if you could provide a little color on
23 what the intent was in this particular factor into what is
24 the concern driving that.

1 >> JONODEV CHAUDHURI: Thank you. Excellent
2 question.

3 Just to give Mike a heads up, probably going to
4 ask for his way in, but let me address those in turn.
5 First of all, all of these portions of the definition come
6 from, you know, either our Agency decisions or case law
7 that's out there. We -- there is a distinction between
8 audit records that are somewhat sanitized and
9 summarized, versus original source material, original
10 source records I mean. And there is certainly --
11 certainly an amount of degree involved -- or analysis of
12 degree involved when you are looking at access to
13 records and in terms of proprietary interest. You are
14 thinking about control, influence, things of that nature.
15 But I wanted to draw that distinction, but also,
16 distinction of a financial interest.

17 You know, when we talk about sole proprietary
18 interest, we are talking about concepts involving
19 ownership and control. And it's really a case by case
20 analysis that speaks to the ownership and control that is
21 exerted by a third party. So it's always going to be
22 somewhat fact specific.

23 But I don't know if -- Mike, do you want to
24 weigh in on any of the background of those provisions

1 at all?

2 >> MIKE HOENIG: Sure. Thank you.

3 So, I think, first, it's important to remember that when
4 we talk about the kind of documents that we are
5 reviewing, when we talk about sole proprietary interest,
6 it's not just financing documents. Certainly, as far as
7 the declination letter process has gone, financing has
8 certainly taken up a big chunk of what we now review.
9 But before -- before, in the early days, it was mostly
10 consulting agreements and development agreements, as
11 well as -- in fact, I don't think we ever saw financing
12 agreements, or rarely did, until after the Wells Fargo
13 litigation.

14 But at any rate, as far as the security interest,
15 and the third party's access to records, I would say that's
16 one of the factors that we have looked at in the past to
17 look for that element of control that goes along with
18 sole proprietary interest. But at the same time, I would
19 say we have also issued hundreds now of declination
20 letters that have reviewed security interests. And we
21 understand that it's part of financing that security
22 interest is almost always part of that. And oftentimes, it
23 includes a right to, in the event of default, to call in the
24 gross gaming revenues from the operation.

1 And what we have seen though, is at the same time
2 there has been other safeguards that have been put into
3 security agreements and loan documents and financing
4 agreements that say, even if that happens, that there is
5 all of these other things that protect the tribe's sole
6 proprietary interest in its gaming operation. I think they
7 are, in the industry, they are referred to as the IGRA's
8 savings provisions. You know, we see that it's almost a
9 standard -- just as now getting a declination letter is a
10 standard condition, that language is almost a standard
11 provision in all of the documents.

12 So, I think that we would be looking at this more
13 in the sense of if, for example, someone just gets all of
14 the gaming revenue plus they have all of the control
15 over the facility, they are the ones that get to come in
16 and demand, we are going to review every document,
17 those are the kind of things that we would look at in
18 maybe a different context than the standard lending
19 framework that we have seen.

20 So it certainly is a factor that we would want to
21 keep in there, it's something we always would look at,
22 but I don't think it's a primary one. I don't think it's -- I
23 can't -- I mean, it's possible, but I don't know that it
24 would ever be the sole factor that we would look at if we

1 were making a determination on sole proprietary
2 interest. I don't know if that helps or presents any
3 clarity but --

4 >> JONODEV CHAUDHURI: Thank you for the
5 question. As I mentioned, it's a matter of degree too
6 and it's a very fact intensive analysis.

7 I see another question.

8 >> ELIZABETH HOMER: Yes. Thank you,
9 Chairman.

10 I have gotten a lot of feedback from my
11 colleagues that do gaming law and, you know, also from
12 my clients in their gaming enterprises about this
13 particular issue. There is a great concern that the
14 definition of management is going to sweep in all kinds
15 of standard agreements, and end up, you know, having
16 to get declination letters for every kind of agreement
17 that the enterprise might enter into, including training
18 and things that are mundane, happen all the time, are
19 necessary. You know, help the tribe to make sure that it
20 has properly adequately trained staff.

21 You know, also, with respect to marketing
22 contracts. You know, and most of these contracts they
23 are just a fee-for-service contract. You know, they are
24 not where somebody is actually gaining a security

1 interest in the gaming operation or, you know, in the
2 revenue stream or anything like that.

3 And so, I guess that that is -- the question is:
4 Will you all consider the breadth of that definition and
5 the potential unintended consequences that could end
6 up costing, you know, a lot of money, a lot of time, a lot
7 of slowing down on business activity, you know, if there
8 are these more mundane and routine types of
9 agreements that are now going to be subject to
10 management contract review. That's what people are
11 afraid of.

12 >> JONODEV CHAUDHURI: And thank you
13 Miss Homer. If there are any specific tribal concerns
14 from any of the specific tribes we would absolutely
15 welcome that more targeted commentary as well. You
16 know, we very much welcome input. You mentioned
17 clients generally, if there are any specific tribal
18 comments you want to follow up with, we would be
19 welcome to review that.

20 But let me just share a few kind of thoughts that
21 come to mind.

22 I am not sure if bringing clarity to the industry
23 would result in an uptick in declination letters of
24 collateral agreements. If we are clear what the

1 definitions are, which we are attempting to be, it will be
2 clear that fee-for-service contracts don't fall into this
3 management definition. That, I think, that's one of the
4 purposes of having a definition that everybody can look
5 to.

6 In fact, the result may very well be as lenders, as
7 tribes are more aware of the black-and-white definition,
8 there very well may be a reduction in the declination
9 letter requests that come in. Bring clarity to the industry
10 is what -- what one of our objectives is.

11 But if there are specific types of agreements that there is
12 concern over following into this definition, we would be
13 happy to examine that and talk about it. And certainly
14 the issue would be whether or not such agreements
15 would give rise to an enforcement action or void them in
16 some way. I don't think -- you know, hiring somebody
17 to do a training is necessarily going to fall under the
18 definition of management.

19 >> ELIZABETH HOMER: That's very reassuring,
20 Chairman. And we will take you at your word on that.
21 That is reassuring.

22 However, you know, the sad truth is you may not
23 always be the Commissioners that are interpreting this
24 language. And you know, I think that there is possible

1 mischief with respect to -- you know, potential mischief
2 with respect to the scope of the definition. It does
3 include things like training and marketing. The long list
4 of things, you know. So, I think that that's the concern.
5 You know, and if you think about specific examples,
6 another example are machine leases. You know, I mean,
7 they do -- they are usually, you know, a 30/70 or an
8 80/20 kind of split or those kinds of things.
9 So the question is: Would these machine lease
10 agreements, and sometimes machine purchase
11 agreements also, you know, they are being paid for with
12 the gaming revenue. So, there is kind of a participation
13 here. Would that bring those kinds of agreements into
14 the management contract review process?

15 >> JONODEV CHAUDHURI: I think that's an
16 excellent question.

17 And absolutely it's the intent, if through under
18 the guise of an ancillary agreement, management is
19 taking place, it's helpful to have a definition that assists
20 in the process to -- to address that. And so, if there is
21 a machine lease agreement that bleeds into
22 management authorities, that's a concern. That's a real
23 concern, and we want to address that.

24 And I don't want to -- and a lot of that, the

1 proof is in the -- I mean, the devil is in the details in the
2 language of those agreements. And so, by providing a
3 definition, the hope is that there is clarity as folks are
4 negotiating things like machine lease agreements, so
5 that issues of management are avoided and not included
6 into these agreements before they ever become a
7 problem. And you can't do that without a clear
8 definition.

9 And so -- or you can do it, it's just more
10 difficult. And so, that's a very good -- excellent point.
11 We will kind of think through it as -- if this is, indeed,
12 approved by the Commission, certainly the
13 implementation will have to be reasonable as well. But
14 the more clarity there is in terms of the playing field that
15 we are working under, the less freedom there is for
16 myself or any future Chairs to interpret management
17 arbitrarily. Thanks.

18 >> MARK VAN NORMAN: Thank you.

19 Mark Van Norman.

20 You know, Mr. Chairman, we have kind of an
21 interesting situation in South Dakota where most of the
22 tribes are operating, you know, small gaming facilities
23 that we, you know, view them still as casino hotels,
24 casino resorts. But we also have a situation where the

1 state has probably a video lottery with probably 8 to
2 10,000 machines. And there are 10 machines per
3 building. And then they define building to say, if you
4 add a wall here or there, you could get up to 30,
5 wherever there is on sale or off sale liquor license.
6 So, on the reservations, we really haven't had the state
7 lottery because the state video lottery is set up to be a
8 revenue share of the proprietor where the machines are
9 located, gets 50% of the net revenue, and the state gets
10 50% of the net revenue. And the state owns the video
11 lottery gaming devices and they own the central server.

12 So, they really have a model there where there is
13 revenue sharing, it wouldn't comport with the IGRA
14 because we have to have at least 60% of the revenue
15 going to the tribes, and we understand that. But, you
16 know, at some level it may be more effective for the
17 tribes, rather than purchasing the games outright, which
18 may then become outmoded to lease, you know, the
19 electronic player stations -- which are not gaming
20 devices -- so that, you know, you can change them out.
21 And what -- what we are hearing from folks is, and from
22 other tribes, is it's more effective to be flexible and be
23 able to change out your games and see which ones are
24 going to be successful, and that kind of thing.

1 So I don't think you should rely too heavily on this
2 percentage of profits because it may be more effective
3 to work with the suppliers on the basis of doing some
4 kind of a percent share of net profits, rather than buying
5 the games outright because they -- the technology
6 changes so quickly. So, I think that's an important thing
7 to consider.

8 And then if you are working with folks that
9 maybe are the proprietors of establishment that has on
10 or off sale, and we were to do something equivalent, you
11 know, they have to receive some -- some compensation
12 also.

13 Obviously we don't want to go up to the level of
14 the state video lottery, but there is some, oh, some
15 appetite, you know, for having small numbers of
16 electronic player stations in remote locations because,
17 you know, these proprietors feel it would be an adjunct
18 to their business, and the tribes feel, well, that my might
19 be okay, and that might, you know, provide us an
20 additional source of revenue without interfering with our
21 main facility.

22 So, I think those are things to consider when you
23 think about sole proprietary interest because you know,
24 we still feel that the tribe is going to own the full

1 system, but we may have to do some leasing of the
2 machines and some leasing of locations because, you
3 know, we may have a network. So, that is something to
4 think about.

5 >> JONODEV CHAUDHURI: Excellent food for
6 thought Mr. Van Norman. And I may -- if Mike Hoenig
7 is comfortable speaking to the guidance we issued in
8 Washington State, well, and potential overlaps, but let
9 me just say, your comments may -- are very well taken
10 for this provision, but they may involve some food for
11 thought that's even beyond the scope of today's
12 consultation. And that's namely the role of the federal
13 government and ensuring primary beneficiary status of
14 tribes that came from IGRA. And frankly, I think it's
15 worked out decently; although, I think there would be
16 some -- some concerns that could be raised that it was
17 somewhat paternalistic in terms of some of the
18 requirements that would put into IGRA to kind of put
19 limits on the types of business agreements that tribes
20 could enter into. And so, whenever you talk about,
21 whether it's the revenue requirements of IGRA or other
22 requirements, such as primary beneficiary status, sole
23 proprietary interest. You have this -- you have these
24 competing concerns to -- to not inhibit tribal

1 investment, tribal innovation, but at the same time
2 uphold your responsibility to work with tribes to protect
3 against third party threats. Now, as applied -- as
4 applied to management, it's an interest -- a good point
5 that you raised that we don't want to hamstring various
6 economic ventures that tribes may not -- may want to
7 consider but still at the end of the day we are still left
8 with a responsibility of the Agency to enforce the -- the
9 statute we operate under. So, that's -- that's frankly
10 something that we try to do in a nonpaternalistic way as
11 possible. But it's -- it exists in Indian gaming in a way
12 that doesn't exist in other industries.

13 And -- and some ways, you know, folks could
14 comment on how valuable that -- that federal
15 requirement of oversight has been, how respectful
16 sovereignty it is, but one practical effect of it is since it's
17 there, it gives us a hook to bring enforcement action
18 when something goes awry. So, while it may very well
19 make sense for tribes to consider very creative --
20 creative investment platforms, we still have
21 responsibilities under IGRA. And that's what we are
22 trying to work through. And if there is a specific portion
23 of the definition that you think could be tweaked to
24 allow for sensible investment, we would be happy to

1 continue chatting. But it's an excellent point you raise.
2 Sorry for the rambling discussion about various
3 investment platforms that are out there because it's --
4 IGRA is unique in that sense in terms of creating a
5 federal agency that's mandated to ensure primary
6 beneficiary status and there may be a lot of reasons for
7 that there certainly were when it was passed in 88, but
8 we are left with-- implementing what IGRA says. So
9 sorry for the --

10 >> MARK VAN NORMAN: I will consult with him
11 when we get back home.

12 >> JONODEV CHAUDHURI: No, sorry for the long
13 speech there.

14 >> ELIZABETH HOMER: I hear where you guys
15 are coming from. I understand well the concerns that
16 you are trying to address here. And at the same time,
17 you know, how does this provision square with the
18 provisions of IGRA that allows tribes to license nontribal
19 entities and yet retain 60% of the revenue. And what is
20 this distinction there, does that give any kind of hint or
21 clue as to what congress intended -- intended as the
22 sole proprietary interest? I am not saying that it does. I
23 am just saying that when you kind of open this can of
24 worms, like a lot of other things come, you know, come

1 spilling out about IGRA. And you know, I guess our goal
2 always is to have a fair and reasonable interpretation of
3 the law.

4 You know, but there are different kinds of ways
5 that are permissible under IGRA for, you know, tribes to
6 be involved in gaming without having the sole
7 proprietary interest in the activity when it comes to
8 licensing, you know, other entities within their
9 jurisdiction.

10 So, I guess that's a question. You know, I don't
11 know the answer to it, I don't pretend to, but I think it's
12 something that we have to think about.

13 >> JONODEV CHAUDHURI: And I thank you
14 Miss Homer. I mean, it goes back to ownership and
15 control. And that's what we are trying to codify in our
16 definition.

17 But we have seen, again, not to go way too off
18 track, why -- not in this setting. I don't want to waste
19 everybody's time with that. But those are good concerns
20 this is our best attempt at articulating IGRA's
21 requirement but it -- it's not just our attempt to -- kind
22 of gleaned from a lot of court cases, a lot of decisions
23 that we have made, and you know, many of our own
24 opinions or Agency actions. And so those are great

1 points, but again some of it goes beyond the scope of
2 IGRA I think or beyond the scope of the consultation,
3 speaks to the history of why certainly provisions were
4 put into IGRA in the first place, so -- I mean, I don't
5 think anybody was expecting historical discussion when
6 they came in here today. But this is good.

7 (LAUGHTER)

8 >> JONODEV CHAUDHURI: Any additional
9 comments, concerns? Amanda?
10 We will give one last crack to the folks attending online?

11 >> MODERATOR: Thank you. As a reminder,
12 please press star 1 if you would like to ask a question.

13 At this time we have no questions on the phone
14 line.

15 >> JONODEV CHAUDHURI: Okay. Well, that
16 concludes our third topic for discussion. You know,
17 since we have a little time, I want to again open it up for
18 any -- any final comments from the audience.
19 Okay. With that, I will turn it over to my fellow
20 Commissioners for some concluding remarks.

21 >> SEQUOYAH SIMERMAYER: Thanks, Chairman.
22 This is Sequoyah Simermeyer. I want to thank
23 you for participating today or for comments you might
24 send in in the future, and I appreciate all of the

1 conversations that -- I think there is open-ended
2 discussion that was really helpful, as well talking about
3 the importance of complying with IGRA's meaning. But
4 in a lot of these for me -- a lot of what has been -- as a
5 separate point for me, a lot of what has been discussed
6 in this past few weeks is looking at ways to make the
7 Agency more efficient and make sure we are removing
8 any burdens that exist while still complying with IGRA.
9 Thank you for your comments today.

10 >> KATHRYN ISOM-CLAUDE: Thank you. I
11 think we have seen today that a lot of our work is trying
12 to figure out the balance, you know, of being too broad,
13 too narrow, how to reconcile the different interests. We
14 appreciate your thoughtful feedback on this and helping
15 us to work through this. And we hope we will see more
16 written comments as well through February 28th, just as
17 a reminder again.

18 Thank you all again for being here.

19 >> JONODEV CHAUDHURI: Thank you. And just
20 want to echo that, thank you everyone for being here.
21 When, you know, when I first started to get my glimpse
22 of how we do things at the Commission, you know, it's
23 clear to me that we all believed in consultation.
24 Consultation was the bedrock of our operations. We

1 made commitment pretty early on that we would never
2 consult for consultation sake. We would never be, you
3 know, after -- we would never engage in after-the-fact
4 consultation. I think we have been pretty true to that.
5 Whenever we consulted we worked diligently to produce
6 actual, tangible results, tangible deliverables on the
7 topics that we discussed.

8 So, I want to thank everybody for their past
9 involvement and consultations. I think we, you know,
10 have been able to produce some specific deliverables for
11 each one of our priorities over the last few years. Today
12 we are hearing on some -- we discussed some areas of
13 opportunity to help us run through the tape.

14 You know, as -- as my fellow Commissioner mentioned,
15 we fully anticipate continued smooth operations at the
16 Agency, even after the expiration of any of our terms.

17 But we want to take the opportunity that we have now,
18 given the fact that we have a full Commission, to do
19 what we can to really take advantage of any areas of
20 opportunity while we have it to do -- do good work.

21 And that's what today's discussion is helping us do.

22 Thank you everyone for taking the time to be here
23 today. Thank you to NCAI for allowing us to piggyback
24 with this consultation. And really, I want to wish

1 everybody safe travels as they travel home.

2 Meduk (phonetic).

3 And I want to thank our team as well, our team has been
4 incredible in terms of putting together all of the
5 recommendations that working with all of you and
6 putting together these recommendations and putting on
7 today's consultations. So, thank you, safe travels.

8 Meduk (phonetic).

9 (MEETING CONCLUDES AT 11:36 A.M.)

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