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Presentation of Tim Twoguns, Chairman, Cayuga Nation Class II Gaming Commission

- Greetings from the Cayuga Nation of New York. My name is Tim Twoguns and I am the current Chairman of the Cayuga Nation Class II Gaming Commission. I also serve on the Cayuga Nation Council, representing the Turtle Clan of my people.
- The Cayuga Nation operates a Class II gaming facility on our reservation lands in Union Springs, New York. We have an excellent relationship with the NIGC and its very capable staff. We appreciate the Commission organizing this consultation session with Indian nations engaged in gaming activities.
- The Cayuga Nation has the following comments to make regarding the two issues raised by the NIGC in its press release announcing this consultation process:

## Management Contract Approvals

- The first issue discussed by the Commission is how it should ensure that its major decisions comply with the requirements of the National Environmental Policy Act, or “NEPA.”
- In a Notice issued in December 2009, the NIGC announced that only one of the regulatory decisions it has to make requires an environmental review under NEPA, by being a “major Federal action.” This major Federal action by the NIGC is the approval of management contracts for Indian gaming facilities under the Indian Gaming Regulatory Act.
- Under NEPA, the NIGC typically can use one of three levels of environmental review of a management contract, in order to satisfy its responsibilities under NEPA.
- First, it can require the preparation of an Environmental Impact Statement, which is a very rigorous, lengthy, and expensive process that can take more than 2 years to complete. To our knowledge, the NIGC has only required an Environmental Impact Statement in only 2 management contract approvals over the past 20 years.

- Second, it can require the preparation of an Environmental Assessment, which is more streamlined environmental review process. According to the NIGC's website, this type of environmental review has been required in 27 management contract approvals by the Commission.
- A third choice is to decide to exclude a management contract from any type of environmental review. This is called a "categorical exclusion" and the NIGC has excluded at least 9 management contracts from NEPA review, according to the Commission's website.
- The NEPA standard for triggering an environmental review of a Federal decision is whether the action or decision will "have a significant effect on the human environment."
- In the view of the Cayuga Nation, the approval of a management contract does NOT have a "significant effect" on the human environment. As stated in IGRA, a management contract is an agreement between an Indian tribe and another entity who will assume the responsibility for the operation and management of a Class II or Class III gaming facility. It is a simple document that

allocates responsibilities and duties for monetary compensation in operating and managing a facility.

- The approval of a management contract, by itself, has absolutely no significant effect on the human environment. For this reason, the NIGC should agree to exclude all management contracts from any type of environmental review under NEPA.
- Many gaming facilities are approved by the Interior Department through the trust land process, which triggers a NEPA review. It is burdensome and duplicative to also require a NEPA review again for any Tribe or Nation that seeks to use an outside management company.

#### Use of Technology

- Let me turn to the second issue you requested comments on in your press release announcing these consultation sessions. In your release, you asked about technological advances in Indian gaming and the importance of the NIGC staying abreast of these advances in its role as a regulator.
- As I mentioned before, the Cayuga Nation owns a Class II facility on our reservation lands. As I am sure you are aware, it has been very difficult for us to engage in negotiations with the State of

New York for a Class III Gaming Compact. This problem has now become even worse because New York has now legalized casino gaming in a number of locations within the State, leaving little incentive for the Governor to work with us to reach agreement on a Compact, as previous Governors have done with the Oneidas, the Mohawks, and the Senecas.

- As a result of this problem, the Cayuga Nation supports any efforts by the NIGC to expand the use of technology in Class II gaming.

We are particularly interested in the Commission's proposed re-interpretation on Electronic One Touch Bingo.

- In 2008, the Chairman of the NIGC disapproved an ordinance amendment on a Class II bingo game that did not require players to "cover" the numbers on their cards.
- In June 2013, the NIGC issued a Request for Public Comments regarding a possible re-interpretation of this position, so that players can comply with a bingo number "cover" requirement by only one touch of a button and with the assistance of the gaming device.
- The Cayuga Nation supports this re-interpretation as being consistent with the IGRA requirements for Class II gaming. And

since these games are played on bingo devices that are linked together electronically, any improvements to the play of these games broadens player participation, which is one of the Act's goals.

- The ability to play One Touch Bingo is also consistent with the legislative history of IGRA, where the Senate Report stated that tribes should have "maximum flexibility" to take advantage of the use of technology.

#### Conclusion

- Commissioners, thank you for having this consultation session and for listening to the views of the Cayuga Nation and other Indian governments interested in the issues you raised in your press release.
- Again, the Cayuga Nation appreciates the professional relationship we have with the Commission and its staff and we look forward to continuing to work together to improve the rules affecting Indian gaming.