* * * * * * *

NATIONAL INDIAN GAMING COMMISSION

CONSULTATION

ON JANUARY 29, 2018, BEGINNING AT 1:01 P.M.

AT THE ARAPAHO CASINO AND HOTEL

IN LAWTON, OKLAHOMA

NIGC STAFF

Chairman - Jonodev Chaudhuri

Staff Attorney - Heather Nakai

Associate Commissioner - Sequoyah Simermeyer

Vice Chairman - Kathryn Isom-Clause

Chief of Staff - Christinia Thomas

Director of Finance - Yvonne Lee

REPORTED BY: MARCY A. KING, CSR, RPR
***PROCEEDINGS***

CHAIRMAN CHAUDHURI: Okay. We're actually going to try to break new ground and get started on time today, but before we do, in keeping with our traditions, we start off with an opening blessing. We are blessed to have Mr. Gary Tomahsah from the Comanche Nation here today. He will lead us off with a blessing.

Thank you very much sir.

(Blessing)

CHAIRMAN CHAUDHURI: Before we move forward with introductions, we always give thanks to the nations whose homelands we enter into, so many, many thanks to Fort Sill Apache, Cheyenne Arapaho, Comanche, Kiowa, all of the western tribes of Oklahoma for allowing us into your homelands. We are honored and blessed to be here. And if I'm missing any specific tribes, feel free to conk me over the head.

My name is Jonodev Chaudhuri, I'm Muscogee Creek. I'm very proud to be back in Oklahoma. I'm going to turn it over to my fellow commissioners to introduce themselves in a bit before we get to housekeeping matters. But if there's any leadership from any of the host
nations here that want to make some opening
remarks you’re absolutely welcome to do so.

So I'll say a little bit more about the
consultation in a moment but I'm going to turn it
over to my fellow commissioners at the time.
There's three of us who are joined by our senior
leadership of the NGIC and we're very much looking
forward to a good consultation today.

MS. ISOM-CLAUSE: Thank you. Good
afternoon, I'm Kathryn Isom-Clause. I am vice
chair of the commission and Taos Pueblo. Thank
you all for joining us and thanks to Fort Sill and
all of the tribes the chairman has mentioned for
hosting us in your lands here.

Tribal consultation is primarily a
means for us to listen to tribes, not only to
honor a government-to-government relationship, but
also recognition of tribes as the primary
regulators of Indian gaming.

It is also a time for us to present
ideas for how we can strengthen our regulatory
partnerships, provide clarity to our regulations
and policies and make our day-to-day work more
efficient.

This round of consultation sessions
follows through our previous consultations that
we've had as this current commission.

Our topics today are targeted to
address protecting against gamesmanship on the
backs of tribes, developing outreach to small and
rural gaming establishments.

While we're specifically targeting
those two especially today, we're also continuing
to implement our other initiatives including
supporting a strong work force both through the
NIGC and among our regulatory partners.

And a final -- not a initiative, I
suppose, but a final management objective will be
reflected in our upcoming strategic plan, that's
instrumental operational excellence. Our
strategic plan will be up next month, very soon,
and it will cover fiscal years 2018 through 2022.
So look to that to provide a continued stability
in our policy initiatives and work with the
commission going forward.

So we're looking forward to sharing our
ideas with you today as well as hearing from you
on these topics as well as any other topics that
you might wish to address with us today.

Thank you again for making time and I
will turn it back to my fellow commissioners.

MR. SIMERMeyer: Thank you.

Good afternoon. I'm Sequoyah Simermeyer. I'm a Coharie Tribe of North Carolina and I'm the third member of the National Indian Gaming Commission.

I want to join my colleague in saying thank you to Indian country for having us here today and for engaging in this discussion.

As part of this consultation series, it's always a good reminder for me to think about the objectives, and for me one of those objectives is to follow the intent of Indian gaming regulatory acts.

As we all know, the watershed laws shape our regulatory framework and led to the over $30 million industry that we have here so that's an important objective on how I look at the world today.

Another objective for me is to look at the -- just to rely on the expertise that exists in Indian country along with our fellow regulators as well as the institutional knowledge within our agency for making informed and defensible decisions.
And the third objective for me is to be diplomatic in how the commission approaches the work that it does. I think that that includes engaging in discussions like this and being aware of the intergovernmental relationships that tribes have established in order to execute their vision for their communities.

So in all of this work that we're doing I think for this consultation series, I think that I share with my colleagues and the commission an appreciation for the work that we can achieve in consultation. It not only makes for better governance at the federal level in terms of our decision-making, it not only helps to bring together federal participants who need to be part of these conversations, but importantly I think it helps to define and puts some meaning to the government-to-government relationship that we have, and to make us stronger federal partners.

So I just want to start off the session today by, from my perspective, saying thank you, and share with my colleagues, in the work that we're doing in this discussion here, and in the coming weeks. So thank you.

CHAIRMAN CHAUDHURI: So before we
go around the room with introductions, we usually
try to recognize NIGC alums that are in the room.
I don't see any, but if I'm missing anybody,
please be sure to raise your hand.

We'll move forward with introductions
but let me just kind of piggyback on a couple of
comments raised by my fellow commissioners.

Let me talk a little bit about the time
frame that we're working under. I'm very proud of
the fact that our agency has made good on our
commitment, at least in my experience and my time
with the commission and from what I've observed
from my colleagues. And our promise is to never
put pen to paper without working with our tribal
partners, without engaging in meaningful dialogue.
So we've worked very hard at every stage to listen
and engage in meaningful dialogue before moving
forward with any proposed regulations and proposed
rules. And I think today is no exception.

We provided some draft documents to
help facilitate the process, but I want to assure
everybody that these draft documents flow from the
many conversations that we've had both one-on-one
through formal consultations and in group
meetings. But furthermore, they flow from
consultation topics that we engaged in or that we
heard from Indian country about last year.

And so even though we have discussion
drafts on these topics, they, in my view,
represent the product of collaboration and
dialogue with Indian country.

That said, we're working on a pretty
aggressive time frame. As many folks in here
know, this agency at various times has functioned
without a full commission. I'm very honored to be
a part of a full commission that brings with it
diverse views and perspectives, and together we
each bring our perspectives and expertise into the
regulation discussion. That's very helpful when
you're passing new regulations, issuing new
guidance, issuing rules.

Although I have every reason to believe
our agency will continue to move, move on a smooth
trajectory despite any changes in the commission
itself. And that's especially due to the
incredible staff we have. We want to do what we
can while all three of us are working together.

My fellow commissioners have
significantly more time on their terms left than I
do. Mine ends later this spring. And while we've
made no formal decisions about a departure date, I certainly am committed to run through the tape to get as much done as I can, giving the honor it is to serve on this full commission. So that's a little background about the time frame.

We're going to move forward with introductions so that everybody in the room knows who the NIGC representatives are. But after that, we're going to turn it over to the room because, as these consultations are transcribed, people who weren't in the room today will still benefit from reading about the conversation that we have and it's always good to know who you're conversing with.

So with that, if we could just briefly introduce ourselves, members of the commission team.

Start on this side and just go down.

MS. NAKAI: Good afternoon, everyone. My name is Heather Nakai. I am an attorney in the office of general counsel. I currently serve as the Oklahoma City regional attorney, so many of you may have met me in the past. I'm honored to be here and look forward to our conversations.
MS. THOMAS: Good afternoon, my name is Christina Thomas. I'm the acting chief of staff of the National Indian Gaming Commission. I'm also a member of the Lacs Band of Ojibwe out of Minnesota.

MS. LEE: Good afternoon, my name is Yvonne Lee, director of finance for the National Indian Gaming Commission.

MR. BENEFIELD: Hello, I'm Josh Benefield, the lead auditor with the National Indian Gaming Commission.

MR. CUNNINGHAM: Hi, I'm Tom Cunningham, the assistant director of compliance for the National Indian Gaming Commission stationed in the Oklahoma City office.

CHAIRMAN CHAUDHURI: And as always, we have an open door, open phone line policy. We strive to work promptly so that small problems don't become big problems.

Just because -- let's see, we have a few members of the audience. Folks from our Tulsa office, if they're here -- I see Mr. Harper back there. Tim Harper, our regional director from Tulsa is here.

Is there anybody else from the NIGC
MR. WHEELER: Anthony Wheeler, acting regional director for the Oklahoma City office of NIGC.

CHAIRMAN CHAUDHURI: Thank you, Tony. That's a good demonstration.

Go ahead.

MS. DINKINS: Dana Dinkins, compliance officer out of the Oklahoma City office.

CHAIRMAN CHAUDHURI: Thank you.

So that illustrates a good point. So we do have a transcriptionist, as I mentioned before, that this consultation will be transcribed and put on our website. And so since we don't have wireless microphones today -- that's correct, right? We're going to try and track down a wireless microphone.

In the meantime, if you could speak as loudly as you can for the benefit of the transcriptionist, we would very much appreciate it. So include your name, your tribal affiliation and what capacity you're appearing today, at today's consultation. We would very much appreciate it.

So if we could go around the room
starting with this table. And just to let you
know, the structure of our layout, unlike other
consultations, we really -- if we had round
tables, we would set the table up in a giant round
table because we don't believe in a one-way
dialogue with these consultations. We want it
really to be a conversation, a meaningful
discourse.

So while we have chairs in the back, I
want to welcome anybody to sit up front and sit at
the circle. We would have one big circle if we
could. But I just throw that out there.

At this time I'll turn it over to our
good friend, Mr. Friend.

MR. FRIEND: Billy Friend, chief
of the Wyandotte Nation.

MR. GORHAM: Hershel Gorham,
tribal attorney for the Cheyenne and Arapaho
tribes.

MR. WASSANA: Reggie Wassana, the
new governor for the Cheyenne and Arapaho tribes.

MR. MILES: Gilbert Miles, the new
lieutenant governor for the Cheyenne and Arapaho
tribes.

MR. THOMAS: Ronnie Thomas, vice
chairman, Alabama Coushatta tribe.

MR. COLBERT: Scott Colbert, Chickasaw Nation Gaming Commission.

MS. CAVINESS: I'm Gena Caviness, Cherokee Nation Gaming Commission, compliance manager.

CHAIRMAN CHAUDHURI: Without a wireless microphone, I'll guess we'll just endure. There we go. There we go. Thank you, sir.

MS. ASHER: Tracy Asher, I'm audit manager with the Cherokee Nation Gaming Commission.

MS. WILMETH: Shannon Wilmeth, acting director of compliance with the Comanche -- acting executive director, excuse me, Comanche Nation Gaming Commission.

MR. McBRIDE: My name is Mike McBride of Crowe and Dunlevy, attorney general of Seminole Nation.

MS. GIBSON: Jackie Gibson, executive director of Muscogee Creek Nation.

MR. YORK: Buddy York, gaming commissioner, Muscogee Creek Nation.

MS. GREEN: Nancy Green, attorney
MR. WALKER: Jody Walker,
regulatory compliance manager, Chickasaw Nation.

MR. KILGORE: Matt Kilgore,
compliance manager, Chickasaw Nation.

MS. VANCE: Vanessa Vance,
treasurer, Wichita and affiliated tribes.

MS. TANYAN: Leslie Tanyan,
Absentee Shawnee, executive director.

MS. MORAGO: Sheila Morago,
executive director of the Oklahoma Indian Gaming Association.

MR. JOHNSON: Jim Johnson,
executive director, Fort Sill Apache Gaming Commission.

MR. TOMAHSAH: Gary Tomahsah, Ft. Sill Apache Gaming Commission, compliance officer of the Comanche Choctaw Chickasaw tribes.

MR. EASTERLING: Jared Easterling,
outside counsel for the Chickasaw Nation.

MR. MORGAN: Matthew Morgan,
director of gaming affairs, Chickasaw Nation and vice chairman of the Oklahoma Indian Gaming Association.

MR. QUALLS: David Qualls,
chairman of the Oklahoma Indian Gaming
Association.

MR. HITCHCOCK: Jeff Hitchcock, chairman of the Wyandotte Nation Gaming Commission.

MS. KASSANAVOID: Alice Kassanavoid, Comanche Nation Gaming commissioner.

MR. SMITH: Doug Smith, compliance and surveillance manager for the Sac and Fox Gaming Commission.

MR. CASTEEL: Rodney Casteel, the executive director of Sac and Fox Nation Gaming Commission.

MS. PEARSE: Kim Pearse, internal auditor, Sac and Fox Nation Gaming Commission.


MS. ISHAM: Leda Isham, Seminole Nation Gaming Commission.

MR. LAURENZANA: Rudy Laurenzana, chief gaming regulator with the Seminole Nation.

MR. HALE: Terry Hale, deputy chief gaming regulator, compliance manager, Seminole Nation.
CHAIRMAN CHAUDHURI: Okay. I want to thank everybody for taking the time and making the long drive and possibly flying in to be here today. We really look forward to a productive consultation.

Before we go to the housekeeping portion of our agenda, I do want to restate, we're proud to be here as part of our commitment to government-to-government consultation. I do recognize that there are various organization representatives in the room as well as a couple of attorneys. Being a former attorney myself, I very much appreciate the role of attorneys and economic development in Indian country.

We will do our best to hear from everybody, but not at the expense from tribal leadership and tribal regulators.

So I want to ask for everybody to defer as much as possible to tribal leadership and then tribal regulators if we have time. Given the time frame that we're working under, we'll hear from everybody. But I certainly want to make sure all leadership and regulators have every opportunity to have their concerns raised, their comments made on the record.
So with that, I'm going to turn it over to our chief of staff, Ms. Christina Thomas, for some housekeeping notes.

MS. THOMAS: Thank you, Chairman.

So just to discuss what our actual format is today, so we're scheduled to go from 1 to 3 p.m. We have three topics that we're going to cover today. The draft changes to the management and contract regulations, audit submissions and the management and sole proprietary interest definitions.

After each topic, we will be pausing, turning it back over to the commission to start the discussion and questions and comments for the record will be heard in between each topic, but at the end we'll also have a catch-all time period for people to actually add additional comments.

In addition to that, so as the chairman has said, we do have a transcriptionist here today, so if you do have a comment for the record, please be very clear with your name and the affiliation that you're with prior to entering your comment.

We do have a deadline comment period for all of the drafts that we provided copies of
today. They're also on our website. That comment period closes on February 28th, 2018.

As updates are done throughout this consultation period, we'll be making changes to the consultation page on the website. Any changes that are done will be completed by 5 p.m. Eastern time every single Wednesday.

With that, I will hand it back over to
the chairman.

CHAIRMAN CHAUDHURI: Thank you.

As I mentioned before, we are honored to be in Western Oklahoma. I again want to restate that any leadership from any of the nations represented here today are absolutely welcome to make some opening statements.

In addition to that, I understand travel accommodations being what they are, some people may need to leave early. If anybody needs to get on the record now and wants to read a statement into the record, please feel free to do so before we get into the formal subjects that we're about to get into in a moment.

Does anybody need to give a statement on the record before catching a flight?

Okay. With that, we're going to hear
each of our consultation topics. As Ms. Thomas
mentioned, we're going to hear background
information about each topic. But at the end of
that information, my fellow commissioners and I
will weigh in and provide some additional
background.

So with that, we're going to now turn
to our discussion about management contracts and
for that, we have our director of finance, Ms.
Yvonne Lee here to give that.

MS. LEE: Thank you, Chairman.

Under IGRA and current NIGC
regulations, Tribes wanting to engage a third
party to manage their operations are required to
enter into a management agreement with the third
party that must be approved by the Chairman of the
National Indian Gaming Commission. Following the
NIGC's 2017 consultation sessions, the Commission
carefully reviewed its regulations, and the
Agency's internal procedures for reviewing and
approving management contracts. As a result of
that review, and based on comments received during
the consultations, the Commission believes that
changes to our management contract regulations
will improve the efficiency of the contract review
process and ensure consistency with IGRA's requirement regarding term limits.

I will provide some background on this topic, including current regulations, Agency concerns, and the Commission's proposed amendments to the regulations. After this, we will open the floor for questions and discussion.

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

After management contracts have been approved, tribes and their management contractors may amend their contracts by following the streamlined procedures for review and approval of contract amendments found in NIGC regulations (25 C.F.R. Part 535). Part 535 provides an expedited process within which background investigations are only required if the third party individuals and/or entities responsible for the management contract have changed, and no new business plan or updated financial information is required. The
expedited process is designed to allow the parties to sustain their relationship in a dynamic business environment while maintaining the integrity of the Chair's initial management contract review and approval.

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

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

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

The proposed amendments clarify the regulations by explicitly noting that amendments that extend the approved management agreement beyond the term limits permitted by IGRA, which is five or seven years, will be reviewed under the
full requirements of a new management contract under Part 531.

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

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

The Commission understands this change may affect the timing and expense of updating background investigations for making suitability determination of management contractors. And independent of the changes discussed above, the Commission received comments during the last round
of consultation that the background investigation process was time-consuming and expensive. As a result, the Commission has done a thorough review of its background investigation process and is proposing changes to our internal procedures to make the process more efficient, thereby reducing the cost of investigations.

Under the new process, NIGC staff will review the background investigation applications and divide them into different investigative groups based on the level of risk. This process will allow the agency staff to focus their investigative resources on the most vital individuals and entities. This replaces a one-size-fits-all model that scrutinizes all applicants the same. For example, under the current process, the top direct financial interest goes through the same background investigation as the smallest indirect financial interest. But under the new process entities and individuals with a direct financial interest, holding the highest level of risk to the tribe, will have a more in depth background investigation completed versus those entities or individuals who have an indirect financial interest.
In addition, the Commission has proposed changing the individuals and entities that are required to submit background applications under the regulations to those that have 10 percent or greater financial interest. This proposed change should significantly reduce the costs to the management contractors in submitting full applications on smaller investors. Further, this proposed change will also better align the agency's requirements with other regulatory agencies.

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

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

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

I would now like to turn it back over to the Commission to lead the discussion.

Thank you.

MR. SIMERMeyer: Thanks, Ms. Lee.

I'll briefly just point out and say that my hope is that what's being looked at today we're balancing the efficiencies and removing burdens that might exist under our current approach, and also being clear about our understanding of what it requires.

And so by looking at whether we're using OPM by creating the zones, by removing the deposit requirement, the hope is that this will avoid a review process that's unduly burdensome beyond what's required. And also be clear about
what IGRA requires in terms of its terms.

So it will be helpful in our discussion and during the coming weeks feedback to hear what the tribes' needs are when they're entering into and engaging with different partners that are necessary to help with their operation's success, whether it's a partnership in the financing field or professional services or management. Having awareness of what impact or, you know, how it would be helpful, and making sure that we're in line with what's required within the law.

And so I just want to thank the staff for gathering this, not just for this consultation series that we're in now, but also for engaging with Indian country over the last year on this discussion about management contracts and making sure that it's sufficient in how we're approaching this.

Those are my comments. Thanks.

MS. ISOM-CLAUSE: I would like to echo those comments, that these proposed changes are about making sure our practices are aligned with IGRA's requirements while also balancing out savings of time and money to these deficiencies that Ms. Lee discussed. You know, we think this
could provide for a much more streamline process
while not creating any additional risks, getting
rid of the burdens to tribes and management
contractors too.

So we're excited about all of the
suggestions that the tribes might make and we're
looking forward to hearing what you all think of
these and any other ideas in this process.

CHAIRMAN CHAUDHURI: Thank you.

I don't have much to add to my
colleagues' statements other than to say that
these proposals get us closer to the letter of
IGRA. I think, as an agency, one of the things I
found remarkable is how we've worked very hard
within our statutory and regulatory limitations to
do our job as regulators, and help ensure tribes
are the primary beneficiaries of the operations,
while at the same time avoiding unnecessary
roadblocks to economic development.

Sometimes that's required us to take,
you know, a very -- you know, an interesting view
of our interpretation of IGRA. I think the
proposals set forth help us actually implement
IGRA as written but still provide flexibility.

That said, we're not -- we're not all
in on any proposal. That's the purpose of consultation. We do have an aggressive time frame. As we mentioned, the comment period ends February 28th but I'm also very thankful for the staff's hard work in putting these proposals together to try to get us as close as possible to IGRA's spirit and letter while at the same time working with Indian country.

So we're very much looking forward to a vibrant discussion today on this topic and we'll turn the floor over to any comments that the audience may have.

Again, please provide all due deference to tribal leadership and tribal regulators. And we do have a wireless microphone.

And Mr. Wheeler in the background will be going around helping get the microphone where it needs to go.

MR. MILES: I have a question. Ms. Lee said that when the contracts -- it says here that you can have a five year contract. But, if approved, you can go as far as seven; is that correct?
Nakai. IGRA does have a five or a seven year requirement for the management agreements. Perhaps our office of general counsel could give a little more background about when five years is appropriate, when seven years is appropriate. But, again, just for the benefit of the transcriptionist, if we could restate our name so that she can have it completely.

MR. MILES: Gilbert Miles, lieutenant governor, Cheyenne and Arapaho tribes. The comment was made that if you wanted to do an amendment to an agreement, that if you start with a one year contract, that you could extend it up to five years if everybody agreed upon that. But in 531.1(a) it says you can go as high as seven. So I didn't know if her example meant that you couldn't go as high as seven or you could go as high as seven if you had an agreement that you wanted to amend, that the possibility is you could have an amendment that went as high as seven and you're not limited to just an amendment going further than five years.

MS. NAKAI: Yes. Again, my name is Heather Nakai, I'm an attorney in the office of general counsel.
IGRA requires that for the chair to approve a management contract, one of the things is to check the term of that contract. And it says explicitly the initial contracts can go for a period of five years or up to a maximum of seven with justification.

And so if you signed a contract that was just for five years, it's a standard submission. If you need the contract go up to seven years, it would have to have a justification, and that also requires an evaluation of that justification. It can't just be, well, we'd really like this to be for seven years.

It's typically because there are needs for recoupment for the investment, because there's going to be a long period of time to get it -- it's anticipated that there will be a long period of time to get the contract up and running smoothly. So you would need an additional justification.

The amendment here in the way it's described is what would happen if you had a contract that was originally intended to be for four years and let's say you added two years to
that contract in an amendment. What would happen
is the amendment would come in, if I looked -- as
a lawyer, looked at that contract that originally
was for four years and you added an additional two
years, now you have a contract that's for six
years. And IGRA is clear that any contract after
five years requires justification.

This makes clear that when you start to
get into these periods of time, you're following
those requirements. And understanding that we
look at the time -- the term as a cohesive group
as opposed to two individual periods of time.

And so in the example that Ms. Lee gave
where the contract was originally for five years
and you added both -- one year and you added four,
you would still get the five.

But if you had a contract for five
years and you had an amendment that gave you an
extended three year term, we would have eight
years. And you understand that IGRA doesn't like
you to have a eight year management contract.

MR. MILES: My question was is
let's say that you have a one year contract and it
was a great contract and you said let's make it a
seven year contract, let's add six more years to
it, and with the appropriate justification
consistency with IGRA was 531.1(a), you could be
able to do that; is that correct?

MS. NAKAI: You could with the
appropriate justification.

MR. MILES: Thank you.

CHAIRMAN CHAUDHURI: And thank you
for that question and thank you, Ms. Nakai for an
excellent answer.

So just for discussion, I think we've
all discussed a little among ourselves at the
agency about the many proposals that have kind of
-- that potentially were appropriate for
consultation. We decided to go out with the ones
that best reflected our conversations with Indian
country.

But one impact from all of this is that
there will be -- there will be fewer amendments
and more approvals of full term contracts. And,
you know, we would welcome any comments about the
impacts of that. Pro or con. We've got thick
skin up we're here. Okay.

With that, as I always say, there's no
crime whatsoever in finishing early. So we'll
leave -- we'll leave a little time at the end,
especially since it looks like we're finishing early, for other questions. Sometimes you have an idea on the way home and you think, well, boy, I wish I would have brought that up in the meeting. If there's any ideas that anybody has, we'll leave a little time at the end.

Also, I don't want us to be -- none of us wants to be constricted by process, so we'll be a little bit flexible in terms of the scope of questions at the end.

But to keep things moving, we'll go ahead and move on to our next consultation topic which is audit submissions. And our subject matter expert for that is chief of staff Christina Thomas.

MS. THOMAS: Thank you, Chairman.

Under IGRA and current NIGC regulations, gaming operations, regardless of income, are required to submit an annual audited financial statement, completed by certified public accountants, to the Commission within 125 days of their fiscal year end. These audits may be encompassed within existing independent tribal audit systems.

Submission of the annual audit report
is critical to the NIGC's mission to protect the integrity of Indian gaming and provides a certain level of assurance as to the safekeeping of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation, and more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

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

A gaming operation earning less than $2 million in gross gaming revenue annually can request from the Commission to submit a CPA reviewed financial statement, if it has submitted an audited financial statement for three
consecutive years. A reviewed financial statement must be completed by an independent CPA and conform to statements on standards for accounting and review services of the gaming operation.

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

NIGC reviewed statutes and regulations from a number of jurisdictions and agencies concerned with financial entities, including the State of Nevada, the Federal Deposit Insurance Corporation and the Department of Interior. We found no consistency in the audit requirements. For example, Nevada gaming regulations require audits of financial statements for operations grossing more than $5 million, but maintain the right to require audits, compile statements or reviews of financial statements of those
operations whose gross revenue is less than $5 million. Interior exempts non-federal entities from their audit requirement if the entity expends less than $750,000 per year. As NIGC considers altering its own regulations, it recognizes that there are currently 95 tribal operations that produce less than $3 million in gross gaming revenue. Further, the Commission is aware that tribal operations comply with the most regulations from their own governments, as well as state and federal entities.

Our hope through this consultation session is to discuss opportunities or receive feedback and recommendations on how to amend this regulation while still ensuring we are supporting financial stability and maintaining a high level of protection of tribal gaming operations.

Thank you. And I will hand it back over to the Commission.

MR. SIMERMeyer: Thanks, Ms. Thomas.

Our management discussion was being proposed as an attempt to comply with IGRA's requirements and that our nation and our agency's interpretation provides a financial stability that
IGRA envisioned. I think it's also important to note that what IGRA requires promotes the growth of some tribes' capacity in order to be able to provide the oversight and auditing requirements. And so -- which is, as was mentioned, some particular types of jurisdictions, and the important objective of IGRA and important for any kind of operation. So any thoughts that tribes have from an operation perspective or from the tribes' own internal auditing approach, whether the gaming site or other parts of their operations and governments, would be helpful in helping us understand what the impact might be with this change.

MS. ISOM-CLAUSE: Thank you. I'll just be brief. We have our experts here so feel free to ask any questions as well. This is a fairly technical topic for some folks, and ourselves included. So feel free to ask any questions or just give us any feedback on what you're seeing if it's not been encompassed in the discussion we've had so far. If you have some questions to prompt conversation, and we'll just start off with just open dialogue.

CHAIRMAN CHAUDHURI: And just to
echo my colleagues' comments, and also touch on a point that the vice chair raised in her introduction, Rural Outreach is one of the initiatives of the agency's priorities. And so -- in our day-to-day regulation work, we're guided by four initiatives. Rural Outreach is one of them. We recognize that a threat to one facility is a threat to the health, integrity, reputation of all Indian gaming. So we see an important part of our work at NIGC as supporting operations' facilities regardless of how big or small they are.

And we certainly recognize that the realities of small or rural or newer operations are different than large urban or established operations. And so we've worked very hard over the last few years to develop agency operations around that initiative.

Some examples include enhancing our technological offerings. We want to be able to offer webinars, Internet trainings, so that smaller facilities, smaller operations can send regulators to our trainings without incurring the travel expenses associated with in-person trainings. We've also developed IT vulnerability assessments that are free services that help
identify IT issues in various operations. We're also actively considering a region split in our St. Paul office and elevating the role of our Rapid City satellite office to a regional office to better serve rural communities.

This proposed regulation change is part of all of that. It's part of our commitment to do whatever we can to look at the unique needs and challenges of small and rural operations in light of our ongoing responsibility to ensure the integrity of Indian gaming.

Again, I would like to thank our team for raising this as a possible outgrowth of Rural Outreach and we very much look forward to hearing comments, concerns, statements from the audience today.

I know audits are super exciting. You know, we're very proud of a lot of the deliverables we've already issued. This is yet another one that is part of us, quote, crossing our T's and dotting our I's on our initiatives the best we can. And, you know, our work to do what we can given the time that we have.

MR. GORHAM: Hershel Gorham, tribal attorney for the Cheyenne and Arapaho
tribes. Can you expand on the $2 million threshold? Is that operating revenues, net revenues, gross revenues?

CHAIRMAN CHAUDHURI: I'll turn it over to the staff.

MS. THOMAS: So under 571.12 is the NIGC regulations that further define the audit submission requirements on what tribes are required to submit.

Underneath that provision there is -- after doing three consecutive years of a full audit, you can do a review of the audit, so it's not a full CPA audit. That $2 million threshold is gross gaming revenue in there, so $2 million. So whatever you report for your gross gaming revenue is the number that we would use to measure the $2 million threshold.

CHAIRMAN CHAUDHURI: Thank you for that question.

MR. SIMERMEYER: I appreciate some of the comments made by the Chair and, you know, the perspective that we're getting. And some of the discussion that we've had so far talks about -- even with the opportunity for the reduced review that Ms. Thomas just kind of mentioned,
it's important to make sure that there's not --
that the auditing requirements, you know, maintain
that envisioned financial stability. I also don't
disincentivise an awareness about the small gaming
operations, what's going on in your community. So
that was in part consideration too, is striking
that balance and looking at, you know, when an
operation is so small, the impact of the cost on
the audit requirements.

So if there's other perspectives here
about how that might be a disincentive, or is that
a disincentive, we want to make sure those are
identified.

CHAIRMAN CHAUDHURI: Yeah. And
just for the purpose of prompting dialogue, I
couldn't agree more. You know, the question is
always how can we get the information that we need
as an agency to ensure compliance on the ground,
while at the same time not regulating in a manner
that squelches meaningful economic development.

You know, as we know, many of the small
operations don't have the biggest bottom lines, a
lot of them are effectively jobs programs for many
rural communities and we recognize the importance
of those operations as -- as we think about
self-sufficiency and strong tribal governments. Those are two of the fundamental policy purposes of IGRA. So the question is how can we get what we need to get to ensure compliance while still supporting tribal self-sufficiency, economic development and strong tribal governments.

Yes, Mr. York?

MR. YORK: Maybe I can speak loud enough. Buddy York with Muscogee Creek Nation Gaming Commission.

Since we have several casinos and some of them -- we may have a couple that fall under this threshold, is there anything that says that we cannot drop these smaller ones off of our regular combined audit and submit them separately?

CHAIRMAN CHAUDHURI: We had a similar question of that in a recent consultation.

Christina, do you want to take that one?

MS. THOMAS: The microphone doesn't like me.

No, there is nothing that would prohibit a tribe who has multiple facilities dropping the smaller ones to have -- underneath the current way that it's written, to have it
reviewed versus having part of it a full CPA audit.

CHAIRMAN CHAUDHURI: Thank you Mr. York.

Okay. Any other questions, comments, concerns? Okay.

With that, we'll move on to the third topic of consultation and that involves management and sole proprietary interest definitions.

And for that, we have our representative from the office of general counsel, Ms. Heather Nakai, who would probably benefit from the microphone.

MS. NAKAI: Thank you, Chairman.

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

With this in mind, I will provide some brief background information of these terms and then pass it back to the Commission for further questioning and discussion.

To assist tribes in determining whether an activity constitutes management, NIGC bulletin number 94-5 explains that the term encompasses activity such as planning, organizing, directing, coordinating and controlling all or part of a gaming operation.

In addition, the NIGC Office of General Counsel issued an opinion letter expanding on these terms by providing tables of management activities. However, today, the commission has not issued a regulation formally defining management. The commission believes that, in consultation with tribes, developing a regulatory definition consistent with past interpretation would help provide greater certainty to the tribal gaming history regarding what constitutes management -- what constitutes management.

The Commission recognizes that the 7th Circuit has also recommended that it provide more
certain guidance.

As stated, the purpose of IGRA is to ensure that the Indian tribe is the primary beneficiary of the gaming operation. Seeking to serve this purpose, IGRA requires that tribal game ordinances provide that tribes have the sole proprietary interest and responsibility for the conduct of any gaming activity unless the gaming activity is individually owned.

To determine whether a third party has received a proprietary interest in a tribal gaming operation in violation of a sole proprietary interest mandate, the agency considers the term of the relationship, the amount of revenue paid to the third party and the right of control over the gaming activity provided to the third party.

The commission has previously consulted other developing guidances and regulations concerning sole proprietary interest in 2008 and 2010. Courts have had the opportunity to consider and discuss this issue in the intervening years noting and upholding NIGC's formulation of the criteria evaluated for said violations.

The commission believes that a regulation consistent with past NIGC enforcement
actions and litigation would provide a greater certainty to the tribal gaming industry regarding what constitutes a violation of the sole proprietary interest pending.

The draft regulations we provided you today in the hand-out incorporate these interpretations for consideration in addition to the commissions' compliance regulations.

I would like to now turn it back over to the commission to lead the discussion.

MR. SIMERMeyer: Thank you.

I'll make three brief points about this topic. As was mentioned, there's guidance and legal things that have come from the agency as well as court decisions over the recent years that have brought some definition to what constitutes management and sole proprietary interest.

So, first, as a member of the commission who had the responsibility for reviewing a Chair's action on one of these topics, I think it's helpful that we promulgate some definitions that would help raise some transparency toward what the standard is. It's just a matter of good governance.

I think secondly there's also an
opportunity to bring some certainty with partners
in Indian country. As was mentioned, also general
counsel provides declaration letters that try to
try to provide some certainty for the
partnerships that have taken place, and so the
hope is and we'll hopefully get comments back, and
this will help to provide some better definition
or certainty in how to approach those
relationships.

And finally I want to say this is an
opportunity to look at this topic to kind of
identify and make the public at large aware of the
options that exist dealing with sole proprietary
interest violations or management contract
violations.

We welcome any feedback on this topic,
whether it's today or in the coming weeks, but as
long we don't go beyond what's required, it's
important that it's practical, and that will help
the industry.

MS. ISOM-CLAUSE: Thank you.

I also would like to highlight that
this isn't meant to include any new requirements
but really just gather our existing understandings
into one spot and do that through a regulation
which as Mr. Simermeyer mentioned should provide
certainty and clarity to the industry and tribes
that we hope will result in efficiencies down the
road for business as well.

MR. CHAUDHURI: Thank you and I
agree with everything and how it was said.

I just want to add, again, the vice
chair already touched on this in the introduction.
These definitions come out of our commitment to do
anything we can to prevent gamesmanship on the
backs of tribes.

I mean, when we first started talking
about our gamesmanship initiative a few years ago,
I think people want a little more information
about what we meant by that. And basically we
explained that it's simply a way of articulating
our responsibility under IGRA to ensure that
tribes are the primary beneficiaries of their
operations and tribes retain sole proprietary
interest in their operations.

So, in other words, you know, it's a
way for us to talk about how we as an agency do
whatever we can to protect against third party
threats to those IGRA requirements. Bringing
clarity, consistency, uniformity, codifying
definitions that have already been, you know, put
out there by courts as well as our agency. That's
all part of that.

And so being able to clearly set forth
what our understanding of management is, what our
understanding of sole proprietary interest is will
not only inform our actions as an agency but as
commissioners, some of them I already mentioned,
hopefully will bring clarity for tribes to work
with other partners.

You know, every finance agreement we
would think would benefit from having our
definitions lived out without having to rely on
specific reviews every time they want more
guidance on our view of management.

And so that's where we're coming from.
We welcome any comments, concerns, or statements
that the audience may have.

MR. YORK: Buddy York, Muscogee
Creek Nation gaming commissioner. One of the
things that I -- as a regulator, one of the things
that would help us as far as definitions go would
be if we had a better definition of what a gaming
operation is. We have so many entities that are
not exactly gaming related that are underneath the
umbrella of the casinos. And those are the ones that are kind of in the gray area that, you know, we're not sure whether or not we have the authority to look at those. And so, you know, if we had a better definition of just what is under the umbrella of a gaming operation, that would help us out when we're doing our regulating.

CHAIRMAN CHAUDHURI: Thank you so much for that, Mr. York.

We have an ongoing responsibility to regularly review our regulations, and so that very well could be a topic for consultation in the future. And so that's one of the benefits of these conversations. Just as previous conversations have formed the topics we're discussing today, we're always looking for ways to improve our service to the industry, to Indian country and the general public. So thank you very much for that comment, Mr. York.

Okay. Without any additional comments on this topic, I'm not seeing any hands, we'll just open it up for just a brief conversation section for the consultation. And again, I don't want us to be locked into a process but we just want to just survey the room to see if there are
any general comments, questions or concerns that
tfolks may have.

MR. YORK: Buddy York, gaming
commisioner, Muscogee Creek Nation.

I just wanted to make a comment that
the NIGC is going in the right direction as far as
what they're trying to do to help the tribes out.
A lot of these issues are things that we have been
dealing with for a long time and I'm glad to see
that you're trying to help us out.

We've got a lot of small rural casinos
that can use, you know, any kind of help they can
get. We have some that may not net over $100,000
or $200,000 a year which isn't much as far as
casinos are concerned but they provide 20 to 30
jobs in an area where the unemployment rate may be
eight to 10 percent.

So these are things that really any
time we can cut expenses to some of these smaller
casinos, it really helps. Because we're looking
at -- casinos are being run as a business now.
And if you have these small rural casinos that
aren't making the money like the big ones, then,
you know, they may want to shut them down for
something that's a little more lucrative.
So I think that you're going in the right direction and I think that the NIGC is getting updated like the tribes are now. These are conglomerates now. We're not just tribal casinos or bingo halls. And the regulations and everything has to be brought up to date to meet those needs.

CHAIRMAN CHAUDHURI: Thank you very much, Mr. York.

Any other comments, questions, concerns?

With that, as they said, it's never a crime to finish early.

Let me just forecast what our game plan is. As I mentioned, the comment period for this consultation session ends February 28th. After that we're anticipating some sort of update session, hopefully an online update in which we'll provide an overview of the comments received and our game plan moving forward.

We're anticipating some or all of these topics will move forward to the next step after we've had a chance to review all comments. And that next step is potential issuance for public notice for a proposed rule.
Again, we're not locked into any specific proposal. That's what consultation is for. But what we can do, we want to do in the time that we have. And so please keep an eye out for next steps on that.

But the transcripts of each of these consultations will be available as soon as possible after each of the consultations and they will be available on our website.

We also have a training tomorrow and we want to encourage everyone here to attend. And we look forward to a positive training. But with that I'm going to turn it over to my fellow commissioners for any closing comments, final comments.

MR. SIMERMeyer: I just want to echo my colleagues' thanks for everyone's feedback about the impact, especially of what we're considering. And the last comment made by the commissioner there as well, it's important that we maintain the tools that exist under IGRA so that we can kind of keep up with trends so that the profile of what tribal gaming represents for Indian country can be positive. So thank you for those comments and thank you for your
participation in this consultation series these
coming weeks.

MS. ISOM-CLAUSE: So as was
mentioned a few times, we've allotted until
February 28th for written comments. So I hope,
you know, as you mentioned on the way homeward, if
you have any thoughts on the way home or just
comments that you prefer to send out through a
written means, we would definitely appreciate
hearing those. Oklahoma is a very important
region, of course, for Indian gaming, so I'm sure
that there's more dialogue to be had. And if
instead of written comments, you want to call in
to Washington, D.C. on February 15 we're having a
telethon as well as in-person consultations, so
for folks who aren't traveling or if you are in
town on that date, we look forward to seeing you
at that as well.

Thank you all for being here.

CHAIRMAN CHAUDHURI: Thank you.

And as vice chair mentioned, if there's
any comments -- if folks are in support of any
provisions, those comments are very much
appreciated as well. Those are all part of the
public record. They go into -- they're referenced
in any preambles to final rules.

And so, you know, I know for my part sometimes I don't say anything unless I'm really up in arms about something, but folks that are in support of a specific proposal, please feel free to send in comments and support for the proposals as well.

So closing thoughts, again, many thanks for our team, our excellent team who both in this region as well as throughout Oklahoma and throughout the agency, folks have been firing on all cylinders trying to get these deliverables teed up so that we can do what we can do in the time that we have.

So many thanks to the team for today's consultation, and many thanks to our tribal partners. We always say that we can't do our job without strong and positive collaborative relationships with our fellow regulators, namely the primary regulators of Indian gaming tribal nations.

So many thanks to everyone here, be they tribal leadership, travel regulators or folks working in the spirit of strong tribal nations through Indian gaming.
Thank you for taking the time to be here today. Safe travels too on the way home.

(Meeting concluded at 2:10 p.m.)
CERTIFICATE

I, Marcy A. King, a Certified Shorthand Reporter, certify that the NIGC CONSULTATION was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript to the best of my ability and was taken by me on January 29, 2018, in Lawton, Oklahoma. Witness my hand and seal of office on this 6th day of February, 2018.

________________________
Marcy A. King, CSR, RPR
CSR # 0834