

2018 NATIONAL GAMING COMMISSION MEETING

TRIBAL CONSULTATION SESSION

THURSDAY, JANUARY 25, 2018

1:30 P.M.

DOUBLETREE HOTEL

3 SISTERS/BACHELOR ROOM

1000 NORTHEAST MULTNOMAH STREET

PORTLAND, OREGON 97232

1 APPEARANCES

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3 CHAIRMAN JONODEV CHAUDHURI

4 VICE CHAIR KATHRYN ISOM-CLAUSE

5 COMMISSIONER E. SEQUOYAH SIMERMAYER

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1 **NIGC CONSULTATION MEETING**

2 JANUARY 25, 2018

3 **CHAIRMAN CHAUDHURI:** Thank you,
4 Councilwoman.

5 My name is Jonodev Chaudhuri. I'm
6 Muscogee Creek Bear Clan and also Bengali, from
7 India, on my father's side. I'm joined by fellow
8 commissioners who will introduce themselves in a
9 moment but as Chairman, I am very, very grateful for
10 everyone's presence here today. And it's been a
11 long productive week at ATNI. Unfortunately, we
12 weren't able to be here for much of the conference.
13 We were at another consultation in Pine Ridge or,
14 I'm sorry, Olalla, the day before yesterday, but we
15 are, ourselves, very honored to be here, very
16 thankful for that blessing, thankful to Cowlitz
17 Spokane, all tribes of this region, this area. Many
18 thanks for allowing us into your homelands for
19 today's consultation.

20 So just -- we have a number of
21 housekeeping matters, but before we begin, I want to
22 say that the room is set up by design to get to as
23 close of a circle as possible given square tables
24 and chairs. And so we really look at our
25 consultations as conversations and true government-

1 to-government dialogue. And so I really want to
2 encourage anybody to feel free to sit at the table.

3 I'm going or turn it over to my fellow
4 commissioners here in a moment and then we'll get
5 into introductions, but again, we're very grateful
6 for both tribal leadership that is represented here
7 today, as well as our regulatory partners being in
8 the room. In order to strengthen the health of the
9 Indian game industry, day-to-day work with our
10 partners is vital and so we appreciate you taking
11 the time to be with us to discuss the consultation
12 topics we're here to discuss.

13 So with that, I'm going to turn it over to
14 Vice Chair Kathryn Isom-Clause.

15 **VICE CHAIR ISOM-CLAUSE:** Thank you. Good
16 afternoon. As Chairman said, I'm Kathryn Isom-
17 Clause, Vice Chair of the Commission. I'm from Taos
18 Pueblo, and I also want to echo the thanks to
19 everyone for having us here. We love being up in
20 the Pacific Northwest and we're happy that you all
21 made time at the very end of the conference. I know
22 folks have to stay a little bit for this so we
23 really do appreciate your time and energy being
24 here.

25 As you mentioned, tribal consultation is

1 really a means for us to listen to you in
2 recognition of the government-to-government
3 relationship, but also because tribes are the
4 primary regulators. And so it's really important
5 for us to have any policy decisions or any other
6 kind of changes that we make be very much informed
7 by the tribal perspective, as well as our own
8 subject-matter experts in the agency.

9 So this round of consultation sessions
10 follows through on some topics that we've been
11 discussing with this current commission makeup. So
12 we've kind of targeted these topics to be a little
13 bit more achievable in the time that we have left
14 just due to the three-year terms that we serve as
15 this current commission. So we hope that these are
16 topics that we can really focus in on and not just
17 big broad topics, but really specific, targeted
18 ideas.

19 I'd also like to note, though, that while
20 our commission may be changing in the coming months,
21 we plan on continuing stability. We have the same
22 policy positions going forward in our strategic plan
23 that will be coming out next month. That's going to
24 be for fiscal year 2018 through 2022. So we do look
25 forward at just keeping our continuing trajectory,

1 continuing to work with tribes productively as we
2 hope that we are doing now. I think that we can say
3 with confidence that we are.

4 And so just to sum up, we really look
5 forward to hearing all of your ideas today, whether
6 on the specific topics or even more broad topics
7 being as well. Thank you.

8 **COMMISSIONER SIMERMEYER:** Good afternoon.
9 I want to join my colleagues in saying thank you to
10 the tribal leadership and the experts who are taking
11 their time to be here with us today and be part of
12 this consultation.

13 I'm Sequoyah Simermeyer. I'm Coharie. My
14 tribe is from North Carolina and I'm the third
15 member on the National Indian Gaming Commission.
16 For me, some of the considerations that are
17 important in kind of approaching the work that I do
18 on the Commission are first, to be cognizant of IGRA
19 and what its requirements are. It's the overarching
20 law that set our agency in place. And so some of
21 the topics that we'll discuss today I think can help
22 provide some background in that and purpose for
23 having it.

24 Second, it's important to -- in the work
25 that I think that the Commission does is to rely to

1 look at the expertise from our colleagues in the
2 regulatory industry and with the institutional
3 knowledge within our organization at NIGC. So
4 again, I want to reiterate our thanks for regulators
5 being here from other jurisdictions, and I
6 appreciate your feedback, both in this process and
7 on a day-to-day basis.

8 And lastly it's important for me -- I
9 think another consideration is to be diplomatic in
10 the way that the NIGC does its work. And so an
11 important part of being diplomatic is looking at the
12 decisions that tribal governments make in order to
13 achieve the vision that they have for their
14 communities. And so as federal partners in that,
15 it's important that we're conscious of decisions
16 that each tribe might be making with other
17 jurisdictions whether it's states or tribes or
18 federal government.

19 So those are all the things that I think
20 are important in the work that I do and are, I
21 think, helpful and achieve through some of the
22 consultation that we're doing. I think consultation
23 not only helps and gives us the opportunity to
24 involve other federal players, it meets our
25 obligations to the federal partner. It helps to

1 make more informed decision making at the federal
2 level, but I think a very important part of
3 consultation is that it helps to define, give
4 meaning to our government-to-government
5 relationships. So I do want to reiterate my thanks
6 to my colleagues that you all are here and engaged
7 in the process on that, so thank you.

8 **CHAIRMAN CHAUDHURI:** So as I mentioned
9 before, the tables are structured to be as close to
10 a circle as possible. An additional benefit of
11 sitting up front is that while we would never ask
12 anybody to sit somewhere that they don't want to
13 sit, we have microphones up front. We do have a
14 transcriptionist and at the end of this
15 consultation, our transcriptionist will send the
16 recording of this and the transcript for processing,
17 and ultimately to be posted on our website as
18 quickly as possible. The reason for that is we want
19 this dialogue to be as helpful to our partners as
20 possible and we want as many people to have the
21 benefit of reviewing this conversation who want that
22 benefit, and to extend to folks who may not be able
23 to be in the room today. So if you happen to make
24 comments and you don't want to speak in the
25 microphone, our transcriptionist should be able to

1 hear you, but please state your name, your tribal
2 affiliation and, you know, the community that you're
3 representing, as clearly as possible.

4 So with that, keeping in mind it's
5 important for us to know who we're sharing with.
6 We'll move forward with some introductions so you
7 know who our team is. It's very important for us to
8 know our partners on a first-name basis whenever
9 possible. Fortunately, before the consultation, we
10 had some good conversation and some good
11 introductions and we were able to get to know each
12 other in person. So we'll go around and introduce
13 ourselves in terms of what we do, but also in
14 keeping with the way we operate at NIGC, we also
15 want to give leadership an opportunity to weigh in
16 with any opening remarks. So I do see leadership in
17 the room today and if their -- let's see. I see
18 the chairman from Cowlitz. I saw the chairwoman
19 from Spokane step in. Chairman, if you have any
20 comments you want to open us up with, we'll defer to
21 you.

22 **MR. IYALL:** Yes, good afternoon. Bill
23 Iyall, I'm the Chair of the Cowlitz tribe -- that's
24 I-Y-A-L-L, which happens to be the scottish ship
25 steward's spelling or our original name, the Cowlitz

1 name. So I really appreciate the opportunity to be
2 here. And joining me today is three of our
3 commissioners, two on counsel and our senior staff
4 from the TGA. So we look forward to a very
5 productive day. And again, I thank you for the
6 federal partnership. It's critical in protecting
7 the economic self-sufficiency for the Cowlitz
8 people.

9 **CHAIRMAN CHAUDHURI:** Thank you, Chairman.
10 And if and when the chairwoman from Spokane returns,
11 we'll, of course, provide her an opportunity as we
12 would with any leadership.

13 So before we move forward with
14 introductions around the room, again, in keeping
15 with that idea that we're here to serve our
16 partners. We'll move forward with NIGC
17 introductions and then we'll move forward with
18 introductions around the room. So we'll start off
19 with our chief of staff.

20 **MS. THOMAS:** Good afternoon. My name is
21 Christina Thomas. I'm the Acting Chief of Staff for
22 the National Indian Gaming Commission. I'm also a
23 member of the Mille Lacs Band of Ojibwe out of
24 Minnesota.

25 **MS. LEE:** Good afternoon. My name is

1 Yvonne Lee, I'm the Director of Finance for the
2 NIGC.

3 **MS. DITTLER:** Good afternoon. My name is
4 Esther Dittler. I'm Mohawk from Six Nations. I'm
5 the regional attorney for the Portland region and --
6 actually, I should have said I'm Senior Attorney
7 with the Commission. I've been with the Commission
8 now for 12 years.

9 **MS. GRUBB:** Hello, my name is Mariah Grubb
10 with the National Indian Gaming Commission. I work
11 in our headquarter office as a management program
12 analyst.

13 **MR. CATCHPOLE:** My name is Daniel
14 Catchpole. I'm with the audit group here for the
15 Portland region. And welcome to this great
16 afternoon.

17 **CHAIRMAN CHAUDHURI:** And our regional team
18 is here too, if you could introduce yourselves.

19 **MR. PHILLIPS:** I'm Mark Phillips. I'm
20 Portland Regional Director with the National Indian
21 Gaming Commission, located right here in Portland.

22 **MS. TAVERA:** Hello, I'm Vida Tavera. I'm
23 out of the Portland NIGC office as well, compliance
24 officer, and I'm a Cow Creek Tribal member from
25 Southern Oregon.

1 **CHAIRMAN CHAUDHURI:** Thank you. So
2 whether it's headquarters or at the region, we're
3 always open, our phone lines are always open. We're
4 here to answer any day-to-day questions that may
5 come up.

6 So at this time if we could go around the
7 room, introduce ourselves to each other. The
8 comments that we hear today, hopefully, will be a
9 benefit to all attendees and not just -- and be part
10 of a larger conversation. So it's always helpful to
11 know who our partners are in the room. So maybe if
12 we could start at the table and move from there.
13 Oh, I'm sorry. Go ahead.

14 **MR. BAKER:** This is Ralph Baker, Chair of
15 the Grand Ronde Gaming Commission.

16 **MR. FISH:** Tanner Fish, I'm the Assistant
17 Director for the Grand Ronde Gaming Commission.

18 **MS. GRAY:** Shawna Gray, Executive Director
19 from the Siletz Tribe Gaming Commission.

20 **MS. GOUDY-SMITH:** Dora Goudy-Smith,
21 Chairman of the Yakama Nation Gaming Commission.

22 **MR. IYALL:** I'm Jerry Iyall, Chairman of
23 the Cowlitz Gaming Commission.

24 **MS. CLOQUET:** Good afternoon, Celine
25 Cloquet, Councilwoman for the Cowlitz Indian Tribe

1 and Vice Chair of the Gaming Commission.

2 **MR. AITKEN:** (Speaks Kootenai.) Good
3 afternoon, I'm Gary Aitken, Jr., Chairman of the
4 Kootenai Tribe of Idaho.

5 **MS. COOPER:** Vice-chairwoman of Kootenai
6 Tribe of Idaho, Tribal Council. Angela Cooper.

7 **MR. WHEAT:** Good afternoon. My name is
8 Scott Wheat. I'm an attorney with Wheat Law
9 Offices. Today I'm here on behalf of Confederated
10 Tribes of Coos, Lower Umpqua and Suislaw Indians, as
11 well as the Spokane Tribe.

12 **MR. BARQUIN:** Billy Barquin, Attorney
13 General Kootenai Tribe of Idaho.

14 **MS. RENTZ:** Pamela Rentz, legal
15 department, Kootenai Tribe of Idaho.

16 **MR. KELLOGG:** Hi, good afternoon. My name
17 is Dick Kellogg. I'm honored to be the TGA Director
18 for the Cowlitz Indian Tribe and the Ilani Casino,
19 which is brand new and you're all welcome to come
20 and have a look.

21 **MR. FORD:** Greg Ford, Cowlitz Tribe,
22 Tribal Gaming Commissioner.

23 **MS. VANCLEAVE:** Kim VanCleave, I'm the
24 Assistant Director for the Cowlitz Tribal Gaming
25 Agency.

1 **MR. DASARO:** Paul Dasaro, I'm Assistant
2 Director for Cowlitz Tribal Gaming Agency.

3 **MS. STACONA:** Good afternoon. Michele
4 Stacona, Secretary/Treasurer, CEO for the
5 Confederated Tribes of Warm Springs.

6 **MS. MACY:** Good afternoon. I'm Alyssa
7 Macy. I'm the Chief Operating Officer for the
8 Confederated Tribes of Warm Springs.

9 **MS. EAGLECLAW:** Good afternoon. Annie
10 Eagleclaw, Yakama Nation Gaming Commission and
11 Secretary.

12 **MS. SMARTLOWIT:** Hello, my name is Leah
13 Smartlowit. I'm Yakama Nation Gaming Commissioner.

14 **MS. METCALF:** Hello, I'm Ronda Metcalf
15 with the Sauk Suiattle Indian Tribe. I'm a
16 councilwoman.

17 **MR. WADZINSKI:** Hello, Kevin Wadzinski of
18 the Law Firm of Powers Pyles. I'm here on behalf of
19 a number of clients including management contractors
20 that obviously are interested in some of the subject
21 matter here today.

22 **CHAIRMAN CHAUDHURI:** Okay. So we will
23 move forward with the nuts and bolts part of our
24 discussion. I'll turn it over to our chief of staff
25 for some housekeeping comments. But again, I want

1 to thank everybody for taking the time to be here
2 today. Even though we have some specific comments,
3 since this is a government-to-government dialogue
4 and discussion, I don't want us to be refrained by
5 process. And so we will have some time at the end
6 of the consultation today to discuss open-ended
7 comments, questions concerns that folks may want to
8 raise. And furthermore, I don't want anybody to
9 feel purely constrained in the course of discussing
10 one topic. If there are related matters that need
11 to be raised, we will always defer to our tribal
12 partners in discussing those matters.

13 That said, since this is a government-to-
14 government consultation, I understand that there
15 were representatives of tribes in the room. If --
16 our first priority is making sure that tribal
17 leadership, tribal regulators have every opportunity
18 to voice their concerns, ask questions, and there
19 will be ample time to -- I want to make sure there's
20 ample time to have those questions and comments
21 raised. We do have -- I mean, this conversation is
22 open to representatives to weigh in, but please wait
23 until we've ensured that tribal leadership has had
24 an opportunity to share their comments.

25 So with that, I'm going or turn it over to

1 our chief staff for some housekeeping matters.

2 **MS. THOMAS:** Thank you, Chairman. So as
3 he had stated earlier, we do have a transcriptionist
4 here so the consultation will be transcribed. So if
5 you do have comments, make sure that you say your
6 name and your affiliation clearly so that she's able
7 to catch that. We're scheduled to go to 3:30 today,
8 but if it needs to take longer, we will definitely
9 take longer.

10 Our format for the consultation, we have
11 three topics. The first topic is Management
12 Contracts. The second one being Audit Submissions
13 and our last being the Management and Sole
14 Proprietary Interest Definition Drafts. We will be
15 stopping in between each -- each topic will have a
16 presentation and in between each presentation, we'll
17 stop for comments and questions before moving
18 forward to the next topic.

19 We do have a comment period ending for the
20 drafts that we already have posted online. That
21 comment period ending is going to be February 28
22 2018, so at the end of next month. Additionally,
23 any updates that we make to the information on the
24 consultation page on our website, we will be
25 updating that stuff every week, Wednesday, by 5:00

1 p.m. Eastern time. So as things may change as we
2 move through the consultation schedule, those
3 changes will be posted to the website. With that,
4 I'll turn it back over to you.

5 **CHAIRMAN CHAUDHURI:** Before we move
6 forward to the subject matter presentations, I want
7 to make sure -- especially since this is the end of
8 ATNI, a lot of people have flights home and may need
9 to get on the road. If anybody needs to get a
10 statement on the record now before we get into the
11 specific subject matter discussions, please feel
12 free to let us know and we'll be sure to get you on
13 the record. Otherwise, we'll turn it over to our
14 first presenter, Ms. Yvonne Lee. But does anybody
15 need to get a statement on the record before we move
16 forward?

17 Okay. With that, for our first
18 consultation topic, we have our Finance Director
19 Yvonne Lee here to talk to us about that topic, so
20 go ahead, Yvonne.

21 **MS. LEE:** Under IGRA and current NIGC
22 regulations, Tribes wanting to engage a third party
23 to manage their operations are required to enter
24 into a management agreement with the third party
25 that must be approved by the Chairman of the

1 National Indian Gaming Commission. Following the
2 NIGC's 2017 consultation sessions, the Commission
3 carefully reviewed its regulations and the Agency's
4 internal procedures for reviewing and approving
5 management contracts. As a result of that review,
6 and based on comments received during the
7 consultations, the Commission believes that changes
8 to our management contract regulations will improve
9 the efficiency of the contract review process and
10 ensure consistency with IGRA's requirements
11 regarding term limits.

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

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

24 After management contracts have been
25 approved, tribes and their management contractors

1 may amend their contracts by following the
2 streamlined procedures for review and approval of
3 contract amendments found in NIGC regulations 25
4 C.F.R. Part 535. Part 535 provides an expedited
5 process within which background investigations are
6 only required if the third party individuals and/or
7 entities responsible for the management contract
8 have changed and no new business plan or updated
9 financial information is required. The expedited
10 process is designed to allow the parties to sustain
11 their relationship in a dynamic business environment
12 while maintaining the integrity of the Chair's
13 initial management contract review and approval.

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

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

1 Commission believes it is important to update
2 regulations to maintain IGRA's mandate.

3 The proposed amendments clarify the
4 regulations by explicitly noting that amendments
5 that extend the approved management agreement beyond
6 the term limits permitted by IGRA, which is five or
7 seven years, will be reviewed under the full
8 requirements of a new management contract under Part
9 531.

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

20 For an example, though, if a management
21 contract had a one-year term, and the parties wanted
22 to amend the agreement to extend it for an
23 additional year, for a total term of two years, the
24 Chair would review the amendment under part 535
25 because the term limit would still be within the

1 statutory limit of five or seven years.

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

15 Under the new process, NIGC staff will
16 review the background investigation applications and
17 divide them into different investigative groups
18 based on the level of risk. This process will allow
19 the agency staff to focus their investigative
20 resources on the most vital individuals and
21 entities. This replaces a one-size-fits-all model
22 that scrutinizes all applicants the same. For
23 example, under the current process, the top direct
24 financial interest goes through the same background
25 investigation as the smallest indirect financial

1 interest. But under the new process, entities and
2 individuals with a direct financial interest,
3 holding the highest level of risk to the tribe will
4 have a more in-depth background investigation
5 completed versus those entities or individuals who
6 have an indirect financial interest.

7 In addition, the Commission has proposed
8 changing the individuals and entities that are
9 required to submit background applications under the
10 regulations to those that have 10 percent or greater
11 financial interest. This proposed change should
12 significantly reduce the costs to the management
13 contractors in submitting full applications on small
14 investors. Further, this proposed change will also
15 better align the agency's requirements with other
16 regulatory agencies.

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

22 In addition, the Commission is proposing a
23 regulatory change to clarify the reduced scope of
24 investigation provision to reduce the burden of
25 background investigations for those who qualify. To

1 further reduce the time and cost of background
2 investigations, the agency will no longer use the
3 Office of Personnel Management or OPM to conduct
4 part of the background investigations. Instead, we
5 will process fingerprint checks through FBI and
6 perform credit checks through other more efficient
7 alternatives.

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

14 I would now like to turn this back over to
15 the Commission to lead the discussion. Thank you.

16 **CHAIRMAN CHAUDHURI:** Thank you, Yvonne.

17 And for additional background context, I'll turn it
18 over to my colleagues.

19 **COMMISSIONER SIMERMEYER:** Thanks, Ms. Lee.

20 I'll just briefly say that the -- what would be
21 really helpful in this conversation on this topic is
22 some of the experiences that individuals might have
23 in terms of how tribes are making their
24 relationships with outside partners and on the
25 ground. How practical the requirements that our

1 agency is putting forward for inquiries and
2 suitability or other issues, how those are, you
3 know, to ensure that our requirements aren't going
4 to be a burden to that process. It's also
5 important, I think, as Ms. Lee pointed out that part
6 of looking at this issue is to look at what IGRA
7 itself requires and to make sure the agency is
8 complying with that. And to, again, make sure that
9 we're not creating an undo burden that goes beyond
10 what our inquiries should be looking at. So those
11 types of comments would be helpful to me today and
12 throughout the rest of the coming weeks in this
13 consultation.

14 **VICE CHAIR ISOM-CLAUSE:** I'd just like to
15 briefly thank our team, too, for coming up with
16 these really great ideas on how to make the process
17 more efficient, not using OPM and changing the
18 structure for our background investigations saves
19 just many, many hours. It's going to be --
20 potentially be a very significant savings in time
21 and money so we're always looking to make things
22 more efficient and really appreciate the team's
23 ideas on that.

24 **CHAIRMAN CHAUDHURI:** Yeah. I definitely
25 want to echo that gratitude to the team for the

1 discussion topics. Also many thanks to the team for
2 putting together today's consultation. A couple
3 guiding principals that I think support this topic
4 of discussion, one is efficiency, and we've already
5 heard quite a bit about how especially the
6 background changes will save a lot of time. The
7 other is one of our initiatives at NIGC is
8 protecting against gamesmanship on the backs of
9 tribes, and that's essentially doing whatever it can
10 to protect the primary beneficiary status of tribes.
11 And the approval of management contracts is an
12 important piece of that, ensuring that tribes'
13 interests are protected. It is a major part of what
14 we do. The backgrounding and the suitability
15 determinations that go into management agreement
16 approvals are critical.

17 As we -- you know, in my short time at the
18 Commission, I noted that there's an inherent balance
19 between trying to streamline things and get things
20 done as quickly as possible, but also making sure
21 you're upholding your fiduciary duty to tribal
22 nations when you're approving these amendments. In
23 order to do that, you can't rely on stale
24 backgrounding materials. You can't rely on old
25 background information. And as -- you know, in

1 trying to meet that balance between moving forward
2 with efficiency while upholding a fiduciary
3 responsibility, this idea of, well, what does IGRA
4 have to say about it kept coming up. And IGRA, in
5 its text itself, has a five-to-seven-year period for
6 management agreement, the lives of management
7 agreement.

8 Well, in practice, we've worked with that
9 five-to-seven-year window, by hook or by crook,
10 trying to work with management agreements to -- to
11 in some cases extend them, in some cases amend them,
12 but bring -- bring clarity to the process is what
13 drove this topic for discussion. You know, as with
14 all of our topics, no decision has been made.
15 That's the purpose of consultation, but we see a
16 benefit in bringing clarity as to the true life
17 terms of management agreements on one side, as well
18 as clarity on the other side of trying to streamline
19 the process so that things aren't slowed down
20 unnecessarily as we're trying to continually
21 reinvent the wheel.

22 So that's kind of some of the background
23 that led to this discussion topic. Hopefully that's
24 helpful in spurring additional dialogue. But at
25 this point, we'll turn it over to everybody in the

1 room for comments, questions, concerns at this time.

2 Yes, sir.

3 **MR. IYALL:** Yeah, I'm Jerry Iyall,
4 Chairman of the Cowlitz Gaming Commission. Last
5 name is spelled I-Y-A-L-L. Our tribe has had a
6 management agreement with Mohicans Tribe and we're
7 happy with that agreement. It's been a very good
8 relationship for a long time so my comments are not
9 in relation to that agreement but it's more from the
10 sense of, you know, I support the increased scrutiny
11 and it just makes good business sense to me. The
12 things that you're asking for they just make good
13 business sense to me and I think they go a ways in
14 protecting the tribes' interests. And the
15 streamlined process that you talked about, we
16 appreciate the work that you've done on that because
17 it will allow us to, you know, maintain the
18 integrity of the system and operations and still not
19 overwhelm us with time and costs, so thank you for
20 that.

21 **CHAIRMAN CHAUDHURI:** Thank you so much for
22 that comment, sir.

23 Yes, sir, Chairman.

24 **MR. IYALL:** Bill Iyall, Chairman of the
25 Cowlitz Tribe. I want to thank you for this -- this

1 is definitely a giant leap forward, having gone
2 through some of this in practice recently, and I do
3 support the improvement of the process. I think it
4 would be worthy to note somewhere in the process
5 earlier or advance notice from the management
6 company to make sure that it's timely. Maybe
7 something in the public notice or -- but I could see
8 that as a tremendous improvement and asset for both
9 you and the management company and the tribe.

10 **CHAIRMAN CHAUDHURI:** And thank you,
11 Chairman. I just -- it got me thinking. So we do
12 have a window for comment period. That's an
13 excellent, excellent suggestion, and, you know, I
14 welcome further dialogue. If after today's
15 consultation there are additional comments that
16 folks want to send in or just -- if anybody wants to
17 just pick up the phone and kind of share thoughts,
18 we want to be open to that. But for the record, we
19 really welcome those comments so thank you,
20 Chairman.

21 **MR. WHEAT:** For the record, Scott Wheat on
22 behalf of the Spokane Confederated Tribes of Coos,
23 Lower Umpqua and Suislaw. On behalf of Spokane, in
24 particular, who's kind of got a history of, you
25 know, partnering with managers, and we have one

1 current management agreement in place -- well, we
2 have one that's under review, actually.

3 So I think -- you know, similar to
4 Cowlitz, you know, I've got recent experience in
5 this area, and so I just want to, you know, get it
6 on the record that these proposals make sense to us.
7 They make good business sense, and they seem to us
8 to be entirely consistent with NIGC statutory
9 mandate. And just, you know, on behalf of my
10 clients who depend on you all to review these
11 agreements, you know, thank you for the work that
12 you do, and thank you to your staff for the hard
13 work that you do.

14 And one of the things just very briefly I
15 want to touch on, you know, the ever-growing
16 workload of the NIGC is partly these management
17 agreements. But from where I sit, you know,
18 representing tribes, it also has a lot to do with
19 the underlying financing and requests by lenders for
20 declinations. And now we're getting these kind of
21 newfangled lender-driven requests, you know, for no
22 impairment determinations in the sense that, you
23 know, the financing agreements, you know, aren't
24 impaired by the management's agreement. And so for
25 tribes, what we see is this kind of ballooning of

1 transactional costs associated with financing and so
2 we -- which is often part and parcel of these
3 management agreements. That's why I'm bringing it
4 up in this discussion. But really appreciate NIGC's
5 leadership and trying to temper those ever-growing
6 lender demands for additional NIGC findings and
7 determinations. It takes up more of your time and
8 it takes up more lawyer time on the lender side and
9 borrower side, which practically speaking, means the
10 tribe pays for all the lawyers as borrowers.

11 So the more the NIGC can help Indian
12 Country kind of hold that line and keep these ever-
13 ballooning requests, you know, within a proper
14 context -- I just -- I do general counsel work in
15 Indian Country. I do a lot litigation, do a lot of,
16 you know, commercial transactions. And litigators,
17 we try to simplify in the finance world, you know,
18 it's hypothecating additional potential cul-de-sacs
19 that you need to draft around. And before too long,
20 the 100-page loan documents balloon into 500-page
21 loan documents.

22 And so just appreciate the NIGC's help in
23 trying to keep these transaction costs a little bit
24 more reasonable. And also, I just want to thank
25 NIGC staff. It seems to me they're willing to go

1 above and beyond the call of duty to get the quick
2 turns on these declinations and kind of issues that
3 are collateral to management agreements. But I
4 think over time -- I mean, I haven't talked to NIGC
5 staff directly about this, but I would imagine that
6 over the years that the amount of additional
7 workload related to collateral determinations is
8 starting to over-shadow the staff hours spent on
9 management agreement approvals and background.

10 So I just wanted to thank the NIGC for the
11 good work you do, including your help in trying to
12 keep transaction costs down for Indian Country
13 borrowers.

14 **CHAIRMAN CHAUDHURI:** Well, thank you, Mr.
15 Wheat. I think I'm joined by my colleagues on the
16 Commission in finding ourselves extremely fortunate
17 to be part of such a great team. I think the staff
18 at NIGC is one of the best staffs in all of -- all
19 of the federal government. And I'm very thankful
20 for the work that our general counsel's office does
21 on these declination letters, but also very thankful
22 for the work of our finance department, supported by
23 our chief of staff's office on all the management
24 agreement reviews. So your comments are very
25 appreciated. Thank you, sir.

1 Yes, sir.

2 **MR. AITKEN:** Good afternoon. Gary Aitken,
3 Jr., Kootenai Tribe of Idaho. Chairman Kootenai.

4 With all due respect to our sister
5 nations, you know, I think we have a different
6 perspective from things right now, regarding this
7 consultation, regarding these proposals. I think
8 the intended -- the intent of IGRA is to promote
9 tribal economic development, self-sufficiency,
10 strong tribal governments. And I think the agency
11 proposal is contrary to all those. I think that
12 there's paternalism that's being exhibited that I
13 could somewhat understand because of the
14 responsibility, a fiduciary responsibility, why it's
15 come in place. But as I stated previously, there's
16 a fine line between paternalism and protection, and
17 I think these regulations are over-stepping that
18 line.

19 I think it's well into the paternalism and
20 with self-governance, self-sufficiency, I think
21 that's a step backwards. I think a lot of these are
22 far overreaching and it's taking us back to, like,
23 the '50's, you know. It's a step backwards in self-
24 sufficiency.

25 I think the Kootenai Tribe through our

1 council, through our gaming commission, we're the
2 best suited to determine -- we're the best suited to
3 determine the suitability of the management team.
4 We find the right people, and as a sovereign nation,
5 we find the right people we want to work with.

6 Our current management agreement -- we've
7 been working with them for 30-plus years, over 30
8 years. We have some of our council members that are
9 younger than our friendship with the management team
10 we have. And so, you know, to have our great white
11 grandfather tell us what we need to do is actually
12 condescending. It's found to be, you know, a bit
13 insulting. You know, it's taken us back to the old
14 days of that paternalism. And with self-governance,
15 we're trying to move forward, we're trying to move
16 forward. And we've exhibited success, you know, in
17 many realms. Many realms what we do, ecosystems to
18 gaming to being community partners.

19 You know, we're one of the number one
20 leaders of economic growth and drivers of jobs in
21 our community. You know, we're successful. And so
22 that protection is, you know, for us is we've --
23 it's confusing. It's like what are you trying to
24 protect us from? A good deal? You know, I mean,
25 it's a beautiful deal for us. We've got great

1 friendships. We have 155 members in our nation,
2 154, excuse me. Half of them are under the age of
3 18. In order to have -- to take on the management
4 responsibilities the way of the team does it, we
5 would have to develop infrastructure. We'd have to
6 basically make half of our nation that's underage do
7 the jobs that are being held and done right now by
8 our team. And we control that team. That team is
9 under our mandates, under our -- what we tell them,
10 under our direction. You know, they're just simply a
11 part of our team that we're able to put forward and
12 do what we want done with it.

13 So essentially, we don't need the federal
14 government to tell us how long we should use a
15 management team. If we decide not to do all the
16 actions ourselves, it's because we decided that's
17 what best suits us as our tribe. You know, that's
18 what fits us, you know. As a sovereign nation, I
19 think that needs to be respected, you know, it's --
20 tribal oversight and guidance of the management team
21 is -- is the management. That's our management, you
22 know, but we have someone else do it as well.

23 So I think we need less federal and
24 colonial involvement and less paternalism. So we
25 just urge you as NIGC to move away from attempting

1 to increase the power and control and return to the
2 path of decolonization and reconciliation between
3 our governments, with all due respect, that's the
4 Kootenai Tribe stance on this.

5 **CHAIRMAN CHAUDHURI:** Thank you so much for
6 those comments, Chairman. You know, we absolutely
7 welcome and recognize the diversity of historical
8 experiences, diversity of perspectives in Indian
9 Country, and that's where consultation begins. This
10 is a place for us all to hear each other's
11 perspectives. So those comments are very, very
12 appreciated.

13 And if I could just share, finding that
14 balance between faithfully administering the law
15 that we're supposed to -- you know, the agencies --
16 the agency was committed -- or created to administer
17 on one end, and doing it in a way that supports
18 sovereignty, self-governance, self-sufficiency and
19 decision making for Indian Country on the other end,
20 that's what we strive to hear input on as much as
21 possible. Because as we're often on the record of
22 saying that IGRA in no way was perfect, and in many
23 ways IGRA restricted tribal authority, restricted
24 inherent sovereignty. And we recognize that in
25 trying to develop a sensible regulatory approach, we

1 do strive to apply IGRA in the most -- you know, in
2 the healthiest way possible that supports tribal
3 decision making. But how you do that, that's where
4 the detail -- I mean the details are critical.

5 And so this input is very, very
6 appreciated and we're grateful for it. I don't know
7 if anybody else wants to weigh in, but that
8 perspective is greatly appreciated.

9 **COMMISSIONER SIMERMEYER:** I appreciate
10 your comments as well. I think one of the
11 challenges in looking at this, and why we're kind of
12 bringing this for discussion in Indian Country, is
13 the -- what the Chairman said, I just also want to
14 echo, is that there's a statutory requirement that
15 exists. And so part of how this is being presented
16 is looking at and acknowledging that responsibility
17 that the agency has when the Chairman makes a
18 determination on the management contracts, which are
19 required by IGRA, and making sure that what the
20 agency is requiring to assist in making that
21 determination isn't overly burdensome. Because
22 being overly burdensome without justification for
23 it, I agree, is paternalistic, and it's contrary to
24 what the principles of self-determination call for.

25 **VICE CHAIR ISOM-CLAUSE:** I echo that and

1 just, you know, absolutely thank you for your
2 comments. We are always open to criticism. You
3 know, I very much appreciate to hear all
4 perspectives on it. So thank you very much for
5 that.

6 You know, I think we do strive to uphold
7 the same principles that you're talking about,
8 tribal self-determination, self-governance. And,
9 you know, that's how we approach it. I think as
10 Chairman said it and Commissioner Simermeyer said
11 it, always a fine line to walk. So how can we
12 fulfill our legal requirements and promote uplifting
13 tribes, uplifting self-governance and getting out of
14 tribe's way also.

15 So, you know, just as we think about it,
16 we really appreciate if you have any -- any other
17 more specific comments you want to send in. If you
18 have anything you see in the regulations or your
19 team sees something we could improve on, we really
20 appreciate that global perspective. But if you do
21 see specific recommendations, we're very open to
22 hearing those as well.

23 **MR. AITKEN:** Gary Aitken, Jr., Kootenai
24 Tribe. I think part of that is interpretation as
25 well. I mean, I think some of those interpretations,

1 we might interpret it differently, you know, the
2 requirements. Some of it is cut-and-dry, some of it
3 is more open to interpretation and I believe we have
4 a lot of different interpretations. And we'll
5 definitely send in more written -- more detailed
6 comments, and we'll get it in in the time frame.

7 It's -- I must say, it's odd to us how
8 much work we do, how much collaboration we do with
9 so many entities from so many different federal
10 agencies. So many are so respectful of the
11 sovereignty, the treaty rights of just the entity
12 that is the tribe. So we work with them in a very
13 respectful manner and the respect is returned.

14 It's hard to have -- to deal with the
15 perspective that we're starting to get that some of
16 the federal agencies that deal the most -- some that
17 are directly designed to deal with Indian Country
18 are some of the most paternalistic, some of the most
19 -- you know with the most boundaries. And that's
20 frustrating, that's frustrating because we work with
21 some that have nothing to do with it but work with
22 us and it's such a different relationship. And some
23 of the most frustrating moments we have are with
24 some of the agencies that are designed to be for us.
25 And, you know, that's -- I mean, I think that's

1 something to take into consideration. I mean, it's
2 out there, and it's -- I don't know -- I can't call
3 it, but it's a shame sometimes. But I do appreciate
4 the time and the opportunity to be able to speak.

5 Thank you.

6 I think we got to get ready for some
7 flights, but I appreciate the time. Thank you.

8 **CHAIRMAN CHAUDHURI:** Thank you, Chairman.

9 Additional comments, concerns, questions?

10 As I mentioned, there will be a catch-all
11 opportunity at the end of our discussion. Even if
12 you think of something about this topic 20 minutes
13 from now, I want folks to have that the opportunity
14 to weigh in, even beyond today, share their
15 perspectives.

16 So if there aren't any additional
17 questions or comments on this topic, I think we can
18 move forward on the next topic.

19 But, you know, before we move on, again,
20 thank you so much for those comments. A
21 paternalistic approach is not what we're shooting
22 for and so we will take those comments to heart and
23 continue to do what we can to weigh all
24 perspectives, so thank you Chairman.

25 Any additional comments before we move on?

1 Okay. With that there is an audit
2 submissions topic. We have our chief of staff,
3 Christina Thomas, here to -- oh, I'm sorry, Dan
4 Catchpole and he'll be working with --

5 **MS. THOMAS:** No, Dan's going to do the
6 topic.

7 **CHAIRMAN CHAUDHURI:** Okay. We'll move
8 forward with audit submissions, our Auditing
9 Director, Dan Catchpole.

10 **MR. CATCHPOLE:** Thank you, Mr. Chairman.
11 Under IGRA and current NIGC regulations, gaming
12 operations regardless of income are required to
13 submit an annual audited financial statement,
14 completed by a certified public accountant to the
15 Commission within 120 days of their fiscal year end.
16 These audits may be encompassed within existing
17 independent tribal audit systems.

18 Submission of the annual audit report is
19 critical to the NIGC's mission to protect the
20 integrity of Indian gaming and provides a certain
21 level of assurance as to the safekeeping of tribal
22 gaming revenues. The audit report prepared and
23 submitted on a timely basis is evidence of, among
24 other things, the integrity of the gaming operation
25 and more specifically, of the adequacy of the books

1 and records, the functioning of the internal
2 financial controls, and the disclosure of
3 information having a bearing on the financial
4 statements.

5 The Commission, however, recognizes that
6 small or charitable gaming operations often struggle
7 with the cost of these requirements. With this in
8 mind, the Commission is seeking feedback and
9 recommendations on whether changes are needed to the
10 audit regulations. Specifically, we want input on
11 what level or levels of audits should be required
12 for smaller gaming operations or charitable
13 operations. To benefit this consultation, I will
14 briefly provide some background information before
15 turning it over to the Commission to lead the
16 conversation.

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

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

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

25 As NIGC considers altering its own

1 regulations, it recognizes that there are currently
2 95 tribal operations that produce less than \$3
3 million in gross gaming revenue. Further, the
4 Commission is aware that tribal operations comply
5 with the most regulations from their own governments
6 as well as state and federal entities.

7 Our hope through this consultation session
8 is to discuss opportunities or receive feedback and
9 recommendations on how to amend this regulation
10 while still ensuring we are supporting financial
11 stability and maintaining a high level of protection
12 of tribal gaming operations. Thank you for
13 listening. With that, I will hand the floor back
14 over to the Commission to lead the discussion.

15 **COMMISSIONER SIMERMEYER:** Thank you, Mr.
16 Catchpole. I just wanted to begin the discussion by
17 saying that like our topic we just looked at, you
18 know, what's being proposed here is looking at
19 what's required under that statute in terms of audit
20 submissions, and looking at how -- what takes place
21 practically on the ground, and how we can be sure
22 that we are not, as an agency, creating undue
23 burdens.

24 One of the things that Mr. Catchpole
25 mentioned was the lesser review standard. And

1 what's particularly helpful is to hear thoughts
2 about how to -- whether it's through the revenue
3 threshold, whether it's through other ideas that
4 folks might have about how to promote and help
5 tribes take better advantage of that.

6 It's also helpful to hear about for tribes
7 who are under lesser review standard how much --
8 what's the incentive for doing that on your part.
9 Is there a substantial enough incentive to be doing
10 that. But in general, the audit requirements, it's
11 essentially required. One of the things it does was
12 to increase and improve the capacity that tribes
13 themselves have for conducting these types of
14 reviews and these types of oversight. So that is a
15 positive thing that should continue and be
16 encouraged as well as the requirement of financial
17 stability within IGRA.

18 **VICE CHAIR ISOM-CLAUSE:** I'll just speak
19 briefly on this. This topic grew out of our
20 conversations on how we can help -- how we can
21 better be of service to smaller and rural
22 operations. So this one is a little bit more open-
23 ended because we do have a lot of constraints,
24 there's only so many things that we can do. But we
25 really appreciate hearing from you on ways that we

1 can be less burdensome, how tribes can take
2 advantage of the provisions that Commissioner
3 Simermeyer was noting. And if there's -- you know,
4 would trainings be beneficial? Would other ideas
5 help? You know, just really looking for more open-
6 ended suggestions on that.

7 **CHAIRMAN CHAUDHURI:** Thank you. Just to
8 join my colleagues, so we mentioned the focus on
9 protecting gamesmanship is one of our tent-pole
10 initiatives. We have four of them. The second one
11 is rural outreach. As Vice Chair mentioned,
12 supporting small and rural operations, new
13 operations. We see that as providing yielding
14 benefits for the entire Indian gaming industry. So
15 we're looking at any and every way to support
16 smaller operations, recognizing that compliance
17 issues with one facility have the potential for
18 affecting all tribal facilities. So we're all in it
19 together. Compliance is important across Indian
20 Country and we want to support rural outreach.

21 So these -- now looking at what can we do
22 on the auditing side is important to rural outreach
23 because we recognize a lot of operations are in many
24 case jobs -- job programs. Some of them barely make
25 payroll. And when you're thinking about charitable

1 operations, small operations, very rural operations,
2 you want to do what you can to ensure integrity, but
3 also you don't want to create roadblocks to economic
4 development when that economic development may be
5 primarily, you know, tribal employment or employment
6 of the local community. And so finding that balance
7 is what we're here to talk to you about today.

8 We have this proposed language that we
9 threw out there as possible suggestions, but if
10 there are other ideas, we want to hear that as well.
11 So we're going to turn it over to the floor for
12 comments, question, concerns.

13 I know audits are the most exciting thing
14 to talk about on the very last day of ATNI, and the
15 last afternoon, but it's important stuff.

16 Chairman.

17 **MR. IYALL:** Yes, thank you, Chair, and
18 staff. I think as we heard earlier, there's concerns
19 about paternalism versus trust responsibility,
20 that's a fine line you walk, but I do believe this
21 is viewed as a step in the right direction. So
22 hopefully people will see that initiative is clearly
23 a part of your mission so I thank you for that.

24 **CHAIRMAN CHAUDHURI:** Thank you so much,
25 Chair.

1 **MR. WHEAT:** Scott Wheat on behalf of the
2 Spokane Tribe. The Spokane Tribe does have one of
3 those remote rural operations that's really a
4 provider of employment, and certainly not a
5 generator of general funds for the tribal
6 government. So I appreciate the NIGC's sensitivity
7 to those marginal operations and how difficult it
8 is. You know, when you got an operation that
9 struggles to barely run in the black every year, you
10 know, these outside audit requirements can just be
11 debilitating. I mean for my client, we have more
12 than gaming operation so that, you know, the more
13 successful one kind of carries the whole weight for
14 the marginal one, but I can only imagine if that was
15 your one operation, not being able to piggy-back on
16 outside audits that you're otherwise required to do
17 could be very onerous. So I appreciate NIGC's
18 efforts in that regard. I mean, given the statute
19 that you have to work with that I think is kind of
20 inherently a little paternalistic, that you guys are
21 doing the best to work with the mandates that you're
22 charged with fulfilling.

23 **CHAIRMAN CHAUDHURI:** Thank you, Mr. Wheat.
24 Thank you. Additional comments, questions,
25 concerns?

1 As we always say, there's never any crime
2 in finishing early so we'll just move on to the next
3 topic. So here to talk about management and sole
4 proprietary interest definitions, we have Ms. Esther
5 Dittler, regional attorney for the Portland
6 regional.

7 I do want to kind of clarify the record.
8 I may have misstated a job title earlier, but the
9 point is we're all here as subject matter experts.
10 I really appreciate our auditor Dan Catchpole's role
11 in this, as well as Esther Dittler's role as
12 regional attorney.

13 So Esther.

14 **MS. DITTLER:** As previously discussed,
15 IGRA provides that a tribal gaming operation owned
16 by the tribe may either be managed by a tribe or by
17 a management contractor subject to a management
18 contract approved by the NIGC Chair. This applies
19 to any arrangement in which a contractor manages all
20 or a part of a gaming operation. To provide better
21 clarity, the Commission is considering developing
22 regulations clearly setting out its standards for
23 what constitutes management as well as criteria for
24 evaluating when a sole proprietary interest
25 violation has occurred. With this in mind, I'll

1 provide some brief background information of these
2 terms and then pass it back to the Commission to
3 open the floor for questions and discussion.

4 To assist the tribes in determining
5 whether an activity constitutes management, NIGC
6 published Bulletin Number 94-5, which explains the
7 terms that encompasses activities such as planning,
8 organizing, directing, coordinating, and controlling
9 all or part of a gaming operation. In addition, the
10 NIGC Office of General Counsel issued an opinion
11 letter expanding on these terms by providing
12 examples of management activities.

13 However, to date, the Commission has not
14 issued a regulation formally defining management.
15 The Commission believes that in consultation with
16 tribes, developing a regulatory definition
17 consistent with past interpretations would help
18 provide greater certainty to the tribal gaming
19 commission regarding what constitutes management.
20 The Commission recognizes that the Seventh Circuit
21 has also recommended that the Commission provide
22 more certain guidance.

23 A stated purpose of IGRA is to ensure that
24 the Indian tribe is the primary beneficiary of the
25 gaming operation. Seeking to serve this purpose,

1 IGRA requires that the tribal gaming ordinances
2 provides that tribes have the sole proprietary
3 interest and responsibility for the conduct of any
4 gaming activity, unless the gaming activity is
5 individually owned.

6 To determine whether a third party has
7 received a proprietary interest in a tribal gaming
8 operation in violation of the sole proprietary
9 interest mandate, the NIGC considers the term of the
10 relationship, the amount of revenue paid to a third
11 party, and the right of control over the gaming
12 activity provided to the third party.

13 The Commission has previously consulted on
14 developing guidance or regulations concerning sole
15 proprietary interest in 2008 and 2010. Courts have
16 had the opportunity to consider and discuss the
17 issue in the intervening years, noting and upholding
18 NIGC's formulation of criteria to evaluate for such
19 violations. The Commission believes that a
20 regulation consistent with past NIGC enforcement
21 actions and litigation would provide greater clarity
22 and certainty to the tribal gaming industry
23 regarding what constitutes a violation of the sole
24 proprietary interest mandate.

25 The draft regulations we have provided you

1 today as a handout incorporate these interpretations
2 for consideration as an addition to the Commission's
3 compliance regulation.

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

6 **COMMISSIONER SIMERMEYER:** Thanks, Ms.
7 Dittler.

8 As was mentioned, there's been guidance
9 opinions internally from legal counsel as well
10 Courts that have provided some interpretation of
11 these issues. As a member of the Commission who
12 would review decisions or actions taken by the
13 agency that rest on these definitions of management
14 or sole proprietary interests, we have these
15 additional interpretations to kind of capture a lot
16 of what the discussion has been over the years would
17 be beneficial. At the same time, too, there's a
18 hope that we're looking at, what the right tool or
19 vehicle is to do that.

20 It was mentioned earlier, too, that
21 there's increasing costs associated with reviewing -
22 - with, like, declination letter reviews, for
23 example, and looking to see if this type of
24 articulation through regulations would help to
25 provide some stability or certainty in that area as

1 well. So just in general, this topic, I think,
2 strikes on a number of ways for us to kind of
3 improve our approach of striving for good governance
4 and clarity and transparency and how things are
5 looked at. I would really appreciate during this
6 discussion and future discussions more feedback in
7 terms of what the appropriate vehicle to do that,
8 and if the vehicle that's being proposed here has an
9 impact on the partnership arrangements that you, the
10 tribes, are making, that you have the authority to
11 make in your own right too, whether it's too broad
12 or too narrow, so thank you.

13 **VICE CHAIR ISOM-CLAUSE:** I would certainly
14 echo Commissioner Simermeyer's comments on that. We
15 didn't intend to introduce any new requirements or
16 any changes with this. This is really just an
17 effort to bring more clarity and certainty to the
18 industry that we hoped would be reflected later in
19 efficiencies down the road by just having these
20 financial regulations. But, you know, we're very
21 interested in hearing is that the appropriate way we
22 move forward. If so, is this the right language.
23 Just because we have it set down on paper, that's
24 just a basis maybe to start with. So we are in no
25 way committed to what we have down. We just want to

1 have something out there for discussion and hear
2 from you all, what your thoughts are.

3 **CHAIRMAN CHAUDHURI:** Thank you. The only
4 thing I would add to that, and I fully agree with
5 everything my fellow commissioners mentioned, I
6 think the process of issuing declination letters was
7 brought up earlier today, and declination letters
8 are a service the agency provides through our Office
9 of General Counsel. That process was mentioned.
10 That process isn't something that grows out of IGRA.

11 After a pretty significant case, the Lake
12 of the Torches case, finance companies have worked
13 with tribes to get weigh-in from NIGC before
14 entering into certain finance agreements, wanting
15 the assurance from NIGC that certain agreements
16 don't constitute management agreements, because
17 management agreements have to be approved by the
18 Chair.

19 And so if nothing else, if there's a
20 benefit to bringing clarity in that finance process,
21 bringing clarity in the front end so that each and
22 every agreement doesn't have to read the tea leaves
23 about how the agency would define something like
24 management, that in itself we see as a benefit.

25 So the hope is the tribes, in working with

1 lenders, have some baseline regulatory language,
2 nothing new, but stuff that kind of codifies what's
3 already been issued. The hope is, at least on the
4 financing side of things, that will help streamline
5 at least one very important step.

6 Same thing with sole proprietary interest.
7 While there are pieces of authorities and our
8 guidance and cases, we believe there will be a
9 benefit to the industry to kind of bring all that
10 together in one place so people don't have to hunt
11 and peck in a million different places to see what
12 the different parts of the definition is.

13 So, again, you know, we're putting this
14 out there for discussion purposes in the hopes of
15 trying to take the best crack that we could take,
16 based on all the discussions that we've had through
17 consultation. But we're not -- we're not, you know,
18 we're definitely not predecisional. We haven't made
19 any decision on these -- this language. We very
20 welcome questions, comments, and concerns. So with
21 that, we'll turn it over to everyone in the room.

22 Yes, sir.

23 **MR. IYALL:** If I may, again, I'm Jerry
24 Iyall with the Cowlitz Gaming Commission. We
25 support this initiative. What we ask that you do

1 with the regulation is to provide some clarity and
2 some definition and some details of what sole
3 proprietary interests means, but also management.
4 And you mentioned gamesmanship a little bit earlier,
5 and I think a well-written regulation could even
6 reduce gamesmanship. So that's our input, thank
7 you.

8 **CHAIRMAN CHAUDHURI:** Thank you, sir. From
9 our perspective, this definitely ties to the
10 gamesmanship initiative that we have. Thank you.

11 **MR. WHEAT:** Scott Wheat, for the record,
12 on behalf of Coos, Lower Umpqua and Suislaw and
13 Spokane.

14 Also support the initiative and just
15 wanted to give a real brief example of why there's a
16 need for clarity on sole proprietary interest. I'm
17 reading -- I'm going to read to y'all just a couple
18 sentences from correspondence that the Spokane Tribe
19 recently received from the Washington State Lottery.
20 Washington State Lottery has this, you know, great
21 business deal that they proposed to tribes, which
22 is, you know, let us sell your lottery tickets on
23 your Indian lands and we'll give you a five percent
24 of the cut.

25 And, of course, Spokane is -- you know,

1 we're IGRA and we're going -- we've read, you know,
2 the City of Duluth decisions and we're scratching
3 our head going, we don't understand how five percent
4 of the cut could possibly be IGRA compliant, but who
5 knew that the State of Washington has some really
6 smart lawyers who have figured out how this is IGRA
7 compliant.

8 So I'm going to share the wisdom of the
9 Washington Attorney General with NIGC council and
10 this group, briefly, today.

11 Jurisdictional powers. This is a quote.
12 "The confusion about gaming profits appears to come
13 from misunderstandings around jurisdictional powers.
14 The gaming profits referred to in IGRA applied to
15 tribal controlled, in bold, gaming on Indian land,
16 both Class II and Class III. Lottery is considered
17 Class III. When the tribe waives sovereignty for the
18 purpose of granting the State Lottery full legal
19 jurisdiction over ticket sales, IGRA does to not
20 apply because the ticket sales are not tribal
21 controlled. All tribes currently licensed have
22 these issues -- have had these issues reviewed by
23 their tribal attorneys, and have acknowledged the
24 State Lottery compensation requirements without
25 conflict with IGRA."

1 So I just -- you know, who knew that
2 somebody who has been practicing IGRA for two
3 decades, that all you have to do was to get the
4 tribe to waive sovereignty and then just anybody, I
5 mean, not just the State of Washington, we're
6 assuming organized crime could just move in and
7 engage in Class II and Class III gaming because the
8 tribe has disavowed any jurisdiction over the
9 activity.

10 So I think -- I mean, you have some well-
11 intended folks north of the Columbia, you know, who
12 honestly believe that that's the way to get around
13 the primary beneficiary and sole proprietary
14 interest requirements. So I do think there's a real
15 need to clarify these issues.

16 **CHAIRMAN CHAUDHURI:** Well, without opining
17 on the validity of that statement, thank you very,
18 very much, Mr. Wheat. We appreciate it.

19 Other questions, comments, concerns?

20 Okay. With that, before we move to just a
21 catch-all portion of the discussion, I'm going to
22 check with my colleagues.

23 Anything you want to weigh in on before we

24 --

25 **COMMISSIONER SIMERMEYER:** Just to remind

1 folks that we appreciate folks being here today and
2 these comments are all being captured and helping to
3 inform our thinking process and the discussions
4 going on in the next few weeks. But, you know,
5 please -- hopefully you'll take a chance to look at
6 -- if you have anything to send in, please be sure
7 to send in specific requirements as you look closer
8 at how some of those definitions, particularly, or
9 if there might be anything else. Thank you.

10 **CHAIRMAN CHAUDHURI:** So before we close as
11 promised, we want to take every opportunity whenever
12 we're here meeting face-to-face to hear any ideas
13 about how we can be doing our jobs better. So I
14 don't want us to be tied to solely the topics that
15 we've discussed. But since we're all here in the
16 room, does anybody have anything else that they want
17 to share before we close?

18 Chair.

19 **MR. IYALL:** If I could, the Attorney
20 General's opinion from the State, that is
21 paternalistic.

22 **CHAIRMAN CHAUDHURI:** Thank you, sir. So
23 let me kind of forecast the next few months here.
24 So again, I think this part has already been framed.
25 We're in no way moving forward without fully hearing

1 from and working with our partners. When we talk
2 about consultation, we truly mean what we say. We
3 believe in active, engaged, meaningful consultation.
4 And so we're always very careful not to move forward
5 without dialogue, collaboration, discussion.

6 That said, we have a pretty aggressive
7 time frame that we're working under, and I know
8 we've already addressed this but let me kind of
9 restate it. Our hope is to move forward with
10 closing the comment period by the end of February,
11 at which point we're considering doing a virtual
12 update to Indian Country that will kind of give an
13 overview of all the comments received. From there,
14 we do anticipate taking a hard look to see at what
15 deliverables we can move forward on to get as much
16 done in the coming months as possible.

17 Again, as Vice Chair and my fellow
18 Commissioner mentioned, just because there may be
19 changes in the Commission on the horizon, one thing
20 that we pride ourselves in, from top to bottom, is
21 stability and a consistent path moving forward. So
22 while my term may be ending, I don't want to suggest
23 that major -- I mean that good work won't be just a
24 continuing hallmark and a trademark -- no, I'm sorry
25 -- a continuing hallmark of what we do at NIGC.

1 That said, we do want to run through the
2 tape and get as much done as we can while we have
3 the full commission, recognizing there have been
4 periods where we haven't had a full commission. So
5 we're trying to get everything done as quickly as
6 possible, and we appreciate your understanding of
7 our time frames. We're not trying to pull a fast
8 one by any means, but that's why we're under such an
9 aggressive time frame. So with that, again, any
10 final comments from anyone in the room?

11 With that, I think we'll close. Again our
12 deepest gratitude for being allowed into the
13 homelands of the nations of this region. And we
14 wish you safe travels and many blessings on your
15 continued journeys. Thank you for today's
16 consultation.

17 **(Whereupon, meeting concluded at 2:47**
18 **p.m.)**

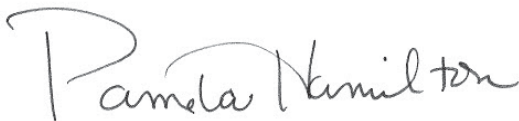
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1 CERTIFICATE

2
3 I, Pamela Hamilton, do hereby certify that I
4 reported all proceedings adduced in the foregoing matter
5 and that the foregoing transcript pages constitutes a
6 full, true and accurate record of said proceedings to the
7 best of my ability.

8
9 I further certify that I am neither related
10 to counsel for any party to the proceedings nor have any
11 interest in the outcome of the proceedings.

12
13 IN WITNESS HEREOF, I have hereunto set my
14 hand this 31st day of January, 2018.

15
16 

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18 _____
19 Pamela Hamilton
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