

**Participant Workbook
DC Regional Training Course
Track 1**

Dear Training Course Participant,

Over twenty five years ago Congress adopted the Indian Gaming Regulatory Act (IGRA) to provide statutory support for gaming by Indian tribes. The National Indian Gaming Commission (NIGC) was created by IGRA to partner with tribal regulators to regulate gaming activities conducted by sovereign Indian tribes on Indian lands. The mission of the NIGC is to fully realize IGRA's goals of: (1) promoting tribal economic development, self-sufficiency and strong tribal governments; (2) maintaining the integrity of the Indian gaming industry; and (3) ensuring that tribes are the primary beneficiaries of their gaming activities.

One of the primary ways the NIGC does this is by providing training and technical assistance to Indian tribes and their gaming regulators.

A properly trained and informed workforce is the most successful key to regulation and the assurance of compliance. Focused, targeted and responsive training and technical assistance programs provide a foundation that maintains the integrity and success of Indian gaming.

Through dedication and hard work, Indian gaming has experienced notable and successful growth thanks to the partnership of dedicated employee's, regulators and tribal governments and the NIGC. Our continued success depends on grabbing the growing momentum and "*Work Together for Success*", now and into the coming future.

With this backdrop in mind, we encourage you to take advantage of the NIGC training opportunities highlighted by this course. The Commission recognizes your work is essential to the success of Indian gaming and encourages you to use the tools you will receive and knowledge you will gain from this course to further regulatory excellence in Indian gaming.



Jonodev Osceola Chaudhuri
NIGC Chairman



Kathryn Isom-Clause
Associate Commissioner



E. Sequoyah Simermeyer
Associate Commissioner

Course Rationale

The National Indian Gaming Commission (NIGC) Regional Training Course is designed to provide a common foundation of knowledge and skills to prepare Tribes to work together to effectively understand and meet requirements to ensure compliance and provide a successful basis for economic development.

NIGC Training is built around adult learning principles, with knowledge delivery for understanding and everywhere possible, application level exercises, workshops and opportunities to collaborate in or for each attendee to have an opportunity to achieve understanding, doing and getting feedback on results – and doing again! Working together and using the skills and knowledge applicable to improve processes as soon as they return to work.

The 6 key benefits to the NIGC Training Model:

1. Provides real focus on issues and concerns important to attendees for meeting compliance.
2. Builds a sense of shared experience and language around the tools and methodologies.
3. Develops an understanding of the trends and concerns impacting Tribes and Indian Country in gaming.
4. Provides a safe environment for query, experimentation and failure.
5. Encourages application and testing in a true problem solving focus.
6. Provides a venue to develop relationships that improve communication, commitment and productivity.

Course Descriptions

The Regional Training Course is designed around information and knowledge sharing dealing with current and ongoing issues and concerns in Indian Gaming, critical learning areas for compliance, and new and trending changes in regulation. Infused with real time information, current opportunities and ground breaking tools, the course provides all attendees flexible and relevant learning options. The course is designed for novice and veteran staff. The course will offer instruction in the following content areas:

Day 1: All Participants

DC Region Guidance on the Issues

The course is a panel discussion of the issues within the region. Participants will gain an understanding and discuss solutions surrounding issues they face in their region. It will highlight regional performance with comparative statistics to better gain an understanding of trends in the region. Topics will include the following: compliance issues with recommendations, legal issues with recommendations and audit issues with recommendations.

NIGC Legal Opinions

This course describes the three most common legal opinions requested of, and issued by, the NIGC's Office of General Counsel (OGC): declination letters, Indian lands opinions and gaming opinions. It also describes the process for obtaining a legal opinion from OGC: from submitting a written request, to receiving a written opinion, and everything that happens in between.

Human Trafficking

Subject matter experts from the Bureau of Indian Affairs, U.S. Department of the Interior will provide the latest information on what Human Trafficking is and how to detect and combat this pervasive criminal activity.

Active Shooter Training

Law Enforcement personnel from the Federal Protective Services, U.S. Department of Homeland Security will provide expert advice in developing policies and procedures for an active shooter situation.

TRACK 1

AUD-120 Internal Audit: A to Z Approach

Internal Audit is an integral component toward protecting the assets of the gaming operation by examining policies and procedures, testing internal controls and monitoring compliance with policies and regulations. The Internal Audit function can provide information to improve your operation's internal controls. 25 CFR Part 543.23 provides guidance; however, it was never intended to define the Internal Audit function. This is a 2-day course that will discuss the role internal audit plays along with the Tribal Gaming Regulatory Agency (TGRA) and Gaming Operation Management in the protection of assets. Additionally, the importance of planning, testing, documenting and reporting of the internal audit work will be examined to further the understanding of how each element enhances the usefulness of the final product.

TRACK 2

CMP-106 Detecting Gamesmanship: A Practical Approach

This course builds on the initiative training provided during FY2016: “Preventing Gamesmanship on the Backs of Tribes”. The focus of this course is to provide TGRAs with tools to determine if Gamesmanship is occurring, to identify additional steps to be taken and documents to request, and to understand what steps can be taken to prevent gamesmanship at their properties. Attendees will learn how to review their gaming ordinance and regulations to identify sections that provide the needed authority to request and review contracts and agreements for violations of the Indian Gaming Regulatory Act (IGRA). Practical exercises will be conducted that will assist the attendee identify problematic language in contracts that indicate unapproved management, violations of the tribe’s sole propriety interest and/or misuse of gaming revenue. At the end of this interactive course, the attendee will have tools necessary to identify Gamesmanship and know what actions can be taken to remedy or prevent instances of Gamesmanship and violations of IGRA.

IT-103 Reading an FBI Criminal History Result

This learning block provides an in-depth view of the Criminal History Report and its use in background investigations. Attendees will learn to review, and decipher information and codes, along with how to locate specific information and what to do when this leaves more questions than answers.

CMP-107 TICS/SICS Workshops

25 CFR Part 543 provides the flexibility for Tribes to customize their controls to fit their gaming operation’s needs. The MICS intent was to give tribes the autonomy to develop what works for their specific operations by allowing for tribes and operations to develop and implement specific procedures as it relates to class II gaming. Based on analysis it has been determined that there is still a need in TICS/SICS development to help ensure compliance is met. This is a 9- hour course that will discuss elements of control and how to recognize areas in the TICS and SICS where detailed procedures should be written so that the Tribal Gaming Regulatory Agency (TGRA) and Gaming Operation Management are provided with a reasonable assurance that assets are protected.

How to Get the Most Out of This Course

- ❖ **Take the right approach to learning.** To meet each attendee's needs, we provide a number of different learning tools. These include well-researched and professionally prepared materials and presentations by skilled and experienced subject matter experts. Although you'll have a preferred style of learning, we hope you'll take advantage of *all* the tools we offer.
- ❖ **Make a note of this.** This workbook and related materials will enable you to take notes, and have access to needed information. Instead of trying to take notes word-for-word, it is recommended that you list key points for later memory jogging. We will try and ensure you have as much information as you need to lessen the need for lengthy notes.
- ❖ **Don't hesitate, participate.** The course will be more interesting and productive when everyone participates. If you don't understand something, there is a good chance someone else does not either, so do everyone a favor and ask questions. Additionally, don't hesitate to answer our questions and share your relevant knowledge and experience with all of us.
- ❖ **Take a break.** Everyone has a limit to how much they can sit still and absorb. So use the break, network, share ideas, and get some fresh air. You can help keep us running smoothly by coming back on time.
- ❖ **Join in with the group.** Stay enthusiastic and involved.
- ❖ **Attendance.** You must fully attend the course, and where applicable, pass a final exam for full credit and to receive a training certificate. Please do your best to be on time for class and try to be here for the entire course.
- ❖ **Cell phones, PDA's and iPad's.** In an effort to minimize disruptions to class, please turn off all cell phones and PDA's. If they are your only emergency contact, please set them to vibrate. iPad's may be used, but should be for note taking.

Please note: This course is conducted in English with instruction facilitated by verbal and written communications.

Course Structure

The Regional Training Course is a 3 day course developed to provide an encompassing event surrounding current, trending and critical knowledge areas in Indian gaming. Providing full staff learning opportunities, as well as focus area learning tracks, the course is designed to give tribal gaming regulators and operations personnel, commissions and staff a wide variety of subject needs to meet concerns and relevant areas of interest in Indian gaming.

Each instruction topic is focused around identified concern areas, new content and regulations and a variety of mechanisms for change, improvement and compliance for success. Each block focuses on various staff roles and responsibilities, focusing on similarities, differences, and opportunities for collaboration and sharing of practices and improvements. Most topic areas will pair an equal amount of time to facilitated lecture and action based learning.

The primary training methodologies will be interactive lecture, small group discussion, and case study. Action based learning will be facilitated through small groups and case study. Final learning will be measured through exercise completion and observation.

Regional Training Course Agenda



	START TIME	DC REGIONAL TRAINING COURSE September 19-21, 2017 Paragon Casino Resort 711 Paragon Place Marksville, LA 71351	
Day One	09:00	Course Opening/Welcome	
	09:15	DC Regional Guidance on the Issues	
	11:00	NIGC Legal Opinions	
	12:00	<i>Lunch (On Your Own)</i>	
	1:00	Human Trafficking (BIA)	
	2:30	Active Shooter Training (DHS)	
	4:00	Day Wrap up, Q&A	
		DAY TWO- TRACKS	
Day Two	9:00	AUD-120 Internal Audit: A to Z Approach	CMP-106 Detecting Gamesmanship
	11:00		IT-103 Reading FBI Crim History Result
	12:00	<i>Lunch (On Your Own)</i>	
	1:00	AUD-120 Internal Audit: A to Z Approach	CMP-107 TICS/SICS Workshop
	4:00	Day Wrap up, Q&A	
		DAY THREE- TRACKS	
Day Three	9:00	AUD-120 Internal Audit: A to Z Approach	CMP-107 TICS/SICS Workshop
	12:00	<i>Lunch (On Your Own)</i>	
	1:00	AUD-120 Internal Audit: A to Z Approach	CMP-107 TICS/SICS Workshop
	4:00	Course Close, Safe Travels!!	

Introduction to the Regional Training Course






National Indian Gaming Commission




Introduction to the RTC
NIGC Training Department



NIGC Training Program


- Revising training approach to be more process driven.
 - **“How To” instead of “How Come”**
- New workshops Internal Audit (16hr training) TICS/SICS
- In the future Learning Management System
- A call for suggestions!

2



Training Materials & Information

- RTC Training Materials
- Updated [Training Course Catalog](#)
- RGTs
- New technology for courses using

 **Poll Everywhere**

- Polls
- Surveys

3

Knowledge Reviews & Course Evaluations

Knowledge Review Purpose

- Check for immediate understanding and retention
- Used to improve courses
- Provide your name & email address
- Completed twice:
 - at the end of the course
 - 90 days after course via email

Course Evaluation Purpose


- Allow participants to provide immediate feedback on their experience
- Encouraged to include ideas and recommendations
- Will be used to improve the course
- All course evaluations are anonymous

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Participating with Poll Everywhere


Poll Everywhere

1




Leader asks a question

2



Participants respond

3



Responses are displayed immediately!

NOTE: Polls are not active until they are displayed on the screen

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Using Your Phone to Participate

Text **NIGC** to **22333** to join the session.

New Message Cancel


To: 22333

NIGC

Send

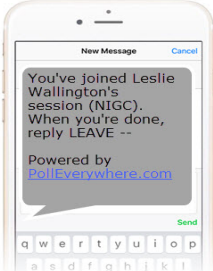
q w e r t y u i o p
a s d f g h j k l

NOTE: Polls are not active until they are displayed on the screen

 **Response from Poll Everywhere**

1. You will receive a text message confirming that you are in the polling session.
2. Do **NOT** select the PollEverywhere.com link.
3. Now you can enter your response to the poll as a text message.


NOTE: Polls are not active until they are displayed on the screen



How did you travel to the conference?

- A. Plane
- B. Train
- C. Car
- D. Foot/Bicycle

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at PollEv.com/app

 **Surveys from Poll Everywhere**

1. Open a web browser on your phone.
2. In the address line type: **PollEv.com/nigc**
3. Click **Start Survey**.
4. Scroll down to access each question.
5. If you need to change your response, select **Clear Response**.
6. Only respond one time to each question.
7. Select **Submit** to submit your answers.

NOTE: Surveys are not active until they are displayed on the screen

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DC Regional Guidance on
the Issues
September 2017





DC

Regional Guidance on the Issues

Panel Discussion

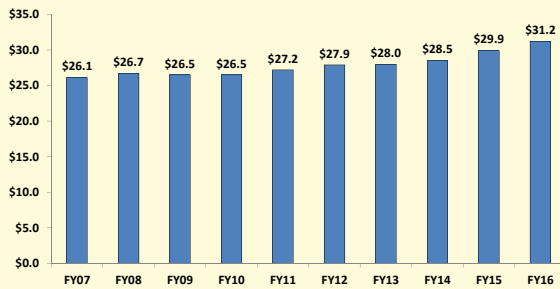


Commission's Initiatives

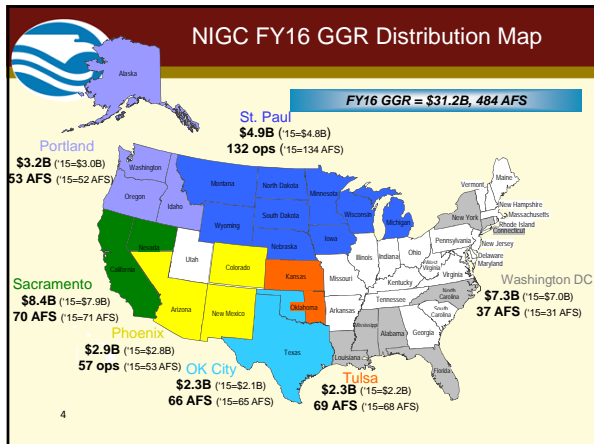
- Rural Outreach
- Staying ahead of the Technology Curve
- Supporting a strong workforce both in-house and among our regulatory partners
- Protect against anything that amounts to gamesmanship on the back of tribes



FY2016 GGR



(\$B)



DC Region

- 7 States – Currently Gaming under IGRA
- Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina, New York
- 15 Tribes – 37 gaming operations:

Class II only	15
Class III only	5
Class II/III	17

DC Region

- Two Tribes in Massachusetts Currently in litigation:
 - Mashpee Wampanoag Tribe
 - Currently preparing additional documentation for a land in trust determination from Interior
 - Large facility in Taunton
 - Wampanoag Tribe of Gay Head
 - Currently waiting on Courts to determine legality of gaming
 - Small Class II only facility



Backgrounds & Licensing

October 2015 to September 2016:

Fingerprints Processed – 12,059

NORs Received – 8,579

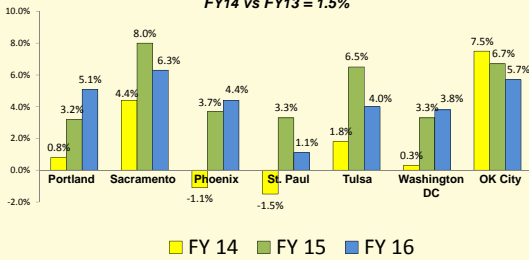
LIC NOTIF Received – 8,377

7



GGR Growth Rate By Region

Overall Growth Rate
FY 16 vs FY15 = 4.4%
FY15 vs FY14 = 5.0%
FY14 vs FY13 = 1.5%



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Regional Compliance Issues/Guidance

ISSUE:

- Submissions of Facility License/Attestation
- Submissions of NOR/LIC Submissions, AFS and Fees Worksheets
- Internal control compliance
- TGRA/Management/Govt. relationship
- Gamesmanship

GUIDANCE:

- Expiration/Renewal
- Timeliness/Systemic review, Reminders and offer of Assistance
- IA, CPA, Compliance Staff- 543 testing, identify, remedy, follow-up
- NIGC assistance/Site Specific Training
- Review the contracts



Office of General Counsel

OGC Technical Assistance:

- Informal Gaming Ordinance Review
- Indian Lands Opinions
- Game Opinions
- Declination Letters



Technology Division

Common ITVA Issues

Identified

- Microsoft Patches not updated
- Virtual Network Computers unsecured
- Remote username/passwords unencrypted

IT General Interactions

1. Remote Access
2. Network Security
3. Vendor Issues

Regulating Gaming Trainings (RGT's)

Questions

1. Forensics
2. Class II Systems
3. IT Threats

Common Compliance Assessments

(ICA's) Issues Encountered

1. Remote Access
2. Policy and Procedures
3. Logical Security – proper username/passwords in place

Technology Division provides free IT Vulnerability Assessments that assist with identifying IT Network deficiencies sign up at <http://www.nigc.gov>

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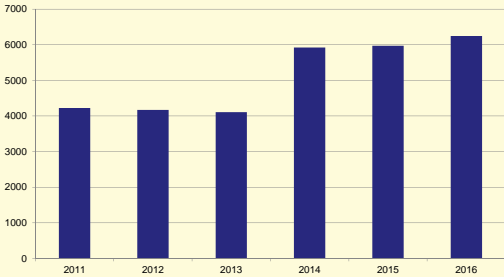
Audit

- Internal Control Assessments
 - Limited Scope review of specific areas



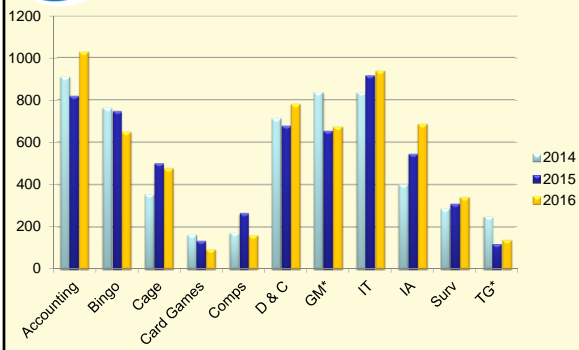
Overall MICS AUP Exceptions

MICS Exceptions for Indian Gaming





Breakdown by Section





543 Tied #5 Finding

- Drop and Count 543.17(k)
 - *Variances*
 - The operation must establish, as approved by TGRA, threshold level at which a variance must be reviewed to determine cause.
 - Any such review must be documented.



543 Tied #5 Finding

- Drop and Count 543.17(e)(3)
 - *Player interface and financial instrument storage component drop*
 - Financial instrument storage components removed only at time previously designated by gaming operation and reported to TGRA.
 - If emergency drop is required, surveillance must be notified before drop is conducted and TGRA must be informed within timeframe approved by TGRA.

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543 Tied #5 Finding

- Auditing Revenue 543.24(d)(10)(i)
 - Establish controls and implement procedures:
 - Inventory
 - Monthly, verify receipt, issuance, and use of controlled inventory
 - Includes, but not limited to, bingo cards, pull tabs, playing cards, keys, pre-numbered and/or multi-part forms.

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543 Tied #5 Finding

- Auditing Revenue 543.24(d)(4)(ii)(c)
 - Establish controls and implement procedures:
 - Gaming Promos and Player Tracking
 - Monthly, review promotional payments, drawings, and giveaway programs
 - Verify payout accuracy and proper accounting treatment in accordance with rules provided to patrons
 - Review documentation related to access to inactive and closed accounts

18



543 Tied #2 Finding

- Cage, Vault, Kiosk, Cash and Cash Equivalents 543.18(c)(2)
 - *Cage and Vault Accountability*
 - Increases and decreases to total cage inventory must be verified, supported by documentation, and recorded.
 - Documentation must include the date and shift, the purpose of the increase/decrease, the agent(s) completing the transaction, and the person or department receiving the cage funds (for decreases only).

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543 Tied #2 Finding

- Cage, Vault, Kiosk, Cash and Cash Equivalents 543.18(c)(3)
 - *Cage and Vault Accountability*
 - Cage/vault inventories must be counted independently by at least two agents, attested to by signature, and recorded in ink or other permanent form at end of each shift during which activity took place.
 - Agents must make individual counts to compare for accuracy and maintain individual accountability.
 - Variances must be documented and investigated.

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543 Tied #2 Finding

- Auditing Revenue 543.24(d)(8)(i)
 - Controls must be established and procedures implemented to audit each of the following operational areas:
 - Drop and Count
 - Quarterly, unannounced currency counter and currency counter interface (if applicable) test must be performed
 - The test results must be documented and maintained

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543 #1 Finding

- Auditing Revenue 543.24(d)(4)(iii)
 - Establish controls and implement procedures to audit the following operational area:
 - Gaming Promos and Player Tracking
 - Annual review of computerized player tracking systems
 - Ensure configuration parameters are accurate and alterations have authorization from management
 - Review performed by agent(s) independent of individuals that set up/change system parameters
 - Document and maintain the test results.

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Summary of 543 findings

A majority of 543 findings are as it relates to the sections that require;

- Controls must be established
- Procedures implemented
- Thresholds established
- Actions documented

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Regional Offices

WASHINGTON NATIONAL OFFICE
 WASHINGTON, DC 20005
 PHONE: (202) 632-7003

PHOENIX REGIONAL OFFICE
 PHOENIX, AZ 85012
 PHONE: (602) 640-2951

PORTLAND REGIONAL OFFICE
 PORTLAND, OR 97205
 PHONE: (503) 326-5095

TULSA REGIONAL OFFICE
 TULSA, OK 74103
 PHONE: (918) 581-7924

SACRAMENTO REGIONAL OFFICE
 SACRAMENTO, CA 95814
 PHONE: (916) 414-2300

ST. PAUL REGIONAL OFFICE
 ST. PAUL, MN 55101
 PHONE: (651) 290-4004

OK CITY REGIONAL OFFICE
 OKLAHOMA CITY, OK 73102
 PHONE: (405) 609-8626



NIGC Training Program

- Revising training approach to be more process driven.
 - “How To” instead of “How Come”
- New workshops Internal Audit (16hr training) TICS/SICS
- In the future Learning Management System
- A call for suggestions!

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Questions





Course Evaluation

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciate and allow us to improve your experience



Course Eval - Regional Guidance
When survey is active, respond at PollEv.com/nigc

Start the presentation to activate live content
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© 0 surveys underway

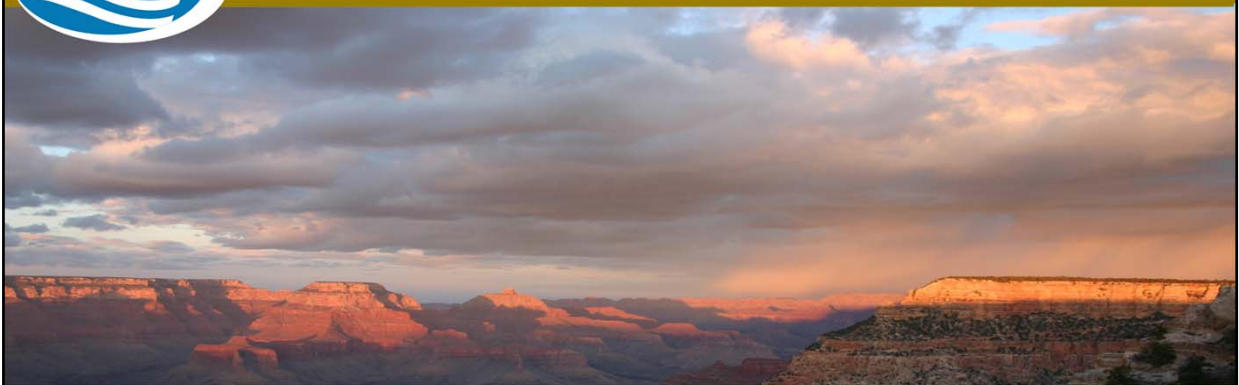
OGC-103 NIGC
Legal Opinions



OGC-103 Legal Opinions Course Participant Guide



National Indian Gaming Commission



OGC-103 Legal Opinions

KEY POINTS:

My Notes

OGC-103 Legal Opinions Course Participant Guide



Course Objectives

Learn about legal advisory opinions issued by NIGC's Office of General Counsel (OGC)

- What they are
- Topics they cover
- Reasons to request one
- How you request one
- What happens to your request, once received
- Content of opinion letters
- Snapshot of legal analysis done by OGC

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KEY POINTS:

My Notes

OGC-103 Legal Opinions Course Participant Guide



Simple Description

OGC issues written legal opinions as a service to tribes and 3rd parties



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KEY POINTS:

- At the request of a tribe or 3rd party, OGC will:
 - Review and analyze related documents for compliance with IGRA and the NIGC regulations, *and*
 - Issue a written legal opinion based on its review and analysis
- Office of General Counsel (OGC) is part of the NIGC
- OGC is located at NIGC headquarters in Washington, D.C.

My Notes

OGC-103 Legal Opinions Course Participant Guide



History of OGC Legal Opinions

IGRA enacted in **1988**, to establish the National Indian Gaming Commission (NIGC)

NIGC is responsible for implementing IGRA and enforcing its provisions



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KEY POINTS:

- Indian lands (1993-today)
- Game classification (1992-today)
- Declination letters (1993-today)

There have been hundreds of submissions to the NIGC since then

My Notes

OGC-103 Legal Opinions Course Participant Guide



History of OGC Legal Opinions

- OGC began issuing opinions in 1990 and continues to do so today
- In 1993, NIGC issued bulletin inviting tribes and their contractors to submit gaming-related agreements to NIGC
 - NIGC would review agreements to determine whether they require NIGC's approval because it allows management activity

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KEY POINTS:

[The evolution of Indian gaming]

- Indian gaming, under IGRA, has evolved dramatically since 1988
- During the early years, many tribes had difficulty getting a loan from a traditional lending institution, such as a bank or savings & loan
- Today, loans to tribes from traditional lending institutions for gaming-related purposes are commonplace
 - The loans often involve significant amounts of capital
 - The loans are typically used to develop, build and expand tribal gaming facilities
- Today, nearly all of OGC's legal opinions are declination letters for loan agreements between tribes and a 3rd party, usually a bank

My Notes

OGC-103 Legal Opinions Course Participant Guide



Role of OGC, General Counsel & OGC Attorneys

- OGC receives all requests for legal opinions
 - Can be e-mailed to legal_opinions@nigc.gov
- OGC may initiate legal opinion without outside request



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KEY POINTS:

- OGC provides legal advice to the NIGC Commission and to NIGC staff
 - Including NIGC regional office staff, who work in the seven NIGC regional offices which are located throughout Indian country
- OGC works closely with NIGC auditors and compliance officers
- OGC collaborates with other federal agencies, particularly the Department of Interior and the Department of Justice
- OGC also works closely with tribal attorneys, officials, regulators and non-tribal 3rd parties, such as banks and other lenders
 - To facilitate and ensure compliance with IGRA and the NIGC regulations
- Once a request for an opinion is received, it is assigned to an OGC attorney
- The OGC attorney will communicate with the requester at the outset and throughout the process
- The OGC attorney drafts the legal opinion
- OGC's General Counsel & Assoc. General Counsel review and edit the legal opinion drafts
 - There are usually many drafts written and reviewed by many people until the opinion is in its final form
- OGC's General Counsel signs the final version before it is issued
- OGC-initiated legal opinions are rare.
 - May happen if the NIGC needs a legal analysis done for a fact situation concerning one of the three legal topics

My Notes

OGC-103 Legal Opinions Course Participant Guide



General Information

- OGC legal opinions are issued as a “legal opinion letter”
- Address specific legal issues & facts presented by tribe or 3rd party or both
- Final opinions are not limited to factual information submitted by a requester with the initial request

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KEY POINTS:

- They are addressed to person requesting legal opinion
- They are signed by OGC General Counsel
- Contain legal opinion and analysis of law and facts upon which opinion is based
- Additional legal issues may be identified and addressed by OGC
- OGC may request additional records, documents or other factual information from the requester
- OGC may work with BIA regional offices to obtain relevant BIA records
- OGC may conduct independent research for additional records and other factual information

My Notes

OGC-103 Legal Opinions Course Participant Guide

NIGC's General Counsel is required by IGRA to issue legal opinions.

- A. True
- B. False



Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at [PollEv.com/app](https://www.polleverywhere.com/app)

Poll Title: NIGC's General Counsel is required by IGRA to issue legal opinions.
https://www.polleverywhere.com/multiple_choice_polls/LXLMK58sqSowOUa

My Notes

OGC-103 Legal Opinions Course Participant Guide



What OGC Legal Opinions Are & Are Not

- Legal *opinions*, not legal *decisions*
- Not “final agency action”
- Voluntary process, not mandatory
- Not negotiation between OGC & tribe or 3rd party

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KEY POINTS:

- OGC legal opinions are advisory only, and are not binding
- They are legal opinions signed by the NIGC’s General Counsel -- not final agency actions under the Administrative Procedures Act (APA)
 - This means the NIGC can’t be sued under the APA for a decision that is arbitrary, capricious or contrary to law
- OGC legal opinions are not final decisions by the NIGC Chair or full Commission
 - This means an opinion can’t be challenged using the NIGC’s internal grievance process
 - This means an opinion can’t be appealed to federal district court
- And if initiated internally by the NIGC, the opinions are legal advice that the OGC attorneys are providing to the Chair or to another division of the NIGC
- They are issued as a courtesy to tribes and 3rd parties
 - It is one of the services provided by the NIGC to the regulated community
 - It is free of charge
- They are not required by IGRA or the NIGC regulations
- They are not required by the NIGC
- OGC is simply providing a legal opinion
- OGC is simply applying the law to the facts

My Notes

OGC-103 Legal Opinions Course Participant Guide



Three Types of Legal Opinions

- **Declination letter**
 - Typically involves review of gaming-related agreements and other related documents
- **Game classification opinion**
 - Typically involves review of a game that is being, or may be, offered for play by a tribe
- **Indian lands opinions**
 - Typically involves review of a specific parcel of tribal land



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KEY POINTS:

My Notes



Reasons to Request an Opinion

- Helps tribes and 3rd parties identify and correct compliance problems *before*
 - Financial agreements are finalized
 - Gaming machines are purchased or leased
 - Gaming is conducted on certain Indian lands
- Ensures compliance with IGRA and avoid NIGC enforcement action



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KEY POINTS:

- OGC may identify potential or existing compliance issues
- If problems are identified by OGC, requester will be able to:
 - Be proactive in addressing problems and fixing them
 - Change draft documents before they are executed
 - Refrain from gaming on lands that aren't "Indian lands"
 - Refrain from offering games that don't qualify as Class II or III games
- Gives tribes and 3rd parties an opportunity to get a legal analysis from OGC attorneys
 - They are experts on the application of IGRA & the NIGC regulations and Indian gaming issues
- Before actions are taken
- Before substantial amounts of time, money and effort are expended

My Notes



Reasons to Request an Opinion

- Provides clarity about issues that may be legally & factually complicated or are issues of first impression

KEY POINTS:



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KEY POINTS:

Issues of first impression are ones that present an application of law to unique facts never before analyzed under IGRA

My Notes



Content of Request & Attachments

- Is usually for opinion on a topic that falls within one of three categories
- Should clearly state legal opinion sought and legal issues you want addressed
- Must identify who is making request

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KEY POINTS:

- The categories are: declination letter, Indian lands opinion or game classification opinion
- Request should include all legal theories and analysis, if possible
- Request should include cites to laws, regulations and case law you think applies
- If not a tribal leader, then requester should identify his or her relationship to tribe
- A request should also include:
 - All documents, records, reports and other information you want considered
 - All materials that provide factual support for a favorable opinion
 - All “relevant” documents
 - Declination letters = drafts of financial documents
 - Indian lands opinions = maps, BIA records, deeds
 - Game classification opinions = technical reports

My Notes

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After Issuance

Once issued, letter is sent to requester



Once issued, all letters are posted on NIGC website with required redactions

After FOIA exemptions & Privacy Act provisions are applied



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KEY POINTS:

My Notes



Declination Letters

15

KEY POINTS:

My Notes

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IGRA Guidance on Declination Letters

- IGRA allows a tribe to enter into a contract with a 3rd party for the **management and operation** of its gaming facilities
But only if contract is first approved by the NIGC Chair
- IGRA also requires a tribe to maintain the **sole proprietary interest** in, and responsibility for, its gaming operation

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KEY POINTS:

- OGC is frequently asked to review drafts of agreements or contracts between tribes and 3rd parties to ensure:
 - They are not management contracts that require approval by the NIGC Chair, *and*
 - They do not violate IGRA's requirement that a tribe have the sole proprietary interest in, and responsibility for, its gaming operation
- OGC will issue a declination letter if satisfied that an agreement:
 - Does not give a 3rd party management responsibility over any part of the gaming operation *and*
 - Does not violate the sole proprietary interest requirement
- Either or both legal opinions will be rendered in the letter, depending on the specific request
 - Almost all requesters seek both legal opinions
 - Both are important to ensure full compliance with IGRA
 - The legal analysis and relevant facts for both issues overlap and are intertwined
- It's important to note, if there is no approved management contract in place, then 3rd party cannot manage all or any part of the gaming operation
- If an agreement authorizes management activity by a 3rd party, and gives a proprietary interest in a tribe's gaming operation to a 3rd party, then:
 - The agreement is void, if not approved by the NIGC Chair
 - The agreement will also violate a tribe's gaming ordinance and could be the basis for an NIGC enforcement action

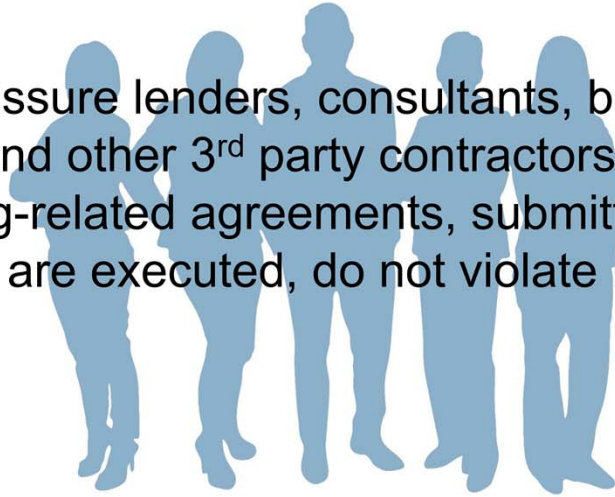
My Notes

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Reasons to Request a Declination Letter

To reassure lenders, consultants, builders, vendors and other 3rd party contractors that drafts of gaming-related agreements, submitted before they are executed, do not violate IGRA



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KEY POINTS:

- To take advantage of OGC's expertise in reviewing and analyzing financial and other agreements for compliance with IGRA
- To get a legal opinion that agreements comport with IGRA and do not require the NIGC Chair's approval
- To help tribes assess whether, under the agreements, they retain the sole proprietary interest in their gaming operation
- They may be investing substantial amounts of time and money
- *Before* critical agreements are executed
 - Identify and address any problematic provisions

My Notes

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History of Declination Letters

- Bulletin No. 1993-3, Submission of Gaming-Related Contracts and Agreements for Review
- Since 1993, hundreds of tribes have taken the NIGC up on its invitation to review documents
- Today, the bulk of submissions from tribes and 3rd parties are no longer consulting, development and employment agreements

They are financing documents

KEY POINTS:

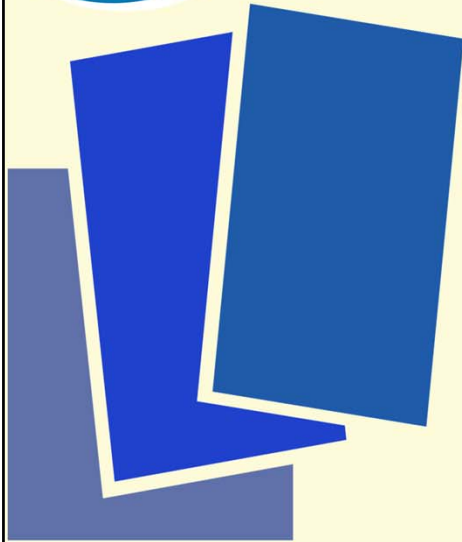
- The Bulletin was issued in response to NIGC's receipt of "several requests for guidance on whether particular gaming related agreements require the approval of the NIGC . . ."
- With its 1993 Bulletin, the NIGC invited tribes and their contractors to submit gaming-related agreements to the NIGC for review -- if they were uncertain about whether certain agreements required NIGC approval
- Consulting agreements, leases or sales of gaming equipment were the examples given in the 1993 Bulletin of appropriate submissions
- The NIGC promised to review each submission and determine whether the agreement required approval of the NIGC
 - If NIGC approval was found to be required, the NIGC promised to notify the tribe to formally submit the agreement for approval
- Through this process, the NIGC hoped to "provide timely and uniform advice to tribes and their contractors"
- Since 2010, more than 500 declination letters have been signed and issued by OGC
- Since 2010, the bulk of documents received for review are financing agreements
- Since IGRA's passage in 1988, the financing of Indian gaming has evolved dramatically
 - For two decades, tribes interested in gaming were unable to get a loan from a traditional lending institution, like a bank
 - Today, a variety of gaming-related loans are readily available to tribes from national and local traditional lending institutions
 - This shift in the availability of financing to tribes is reflected in the kinds of gaming-related contracts and agreements that tribes and 3rd parties now submit to the NIGC for review and guidance
 - Since 2010, nearly all contracts and agreements submitted to the NIGC by tribes or lenders for review are loan agreements between a tribe or a tribal gaming operation and a bank or other lending institution

My Notes

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Initial Request & Document Submissions



- Identify, with specificity, legal opinions sought
- Include drafts of documents, *not* executed documents
- Typical submissions include drafts of:
 - Loan agreements and related documents

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KEY POINTS:

- Initial request should:
 - Include all relevant documents in draft form
 - List and identify, in the body of the cover letter, all relevant draft documents that have been submitted
 - Identify and submit all exhibits, schedules and any other documents that are incorporated by reference in any of the documents
 - Briefly summarize the nature and purpose of documents
 - Identify all parties to any agreements
 - If declination letter is needed by set date, include in request
- Requester should be identified by his or her full title and place of employment
 - And his or her relationship to a tribe, i.e. the tribe's lawyer, lender, lender's lawyer, etc.
- OGC will not give an opinion on executed documents
 - We submit executed documents to Compliance and work with them to determine whether there is a violation of IGRA or our regulations
- The "related documents" submitted with a loan agreement typically include:
 - Credit Agreements
 - Security Agreements
 - Deposit Account Control Agreements
 - Promissory Notes *and*
 - Fee Letters
- Less frequent submissions include drafts of:
 - Development Agreements
 - Employment Agreements
 - Leases or Sub-leases
 - Other agreements or contracts

My Notes

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OGC Review Process

- All documents submitted in connection with request will be reviewed by OGC
- Assigned attorney will communicate with requester, tribe and 3rd parties



KEY POINTS:

- Whether submitted with initial request or submitted later
- Review will include any changes made to draft documents by requester before review is concluded
- To address problematic provisions
- To review revisions
- To request missing documents
- To answer any questions

My Notes

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Time Considerations

- Assigned OGC attorney will ask requester if there are any time considerations we should be aware of
- Any missing documents will cause delay while OGC attorney waits to receive them
- Other factors will impact the time needed for OGC to complete its review



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KEY POINTS:

- Any looming deadlines must be communicated to OGC as soon as possible
- OGC will try to accommodate a deadline request as best as possible, but reviews typically take 4-6 weeks under the best of circumstances, so plan accordingly
- Typical missing documents are ones that:
 - Are central to the agreements
 - Are referenced in the agreements
 - The requester wants encompassed within the scope of the legal opinion, but hasn't submitted yet
- Factors impacting OGC's ability to meet a requester's proposed deadline, include:
 - The number and complexity of changes recommended by OGC
 - The number of parties, including the tribe, who must agree to the changes
 - Whether the tribe and 3rd parties accept OGC's recommendations or challenge them
- During OGC's review process, providing red-lined versions of the original documents that show any subsequent changes made during the review process, is extremely helpful and a big time-saver

My Notes

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GRA defines "management".

True

False

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Poll Title: IGRA defines "management".
https://www.polleverywhere.com/multiple_choice_polls/6TC49f6bBDjkyqz

My Notes

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Legal Analysis

- What is definition of “management activity”?
 - Neither IGRA nor NIGC regulations define “management”
- NIGC Bulletin No. 94-5 describes indicia of management
- NIGC regulations define “primary management official”

PLANNING

DIRECTING

ORGANIZING

COORDINATING

CONTROLLING

23

KEY POINTS:

The legal analysis begins with IGRA

- Whether provisions in loan agreements and related documents, individually or collectively
 - Allow or require any management activity by 3rd party *or*
 - Violate IGRA’s sole proprietary interest requirement
- If the agreement requires, or allows, performance of any management activity of all or part of a tribe’s gaming operation, then the agreement is a management contract within meaning of 25 USC § 2711
 - And requires the NIGC Chair’s approval
- Courts have held that, to be a management contract, document must “grant to a party other than the tribe some authority with regard to a gaming operation”

May rely on its ordinary meaning

- The definition of “manage” is:
 - To exercise executive, administrative and supervisory direction of
 - To direct or carry on business or affairs
- The definition of “management” is:
 - The act of managing
 - The conducting or supervising of something (a business) *or*
 - The collective body of those who manage or direct an enterprise
- Activities such as planning, organizing, directing, coordinating and controlling
- Any person “who has authority . . . to set up a working policy for a gaming operation”
 - 25 CFR § 502.19

My Notes

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Results of Legal Analysis

If, during legal analysis, OGC finds provisions that allow or require 3rd party management activity or give 3rd party a proprietary interest in a tribe's gaming operations, then:

- OGC will share specific concerns with requester and answer any questions
- OGC will ask requester to change or eliminate all problematic provisions



KEY POINTS:

- If no changes are recommended, a declination letter will be issued
- If changes are recommended, and made, a declination letter will be issued
- If changes are recommended, but not made, no declination letter will be issued
- If no declination letter is issued, the tribe may, alternatively, choose to undergo the NIGC's management contract review process
- If no declination letter is issued, but the documents are executed without a declination letter, then
 - The parties run the risk of operating under agreements that may be found to be void under IGRA
 - The parties run the risk of an NIGC enforcement action and the resulting penalties
- The parties may be conducting gaming in violation of IGRA, the NIGC regulations and/or the tribe's gaming ordinance

My Notes

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Content of OGC Declination Letter

- Each document reviewed will be listed
- Legal issues addressed by OGC will be spelled out
- Legal opinion will be provided for each issue considered
- Limitations of legal opinions included at end of letter
- Will include notice that letter will be posted on NIGC's website

25

KEY POINTS:

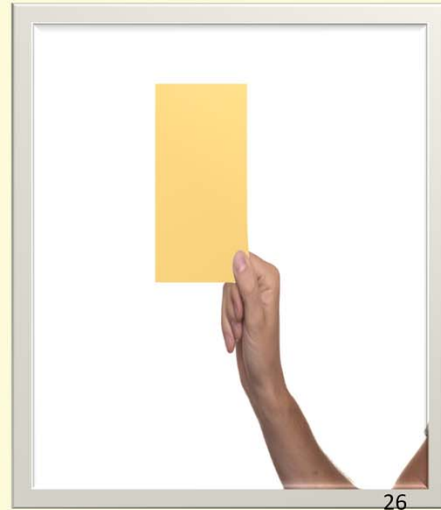
- Opinion applies only to existing documents
 - Not to future documents incorporating extensions, modifications, supplements or other changes to the documents
- Opinion does not apply to any missing documents
- If documents change in any material way, opinion won't apply to changes
- Declination letter will be posted only *after* NIGC's FOIA Officer:
 - Informs requester of opportunity to request that certain information be redacted or withheld under FOIA's exemptions;
 - Reviews and considers any requests received from requester; *and*
 - Redacts or withholds text if justified under FOIA and/or the Privacy Act
- Letter will be redacted in accordance with FOIA and the Privacy Act before it is posted
- NIGC frowns upon requesters asking that an entire letter be withheld
 - To withhold entire letter would be contrary to NIGC's policy of transparency and FOIA's presumption of openness
 - Also, one of the purposes of all OGC opinions is to better inform the industry generally, which does not happen if opinions are withheld

My Notes



Withdrawing Request

- Before opinion is issued
- If circumstances change and requester no longer needs opinion



KEY POINTS:

- If adverse judicial decision is issued that impacts or moots need for legal analysis
- If tribe abandons gaming project before completion

My Notes

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Common Problems

- Provisions that authorize 3rd party to:
 - Engage in a management activity
 - Exercise control over a management activity
- Provisions that give 3rd party:
 - Decision-making power and authority for all or part of any management activity



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KEY POINTS:

- Engage in management by participating in tribe's governmental processes
 - Right to veto any amendments to tribe's gaming ordinance
 - Right to veto any new laws or regulations enacted by tribe
 - Right to review and object to tribe's licensing decisions
- Exercise control over some or all of the gaming revenues *before* an event of default

In addition,

- Provisions that take away some, or all, of a tribe's decision-making power and authority over a management activity
 - Can't require lender's consent or approval for decision
 - Can't give lender veto power over decision made by tribe
- Provisions that allow a court to appoint a receiver as a remedy for default on a loan by a tribe
 - This is management
 - Receiver will have authority to make significant financial decisions related to gaming facility and gaming revenues
 - The collection and depositing of revenues
 - The payment of liabilities
 - A federal court in *Wells Fargo v. Lake of Torches* found that the appointment of a receiver to carry out the terms of a bond indenture, i.e. the deposit of revenues and payment of liabilities, where tribe's debt is secured by gross gaming revenues, is management

Also,

- Fees, interest and other costs that are unreasonably high when considered together
- Compensation to 3rd party that can't be justified by the benefits to tribe and/or the services rendered to tribe by 3rd party
- The good news is provisions that may make management a possibility, but do not directly permit management, can be easily cured with language that prohibits a creditor from engaging in management activities
 - 2009 *Muscogee Creek* language
 - Other limiting language approved by NIGC

My Notes

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What are the two primary areas of concern for OGC when performing a declination letter review?

- Management and sole proprietary interest
- Number of games and location of casino
- Minimum internal controls and tribal internal controls

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Poll Title: What are the two primary areas of concern for OGC when performing a declination letter review?
https://www.poll Everywhere.com/multiple_choice_polls/JQ8TiNkz3yEIFw7

My Notes

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Which NIGC Bulletin provides guidance on "management"?

- Bulletin 88-1
- Bulletin 94-5
- Bulletin 99-5

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at [PollEv.com/app](https://www.polleverywhere.com/app)

Poll Title: Which NIGC Bulletin provides guidance on "management"?
https://www.polleverywhere.com/multiple_choice_polls/RAZdVZ0XRrYJ1ku

My Notes



Indian Land Opinions

30

KEY POINTS:

My Notes

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Indian Lands Opinions

- It's a legal opinion, in letter form
- Addresses whether a particular parcel of land qualifies as Indian lands eligible for gaming under IGRA



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KEY POINTS:

My Notes

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History of Indian Lands Opinions

- First Indian lands opinion was issued in 1993 with approximately 75 opinions issued since
- Most issued by OGC and initiated at the request of a tribe
- Currently, there are 497 gaming operations that are located on “Indian lands” eligible for gaming under IGRA

32

KEY POINTS:

- However, some are issued by Interior’s Solicitor’s Office, not OGC
 - When a tribe submits a trust application for a land parcel to DOI and expresses an intention to game on the land
 - Many of the early Indian lands opinions were issued by Solicitor’s Office
- The location of the land, and the legal status of the land, have been documented by the NIGC for each tribal gaming operation
 - With the assistance of tribes and BIA regional offices
- Most tribal gaming operations have been in place for many years on the same “Indian lands”

My Notes

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Reasons to Request an Indian Lands Opinion

Achieve certainty about land's legal status before financing, building, opening and operating a gaming facility



Obtain legal justification from NIGC for gaming being conducted by a tribe on its land under IGRA

Favorable opinion can be used by tribe



33

KEY POINTS:

- Whether land is eligible for gaming under IGRA is one of the prerequisites to conducting Indian gaming
 - It is a critical preliminary determination for a tribe that intends to conduct gaming on certain lands
 - To get some clarity about the NIGC's position on the land before investing money and resources on a new facility
 - To use defensively to counter legal challenges and threats from outside entities

My Notes

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Content of Initial Request & Attachments

- **Should provide basic description of land**
 - **Location**
 - **Location in relation to tribe's reservation**
- **Should include history of land at issue**
 - **And tribe's homelands generally**
- **Should include theory of why land qualifies as "Indian lands" under IGRA**

34

KEY POINTS:

- Like all legal opinion requests, it must be in writing
- Should describe requester's relationship to tribe
 - Particularly if requester is not a tribal leader
- Should include the following materials:
 - Grant deed for the land
 - Legal description of the land
 - From BIA and/or county records
 - Land survey records
 - Maps of the land
 - Relevant BIA records, including:
 - Notices of Decision (for taking land into trust)
 - Preliminary Title Reports
 - Maps, including US Geological Survey maps
 - Relevant Federal Register Notices
 - Initial Reservation Proclamation, Federal Recognition, etc.

My Notes

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Time Considerations



- No statutory time limits
- Even if substantial materials are submitted with initial request, more information is almost always required
- Multiple reviews and edits of opinion drafts take time

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KEY POINTS:

- OGC often needs additional records, documents, maps or other information for its legal analysis
 - Obtaining the missing materials can cause delay
 - Some records, documents and maps are hard to locate
 - Particularly historical ones
- Many attorneys are involved in reviewing and editing a draft legal opinion
- All drafts are reviewed and edited by at least one OGC supervisor and the General Counsel
- OGC also seeks concurrence from the Dept. of Interior Solicitor's office to ensure that both agencies with some jurisdiction over the land agree on its status
- Final version of Indian lands opinion will have been reviewed and edited multiple times

My Notes

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Legal Analysis – IGRA’s Basic Requirements

Two basic requirements must always be satisfied for land to be eligible for gaming under IGRA:

Land must meet IGRA’s definitions of “Indian lands”

AND

Tribe must have jurisdiction over the land

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KEY POINTS:

These two basic requirements apply to all Indian lands determinations

My Notes

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Legal Analysis – IGRA’s Basic Requirements

- An additional requirement applies only to a tribe’s trust land or restricted fee land located outside of its reservation boundaries
 - A tribe must exercise governmental power over the land

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KEY POINTS:

- 3rd requirement applies to *all* trust or restricted fee land not within a reservation
 - Not just trust land acquired after 1988
- Analysis is done on case-by-case basis
 - No set formula for satisfying this requirement

My Notes

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Legal Analysis – IGRA Applied to Tribe's Land

- Special requirements apply to trust land acquired by Secretary of Interior for tribe after 1988
 - General rule is that gaming cannot occur on post-1988 trust land
 - Unless one of the exceptions in 25 USC 2719 is met
 - There are 9 exceptions
 - 7 exceptions apply to all trust lands
 - 2 exceptions apply only to trust lands in OK

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KEY POINTS:

- Exceptions to general rule that gaming *cannot* occur on post-1988 trust land are:
 - If trust land is within a tribe's reservation boundaries
 - As they existed in 1988
 - If trust land is contiguous to the boundaries of a tribe's reservation
 - As they existed in 1988
 - If land is within tribe's last reservation
 - In state where the tribe is currently located
 - Two-part determination by Secretary of Interior and Governor
 - Settlement of a land claim
 - Initial reservation of newly recognized tribe
 - Restoration of lands for restored tribe
- Special Oklahoma exceptions to general rule
 - If tribe had no reservation in 1988, its trust land is located in OK, and the trust land is:
 - Within the boundaries of the tribe's former reservation
 - As defined by the Sec'y of Interior
 - Contiguous to other land held in trust or restricted status by the U.S. for the tribe in OK

My Notes

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Legal Analysis – IGRA’s Basic Requirements

- First, location & status of land at issue is determined
- If land is within reservation’s boundaries, it is “Indian lands” under IGRA
- If not, a more in-depth analysis is required to determine whether land is “Indian lands” under IGRA and the tribe has jurisdiction over the land

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KEY POINTS:

- The location and status of a tribe’s land signal which sections of IGRA & the NIGC regulations apply. Possibilities are:
 - On current reservation
 - Not on current reservation
 - In trust for tribe
 - In trust for tribal member
 - Restricted fee for tribe
 - Restricted fee for tribal member
 - Tribal fee land
 - Individual fee land
- Land within a tribe’s reservation’s boundaries is “Indian lands” even if the land is non-tribally owned fee land
 - Jurisdiction is presumed
 - The legal analysis is simple and straightforward
- But reservation land is only one type of “Indian lands” as defined in IGRA
 - IGRA also permits gaming by a tribe on its trust and restricted land regardless of whether it is on or off reservation, but imposes the additional requirement that the tribe must exercise governmental power over the land

My Notes

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Content of Opinion Letter

- Legal description of land
- History of land and tribe relevant to legal analysis
- List of all documents submitted by requester and considered by OGC
- Detailed legal analysis
- Legal opinion

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KEY POINTS:

- History of a tribe and its land
- Treaties, if any
- Relocations from original homelands, if any
- Factual support for legal opinion
- Application of relevant sections of IGRA, the NIGC regulations, a tribe's gaming ordinance, the BIA regulations, a tribe's constitution and other laws
- Application of relevant case law and judicial decisions
- Cites to previous OGC Indian lands legal opinions, DOI Sol's Office legal opinions and Interior (IBIA) appellate decisions
- Includes specific sections of IGRA and other laws/regulations that were applied
- Identifies and explains the legal theory justifying the opinion
- Tribal records, historical documents and maps
- BIA records, reports, maps and other materials
- Information from other sources

My Notes

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Common Issues

- Most issues concern post-1988 trust land
 - “Restored lands” for a “restored tribe” exception
 - Land taken into trust as settlement of a land claim
 - Whether trust land is within a tribe’s reservation boundaries
 - As they existed in 1988

41

KEY POINTS:

- Must meet one of the exceptions in 25 USC § 2719 to qualify for gaming under IGRA which can be challenging.
- There are numerous previously issued OGC legal opinions that analyze whether post-1988 trust land qualifies for one of the exceptions to the general rule that gaming is prohibited on post-1988 trust land
 - These opinions can be found on the NIGC website
 - Each opinion is identified by the legal theory applied
 - For post-1988 trust land, this includes whichever exception was applied

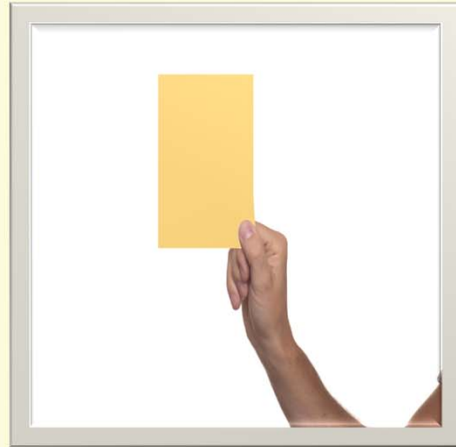
My Notes

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Withdrawing an Opinion

Most requests for Indian lands opinions can be withdrawn



42

KEY POINTS:

Can usually be withdrawn at request of tribe that requested the opinion

My Notes

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What information should you submit if you are requesting an Indian lands opinion?

- The legal description of the land
- The tribe's ties to the land
- Theory why your tribe thinks the land is Indian lands
- All of the above

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Poll Title: What information should you submit if you are requesting an Indian lands opinion?
https://www.polleverywhere.com/multiple_choice_polls/xdETISaugamkR00

My Notes



Game Classification Opinions

44

KEY POINTS:

My Notes

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Definition



A legal advisory opinion issued by NIGC's General Counsel as to whether a game is Class II or Class III

45

KEY POINTS:

- Focus is usually on proposed gaming machines, devices or activities
- Provides guidance to tribes, game developers and game manufacturers about whether a particular game is Class I, II or III and can be legally played under IGRA
 - Can help determine whether Tribal-state compact is needed
- On the tribal side, usually requested by tribal officials, tribal attorneys, tribal gaming commissions, gaming corporations or gaming operations
- On the non-tribal side, usually requested by game developers, game manufacturers or their attorneys

My Notes

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History of Game Classification Opinions

- First game classification opinion was issued by NIGC's General Counsel in 1992
- NIGC's General Counsel has signed a majority of these opinions

1992

JANUARY							FEBRUARY							MARCH							APRIL						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	25	26	27	28	29	30	31																		
MAY							JUNE							JULY							AUGUST						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	25	26	27	28	29	30	31																		
SEPTEMBER							OCTOBER							NOVEMBER							DECEMBER						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
22	23	24	25	26	27	28	29	30	31																		

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KEY POINTS:

- Since 1992, more than 100 game opinions have been issued
- Analyzing everything from pull-tabs to electronic bingo machines to card games to progressively linked games

My Notes

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Relevant IGRA Section

- IGRA created three classes of gaming
- They are described in 25 USC § 2703

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KEY POINTS:

- IGRA divides the world of Indian gaming into three classes of gaming.
 - Class I gaming encompasses *social games* – for small value prizes or in connection with tribal ceremonies or celebrations
 - Class II includes the following games: (a) bingo (paper or electronic); (b) pull tabs when played in the same location as bingo, and (c) non-banked card games authorized or not explicitly prohibited by the state
 - All other games are Class III. Class III games include, but are not limited to the following: baccarat, *chemin de fer*, blackjack, slot machines
- IGRA permits electronic or electromechanical facsimiles of any game of chance as a Class III game
- Implemented by NIGC regulations at 25 CFR §§ 502.2-502.4
- IGRA gaming can be conducted by tribes under IGRA
 - If the gaming is located within a state that permits such gaming for any purpose by any person
 - For class III gaming, if there is a valid Tribal-state compact in place

My Notes

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In General

Game classification opinions:

- Assist in classifying games that may arise as new games are developed and technology advances
- Are used by the NIGC to delineate between Class II and III games
- Bring clarity to the Indian gaming industry

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KEY POINTS:

My Notes

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Reasons to Request a Game Classification Opinion

- To be proactive
- BUT, if game is already being played, or machine is already on floor, then to ensure compliance with IGRA

49

KEY POINTS:

- A tribe may want to request a GO:
 - To obtain OGC opinion *before* placing game on casino floor
 - *Before* contracting with vendor for leasing or purchasing gaming machines
- A game developer or manufacturer may want one
 - To obtain OGC opinion *before* marketing, selling or leasing game to tribe

My Notes

OGC-103 Legal Opinions Course Participant Guide



Content of Request & Attachments

- Be specific as to legal opinion sought
- Include all relevant records, reports and other information with initial request

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KEY POINTS:

- Identify and describe particular gaming machine, device or activity at issue
- Clearly articulate question or questions you want answered
- Specifics about game design
- Specifics about how game is played
- Results of any scientific testing
- Results of any additional testing done after initial request for legal opinion
- Copies of any expert opinions, and accompanying reports, obtained from independent laboratories for game
- Additional records, reports and other information requested by OGC for legal analysis

My Notes

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Time Considerations



- No statutory time limits
- The more complete the submission, the faster the OGC response

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KEY POINTS:

- Timeliness of OGC's response depends on whether all materials necessary for a complete review and analysis by OGC attorney have been submitted to NIGC
- Very often, technical specifications, test results and other information are missing from initial request

My Notes

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Content of OGC Opinion Letter

- Provides opinion as to whether a game is Class II or III or doesn't fall within either definition
- Describes, in detail, characteristics of the game that was submitted for review

Includes discussion of:

- Relevant parts of IGRA & NIGC regulations
- Legal analysis done
- Resulting legal opinion
- Factual basis supporting legal opinion

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KEY POINTS:

- Helps avoid future misunderstandings or miscommunication about particular game at issue
- Legal analysis may reference prior OGC game opinions, federal judicial decisions and other court cases to support its ultimate legal opinion
- If necessary, discusses IGRA's technologic aid provisions, Class III facsimiles and the Johnson Act

My Notes



Common Issues

When key elements of definition of either
Class II or III gaming are not met



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KEY POINTS:

- For example, established characteristics of bingo are missing
- Examples of when part of a gaming activity is off of Indian lands
 - Server is on reservation, but wager is made off-reservation
 - Wager is made on reservation, but ball drop occurs off-reservation

My Notes

OGC-103 Legal Opinions Course Participant Guide

If you are unsure about a game or technology, when is the best time to seek a game classification opinion?

Never, just wing it
After the game is installed
Before the game is installed

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Poll Title: If you are unsure about a game or technology, when is the best time to seek a game classification opinion?
https://www.poll Everywhere.com/multiple_choice_polls/UhtokOUI9BBxlih

My Notes

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House-banked card games are in which class of gaming under IGRA?

- Class I
- Class II
- Class III
- Class IV

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Poll Title: House-banked card games are in which class of gaming under IGRA?
https://www.polleverywhere.com/multiple_choice_polls/SHqQboE7TPnUrGM

My Notes



Summary

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KEY POINTS:

My Notes



Conclusion

The long-term impact of NIGC legal opinions is:

- Greater clarity for tribes
- Greater clarity for 3rd parties and
- Greater clarity for the Indian gaming industry

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KEY POINTS:

- Today tribes routinely enter into loan agreements -- with banks and other traditional lending institutions -- that *don't* constitute management contracts requiring approval by the NIGC Chair
 - Tribes accomplish this by routinely submitting draft agreements to the NIGC for review *before* they are executed
 - The feedback received from OGC enables tribes to proactively change or eliminate provisions that allow management activity and give unreasonable compensation to 3rd parties
- Today, there is a clearer understanding of the requirement that a tribe retain the sole proprietary interest in, and responsibility for, its gaming operation
 - No joint ventures, no shared ownership, no payment of gaming revenues for nothing in return or for something of disproportionate value
 - No managing by 3rd party of *any* part of the gaming operation without an approved management contract in place
- Today, there is a clearer understanding and delineation of the differences between Class II and III gaming activity, machines and devices
 - This is especially true for electronic bingo machines, pull-tabs and table games

My Notes

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How to Request an Opinion

Requests for legal advisory opinions must be made in writing and either:

- E-mailed to OGC at legal_opinions@nigc.gov or
- Mailed to OGC at:
National Indian Gaming
Commission 1849 C Street, NW
Mail Stop #1621
Washington, DC 20240

See NIGC's website home page for "How to Request a Legal Opinion"

<https://www.nigc.gov/images/uploads/game-opinions/SubmittingRequestforLegalOpinionDec112013.pdf>

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KEY POINTS:

Requests for legal advisory opinions must be made in writing and either:

- E-mailed to OGC at legal_opinions@nigc.gov or
- Mailed to OGC

My Notes

OGC-103 Legal Opinions Course Participant Guide



How to Access Previously Issued OGC Legal Opinions

Many of OGC's previously issued legal opinions can be accessed from the NIGC website

- **Declination letters:** <http://www.nigc.gov/general-counsel/management-review-letters>
- **Game classification opinions:** <https://www.nigc.gov/general-counsel/game-classification-opinions>
- **Indian lands opinions :** <https://www.nigc.gov/general-counsel/indian-lands-opinions>

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KEY POINTS:

- Many of OGC's previously issued legal opinions can be accessed from the NIGC's website
- It is always helpful to review legal opinions that have been previously issued by OGC to see how IGRA has been interpreted and applied to different fact situations
 - OGC frequently cites to its previous legal opinions when issuing a new opinion

My Notes

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Generally, the declination letter review process takes:

- Two to four weeks.
- Four to six weeks.
- Eternity.


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Poll Title: Generally, the declination letter review process takes:
https://www.polleverywhere.com/multiple_choice_polls/rx4ZLKkyUMNnx1H

My Notes

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Three examples of Legal Opinions that the NIGC issues are:



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Poll Title: Three examples of Legal Opinions that the NIGC issues are:
https://www.polleverywhere.com/free_text_polls/S39akThYdUEZwAT

My Notes

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Questions

If you have any questions, please feel free to contact the NIGC at:

(202) 632-7003

and ask to speak with an attorney



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KEY POINTS:

My Notes

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Knowledge Review

- Legibly write your name and email address
- Do your best
- We will go over the answers at the end
- Be on the lookout for the survey email 90 days from today

QUESTIONS	
1-	<input checked="" type="radio"/> A <input type="radio"/> B <input type="radio"/> C <input type="radio"/> D
2-	<input type="radio"/> A <input type="radio"/> B <input type="radio"/> C <input checked="" type="radio"/> D
3-	<input type="radio"/> A <input checked="" type="radio"/> B <input type="radio"/> C <input type="radio"/> D
4-	<input type="radio"/> A <input checked="" type="radio"/> B <input type="radio"/> C <input type="radio"/> D
5-	<input type="radio"/> A <input type="radio"/> B <input checked="" type="radio"/> C <input type="radio"/> D
6-	<input checked="" type="radio"/> A <input type="radio"/> B <input type="radio"/> C <input type="radio"/> D

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KEY POINTS

Our last task is to complete the knowledge review and the course evaluation. We use the information from both to evaluate the effectiveness of the course and to make improvements so please provide specific written feedback if applicable.

My Notes

OGC-103 Legal Opinions Course Participant Guide



Knowledge Review - OGC-103 Legal Opinions

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0 surveys underway



Poll Title: Knowledge Review - OGC-103 Legal Opinions
<https://www.polleverywhere.com/surveys/vwXApTfkR>

My Notes

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Course Evaluation

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciated and allow us to improve your experience



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KEY POINTS

Our last task is to complete the knowledge review and the course evaluation. We use the information from both to evaluate the effectiveness of the course and to make improvements so please provide specific written feedback if applicable.

My Notes

OGC-103 Legal Opinions Course Participant Guide



Course Eval - OGC-103 Legal Opinions

When survey is active, respond at [PolleEv.com/nigc](https://www.polleverywhere.com/nigc)



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0 surveys underway



Poll Title: Course Eval - OGC-103 Legal Opinions
<https://www.polleverywhere.com/surveys/qahSWV44o>

My Notes



AUG - 6 2012

Mr. Donald Hohman, President
WhoopAss Poker, Inc.
1472 N. San Antonio Ave.
Upland, CA 91786

Re: WhoopAss Poker Game Classification Decision

Dear Mr. Hohman:

This is in response to your request for our review of the card game, WhoopAss Poker, and to determine its classification under the Indian Gaming Regulatory Act ("IGRA"). Your request asked for decisions on two different versions of the game; one played similarly to a traditional game of poker against other players ("poker version") and the other in which the player "plays against the house" ("table game version").

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). Your request did not identify any particular state in which the game would be played. Therefore, this decision is not state specific and contains no analysis of state gaming laws. This determination is confined to the question of whether WhoopAss Poker meets the non-banking requirement for class II status.

I have reviewed the game descriptions you submitted with your request and conclude that the poker version of WhoopAss Poker meets the non-banking requirement for Class II and the table game version is Class III.

Game Play

WhoopAss Poker is a card game played with a standard deck of 52 playing cards. The game can be played two ways, with the ultimate objective under either version of the game to make the best five card poker hand using a combination of cards dealt specifically to one player and community cards available to all players. Although the objective of the two versions is the same, the rules of play are not.

Poker Version

The poker version of WhoopAss Poker is similar to the game of Texas hold'em. There is no bank, meaning wagers are made against other players rather than a banker (usually the house). Unlike Texas hold'em, though, WhoopAss poker gives players the option to buy an additional card to use as either a hole¹ or community card.²

The poker version of the game begins with the player to the left of the dealer making a required bet called the "small blind." This is usually about half the minimum bet for a game. Next, the player to the left of the small blind makes a second required bet called the "big blind." The big blind is typically the same amount as the minimum bet. So, for example, if the minimum bet in a game is five dollars, the small blind will be two dollars and the big blind five dollars. Next, each player is dealt two cards face down. These are called the "hole cards." After the hole cards are dealt each player may call the big blind, raise, call any raise, or fold.

After the first round of betting, the dealer discards a card from the deck and places two cards face up in the middle of the game table. This is called "the flop" and these cards are the first of six community cards that will be dealt throughout the game. The flop is followed by second round of betting, which in turn is followed by another flop.

At this point in the game, the dealer collects the rake and the players are given the option to purchase a "WhoopAss card." Each player will notify the dealer as to whether he or she wants a WhoopAss card by placing the buy amount, usually the amount of the largest bet allowed, in a designated place on the game table. Depending on where the money is placed, the card can be dealt either face up or face down. If the WhoopAss card is dealt face up, it becomes one of the player's community cards. If it is dealt face down, it becomes a hole card.

After all of the players have indicated whether they want a WhoopAss card, the dealer discards another card and deals the WhoopAss cards to the appropriate players. Following the WhoopAss card deal, the third and final flop is dealt. There is no discard

¹ A "hole card" is a Card dealt to a player face down, hidden to everyone at the table except for the player to which it was dealt.

² Community cards are shared cards that can be used by all players in a poker game and give partial information about an opponent's hand

between the deal of the WhoopAss card and the final flop. This concludes the deal, and all players will hold two hole cards and six community cards. Those players that bought a WhoopAss card will also have an extra hole card or community card, depending on their purchase option.

Now that the deal is complete, the final round of betting occurs. After all bets are in, the remaining players turn over their cards. The winning hand is determined by looking at two of each player's hole cards and three of the community cards. The best hand based on regulation poker rankings is the winner.

Table Version

The table version of WhoopAss poker is similar to the poker version. The objective of the game is the same, but unlike the poker version, the table version is played against a banker rather than other players. It also gives players additional betting options. Ultimately, though, the players are still trying to make the best five card hand using a combination of hole and community cards.

The table for this version of WhoopAss poker also bears describing. Each player has several designated spaces in front of him, including three numbered betting spaces and a *Play* space. Above that are three spaces marked *Ante*, *Straight or Better*, and *Blind*. Finally, there is a space for the WhoopAss card with *down* and *up* designations. In front of the dealer are spaces for the flop and the dealer's hole cards.

The game begins with the player placing his bet in the *Blind* and *Ante* spaces. The player must bet in both spaces to start the game and the bets must be the same. The size of the bet is determined by the player, subject to house limits. At the same time as the player makes the *Blind* and *Ante* bets, he may choose to make a *Straight or Better* bet, which must be the same amount as the ante. The *Straight or Better* bet, as its name suggests, is a wager that regardless of the ultimate outcome of the game, the player will at least be able to make a straight or better hand.

After the player makes the initial bets, the dealer gives each player and himself two cards face down. The player then decides if he wants to bet or check. If betting, the player places his bet in the *First Bet* space on the table. The first bet may be up to four times the ante. Dealer then deals the first flop. The player may then check or bet by placing a wager of up to double the ante in the space marked *Second Bet*. The second flop is dealt next and the player once again may check or bet by placing a wager, which must be the same amount as the ante, in the space marked *Third Bet*.

At this point in the game, the player is given the opportunity to purchase a WhoopAss card by placing the same amount as the initial ante in the appropriate space on the *down* or *up* space on the table. As with the poker version, the player may purchase

the card as a hole or community card. The dealer will also deal himself a WhoopAss card face down. The dealer will decide how the card should be used at the end of the game.³

After the WhoopAss card is dealt, the dealer turns the third and final flop. The player may then choose to fold or stay in the game by betting. If the player decides to keep playing, he must place his final bet, which must be the same amount as the ante, in the *Play* space. If the player folds, he loses his ante, blind bet, first, second, and third bet, and the money used to purchase the WhoopAss card. If the player opted to make a *Straight or Better* bet and folds with a straight or better, the player wins the *Straight or Better* wager and is paid upon folding his hand.

After all bets are made, the dealer turns over his two hole cards and his WhoopAss card. He may use the option card as either a community card or hole card. The player then turns over his hole cards. Like the poker version of the game, the winning hand is determined using two of the player's hole cards and three of the community cards.

If the player wins, and no *Straight or Better* bet was made, the dealer will return and match the player's ante, first, second, third, and *Play* bets. The dealer will also return and match the player's *Blind* bet, but only if the player has a flush or better. If the player does not have a flush or better, the blind bet goes to the dealer. If the player elected to purchase a Whoop-ass card and the player wins the hand, the purchase money for the card is returned to the player, but not matched.

If the player loses the hand, the ante, the blind, all bets, and the WhoopAss card purchase money go to the dealer. Finally, regardless of whether the player won or lost the hand, if the player made a *Straight or Better* bet, and the player's hand is a straight or better, the dealer will return and match the wager amount. If the player's hand fails to reach that threshold, the dealer collects the wager.

In the event of a tie, the player loses the *Ante* bet and bets 1, 2, and 3. The player must beat the dealer to win these bets. Regardless of a tie, if the player has made a *Straight or Better* bet, he or she will win or lose the bet according to whether the player makes a straight. For the player to win the *Blind* bet, he or she must have a flush or better. If the player beats the dealer with less than a flush, the blind bet is won by the dealer. The player with a flush or better can not win the *Blind* bet on a tie. He or she must still beat the dealer to be paid on the *Blind* bet.

³ The WhoopAss buy card money may also be used as a jackpot for players only. In this version of the game, each player that buys a WhoopAss card is eligible to win the jackpot. After all of the WhoopAss cards have been purchased, the dealer will rake all of the buy card money to the center of the table. The player with the highest hand wins the jackpot. The dealer may not participate in this aspect of the game.

Analysis

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701, *et seq.* divides the world of Indian gaming into three classes. Class I gaming, which is not at issue here, encompasses "social games" played "solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6).

IGRA defines Class II gaming to include:

(ii) card games that -

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(i) - (ii); 25 C.F.R. § 502.3. IGRA expressly states that banking card games are not class II gaming. 25 U.S.C. § 2703(7)(B)(i).

Finally, Class III is a catchall category and includes "all forms of gaming that are not Class I gaming or Class II gaming." 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4.

Given these definitions, the classification of both versions of WhoopAss Poker turns on whether the game is banked or non-banked. Banking games, as commonly understood and as defined in NIGC regulations, are games in which the banker (usually the house) competes against all players, collecting from losers and paying winners. *See* 25 C.F.R. § 502.11. Conversely, non-banking card games are games where players play against each other. Poker is a typical example of a non-banking card game.

The poker version of WhoopAss Poker is a non-banked card game. The players play one another rather than a banker or the house. It is therefore not categorically excluded from the definition of Class II gaming. So long as the poker version of WhoopAss Poker is played in a state in which the requirements in 25 U.S.C. § 2703(7)(A)(ii) (I) or (II) are satisfied, it is Class II.⁴

The table version of the game, though, is a different matter. The table version of WhoopAss Poker is a banked card game – the house acts as a banker and takes on all comers and pays all winners. IGRA explicitly excludes banked card games from the

⁴ The request did not identify any particular state in which the game would be played. Therefore, this decision does not analyze state gaming laws against the requirements of 2703(7)(A)(ii).

definition of Class II games. Because it is not a Class II game, and any game that is not Class I or Class II is Class III, the table version of WhoopAss Poker is Class III.

If you should have any further questions, please contact NIGC Senior Attorney Michael Hoenig at (202) 632-7003.

Sincerely,

A handwritten signature in cursive script, appearing to read "T Stevens".

Tracie L. Stevens
Chairwoman



January 23, 2009

Kent E. Richey
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Re: Opinion regarding pledge of gross revenue from gaming operations

Dear Mr. Richey:

This responds to your letters dated January 21, 2009 and January 23, 2009. You informed me that the Muscogee (Creek) Nation intends to close shortly on a large loan with a number of lenders, and that the parties intend to secure the loan obligations in part by a pledge of gross revenues from certain gaming operations of the Nation.

From past opinions issued by this office, you are aware of our legal position that an agreement containing a security interest in a gaming facility's future gross revenues, without further limitation, authorizes management of the gaming facility. We take this position because in the event of default, a party with a security interest in a gaming facility's gross revenues has the authority to decide how and when operating expenses at the gaming facility are paid, which is itself a management function. Furthermore, a party that controls gross revenue potentially can control everything about the gaming facility by allocating or putting conditions on the payment of operating expenses. Therefore, agreements with such a security interest constitute management contracts that are void unless and until they are approved by the Chairman of the National Indian Gaming Commission (NIGC).

You have suggested that our concern could be addressed by including certain limitations in the agreement that would prevent the secured party or parties from exercising management control over the gaming facility, even if the secured party took control over gross revenues in the event of default. To that end, you have proposed to include language in the loan documents substantially in the following form:

Notwithstanding any provision in any Loan Document, none of the Lending Parties shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Borrower's gaming operations (collectively, "Management Activities"), including, but not limited to:

1. the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;

2. any employment policies or practices;
3. the hours or days of operation;
4. any accounting systems or procedures;
5. any advertising, promotions or other marketing activities;
6. the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
7. the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
8. budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided, however, that a Lending Party will not be in violation of the foregoing restriction solely because a Lending Party:

- A. enforces compliance with any term in any Loan Document that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; or
- B. requires that all or any portion of the revenues securing the Loan be applied to satisfy valid terms of the Loan Documents; or
- C. otherwise forecloses on all or any portion of the property securing the Loan.

My opinion is that this negative covenant adequately addresses the concern. The language prohibits a lender from exercising management control or discretion, but permits it, in the event of default, to put a borrower on a revised schedule of payments, provide the borrower with a sum certain to pay operating expenses, or demand payment in full and cause the bankruptcy or insolvency of the gaming operation. It would not allow a lender to decide whether and to what extent the monies the Tribe retains would be used for operating expenses. As such, the pledge of gross revenues no longer authorizes management. Assuming that there are no other management provisions, the contract would not have to be approved by the Chairman of the NIGC.

If you have any questions or require any additional assistance, Senior Attorney Jeffrey Nelson is assigned to this matter.

Sincerely,



Penny J. Coleman
Acting General Counsel



September 28, 2015

Chairperson Leona L. Williams
Pinoleville Pomo Nation
500 B Pinoleville Drive
Ukiah, California 95482

Dear Chairperson Williams:

This is in response to your request for an Indian lands opinion¹ from the Office of General Counsel ("OGC") of the National Indian Gaming Commission ("NIGC") regarding whether gaming can be legally conducted on the Pinoleville Pomo Nation's Reservation² under the Indian Gaming Regulatory Act ("IGRA"). More specifically, the Tribe asks whether certain fee lands, upon which the Tribe intends to conduct gaming, fall within the definition of "Indian lands" under IGRA.³

To assist with our analysis, the Tribe has provided us with extensive documentation and written materials. The submissions include, but are not limited to, the following: (1) maps of the Tribe's Reservation; (2) maps of the fee lands at issue and their location within the Reservation; (3) deeds for the original Rancheria; (4) letters, with maps, from the BIA addressing the legal status of the Pinoleville Rancheria, dated January 3, 2001, and September 8, 2009; (5) copies of stipulations and court orders from the *Tillie Hardwick* class action litigation and subsequent settlement, which includes a legal description of the exterior boundaries of the Reservation, both original and as restored; (6) a copy of the Tribe's current commercial lease for the Parcels, with an option to purchase; (7) land survey records; (8) preliminary title reports; (9) an environmental site assessment of the Reservation; (10) a draft Environmental Impact Report, prepared for the Tribe in 2010, concerning a proposed casino project on the fee lands at issue; (11) the Tribe's

¹ See letter, with enclosures, dated January 16, 2014, from Attorney Melissa Canales, on behalf of the Pinoleville Pomo Nation, to Eric Shepard, Acting General Counsel, NIGC; e-mail from Melissa Canales to Eric Shepard, entitled "Request of Indian Lands Determination Legal Opinion" (Jan. 16, 2014, 16:37 EST) (on file with NIGC); and e-mail, from Melissa Canales to the NIGC, entitled "Request of Indian Lands Confirmation" (Aug. 19, 2013, 14:58 EST) (on file with NIGC).

² In the requests and submissions we received from the Tribe, the Tribe's lands are referred to as both the Pinoleville Reservation and the Pinoleville Rancheria. The terms "reservation" and "rancheria" are used interchangeably throughout this opinion. We note that the definition of a "reservation," found in 25 C.F.R. § 292.2, specifically includes rancherias.

³ See 25 U.S.C. § 2703(4); 25 C.F.R. § 502.12; see also 25 C.F.R. § 292.2.

Constitution; (12) the Tribe's class II and III Gaming Ordinance, approved by the NIGC;⁴ and (13) the Tribe's Tribal-State Compact with the State of California for class III gaming, approved by the Secretary of the Interior.⁵

According to the Tribe, the fee lands at issue are located within the exterior boundaries of the Pinoleville Reservation, which is situated approximately one mile north of the City of Ukiah, in an unincorporated portion of Mendocino County, California. The fee lands consist of two adjacent parcels ("the Parcels"), which, together, comprise approximately 8.8 acres. The lands are owned by a non-Tribal entity⁶ and were previously developed as an automobile dealership/service center. They are currently being leased to the Tribe for a 5-year term, until 2016, with an option to purchase the lands included in the lease.

After carefully reviewing the Tribe's submissions, coupled with our own investigation of the status and location of the lands at issue, we find that the Parcels are located within the exterior boundaries of the Tribe's Reservation. Based on this finding, we conclude that the Parcels are "Indian lands" under IGRA. We also find that the Tribe has jurisdiction over the land. Therefore, the Tribe may legally conduct gaming on the lands.⁷

Background

The Pinoleville Pomo Nation is a federally recognized Indian tribe.⁸ The Tribe's primary land base is a 99.53-acre reservation located in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. It is situated approximately 100 miles north of San Francisco and is divided by Highway 101, a major north-south, interstate thoroughfare. According to the Tribe's Constitution, the territory of the Tribe includes "all lands within the original boundaries of the Pinoleville Reservation."⁹

Beginning in 1906, Congress appropriated funds for the acquisition of lands "for the use of the Indians in California now residing on reservations which do not contain land suitable for

⁴ The Pinoleville Band of Pomo Indians Gaming Ordinance was approved by NIGC Chairman Philip N. Hogen on August 24, 2004.

⁵ The Tribal-State Compact between the State of California and the Pinoleville Pomo Nation was approved on January 26, 2012, by Larry Echo Hawk, Assistant Secretary-Indian Affairs, and became effective on February 3, 2012. The term of the Compact extends to December 31, 2031. See "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).

⁶ The non-Tribal owner/lessor of the fee lands is Kandy Investments, LLC.

⁷ We note that IGRA's prohibition of gaming on after-acquired trust land is not triggered here because the Parcels are fee lands within the limits of the Pinoleville Reservation. See 25 U.S.C. § 2719(a)(1).

⁸ See "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," 80 Fed. Reg. 1942, 1945 (Jan. 14, 2015). Until 2005, the Tribe was listed in the Federal Register as the Pinoleville Rancheria of Pomo Indians of California. See also BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, to Jay Petersen, Directing Attorney, California Indian Legal Services.

⁹ See Pinoleville Pomo Nation Const. art. I, § 1.

cultivation, and for Indians who are not now upon reservations . . .”¹⁰ Parcels acquired with these funds came to be known as rancherias.¹¹

In 1911, the federal government purchased privately held land for the benefit of the Pomo Indians in the Pinoleville area of California and, with this land, created the Pinoleville Rancheria (“Rancheria”).^{12,13,14}

In 1958, Congress passed the California Rancheria Act,¹⁵ which authorized termination of the federally recognized tribal status of many of the California rancherias, including the Pinoleville Rancheria.¹⁶ The rancherias’ lands were broken up into parcels and distributed in fee to the adult Indian members, thereby removing the rancherias’ status as Indian lands.¹⁷ Additionally, individual Indian distributees receiving rancheria assets lost their federal Indian status.¹⁸

In the 1960s, the Pinoleville Rancheria was “terminated” and the land and other assets were distributed pursuant to the California Rancheria Act.^{19,20} The BIA divided the Rancheria

¹⁰ Act of June 21, 1906, 34 Stat. 325, 333; Act of 1908, 35 Stat. 70, 76.

¹¹ *Duncan v. Andrus*, 517 F. Supp. 1, 2 (N.D. Cal. 1977); see also 2014 BIA website available at <http://bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/index.htm> (accessed April 15, 2015).

¹² *In re the Trusteeship of the Pinoleville Indians v. Hunter*, 2004 WL 1304044, 2 (Cal. App. 1 Dist.) (unpublished decision); see also *Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043 (N.D. Cal. 1988).

¹³ According to the BIA, the deeds from the two purchases by the United States to establish the Pinoleville Rancheria are dated March 13, 1911, and September 15, 1911, and were authorized by appropriations acts passed by Congress on June 21, 1906 (34 Stat. 325, 333) and April 30, 1908 (35 Stat. 70, 76). See BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

¹⁴ See BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

¹⁵ “An Act to provide for the distribution of the land and assets of certain Indian Rancherias in California, and for other purposes,” (“California Rancheria Act”), P.L. 85-671, 72 Stat. 619-621 (1958) (amended 1964). The California Rancheria Act set out a process by which the Secretary could terminate the tribal status and federal recognition of 41 California rancherias, if the members of the rancheria approved the termination. The Rancheria Act was amended six years later to allow *all* rancherias and reservations lying wholly within California to petition for the distribution of tribal lands and other assets and the termination of federal relations.

¹⁶ California Rancheria Act, P.L. 85-671, §§ 3(e), 9, 11.

¹⁷ *Id.* at § 3(e); see also *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043.

¹⁸ *Id.* at § 10(b); see also *Allen v. United States*, 871 F. Supp.2d 982, 984 (2012).

¹⁹ California Rancheria Act, P.L. 85-671, § 1; Complaint at 7, *Hardwick v. United States* (“*Hardwick*”), No. C-79-1710 SW (N.D. Cal. Filed 1979); *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043. See also *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ 2(B)(2)-(3).

²⁰ See also “Notice of Termination of Federal Supervision Over Property and Individual Members,” 31 Fed. Reg. 2911 (Feb. 18, 1966), which reads: *Notice of Termination of Federal Supervision Over Property and Individual Members* from the Office of the Secretary [of the Department of Interior] regarding “Certain Rancherias in California . . . Notice is hereby given that the Indians and the dependent members of their immediate families named below are no longer entitled to any of the services performed by the United States for Indians because of their status as Indians; that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens within their jurisdiction. Title to the land on the North Fork, Picayune, Graton, and Pinoleville Rancherias has passed from the U.S. Government under the distribution plans, approved April 29, 1960; June 30, 1960; September 17, 1959; and May 10, 1960; respectively, for the above-named Rancherias . . . Pinoleville Rancheria. . . Ninety-nine and 53/100 acres of land located in Mendocino County, Calif., described in deed dated March 13, 1911, recorded in Book 123 of Deeds, page 418; and deed dated September 15, 1911, recorded in Book 133 of Deeds, page 283, Recorder’s Office County of Mendocino . . . This notice is issued pursuant to the [California Rancheria

into 19 individual parcels, which were then deeded in fee simple title to individual members living on the Rancheria.²¹ Some of these Indian owners “sold or otherwise transferred all or portions of their parcels to non-members of the tribe” during the period of unlawful termination.²² Consequently, today both Indians and non-Indians own property within the original Rancheria boundaries.²³ The Rancheria “consists of a checkerboard of parcels held in fee and trust by the Tribe and individual Tribal citizens, as well as parcels held in fee by non-Tribal individuals and entities, as a result of those years during which the Tribe was illegally terminated.”²⁴

In 1979, Indian residents from the original Pinoleville Rancheria joined Indian residents from other California Rancherias in a class action lawsuit²⁵ against the United States to restore the reservation status of their lands and the tribal status of their people.²⁶ According to the Complaint, three of the Pinoleville plaintiffs “were and are residents of the parcels of land to which they received fee simple title as a result of the purported termination of the Pinoleville Rancheria,” and a fourth Pinoleville plaintiff was “a distributee of the Pinoleville Rancheria who alienated his land shortly after receiving title thereto.”²⁷ All of the Pinoleville plaintiffs alleged that their lands, their special status as Indians, and the trust relationship they had with United States as Rancheria residents had been wrongfully terminated under the California Rancheria Act of 1958.²⁸ The plaintiffs sought, among other things, judicial recognition that “[t]he Secretary of the Interior is under a duty to ‘unterminate’ each of the subject Rancherias, and . . . to hold the same in trust for the benefit of the Indians of the original Rancherias; . . . to treat all of the subject Rancherias as Indian reservations in all respects; and . . . to treat the Rancherias and their Indians as unterminated in all respects.”²⁹

The litigation was ultimately settled. The plaintiffs entered into separate stipulations, approving entry of final judgments, with the defendants: the United States and the counties in which the purportedly terminated rancherias were located.³⁰ On December 22, 1983, judgment was entered against the United States, resulting in the Department of Interior (“Department”)

Act] . . . that all restrictions and tax exemptions applicable to trust or restricted lands or interests therein owned by the Indians who are affected by this notice are terminated.”

²¹ Prior to the purported termination of the Pinoleville Rancheria in 1961, approximately 120 Indian persons resided on the Rancheria. Complaint at 7, *Hardwick v. United States* (“*Hardwick*”), No. C-79-1710 SW (N.D. Cal. 1979).

²² *Id.*; *Duncan v. United States*, 667 F.2d at 41.

²³ *Id.*

²⁴ See letter, dated January 16, 2014, from Melissa Canales, Attorney for the Tribe, to the NIGC.

²⁵ Complaint, *Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. 1979). According to the Complaint, plaintiffs brought the action “on their own behalf and on behalf of a class of similarly situated persons. The class consists of all distributees of the Rancherias listed in Exhibit A [36 Rancherias, including Pinoleville Rancheria], any heirs or legatees of said distributees and any Indian successors in interest to such lands.” *Id.* at 5. A total of 17 distributees were from the Pinoleville Rancheria. *Hardwick*, Complaint, Exhibit A at 1.

²⁶ *Id.* at 27.

²⁷ *Id.* at 4-5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Hardwick*, Stipulation for Entry of Judgment (“Stipulation”), filed Dec. 22, 1983 (signed by U.S. Atty. for federal defendants); *Hardwick*, Stipulation for Entry of Judgment (“Stipulation”), filed May 22, 1985 (signed by counsel for Mendocino County); see also *Hardwick*, Stipulation to Restoration of Indian Country (Humboldt, Mendocino, Lake, Plumas, and Tuolumne Counties) (“Stipulation”) and Order, filed March 5, 1986 (signed by U.S. Atty. for federal defendants).

restoring 17 of the Rancherias, including the Pinoleville Rancheria, to their tribal status.³¹ On May 30, 1985, judgment was entered against Mendocino County, restoring the Pinoleville Rancheria.³² The effect of the judgments was that all lands within the Rancheria's exterior boundaries, as they existed immediately prior to the wrongful termination, were declared to be "Indian Country," as defined by 18 U.S.C. § 1151.³³ Further, the United States and Mendocino County expressly agreed to treat the Rancheria like any other federally recognized Indian reservation.³⁴

On March 23, 1985, the Pinoleville Indian Community reorganized its tribal government.³⁵ The Tribe is presently governed by a Tribal Council, in accordance with the Tribe's Constitution, which was ratified in 2005.³⁶ In 2005, under the terms of its Constitution, the Pinoleville Rancheria renamed itself the Pinoleville Pomo Nation.³⁷

On May 18, 2004, the Tribe adopted an ordinance for both class II and class III gaming activities; on August 24, 2004, the Chair of the NIGC approved the ordinance.³⁸ Additionally, on January 26, 2012, a Tribal-State Compact for class III gaming, between the State of California and the Pinoleville Pomo Nation, was approved by the Secretary of the Interior.³⁹ It became effective on February 3, 2012.⁴⁰

Applicable Law

In order for a tribe to authorize gaming activity under IGRA, the land upon which the tribe intends to conduct the gaming activity must qualify as "Indian lands," as defined in IGRA.⁴¹

IGRA explicitly defines "Indian lands" as follows:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

³¹ *Hardwick*, Stipulation, filed Dec. 22, 1983.

³² *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C. This stipulation, which restored the Pinoleville Rancheria and was ordered as to Mendocino County, was subsequently ordered as to the United States and the other federal defendants. See *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶¶ 2-3.

³³ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044-45.

³⁴ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).

³⁵ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044.

³⁶ See Pinoleville Pomo Nation Const. art. III, § 1; see also *Allen v. United States*, 871 F. Supp. at 985.

³⁷ *Id.*

³⁸ See letter, dated August 24, 2004, from NIGC Chairman Philip Hogen to James Cohen, Attorney for the Tribe, approving the "Pinoleville Band of Pomo Indians Gaming Ordinance."

³⁹ See "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).

⁴⁰ *Id.*

⁴¹ See 25 U.S.C. §§ 2703(4), 2710; 25 C.F.R. §§ 501.2, 502.12.

NIGC regulations further clarify the definition of “Indian lands,” providing that:

“Indian lands” means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either—
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual;
 - or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

Other statutory and regulatory definitions shed light on what constitutes “Indian lands.” In 25 C.F.R. part 292, the Department includes in its definition of “reservation” the following:

. . . (2) Land of Indian colonies and Rancherias (including Rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland . . .

25 C.F.R. § 292.2.

IGRA also requires that a tribe possess legal jurisdiction over the land before it authorizes gaming.⁴²

Once IGRA is deemed applicable, tribes have the exclusive right to regulate gaming “on Indian lands,” providing that:

[T]he gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701(5).

Analysis

In order to determine whether the Tribe can authorize gaming on the Parcels, the Tribe must demonstrate under subsection (A) of the definition of “Indian lands” that the Parcels qualify

⁴² 25 U.S.C. § 2710(b)(1) (“An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe’s jurisdiction, if [it meets certain specified criteria]”); *id.* § 2710(d)(1)(A)(i) (“Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that—(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands [and meets other specified criteria]”); *id.* § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities”). *See also Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 701-03 (1st Cir. 1994) (citing Sections 2710(d)(3)(A) and 2710(b)(1) of IGRA as creating IGRA’s jurisdictional requirement), *cert. denied*, 513 U.S. 919 (1994).

as “lands within the exterior boundaries of the reservation.”⁴³ Accordingly, we must evaluate the following: (1) whether the Pinoleville Rancheria qualifies as a reservation; and (2) whether the Parcels are located “within the limits” of the Reservation. If both queries are answered affirmatively, we must then determine whether the Tribe has jurisdiction over the Parcels.

I. *The Parcels Qualify as “Indian lands” under IGRA*

IGRA recognizes the exclusive right of tribes to conduct and regulate gaming activity “on Indian lands”⁴⁴ and specifically requires that the gaming activity be conducted “on Indian lands.”⁴⁵ Accordingly, any lands upon which a tribe intends to conduct gaming must first be determined to be “Indian lands” under IGRA.⁴⁶

A. *The Pinoleville Rancheria Is an Indian Reservation*

We first examine whether the Pinoleville Rancheria is an Indian reservation under subsection (A) of the definition of “Indian lands” in IGRA.⁴⁷ If it is, we need not consider the application of subsection (B).⁴⁸

The Tribe’s Reservation occupies 99.53 acres in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. In 1911, the United States government purchased 99.53 acres of land with Congressional funds allocated for this purpose, thereby establishing the Pinoleville Rancheria.⁴⁹

Federal case law and long-standing Department practice confirm that California rancherias, including the Pinoleville Rancheria, are Indian reservations. In a case involving the Pinoleville Rancheria specifically, the United States District Court for the District of Northern California described California rancherias as “numerous small Indian reservations or communities in California.”⁵⁰ Other federal courts have also described California rancherias as reservations, using the same, or similar, language.⁵¹ Moreover, the Department has previously

⁴³ 25 U.S.C. § 2703(4).

⁴⁴ 25 U.S.C. § 2701(5).

⁴⁵ 25 U.S.C. §§ 2710(a)(1)(2); 2710(d)(1)(A), (C). *See also* 25 C.F.R. § 501.2.

⁴⁶ 25 U.S.C. § 2703(4). “Indian lands” are defined in the NIGC regulations at 25 C.F.R. § 502.12.

⁴⁷ 25 U.S.C. § 2703(4)(A).

⁴⁸ 25 U.S.C. § 2703(4)(B).

⁴⁹ *See* original deeds, dated March 13, 1911, recorded in Book 123 of Deeds, p. 418, and September 15, 1911, recorded in Book 133 of Deeds, p. 283, Recorder’s Office, County of Mendocino; *see also* “Notice of Termination of Federal Supervision Over Property and Individual Members,” 31 Fed. Reg. 2911 (Feb. 18, 1966).

⁵⁰ *Governing Council of Pinoleville Indian Cmty.*, 684 F. Supp. at 1043 n.1 (citing *Duncan v. United States*, 667 F.2d 36, 38, 229 Ct. Cl. 120 (1981), *cert. denied*, 463 U.S. 1228 (1983)).

⁵¹ *Duncan v. United States*, 667 F.2d at 38 (“Rancherias are numerous small Indian reservations or communities in California”); *Big Lagoon Rancheria v. California*, Nos. 10-17803, 10-17878, 2015 WL 3499884, at *1-7, *2 n.1 (9th Cir. June 4, 2015) (“Rancherias are numerous small Indian reservations or communities in California . . .”); *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) (“Rancherias are numerous small Indian reservations or communities in California . . .”); *Artichoke Joe’s Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174 n.1 (E.D. Cal. 2003) (“Rancherias are small Indian reservations . . .”).

stated in legal opinions, one of which was issued in 1939, that a California rancheria qualifies as a reservation.⁵²

The Department's long-held view that rancherias are reservations dates back to at least the passage of the Indian Reorganization Act ("IRA")⁵³ in 1934. On June 10, 1935, as part of its implementation of the newly enacted IRA, the Department held a special election at the Pinoleville Rancheria to provide Rancheria residents with the opportunity to vote to reject application of the IRA to the Rancheria, as required by the IRA.⁵⁴ These special elections were to be held at *reservations*,⁵⁵ and the calling of such an election at the Rancheria demonstrates that the Department concluded at that time that the Pinoleville Rancheria was a "reservation" at which an election should be held.

In the 1960s, pursuant to the California Rancheria Act, the Rancheria's tribal status was terminated through distribution of the Rancheria lands.⁵⁶ The Rancheria lost its status as a federally recognized Indian tribe.⁵⁷ Its lands ceased to be held by the federal government and were broken up and distributed in fee simple parcels to individual tribal members.⁵⁸

Nearly two decades later, the Pinoleville Rancheria was relieved of the deleterious effects of the California Rancheria Act. Between 1983 and 1986, the Rancheria's tribal status and the status of its lands were restored as part of the *Hardwick* settlement (mentioned in the background section).⁵⁹ The settlement included stipulations between the Rancheria and the United States, and the Rancheria and Mendocino County.⁶⁰

These stipulations establish several critical points, which are dispositive of our analysis today: (1) the tribal status of the members of the Pinoleville Rancheria is restored and the Rancheria is restored to federal recognition (the 1983 Stipulation⁶¹); (2) the Pinoleville Rancheria was never, and is not now, lawfully terminated under the California Rancheria Act (the May 1985 Stipulation⁶²); (3) the Pinoleville Rancheria "shall be treated by . . . the United States of America as any other federally recognized Indian Reservation" (the 1985 Stipulation⁶³);

⁵² See Solicitor's Op. M-28958 (Apr. 26, 1939); 1 Op. Sol. On Indian Affairs 891 (U.S.D.I. 1979) available at http://thorpe.ou.edu/aol_opinions/p876-900.html (finding that the State of California lacks jurisdiction over land located within a rancheria—land purchased for landless Indians in California with funds appropriated by Congress—because rancherias are "for all practical purposes, small reservations," making them Indian country).

⁵³ 25 U.S.C. §§ 461-494a.

⁵⁴ See Theodore Haas, *Ten Years of Tribal Government Under I.R.A.* (1947) at 15 (reporting Pinoleville Rancheria election results showing that the Tribe voted to not reject, i.e., accept, the IRA) available at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>.

⁵⁵ 25 U.S.C. § 478 (providing that the IRA "shall not apply to any *reservation* wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application"). (emphasis added)

⁵⁶ P.L. 85-671, 72 Stat. 619-621(1958) (amended 1964), §§ 3(e), 9, 10(a)-(b), 11; see also "Notice of Termination of Federal Supervision Over Property and Individual Members," 31 Fed. Reg. 2911 (Feb. 18, 1966).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Hardwick*, Stipulations, filed May 30, 1985, and March 5, 1986. See also *Hardwick*, Stipulation, filed Dec. 22, 1983.

⁶⁰ *Id.*

⁶¹ *Hardwick*, Stipulation, filed Dec. 22, 1983, p. 3, ¶¶ 3-4.

⁶² *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).

⁶³ *Hardwick*, Stipulation, filed May 30, 1985, pp. 4-5, ¶ D.

and (4) the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored and all land within the restored boundaries of the Pinoleville Rancheria are declared to be “Indian Country”⁶⁴ (the May 1985⁶⁵ and March 1986⁶⁶ Stipulations).

Additionally, we note that, not long before IGRA was enacted, the legal status of non-Indian fee lands within the exterior boundaries of the Pinoleville Rancheria was addressed by a federal district court in a non-gaming context. In *Governing Council of Pinoleville Indian Community v. Mendocino County*,⁶⁷ the Pinoleville Rancheria maintained that it had regulatory authority over the use of non-Indian owned fee land located within the exterior boundaries of the Rancheria because of the *Hardwick* stipulations. The court examined the effects of the stipulations on the Pinoleville Tribal Council’s power to regulate non-Indian fee land within its Rancheria’s boundaries and found that it was Mendocino County’s express undertaking, in its stipulation with the Pinoleville Rancheria, “to treat the *entire* Rancheria as a reservation . . .” Moreover, the Court found that it was “the clear and fundamental intent” of the *Hardwick* judgments to “restore *all* land within the original Rancheria as Indian Country. . .”⁶⁸

Accordingly, we conclude that the Pinoleville Reservation is an Indian reservation and, therefore, meets the definition of “Indian lands” under IGRA.⁶⁹

In support of our conclusion, we find that the exterior boundaries of the original Pinoleville Reservation, as described in Exhibit A of the first *Hardwick* Stipulation,⁷⁰ are the same as the Reservation’s exterior boundaries today; they have not changed. The legal description of the current Pinoleville Reservation is the same as the legal description of the original Pinoleville Rancheria, created in 1911, and both are the same as the legal description of the Pinoleville Rancheria restored by the *Hardwick* settlement.⁷¹ This legal description has been confirmed by the Tribe⁷² and is consistent with official maps of the Reservation prepared by the BIA⁷³ and additional maps prepared by other entities.⁷⁴

⁶⁴ We note that the IGRA definition of “Indian lands,” i.e. “all lands within the limits of any Indian reservation” uses the same language as the definition in 18 U.S.C. § 1151(a), “all land within the limits of any Indian reservation.”

⁶⁵ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.

⁶⁶ *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.

⁶⁷ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. 1042 (N.D. Cal. 1988).

⁶⁸ *Id.* at 1046.

⁶⁹ 25 U.S.C. § 2703(4)(A).

⁷⁰ *Hardwick*, Stipulation, filed Dec. 22, 1983.

⁷¹ See BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, with enclosures, including “copies of the map delineating the exterior boundaries of the Pinoleville Rancheria as recognized by the United States along with the 1985 Stipulation and therein referenced Exhibit ‘A’ as attached to the 1983 Order and Stipulation for Entry of Judgment. Said boundaries are also shown on that Record of Survey for the Pinoleville Rancheria recorded in the Official Records of Mendocino County filed in Map Case 2, Drawer 1, Page 74.”

⁷² See e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).

⁷³ See BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, *supra* note 64.

⁷⁴ See 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels’ location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. See also map on p. 39.

B. *The Parcels Fall Within the Exterior Boundaries of the Reservation*

After concluding that the Pinoleville Rancheria, as restored by the *Hardwick* stipulations, constitutes a reservation, we now examine whether the Parcels, upon which the Tribe intends to conduct gaming, qualify as “lands within the limits of an Indian reservation,” as required by IGRA.⁷⁵

The fee lands at issue consist of two adjacent parcels, which together comprise approximately 8.8 acres of the 99.53-acre Pinoleville Reservation. The parcels are owned in fee simple by a non-Tribal entity, Kandy Investments, LLC, and are currently being leased by the Tribe until 2016, with an option to purchase. The Tribe has provided us with a legal description of the Parcels;⁷⁶ a map of the Parcels, showing their location within the Reservation;⁷⁷ a Draft Tribal Environmental Report, prepared for the Tribe in 2010, which includes two maps showing the Parcels’ location within the Reservation;⁷⁸ and maps of the Reservation, including the Parcels, which were prepared by the BIA.⁷⁹ The Tribe has also confirmed, in writing, that the fee lands are located within the exterior boundaries of the Reservation.⁸⁰

Based upon our review of the maps, legal descriptions of the Parcels, legal descriptions of the Reservation’s exterior boundaries, and other materials provided to us by the Tribe, coupled with our own investigation of the Parcels’ status and location, we conclude that the Parcels, owned in fee simple by a non-Tribal entity, are located “within the limits” of the Pinoleville Reservation, thereby satisfying part of the definition of “Indian lands” under IGRA.

The fact that the Parcels are owned in fee simple by a non-Tribal entity and not by the Tribe or a Tribal member (in trust or in fee) does not affect our Indian lands analysis. IGRA’s definition of “Indian lands” includes “*all lands* within the limits of any Indian reservation.”⁸¹ As explained above, the *Hardwick* stipulations were intended to restore *all* land within the Pinoleville Rancheria and treat the *entire* Rancheria as a reservation,⁸² and the United States, as a party to the litigation, remains bound by these stipulations. The restoration of the status of Rancheria lands as Indian Country, as defined by 18 U.S.C. § 1151, included land that had been sold or conveyed to non-Tribal members during the time in which the Rancheria was purportedly terminated. We note that, in our previous Indian lands opinions, we have not distinguished

⁷⁵ 25 U.S.C. § 2703(4)(A); *see also* 25 C.F.R. § 502.12.

⁷⁶ *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 7).

⁷⁷ *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 9). The Parcels are identified on the maps as Nos. 26 and 27, with APNs of 169-211-26-00 (Parcel One) and 169-211-27-00 (Parcel Two).

⁷⁸ *See* 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels’ location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. *See also* map on p. 39.

⁷⁹ *See* BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director, *supra* notes 69, 71. *See also* BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, confirming “that lands within the boundaries of the Pinoleville Rancheria are ‘Indian lands’ within the meaning of IGRA,” and enclosing a map of the Pinoleville Rancheria, including the location of Tribal trust land, trust allotments and fee land.

⁸⁰ *See* e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).

⁸¹ *See* 25 U.S.C. § 2703(4).

⁸² *See Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1046; *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.

between non-Indian owned fee land and fee land owned by a tribe or an individual tribal member, if the fee lands are located within the exterior boundaries of a reservation. Fee lands within the exterior boundaries of a reservation are “Indian lands” under IGRA, regardless of ownership.⁸³

II. *The Tribe Has Jurisdiction Over the Parcels*

Finally, we examine whether the Pinoleville Pomo Nation is the tribe that has jurisdiction over the Tribe’s Reservation, i.e. the lands within the Reservation’s exterior boundaries. Before conducting gaming under IGRA, a tribe must satisfy IGRA’s requirement that it is, in fact, the tribe exercising jurisdiction over the Indian lands upon which it intends to game. IGRA states that a tribe may engage in class II gaming “on Indian lands *within such tribe’s jurisdiction*” if, among other things, the tribe has an ordinance approved by the NIGC’s Chair.⁸⁴ The requirements for conducting class III gaming likewise include: “Class III gaming activities shall be lawful on Indian lands only if such activities are (A) authorized by an ordinance or resolution that (i) is adopted by the governing body of *the Indian tribe having jurisdiction over such lands*. . . .”⁸⁵

Generally speaking, Indian tribes possess jurisdiction “over both their members and their territory.”⁸⁶ A tribe is presumed to have jurisdiction over its own reservation.⁸⁷ Further, it is well settled that a tribe retains primary jurisdiction over the land that the tribe inhabits if the land qualifies as “Indian country,” and reservation land is one type of “Indian country.”⁸⁸

As part of the *Hardwick* settlement, the United States and Mendocino County stipulated that “the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored, and all lands within these restored boundaries are declared to be ‘Indian Country,’ as defined in 18 U.S.C. § 1151.”⁸⁹

⁸³ See Letter from NIGC Acting General Counsel to Pyramid Lake Paiute Tribal Chairwoman (“Pyramid Lake Paiute Tribe Indian lands opinion”), dated Sept. 27, 2005; Memorandum from NIGC Attorney to NIGC Acting General Counsel re: White Earth Band of Chippewa Indians (“White Earth Reservation Indian lands opinion”), dated March 14, 2005; Letter from NIGC Acting General Counsel to Judith Kammins Albietz, Attorney for Buena Vista Rancheria of Me-Wuk Indians (“Buena Vista Rancheria Indian lands opinion”), dated June 30, 2005; Letter from NIGC Attorney to California Dept. of Justice (“Picayune Rancheria Indian lands opinion”), dated Dec. 3, 2001.
⁸⁴ 25 U.S.C. § 2710(b)(1).

⁸⁵ 25 U.S.C. § 2710(d)(1). See also *id.* § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities . . .”).

⁸⁶ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).

⁸⁷ See NIGC’s Buena Vista Rancheria Indian lands opinion, dated June 30, 2005, p. 6 (explaining that, if the gaming is to occur within a tribe’s reservation under IGRA, we can presume that jurisdiction exists for that tribe over its reservation lands).

⁸⁸ “Indian Country” is defined in 18 U.S.C. § 1151, in relevant part, as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . .” See also *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995); *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 527 n.1 (1998); *United Keetowah Band of Cherokee Indians of Oklahoma v. United States Dept. of Housing and Urban Development*, 567 F.3d 1235, 1240 n.5 (10th Cir. 2009).

⁸⁹ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C; *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.

We have already determined that the Pinoleville Reservation, inclusive of the fee lands within the exterior boundaries of the Reservation (the Parcels), qualify as "Indian lands" under 25 U.S.C. § 2703(4)(A). We now conclude that the Pinoleville Nation has exclusive jurisdiction to regulate gaming on lands within its Reservation.

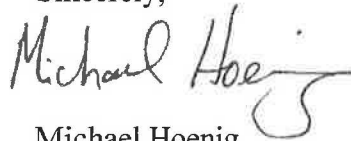
Based on the record before us, the Tribe meets IGRA's requirements that the lands upon which the Tribe intends to conduct gaming be "within such tribe's jurisdiction."

Conclusion

Based upon the foregoing analysis, including the language of IGRA, the NIGC regulations, case law and other materials, as well as our review of the Tribe's submissions and our own investigation of the status and location of the Parcels, we conclude that the Parcels upon which the Tribe proposes to conduct gaming are Indian lands eligible for gaming under IGRA.

The Department of Interior, Office of the Solicitor, concurs in our opinion. If you have any questions, please contact Katherine Zebell at (202) 632-7003.

Sincerely,

A handwritten signature in black ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized initial "M" and a long, sweeping underline.

Michael Hoenig
General Counsel

cc: Melissa Canales, Esq.



December 2013

Helpful Hints for Submitting Requests for a Legal Opinion to the NIGC Office of General Counsel

I. Introduction

From time to time, the National Indian Gaming Commission's Office of General Counsel (OGC) is asked to give its opinion on certain discrete legal questions from the gaming industry or other interested parties. The overwhelming majority of these requests seek the General Counsel's legal opinion that an agreement is not a management contract requiring the approval of the NIGC Chair and does not violate IGRA's sole proprietary interest mandate. Such legal opinions are more commonly referred to as "declination letters." Less frequently, the OGC also receives requests for legal opinions on other matters, such as whether certain lands are Indian lands eligible for gaming under IGRA or whether a specific game is considered class II or class III gaming.

As a general matter, legal opinions are issued by the OGC as a courtesy, and neither IGRA nor NIGC regulations require the OGC to issue a legal opinion on any matter. Further, the legal opinion of the General Counsel is not agency action and the issuance of a legal opinion is a voluntary process, both for the party making the request and the OGC. That being said, the OGC offers the following suggestions to help submitters through the process of obtaining an opinion.

II. The Submission Process

In order to facilitate requests for legal opinions and ensure the timely review of submitted documents, we ask that submitters and their attorneys send their request and all relevant documents to the OGC in electronic format via e-mail to legal_opinions@nigc.gov.

For requests seeking a legal opinion regarding whether a contract constitutes a management contract, please submit documents in final or substantially final form. This does not mean that the documents need to be signed and executed. In fact, documents should be submitted prior to their execution as the General Counsel is not inclined to provide a legal opinion on any documents that have already been executed or in cases where litigation related to the documents is pending.¹ The submitted documents should, however, reflect as closely as possible the document the parties intend to execute.

The submission should also include all of the documents to be reviewed and specify the date by which the parties hope to receive a legal opinion. Please note that the submission of additional documents or changes to any previously submitted documents will delay OGC

¹ The proper mechanism for addressing executed agreements that may violate IGRA is to refer them to the NIGC Compliance Division.

review and thus the issuance of the opinion.

III. The Review Process

The initial review of the request and the supporting documents will be conducted by OGC staff attorneys. The amount of time it takes to finish that review is dependent upon several factors, including the completeness of each submission, the complexity of the documents, the responsiveness of the parties, the availability of OGC staff, and competing priorities set by the Commission.

The OGC will always attempt to meet reasonable time frames for providing an opinion, but submitters should expect the review to take weeks, not days. Upon receiving the request, the staff attorney assigned to the review will reach out to the submitter to discuss the request and the supporting documents. The submitters are encouraged to discuss time frames at that point. Further, submitters should also feel free to contact NIGC OGC at any point throughout the process.

During the review stage, OGC staff attorneys may contact the parties and ask for additional information or inform the parties that a legal opinion cannot be issued. The parties may also withdraw a request for a legal opinion at any time prior to an opinion being issued. The review process is not a negotiation between the parties and the NIGC OGC, as the NIGC OGC is simply providing a legal opinion.

Following review, OGC staff attorneys will make a recommendation to the Associate General Counsels and the General Counsel. This recommendation, as well as the submitted documents, will be reviewed by Associate General Counsels prior to submission to the General Counsel. Once the Associate General Counsel has completed his or her review, the recommendation and supporting documents will be submitted to the General Counsel, and the General Counsel will make the final decision on whether to issue the legal opinion.

As OGC legal opinions are intended to inform the public and bring clarity to the Indian gaming industry, the opinions will be posted to the NIGC website for public review. The opinions and submission materials are also likely to be the subject of Freedom of Information Act (FOIA) requests.² To that end, submitters are encouraged to mark the specific financial and confidential terms found in the submissions in accordance with FOIA Exemption Four.³ FOIA further imposes a “segregability requirement” that requires the NIGC to release all reasonably segregable nonexempt material.⁴ As such, OGC strongly recommends that submitters do not request that NIGC withhold or entirely redact documents, but identify only the specific material that comes within the scope of the exemption. Failure to identify exempt information and designations that appear obviously frivolous may, pursuant to NIGC regulation, be subject to disclosure without future opportunities to object.⁵ That being said, the NIGC FOIA Office will provide submitter notices to the submitters, when appropriate, to ensure that the submitters are provided with an opportunity to convey their specific redactions and the bases for them.⁶

² The Freedom of Information Act can be found at 5 U.S.C. § 552.

³ 5 U.S.C. § 552(b)(4).

⁴ See 5 U.S.C. § 552(b).

⁵ 25 C.F.R. § 517.7(f)(4)-(5).

⁶ 25 C.F.R. § 517.7(a).

IV. Available Resources

OGC recommends that parties planning to request a legal opinion visit the NIGC's website at www.nigc.gov. Most of the legal opinions issued by the OGC over the years can be found on the "Reading Room" page of the site. There, interested parties can find OGC legal opinions regarding Indian lands, game classification, management, and sole proprietary interest. A party may find that the issue on which they seek an opinion has already been considered by the OGC.

In addition, although OGC attorneys cannot and will not provide legal advice to the parties or edit any portion of a document submitted for review, they are generally available to answer any questions the parties may have, both before and after the submission of documents.



April 23, 2013

Cynthia Iyall
Tribal Chairman
Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, WA 98513

Re: Review of Loan Documents for the Nisqually Indian Tribe

Dear Ms. Iyall:

This letter responds to the request on behalf of the Nisqually Indian Tribe (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review several agreements related to the refinancing of the Tribe's existing debt. The Tribe has asked for an opinion on whether these agreements are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act (IGRA). The Tribe also asked for an opinion on whether the agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Loan Documents"), either executed or drafts represented to be in substantially final form:

- Amended and Restated Business Loan Agreement marked on the top right corner as "SMRH DRAFT 4/10/13" and bottom left as "SMRH:200742079.9" (Loan Agreement);
- Amended and restated security agreement marked on the top right corner as "SMRH Draft 4/10/13" and on the bottom left as "SMRH:200780847.2" (Security Agreement).

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. See http://www.nigc.gov/Reading_Room/Management_Review_Letters_Declination_Letters.aspx. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion. If such terms change in any material way or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above. This

Ms. Iyall
April 23, 2013
Page 2 of 2

opinion does not include or extend to any other agreements or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact NIGC Staff Attorney Alison Grigonis at (202) 632-7003.

Sincerely,



Eric Shepard
Acting General Counsel

Cc: Christine L. Swanick
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112

Fabio Apolitio
Nisqually Indian Tribe
Office of the Tribal Attorney
4820 She-Nah-Num Drive S.E.
Olympia, WA 98513



September 28, 2015

Chairperson Leona L. Williams
Pinoleville Pomo Nation
500 B Pinoleville Drive
Ukiah, California 95482

Dear Chairperson Williams:

This is in response to your request for an Indian lands opinion¹ from the Office of General Counsel ("OGC") of the National Indian Gaming Commission ("NIGC") regarding whether gaming can be legally conducted on the Pinoleville Pomo Nation's Reservation² under the Indian Gaming Regulatory Act ("IGRA"). More specifically, the Tribe asks whether certain fee lands, upon which the Tribe intends to conduct gaming, fall within the definition of "Indian lands" under IGRA.³

To assist with our analysis, the Tribe has provided us with extensive documentation and written materials. The submissions include, but are not limited to, the following: (1) maps of the Tribe's Reservation; (2) maps of the fee lands at issue and their location within the Reservation; (3) deeds for the original Rancheria; (4) letters, with maps, from the BIA addressing the legal status of the Pinoleville Rancheria, dated January 3, 2001, and September 8, 2009; (5) copies of stipulations and court orders from the *Tillie Hardwick* class action litigation and subsequent settlement, which includes a legal description of the exterior boundaries of the Reservation, both original and as restored; (6) a copy of the Tribe's current commercial lease for the Parcels, with an option to purchase; (7) land survey records; (8) preliminary title reports; (9) an environmental site assessment of the Reservation; (10) a draft Environmental Impact Report, prepared for the Tribe in 2010, concerning a proposed casino project on the fee lands at issue; (11) the Tribe's

¹ See letter, with enclosures, dated January 16, 2014, from Attorney Melissa Canales, on behalf of the Pinoleville Pomo Nation, to Eric Shepard, Acting General Counsel, NIGC; e-mail from Melissa Canales to Eric Shepard, entitled "Request of Indian Lands Determination Legal Opinion" (Jan. 16, 2014, 16:37 EST) (on file with NIGC); and e-mail, from Melissa Canales to the NIGC, entitled "Request of Indian Lands Confirmation" (Aug. 19, 2013, 14:58 EST) (on file with NIGC).

² In the requests and submissions we received from the Tribe, the Tribe's lands are referred to as both the Pinoleville Reservation and the Pinoleville Rancheria. The terms "reservation" and "rancheria" are used interchangeably throughout this opinion. We note that the definition of a "reservation," found in 25 C.F.R. § 292.2, specifically includes rancherias.

³ See 25 U.S.C. § 2703(4); 25 C.F.R. § 502.12; see also 25 C.F.R. § 292.2.

Constitution; (12) the Tribe's class II and III Gaming Ordinance, approved by the NIGC;⁴ and (13) the Tribe's Tribal-State Compact with the State of California for class III gaming, approved by the Secretary of the Interior.⁵

According to the Tribe, the fee lands at issue are located within the exterior boundaries of the Pinoleville Reservation, which is situated approximately one mile north of the City of Ukiah, in an unincorporated portion of Mendocino County, California. The fee lands consist of two adjacent parcels ("the Parcels"), which, together, comprise approximately 8.8 acres. The lands are owned by a non-Tribal entity⁶ and were previously developed as an automobile dealership/service center. They are currently being leased to the Tribe for a 5-year term, until 2016, with an option to purchase the lands included in the lease.

After carefully reviewing the Tribe's submissions, coupled with our own investigation of the status and location of the lands at issue, we find that the Parcels are located within the exterior boundaries of the Tribe's Reservation. Based on this finding, we conclude that the Parcels are "Indian lands" under IGRA. We also find that the Tribe has jurisdiction over the land. Therefore, the Tribe may legally conduct gaming on the lands.⁷

Background

The Pinoleville Pomo Nation is a federally recognized Indian tribe.⁸ The Tribe's primary land base is a 99.53-acre reservation located in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. It is situated approximately 100 miles north of San Francisco and is divided by Highway 101, a major north-south, interstate thoroughfare. According to the Tribe's Constitution, the territory of the Tribe includes "all lands within the original boundaries of the Pinoleville Reservation."⁹

Beginning in 1906, Congress appropriated funds for the acquisition of lands "for the use of the Indians in California now residing on reservations which do not contain land suitable for

⁴ The Pinoleville Band of Pomo Indians Gaming Ordinance was approved by NIGC Chairman Philip N. Hogen on August 24, 2004.

⁵ The Tribal-State Compact between the State of California and the Pinoleville Pomo Nation was approved on January 26, 2012, by Larry Echo Hawk, Assistant Secretary-Indian Affairs, and became effective on February 3, 2012. The term of the Compact extends to December 31, 2031. See "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).

⁶ The non-Tribal owner/lessor of the fee lands is Kandy Investments, LLC.

⁷ We note that IGRA's prohibition of gaming on after-acquired trust land is not triggered here because the Parcels are fee lands within the limits of the Pinoleville Reservation. See 25 U.S.C. § 2719(a)(1).

⁸ See "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," 80 Fed. Reg. 1942, 1945 (Jan. 14, 2015). Until 2005, the Tribe was listed in the Federal Register as the Pinoleville Rancheria of Pomo Indians of California. See also BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, to Jay Petersen, Directing Attorney, California Indian Legal Services.

⁹ See Pinoleville Pomo Nation Const. art. I, § 1.

cultivation, and for Indians who are not now upon reservations . . .”¹⁰ Parcels acquired with these funds came to be known as rancherias.¹¹

In 1911, the federal government purchased privately held land for the benefit of the Pomo Indians in the Pinoleville area of California and, with this land, created the Pinoleville Rancheria (“Rancheria”).^{12,13,14}

In 1958, Congress passed the California Rancheria Act,¹⁵ which authorized termination of the federally recognized tribal status of many of the California rancherias, including the Pinoleville Rancheria.¹⁶ The rancherias’ lands were broken up into parcels and distributed in fee to the adult Indian members, thereby removing the rancherias’ status as Indian lands.¹⁷ Additionally, individual Indian distributees receiving rancheria assets lost their federal Indian status.¹⁸

In the 1960s, the Pinoleville Rancheria was “terminated” and the land and other assets were distributed pursuant to the California Rancheria Act.^{19,20} The BIA divided the Rancheria

¹⁰ Act of June 21, 1906, 34 Stat. 325, 333; Act of 1908, 35 Stat. 70, 76.

¹¹ *Duncan v. Andrus*, 517 F. Supp. 1, 2 (N.D. Cal. 1977); see also 2014 BIA website available at <http://bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/index.htm> (accessed April 15, 2015).

¹² *In re the Trusteeship of the Pinoleville Indians v. Hunter*, 2004 WL 1304044, 2 (Cal. App. 1 Dist.) (unpublished decision); see also *Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043 (N.D. Cal. 1988).

¹³ According to the BIA, the deeds from the two purchases by the United States to establish the Pinoleville Rancheria are dated March 13, 1911, and September 15, 1911, and were authorized by appropriations acts passed by Congress on June 21, 1906 (34 Stat. 325, 333) and April 30, 1908 (35 Stat. 70, 76). See BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

¹⁴ See BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

¹⁵ “An Act to provide for the distribution of the land and assets of certain Indian Rancherias in California, and for other purposes,” (“California Rancheria Act”), P.L. 85-671, 72 Stat. 619-621 (1958) (amended 1964). The California Rancheria Act set out a process by which the Secretary could terminate the tribal status and federal recognition of 41 California rancherias, if the members of the rancheria approved the termination. The Rancheria Act was amended six years later to allow *all* rancherias and reservations lying wholly within California to petition for the distribution of tribal lands and other assets and the termination of federal relations.

¹⁶ California Rancheria Act, P.L. 85-671, §§ 3(e), 9, 11.

¹⁷ *Id.* at § 3(e); see also *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043.

¹⁸ *Id.* at § 10(b); see also *Allen v. United States*, 871 F. Supp.2d 982, 984 (2012).

¹⁹ California Rancheria Act, P.L. 85-671, § 1; Complaint at 7, *Hardwick v. United States* (“Hardwick”), No. C-79-1710 SW (N.D. Cal. Filed 1979); *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043. See also *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ 2(B)(2)-(3).

²⁰ See also “Notice of Termination of Federal Supervision Over Property and Individual Members,” 31 Fed. Reg. 2911 (Feb. 18, 1966), which reads: *Notice of Termination of Federal Supervision Over Property and Individual Members* from the Office of the Secretary [of the Department of Interior] regarding “Certain Rancherias in California . . . Notice is hereby given that the Indians and the dependent members of their immediate families named below are no longer entitled to any of the services performed by the United States for Indians because of their status as Indians; that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens within their jurisdiction. Title to the land on the North Fork, Picayune, Graton, and Pinoleville Rancherias has passed from the U.S. Government under the distribution plans, approved April 29, 1960; June 30, 1960; September 17, 1959; and May 10, 1960; respectively, for the above-named Rancherias . . . Pinoleville Rancheria. . . Ninety-nine and 53/100 acres of land located in Mendocino County, Calif., described in deed dated March 13, 1911, recorded in Book 123 of Deeds, page 418; and deed dated September 15, 1911, recorded in Book 133 of Deeds, page 283, Recorder’s Office County of Mendocino . . . This notice is issued pursuant to the [California Rancheria

into 19 individual parcels, which were then deeded in fee simple title to individual members living on the Rancheria.²¹ Some of these Indian owners “sold or otherwise transferred all or portions of their parcels to non-members of the tribe” during the period of unlawful termination.²² Consequently, today both Indians and non-Indians own property within the original Rancheria boundaries.²³ The Rancheria “consists of a checkerboard of parcels held in fee and trust by the Tribe and individual Tribal citizens, as well as parcels held in fee by non-Tribal individuals and entities, as a result of those years during which the Tribe was illegally terminated.”²⁴

In 1979, Indian residents from the original Pinoleville Rancheria joined Indian residents from other California Rancherias in a class action lawsuit²⁵ against the United States to restore the reservation status of their lands and the tribal status of their people.²⁶ According to the Complaint, three of the Pinoleville plaintiffs “were and are residents of the parcels of land to which they received fee simple title as a result of the purported termination of the Pinoleville Rancheria,” and a fourth Pinoleville plaintiff was “a distributee of the Pinoleville Rancheria who alienated his land shortly after receiving title thereto.”²⁷ All of the Pinoleville plaintiffs alleged that their lands, their special status as Indians, and the trust relationship they had with United States as Rancheria residents had been wrongfully terminated under the California Rancheria Act of 1958.²⁸ The plaintiffs sought, among other things, judicial recognition that “[t]he Secretary of the Interior is under a duty to ‘unterminate’ each of the subject Rancherias, and . . . to hold the same in trust for the benefit of the Indians of the original Rancherias; . . . to treat all of the subject Rancherias as Indian reservations in all respects; and . . . to treat the Rancherias and their Indians as unterminated in all respects.”²⁹

The litigation was ultimately settled. The plaintiffs entered into separate stipulations, approving entry of final judgments, with the defendants: the United States and the counties in which the purportedly terminated rancherias were located.³⁰ On December 22, 1983, judgment was entered against the United States, resulting in the Department of Interior (“Department”)

Act] . . . that all restrictions and tax exemptions applicable to trust or restricted lands or interests therein owned by the Indians who are affected by this notice are terminated.”

²¹ Prior to the purported termination of the Pinoleville Rancheria in 1961, approximately 120 Indian persons resided on the Rancheria. Complaint at 7, *Hardwick v. United States* (“*Hardwick*”), No. C-79-1710 SW (N.D. Cal. 1979).

²² *Id.*; *Duncan v. United States*, 667 F.2d at 41.

²³ *Id.*

²⁴ See letter, dated January 16, 2014, from Melissa Canales, Attorney for the Tribe, to the NIGC.

²⁵ Complaint, *Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. 1979). According to the Complaint, plaintiffs brought the action “on their own behalf and on behalf of a class of similarly situated persons. The class consists of all distributees of the Rancherias listed in Exhibit A [36 Rancherias, including Pinoleville Rancheria], any heirs or legatees of said distributees and any Indian successors in interest to such lands.” *Id.* at 5. A total of 17 distributees were from the Pinoleville Rancheria. *Hardwick*, Complaint, Exhibit A at 1.

²⁶ *Id.* at 27.

²⁷ *Id.* at 4-5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Hardwick*, Stipulation for Entry of Judgment (“Stipulation”), filed Dec. 22, 1983 (signed by U.S. Atty. for federal defendants); *Hardwick*, Stipulation for Entry of Judgment (“Stipulation”), filed May 22, 1985 (signed by counsel for Mendocino County); see also *Hardwick*, Stipulation to Restoration of Indian Country (Humboldt, Mendocino, Lake, Plumas, and Tuolumne Counties) (“Stipulation”) and Order, filed March 5, 1986 (signed by U.S. Atty. for federal defendants).

restoring 17 of the Rancherias, including the Pinoleville Rancheria, to their tribal status.³¹ On May 30, 1985, judgment was entered against Mendocino County, restoring the Pinoleville Rancheria.³² The effect of the judgments was that all lands within the Rancheria's exterior boundaries, as they existed immediately prior to the wrongful termination, were declared to be "Indian Country," as defined by 18 U.S.C. § 1151.³³ Further, the United States and Mendocino County expressly agreed to treat the Rancheria like any other federally recognized Indian reservation.³⁴

On March 23, 1985, the Pinoleville Indian Community reorganized its tribal government.³⁵ The Tribe is presently governed by a Tribal Council, in accordance with the Tribe's Constitution, which was ratified in 2005.³⁶ In 2005, under the terms of its Constitution, the Pinoleville Rancheria renamed itself the Pinoleville Pomo Nation.³⁷

On May 18, 2004, the Tribe adopted an ordinance for both class II and class III gaming activities; on August 24, 2004, the Chair of the NIGC approved the ordinance.³⁸ Additionally, on January 26, 2012, a Tribal-State Compact for class III gaming, between the State of California and the Pinoleville Pomo Nation, was approved by the Secretary of the Interior.³⁹ It became effective on February 3, 2012.⁴⁰

Applicable Law

In order for a tribe to authorize gaming activity under IGRA, the land upon which the tribe intends to conduct the gaming activity must qualify as "Indian lands," as defined in IGRA.⁴¹

IGRA explicitly defines "Indian lands" as follows:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

³¹ *Hardwick*, Stipulation, filed Dec. 22, 1983.

³² *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C. This stipulation, which restored the Pinoleville Rancheria and was ordered as to Mendocino County, was subsequently ordered as to the United States and the other federal defendants. See *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶¶ 2-3.

³³ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044-45.

³⁴ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).

³⁵ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044.

³⁶ See Pinoleville Pomo Nation Const. art. III, § 1; see also *Allen v. United States*, 871 F. Supp. at 985.

³⁷ *Id.*

³⁸ See letter, dated August 24, 2004, from NIGC Chairman Philip Hogen to James Cohen, Attorney for the Tribe, approving the "Pinoleville Band of Pomo Indians Gaming Ordinance."

³⁹ See "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).

⁴⁰ *Id.*

⁴¹ See 25 U.S.C. §§ 2703(4), 2710; 25 C.F.R. §§ 501.2, 502.12.

NIGC regulations further clarify the definition of “Indian lands,” providing that:

“Indian lands” means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either—
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual;
or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

Other statutory and regulatory definitions shed light on what constitutes “Indian lands.” In 25 C.F.R. part 292, the Department includes in its definition of “reservation” the following:

. . . (2) Land of Indian colonies and Rancherias (including Rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland . . .

25 C.F.R. § 292.2.

IGRA also requires that a tribe possess legal jurisdiction over the land before it authorizes gaming.⁴²

Once IGRA is deemed applicable, tribes have the exclusive right to regulate gaming “on Indian lands,” providing that:

[T]he gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701(5).

Analysis

In order to determine whether the Tribe can authorize gaming on the Parcels, the Tribe must demonstrate under subsection (A) of the definition of “Indian lands” that the Parcels qualify

⁴² 25 U.S.C. § 2710(b)(1) (“An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe’s jurisdiction, if [it meets certain specified criteria]”); *id.* § 2710(d)(1)(A)(i) (“Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that—(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands [and meets other specified criteria]”); *id.* § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities”). *See also Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 701-03 (1st Cir. 1994) (citing Sections 2710(d)(3)(A) and 2710(b)(1) of IGRA as creating IGRA’s jurisdictional requirement), *cert. denied*, 513 U.S. 919 (1994).

as “lands within the exterior boundaries of the reservation.”⁴³ Accordingly, we must evaluate the following: (1) whether the Pinoleville Rancheria qualifies as a reservation; and (2) whether the Parcels are located “within the limits” of the Reservation. If both queries are answered affirmatively, we must then determine whether the Tribe has jurisdiction over the Parcels.

I. *The Parcels Qualify as “Indian lands” under IGRA*

IGRA recognizes the exclusive right of tribes to conduct and regulate gaming activity “on Indian lands”⁴⁴ and specifically requires that the gaming activity be conducted “on Indian lands.”⁴⁵ Accordingly, any lands upon which a tribe intends to conduct gaming must first be determined to be “Indian lands” under IGRA.⁴⁶

A. *The Pinoleville Rancheria Is an Indian Reservation*

We first examine whether the Pinoleville Rancheria is an Indian reservation under subsection (A) of the definition of “Indian lands” in IGRA.⁴⁷ If it is, we need not consider the application of subsection (B).⁴⁸

The Tribe’s Reservation occupies 99.53 acres in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. In 1911, the United States government purchased 99.53 acres of land with Congressional funds allocated for this purpose, thereby establishing the Pinoleville Rancheria.⁴⁹

Federal case law and long-standing Department practice confirm that California rancherias, including the Pinoleville Rancheria, are Indian reservations. In a case involving the Pinoleville Rancheria specifically, the United States District Court for the District of Northern California described California rancherias as “numerous small Indian reservations or communities in California.”⁵⁰ Other federal courts have also described California rancherias as reservations, using the same, or similar, language.⁵¹ Moreover, the Department has previously

⁴³ 25 U.S.C. § 2703(4).

⁴⁴ 25 U.S.C. § 2701(5).

⁴⁵ 25 U.S.C. §§ 2710(a)(1)(2); 2710(d)(1)(A), (C). *See also* 25 C.F.R. § 501.2.

⁴⁶ 25 U.S.C. § 2703(4). “Indian lands” are defined in the NIGC regulations at 25 C.F.R. § 502.12.

⁴⁷ 25 U.S.C. § 2703(4)(A).

⁴⁸ 25 U.S.C. § 2703(4)(B).

⁴⁹ *See* original deeds, dated March 13, 1911, recorded in Book 123 of Deeds, p. 418, and September 15, 1911, recorded in Book 133 of Deeds, p. 283, Recorder’s Office, County of Mendocino; *see also* “Notice of Termination of Federal Supervision Over Property and Individual Members,” 31 Fed. Reg. 2911 (Feb. 18, 1966).

⁵⁰ *Governing Council of Pinoleville Indian Cmty.*, 684 F. Supp. at 1043 n.1 (citing *Duncan v. United States*, 667 F.2d 36, 38, 229 Ct. Cl. 120 (1981), *cert. denied*, 463 U.S. 1228 (1983)).

⁵¹ *Duncan v. United States*, 667 F.2d at 38 (“Rancherias are numerous small Indian reservations or communities in California”); *Big Lagoon Rancheria v. California*, Nos. 10-17803, 10-17878, 2015 WL 3499884, at *1-7, *2 n.1 (9th Cir. June 4, 2015) (“Rancherias are numerous small Indian reservations or communities in California . . .”); *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) (“Rancherias are numerous small Indian reservations or communities in California . . .”); *Artichoke Joe’s Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174 n.1 (E.D. Cal. 2003) (“Rancherias are small Indian reservations . . .”).

stated in legal opinions, one of which was issued in 1939, that a California rancheria qualifies as a reservation.⁵²

The Department's long-held view that rancherias are reservations dates back to at least the passage of the Indian Reorganization Act ("IRA")⁵³ in 1934. On June 10, 1935, as part of its implementation of the newly enacted IRA, the Department held a special election at the Pinoleville Rancheria to provide Rancheria residents with the opportunity to vote to reject application of the IRA to the Rancheria, as required by the IRA.⁵⁴ These special elections were to be held at *reservations*,⁵⁵ and the calling of such an election at the Rancheria demonstrates that the Department concluded at that time that the Pinoleville Rancheria was a "reservation" at which an election should be held.

In the 1960s, pursuant to the California Rancheria Act, the Rancheria's tribal status was terminated through distribution of the Rancheria lands.⁵⁶ The Rancheria lost its status as a federally recognized Indian tribe.⁵⁷ Its lands ceased to be held by the federal government and were broken up and distributed in fee simple parcels to individual tribal members.⁵⁸

Nearly two decades later, the Pinoleville Rancheria was relieved of the deleterious effects of the California Rancheria Act. Between 1983 and 1986, the Rancheria's tribal status and the status of its lands were restored as part of the *Hardwick* settlement (mentioned in the background section).⁵⁹ The settlement included stipulations between the Rancheria and the United States, and the Rancheria and Mendocino County.⁶⁰

These stipulations establish several critical points, which are dispositive of our analysis today: (1) the tribal status of the members of the Pinoleville Rancheria is restored and the Rancheria is restored to federal recognition (the 1983 Stipulation⁶¹); (2) the Pinoleville Rancheria was never, and is not now, lawfully terminated under the California Rancheria Act (the May 1985 Stipulation⁶²); (3) the Pinoleville Rancheria "shall be treated by . . . the United States of America as any other federally recognized Indian Reservation" (the 1985 Stipulation⁶³);

⁵² See Solicitor's Op. M-28958 (Apr. 26, 1939); 1 Op. Sol. On Indian Affairs 891 (U.S.D.I. 1979) available at http://thorpe.ou.edu/aol_opinions/p876-900.html (finding that the State of California lacks jurisdiction over land located within a rancheria—land purchased for landless Indians in California with funds appropriated by Congress—because rancherias are "for all practical purposes, small reservations," making them Indian country).

⁵³ 25 U.S.C. §§ 461-494a.

⁵⁴ See Theodore Haas, *Ten Years of Tribal Government Under I.R.A.* (1947) at 15 (reporting Pinoleville Rancheria election results showing that the Tribe voted to not reject, i.e., accept, the IRA) available at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>.

⁵⁵ 25 U.S.C. § 478 (providing that the IRA "shall not apply to any *reservation* wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application"). (emphasis added)

⁵⁶ P.L. 85-671, 72 Stat. 619-621(1958) (amended 1964), §§ 3(e), 9, 10(a)-(b), 11; see also "Notice of Termination of Federal Supervision Over Property and Individual Members," 31 Fed. Reg. 2911 (Feb. 18, 1966).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Hardwick*, Stipulations, filed May 30, 1985, and March 5, 1986. See also *Hardwick*, Stipulation, filed Dec. 22, 1983.

⁶⁰ *Id.*

⁶¹ *Hardwick*, Stipulation, filed Dec. 22, 1983, p. 3, ¶¶ 3-4.

⁶² *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).

⁶³ *Hardwick*, Stipulation, filed May 30, 1985, pp. 4-5, ¶ D.

and (4) the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored and all land within the restored boundaries of the Pinoleville Rancheria are declared to be “Indian Country”⁶⁴ (the May 1985⁶⁵ and March 1986⁶⁶ Stipulations).

Additionally, we note that, not long before IGRA was enacted, the legal status of non-Indian fee lands within the exterior boundaries of the Pinoleville Rancheria was addressed by a federal district court in a non-gaming context. In *Governing Council of Pinoleville Indian Community v. Mendocino County*,⁶⁷ the Pinoleville Rancheria maintained that it had regulatory authority over the use of non-Indian owned fee land located within the exterior boundaries of the Rancheria because of the *Hardwick* stipulations. The court examined the effects of the stipulations on the Pinoleville Tribal Council’s power to regulate non-Indian fee land within its Rancheria’s boundaries and found that it was Mendocino County’s express undertaking, in its stipulation with the Pinoleville Rancheria, “to treat the *entire* Rancheria as a reservation . . .” Moreover, the Court found that it was “the clear and fundamental intent” of the *Hardwick* judgments to “restore *all* land within the original Rancheria as Indian Country. . .”⁶⁸

Accordingly, we conclude that the Pinoleville Reservation is an Indian reservation and, therefore, meets the definition of “Indian lands” under IGRA.⁶⁹

In support of our conclusion, we find that the exterior boundaries of the original Pinoleville Reservation, as described in Exhibit A of the first *Hardwick* Stipulation,⁷⁰ are the same as the Reservation’s exterior boundaries today; they have not changed. The legal description of the current Pinoleville Reservation is the same as the legal description of the original Pinoleville Rancheria, created in 1911, and both are the same as the legal description of the Pinoleville Rancheria restored by the *Hardwick* settlement.⁷¹ This legal description has been confirmed by the Tribe⁷² and is consistent with official maps of the Reservation prepared by the BIA⁷³ and additional maps prepared by other entities.⁷⁴

⁶⁴ We note that the IGRA definition of “Indian lands,” i.e. “all lands within the limits of any Indian reservation” uses the same language as the definition in 18 U.S.C. § 1151(a), “all land within the limits of any Indian reservation.”

⁶⁵ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.

⁶⁶ *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.

⁶⁷ *Governing Council of Pinoleville Indian Community*, 684 F. Supp. 1042 (N.D. Cal. 1988).

⁶⁸ *Id.* at 1046.

⁶⁹ 25 U.S.C. § 2703(4)(A).

⁷⁰ *Hardwick*, Stipulation, filed Dec. 22, 1983.

⁷¹ See BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, with enclosures, including “copies of the map delineating the exterior boundaries of the Pinoleville Rancheria as recognized by the United States along with the 1985 Stipulation and therein referenced Exhibit ‘A’ as attached to the 1983 Order and Stipulation for Entry of Judgment. Said boundaries are also shown on that Record of Survey for the Pinoleville Rancheria recorded in the Official Records of Mendocino County filed in Map Case 2, Drawer 1, Page 74.”

⁷² See e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).

⁷³ See BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, *supra* note 64.

⁷⁴ See 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels’ location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. See also map on p. 39.

B. *The Parcels Fall Within the Exterior Boundaries of the Reservation*

After concluding that the Pinoleville Rancheria, as restored by the *Hardwick* stipulations, constitutes a reservation, we now examine whether the Parcels, upon which the Tribe intends to conduct gaming, qualify as “lands within the limits of an Indian reservation,” as required by IGRA.⁷⁵

The fee lands at issue consist of two adjacent parcels, which together comprise approximately 8.8 acres of the 99.53-acre Pinoleville Reservation. The parcels are owned in fee simple by a non-Tribal entity, Kandy Investments, LLC, and are currently being leased by the Tribe until 2016, with an option to purchase. The Tribe has provided us with a legal description of the Parcels;⁷⁶ a map of the Parcels, showing their location within the Reservation;⁷⁷ a Draft Tribal Environmental Report, prepared for the Tribe in 2010, which includes two maps showing the Parcels’ location within the Reservation;⁷⁸ and maps of the Reservation, including the Parcels, which were prepared by the BIA.⁷⁹ The Tribe has also confirmed, in writing, that the fee lands are located within the exterior boundaries of the Reservation.⁸⁰

Based upon our review of the maps, legal descriptions of the Parcels, legal descriptions of the Reservation’s exterior boundaries, and other materials provided to us by the Tribe, coupled with our own investigation of the Parcels’ status and location, we conclude that the Parcels, owned in fee simple by a non-Tribal entity, are located “within the limits” of the Pinoleville Reservation, thereby satisfying part of the definition of “Indian lands” under IGRA.

The fact that the Parcels are owned in fee simple by a non-Tribal entity and not by the Tribe or a Tribal member (in trust or in fee) does not affect our Indian lands analysis. IGRA’s definition of “Indian lands” includes “*all lands* within the limits of any Indian reservation.”⁸¹ As explained above, the *Hardwick* stipulations were intended to restore *all* land within the Pinoleville Rancheria and treat the *entire* Rancheria as a reservation,⁸² and the United States, as a party to the litigation, remains bound by these stipulations. The restoration of the status of Rancheria lands as Indian Country, as defined by 18 U.S.C. § 1151, included land that had been sold or conveyed to non-Tribal members during the time in which the Rancheria was purportedly terminated. We note that, in our previous Indian lands opinions, we have not distinguished

⁷⁵ 25 U.S.C. § 2703(4)(A); *see also* 25 C.F.R. § 502.12.

⁷⁶ *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 7).

⁷⁷ *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 9). The Parcels are identified on the maps as Nos. 26 and 27, with APNs of 169-211-26-00 (Parcel One) and 169-211-27-00 (Parcel Two).

⁷⁸ *See* 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels’ location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. *See also* map on p. 39.

⁷⁹ *See* BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director, *supra* notes 69, 71. *See also* BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, confirming “that lands within the boundaries of the Pinoleville Rancheria are ‘Indian lands’ within the meaning of IGRA,” and enclosing a map of the Pinoleville Rancheria, including the location of Tribal trust land, trust allotments and fee land.

⁸⁰ *See* e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).

⁸¹ *See* 25 U.S.C. § 2703(4).

⁸² *See Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1046; *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.

between non-Indian owned fee land and fee land owned by a tribe or an individual tribal member, if the fee lands are located within the exterior boundaries of a reservation. Fee lands within the exterior boundaries of a reservation are “Indian lands” under IGRA, regardless of ownership.⁸³

II. *The Tribe Has Jurisdiction Over the Parcels*

Finally, we examine whether the Pinoleville Pomo Nation is the tribe that has jurisdiction over the Tribe’s Reservation, i.e. the lands within the Reservation’s exterior boundaries. Before conducting gaming under IGRA, a tribe must satisfy IGRA’s requirement that it is, in fact, the tribe exercising jurisdiction over the Indian lands upon which it intends to game. IGRA states that a tribe may engage in class II gaming “on Indian lands *within such tribe’s jurisdiction*” if, among other things, the tribe has an ordinance approved by the NIGC’s Chair.⁸⁴ The requirements for conducting class III gaming likewise include: “Class III gaming activities shall be lawful on Indian lands only if such activities are (A) authorized by an ordinance or resolution that (i) is adopted by the governing body of *the Indian tribe having jurisdiction over such lands*. . . .”⁸⁵

Generally speaking, Indian tribes possess jurisdiction “over both their members and their territory.”⁸⁶ A tribe is presumed to have jurisdiction over its own reservation.⁸⁷ Further, it is well settled that a tribe retains primary jurisdiction over the land that the tribe inhabits if the land qualifies as “Indian country,” and reservation land is one type of “Indian country.”⁸⁸

As part of the *Hardwick* settlement, the United States and Mendocino County stipulated that “the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored, and all lands within these restored boundaries are declared to be ‘Indian Country,’ as defined in 18 U.S.C. § 1151.”⁸⁹

⁸³ See Letter from NIGC Acting General Counsel to Pyramid Lake Paiute Tribal Chairwoman (“Pyramid Lake Paiute Tribe Indian lands opinion”), dated Sept. 27, 2005; Memorandum from NIGC Attorney to NIGC Acting General Counsel re: White Earth Band of Chippewa Indians (“White Earth Reservation Indian lands opinion”), dated March 14, 2005; Letter from NIGC Acting General Counsel to Judith Kammins Albietz, Attorney for Buena Vista Rancheria of Me-Wuk Indians (“Buena Vista Rancheria Indian lands opinion”), dated June 30, 2005; Letter from NIGC Attorney to California Dept. of Justice (“Picayune Rancheria Indian lands opinion”), dated Dec. 3, 2001.
⁸⁴ 25 U.S.C. § 2710(b)(1).

⁸⁵ 25 U.S.C. § 2710(d)(1). See also *id.* § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities . . .”).

⁸⁶ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).

⁸⁷ See NIGC’s Buena Vista Rancheria Indian lands opinion, dated June 30, 2005, p. 6 (explaining that, if the gaming is to occur within a tribe’s reservation under IGRA, we can presume that jurisdiction exists for that tribe over its reservation lands).

⁸⁸ “Indian Country” is defined in 18 U.S.C. § 1151, in relevant part, as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . .” See also *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995); *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 527 n.1 (1998); *United Keetowah Band of Cherokee Indians of Oklahoma v. United States Dept. of Housing and Urban Development*, 567 F.3d 1235, 1240 n.5 (10th Cir. 2009).

⁸⁹ *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C; *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.

We have already determined that the Pinoleville Reservation, inclusive of the fee lands within the exterior boundaries of the Reservation (the Parcels), qualify as "Indian lands" under 25 U.S.C. § 2703(4)(A). We now conclude that the Pinoleville Nation has exclusive jurisdiction to regulate gaming on lands within its Reservation.

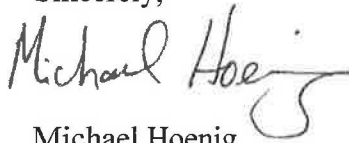
Based on the record before us, the Tribe meets IGRA's requirements that the lands upon which the Tribe intends to conduct gaming be "within such tribe's jurisdiction."

Conclusion

Based upon the foregoing analysis, including the language of IGRA, the NIGC regulations, case law and other materials, as well as our review of the Tribe's submissions and our own investigation of the status and location of the Parcels, we conclude that the Parcels upon which the Tribe proposes to conduct gaming are Indian lands eligible for gaming under IGRA.

The Department of Interior, Office of the Solicitor, concurs in our opinion. If you have any questions, please contact Katherine Zebell at (202) 632-7003.

Sincerely,

A handwritten signature in black ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael Hoenig
General Counsel

cc: Melissa Canales, Esq.



AUG - 6 2012

Mr. Donald Hohman, President
WhoopAss Poker, Inc.
1472 N. San Antonio Ave.
Upland, CA 91786

Re: WhoopAss Poker Game Classification Decision

Dear Mr. Hohman:

This is in response to your request for our review of the card game, WhoopAss Poker, and to determine its classification under the Indian Gaming Regulatory Act ("IGRA"). Your request asked for decisions on two different versions of the game; one played similarly to a traditional game of poker against other players ("poker version") and the other in which the player "plays against the house" ("table game version").

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). Your request did not identify any particular state in which the game would be played. Therefore, this decision is not state specific and contains no analysis of state gaming laws. This determination is confined to the question of whether WhoopAss Poker meets the non-banking requirement for class II status.

I have reviewed the game descriptions you submitted with your request and conclude that the poker version of WhoopAss Poker meets the non-banking requirement for Class II and the table game version is Class III.

Game Play

WhoopAss Poker is a card game played with a standard deck of 52 playing cards. The game can be played two ways, with the ultimate objective under either version of the game to make the best five card poker hand using a combination of cards dealt specifically to one player and community cards available to all players. Although the objective of the two versions is the same, the rules of play are not.

Poker Version

The poker version of WhoopAss Poker is similar to the game of Texas hold'em. There is no bank, meaning wagers are made against other players rather than a banker (usually the house). Unlike Texas hold'em, though, WhoopAss poker gives players the option to buy an additional card to use as either a hole¹ or community card.²

The poker version of the game begins with the player to the left of the dealer making a required bet called the "small blind." This is usually about half the minimum bet for a game. Next, the player to the left of the small blind makes a second required bet called the "big blind." The big blind is typically the same amount as the minimum bet. So, for example, if the minimum bet in a game is five dollars, the small blind will be two dollars and the big blind five dollars. Next, each player is dealt two cards face down. These are called the "hole cards." After the hole cards are dealt each player may call the big blind, raise, call any raise, or fold.

After the first round of betting, the dealer discards a card from the deck and places two cards face up in the middle of the game table. This is called "the flop" and these cards are the first of six community cards that will be dealt throughout the game. The flop is followed by second round of betting, which in turn is followed by another flop.

At this point in the game, the dealer collects the rake and the players are given the option to purchase a "WhoopAss card." Each player will notify the dealer as to whether he or she wants a WhoopAss card by placing the buy amount, usually the amount of the largest bet allowed, in a designated place on the game table. Depending on where the money is placed, the card can be dealt either face up or face down. If the WhoopAss card is dealt face up, it becomes one of the player's community cards. If it is dealt face down, it becomes a hole card.

After all of the players have indicated whether they want a WhoopAss card, the dealer discards another card and deals the WhoopAss cards to the appropriate players. Following the WhoopAss card deal, the third and final flop is dealt. There is no discard

¹ A "hole card" is a Card dealt to a player face down, hidden to everyone at the table except for the player to which it was dealt.

² Community cards are shared cards that can be used by all players in a poker game and give partial information about an opponent's hand

between the deal of the WhoopAss card and the final flop. This concludes the deal, and all players will hold two hole cards and six community cards. Those players that bought a WhoopAss card will also have an extra hole card or community card, depending on their purchase option.

Now that the deal is complete, the final round of betting occurs. After all bets are in, the remaining players turn over their cards. The winning hand is determined by looking at two of each player's hole cards and three of the community cards. The best hand based on regulation poker rankings is the winner.

Table Version

The table version of WhoopAss poker is similar to the poker version. The objective of the game is the same, but unlike the poker version, the table version is played against a banker rather than other players. It also gives players additional betting options. Ultimately, though, the players are still trying to make the best five card hand using a combination of hole and community cards.

The table for this version of WhoopAss poker also bears describing. Each player has several designated spaces in front of him, including three numbered betting spaces and a *Play* space. Above that are three spaces marked *Ante*, *Straight or Better*, and *Blind*. Finally, there is a space for the WhoopAss card with *down* and *up* designations. In front of the dealer are spaces for the flop and the dealer's hole cards.

The game begins with the player placing his bet in the *Blind* and *Ante* spaces. The player must bet in both spaces to start the game and the bets must be the same. The size of the bet is determined by the player, subject to house limits. At the same time as the player makes the *Blind* and *Ante* bets, he may choose to make a *Straight or Better* bet, which must be the same amount as the ante. The *Straight or Better* bet, as its name suggests, is a wager that regardless of the ultimate outcome of the game, the player will at least be able to make a straight or better hand.

After the player makes the initial bets, the dealer gives each player and himself two cards face down. The player then decides if he wants to bet or check. If betting, the player places his bet in the *First Bet* space on the table. The first bet may be up to four times the ante. Dealer then deals the first flop. The player may then check or bet by placing a wager of up to double the ante in the space marked *Second Bet*. The second flop is dealt next and the player once again may check or bet by placing a wager, which must be the same amount as the ante, in the space marked *Third Bet*.

At this point in the game, the player is given the opportunity to purchase a WhoopAss card by placing the same amount as the initial ante in the appropriate space on the *down* or *up* space on the table. As with the poker version, the player may purchase

the card as a hole or community card. The dealer will also deal himself a WhoopAss card face down. The dealer will decide how the card should be used at the end of the game.³

After the WhoopAss card is dealt, the dealer turns the third and final flop. The player may then choose to fold or stay in the game by betting. If the player decides to keep playing, he must place his final bet, which must be the same amount as the ante, in the *Play* space. If the player folds, he loses his ante, blind bet, first, second, and third bet, and the money used to purchase the WhoopAss card. If the player opted to make a *Straight or Better* bet and folds with a straight or better, the player wins the *Straight or Better* wager and is paid upon folding his hand.

After all bets are made, the dealer turns over his two hole cards and his WhoopAss card. He may use the option card as either a community card or hole card. The player then turns over his hole cards. Like the poker version of the game, the winning hand is determined using two of the player's hole cards and three of the community cards.

If the player wins, and no *Straight or Better* bet was made, the dealer will return and match the player's ante, first, second, third, and *Play* bets. The dealer will also return and match the player's *Blind* bet, but only if the player has a flush or better. If the player does not have a flush or better, the blind bet goes to the dealer. If the player elected to purchase a Whoop-ass card and the player wins the hand, the purchase money for the card is returned to the player, but not matched.

If the player loses the hand, the ante, the blind, all bets, and the WhoopAss card purchase money go to the dealer. Finally, regardless of whether the player won or lost the hand, if the player made a *Straight or Better* bet, and the player's hand is a straight or better, the dealer will return and match the wager amount. If the player's hand fails to reach that threshold, the dealer collects the wager.

In the event of a tie, the player loses the *Ante* bet and bets 1, 2, and 3. The player must beat the dealer to win these bets. Regardless of a tie, if the player has made a *Straight or Better* bet, he or she will win or lose the bet according to whether the player makes a straight. For the player to win the *Blind* bet, he or she must have a flush or better. If the player beats the dealer with less than a flush, the blind bet is won by the dealer. The player with a flush or better can not win the *Blind* bet on a tie. He or she must still beat the dealer to be paid on the *Blind* bet.

³ The WhoopAss buy card money may also be used as a jackpot for players only. In this version of the game, each player that buys a WhoopAss card is eligible to win the jackpot. After all of the WhoopAss cards have been purchased, the dealer will rake all of the buy card money to the center of the table. The player with the highest hand wins the jackpot. The dealer may not participate in this aspect of the game.

Analysis

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701, *et seq.* divides the world of Indian gaming into three classes. Class I gaming, which is not at issue here, encompasses "social games" played "solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6).

IGRA defines Class II gaming to include:

(ii) card games that -

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(i) - (ii); 25 C.F.R. § 502.3. IGRA expressly states that banking card games are not class II gaming. 25 U.S.C. § 2703(7)(B)(i).

Finally, Class III is a catchall category and includes "all forms of gaming that are not Class I gaming or Class II gaming." 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4.

Given these definitions, the classification of both versions of WhoopAss Poker turns on whether the game is banked or non-banked. Banking games, as commonly understood and as defined in NIGC regulations, are games in which the banker (usually the house) competes against all players, collecting from losers and paying winners. *See* 25 C.F.R. § 502.11. Conversely, non-banking card games are games where players play against each other. Poker is a typical example of a non-banking card game.

The poker version of WhoopAss Poker is a non-banked card game. The players play one another rather than a banker or the house. It is therefore not categorically excluded from the definition of Class II gaming. So long as the poker version of WhoopAss Poker is played in a state in which the requirements in 25 U.S.C. § 2703(7)(A)(ii) (I) or (II) are satisfied, it is Class II.⁴

The table version of the game, though, is a different matter. The table version of WhoopAss Poker is a banked card game – the house acts as a banker and takes on all comers and pays all winners. IGRA explicitly excludes banked card games from the

⁴ The request did not identify any particular state in which the game would be played. Therefore, this decision does not analyze state gaming laws against the requirements of 2703(7)(A)(ii).

definition of Class II games. Because it is not a Class II game, and any game that is not Class I or Class II is Class III, the table version of WhoopAss Poker is Class III.

If you should have any further questions, please contact NIGC Senior Attorney Michael Hoenig at (202) 632-7003.

Sincerely,



Tracie L. Stevens
Chairwoman

Human Trafficking (BIA) Course



Human Trafficking



National Indian Gaming Commission
Marksville, LA 71351
September 19, 2017

Presented by:
Arlene Armijo, BIA Victim Specialist
District IV—Albuquerque, NM


Disclaimer

Some of the information that you will hear and view contains graphic images and language as the information is taken from actual web sites that are used in the solicitation process.

Learning Objectives

- Introduction to human trafficking in tribal communities;
- Increase your awareness;
- Provide definitions of human trafficking and terms used;
- Learn how to identify potential victims; and
- Understand the mindset of victims.

What is Your Knowledge on Trafficking?



1 = lack knowledge
10 = know everything about trafficking

Things to Think About....

- Do you believe that human trafficking is happening in your community?
- Could a homeless person or runaway be a victim of human trafficking?
- Are human trafficking victims drug addicts?

True or False

- There is human trafficking in Louisiana?
- There is trafficking in rural Louisiana?
- Prostitutes are willing participants?
- Children be prosecuted for prostitution?
- Human trafficking is prosecuted at the Federal level?
- All participants involved are criminals?
- Every jurisdiction has victim services for human trafficking victims?
- Human trafficking victims want to be rescued?

Definitions

Sex Trafficking

The recruitment, harboring, transportation, provision, obtaining, patronizing, soliciting, or advertising of a person for a commercial sex act induced by **force, fraud, or coercion**, or in which the person induced to perform such an act has not attained 18 years of age.

- Under 18 years of age it is a crime, and law enforcement does not have to prove force, fraud or coercion.

Labor trafficking

The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of **force, fraud, or coercion** for the purpose of subjecting to **involuntary** servitude, peonage, debt bondage, or slavery.

Definitions/Language

- **Pimp:** (Gorilla Pimp / Romeo Pimp) A person who controls and financially benefits from the commercial sexual exploitation of another person;
- **Bottom Bitch:** A female appointed by the trafficker/pimp to supervise the others and report rule violations, also responsible for recruiting;
- **Branding:** A tattoo or carving on a victim that indicates ownership by a trafficker/pimp/gang;

Definitions/Language (cont.)

- **Daddy:** The term a pimp will often require his victim to call him;
- **Date:** The exchange when prostitution takes place, or the activity of prostitution. A victim is said to be "with a date" or "dating." (John, Trick);
- **The LIFE:** The subculture of prostitution, complete with rules, a hierarchy of authority, and language. Women and girls will say they've been "in the life" if they've been involved in prostitution for a while;
- **Turn Out:** To be forced into prostitution or a person newly involved in prostitution;

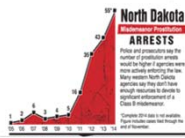
Definitions/Language (cont.)

- **Wifey's/Wife-in-Law/Sister Wife:** What women and girls under the control of the same pimp call each other;
- **Eyeballing:** A term which refers to the act of looking around instead of keeping your eyes on the ground. Eyeballing is against the rules and could lead an untrained victim to "choose up" by mistake; and
- **Choosing Up:** The process by which a different pimp takes "ownership" of a victim.

Examples of Trafficking

Sex Trafficking:

Child sex tourism, massage parlors, street prostitution, recruitment of tribal members from casinos into city limits; parents trading children for food, drugs, alcohol, wood, utilities, runaway or homeless youth (aging out of foster care) "man camps".



Examples of Trafficking (cont.)

Labor Trafficking:

Agriculture, begging/street peddling, beauty salons, construction, custodial work, elder care, exotic dancing, food industry/restaurant work, traveling sales crews, oil fields, etc.



Casino & Hotel—Identifying Victims of Human Trafficking

- Guest appears to be disconnected from individual, family, friends, etc;
- May have visible brandings;
- Lacks luggage, overnight bag;
- Rents more than one room; (working/trafficker rooms)
 - May lack identification;
 - Uses entrances other than the front door;

Reference: K. Brown (2017). Hotel & Casino PPT

Casino & Hotel—Identifying Victims of Human Trafficking

- Controlled movement;
- May refuse cleaning services;
- When room is cleaned, there is an unusual amount of condoms, lubricant and hand towels;
- May have several phones/laptops in the room;
- May have excessive pornographic TV purchases; and
- Transactions are completed in cash.

Reference: K. Brown (2017). Hotel & Casino PPT

Understanding the Mindset of a Victim

- Victims often don't see themselves as victims;
- Victims may feel shame, self-blame and feeling of unworthiness;
- Victims may be coached to lie (give fabricated histories/scripted stories);

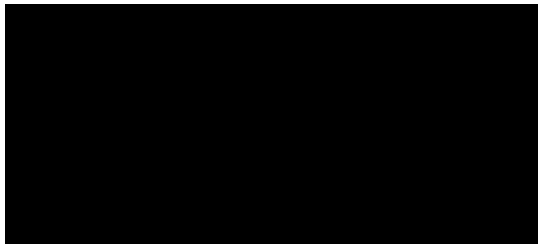


Understanding the Mindset of a Victim

- Victims are fearful and distrust law enforcement and government services due to fear of arrest;
- Victims may have formed a trauma bond with their exploiter and may have deep loyalties and positive feelings for their abuser; and
- Drugs often play a role in sex trafficking situations-sometimes as a way to cope victims stay in "the life" to support a drug habit.



Native American Trafficking – Video (8:16)



Statistics

- Trafficking is a continuation of a lengthy history for Native people, with colonization of America through wars, forced removal from homelands to reservations, boarding schools and forced urban relocation.

Commercial Sex Trade Data

- A review of community impact data taken from four formal studies demonstrates the disproportionate impact the commercial sex trade has on indigenous communities in both the U.S. and Canada.

Source: Human Trafficking Center Blog 2/24/17; Victoria Sweet, JD

Statistics (cont.)

- In Hennepin County, Minnesota, roughly 25% of the women arrested for prostitution identified as American Indian while American Indians comprise only 2.2% of the total populations;
- In Anchorage, Alaska, 33% of the women arrested for prostitution were Alaska Native, but Alaska Natives make up only 7.9% of the population; and
- Although many individuals involved in prostitution are not victims of sex trafficking, it is telling that Native women are so disproportionately represented among the population. It is necessary to examine what leads these women to this work and whether they have any other viable opportunities for economic advancement within their communities.

Source: Human Trafficking Center Blog 2/14/17, Victoria Sweet, JD

22 U.S. Code Chapter 78 Trafficking Victims Protection Act (TVPA)

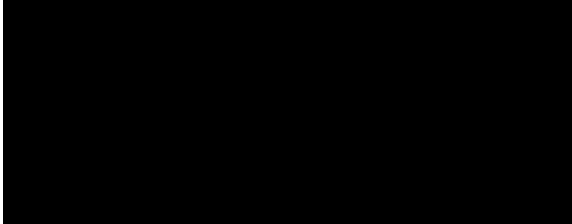
- The Trafficking Victims Protection Act is the most important anti-trafficking law ever passed. The TVPA, criminalized human trafficking with its passage in 2000 and establishes victim protection for men, and women, adults and children, citizens, and non-citizens alike.
- Establishes a three-prong approach prevention, protection and prosecution.
 - §7101. Purposes and findings
 - (a) The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

A-M-P Model

Action*	Means**	Purpose
RECRUITS	FORCE Physical assault, sexual assault, confinement	A Commercial
HARBORS	FRAUD False promises about work/living conditions, withholding promised wages	Sex Act
TRANSPORTS	COERCION Threats of harm or deportation, debt bondage, psychological manipulation, confiscation of documents	Labor or
PROVIDES		Services
OBTAINS		

* Additional actions that constitute sex trafficking, but not labor trafficking, include patronizes, solicits, and knowingly advertises.
 ** Neither force, nor fraud, nor coercion are required to be shown for minors under the age of 18 induced into commercial sex acts.

Human Trafficking in Montana: (4:16)



Source: Completed at ABC FOX Montana, Great Falls, June 7, 2016

How and Where Do I Report?

If you believe the person is in imminent danger, contact your local law enforcement or call 911

- If the person is a minor, and child abuse or neglect is suspected:
 - Contact your local/tribal/county social services or child protection agency.
- If the person is a minor and human trafficking is suspected:
 - Contact your social services/child protection and local/tribal law enforcement.
- If the person is an adult and human trafficking is suspected:
 - Contact the appropriate law enforcement agency in your area and victim service organization.


How You Can Help

- Learn the indicators of human trafficking;
- Report suspicions to law enforcement by calling 911 or 24-hour National Human Trafficking Resource Center line at 1-888-373-7888;
- Volunteer and support anti-trafficking efforts in your community;
- Meet with and/or write to your local, state, federal and tribal government representatives;
- Host an event to watch and discuss films about human trafficking;
- Work with local anti-trafficking agencies;
- Businesses: provide jobs, internships, skills training, and other opportunities to trafficking survivors; and
- Train casino personnel.

Louisiana Information

Louisiana sex trafficking cases increased 25 percent last year

Updated on April 28, 2017 at 9:55 AM. Posted on April 28, 2017 at 7:00 AM



FBI Special Agent in Charge Jeff Satter, shown in this February file photo, speaks during a news conference held at New Orleans City Hall to announce what they called the rescue of 13 potential human trafficking victims. (Kevin Litten, NOLA.com | The Times-Picayune)

Louisiana Information

- <http://www.shreveporttimes.com/story/news/2017/04/21/human-trafficking-more-than-400-la-victims-2016/100753214>

Louisiana Information (cont.)




ABOUT | PRESS RELEASES | GET INVOLVED | MEMBERSHIP | CONTACT | DONATIONS

The Louisiana Coalition Against Human Trafficking is a faith-based 501(c)(3) nonprofit agency to educate human trafficking in Louisiana through community and government agency awareness, organization partnerships and victim rehabilitation at the Free Inland Home.

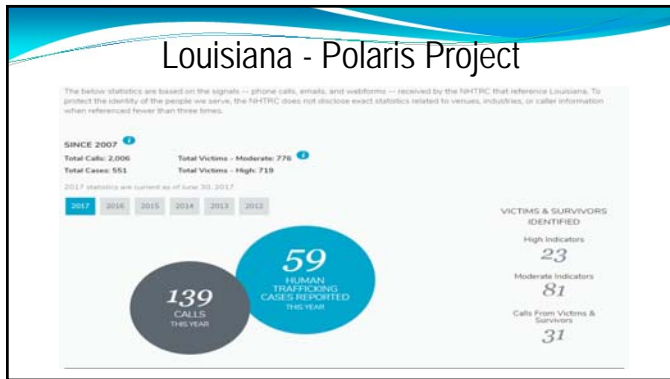


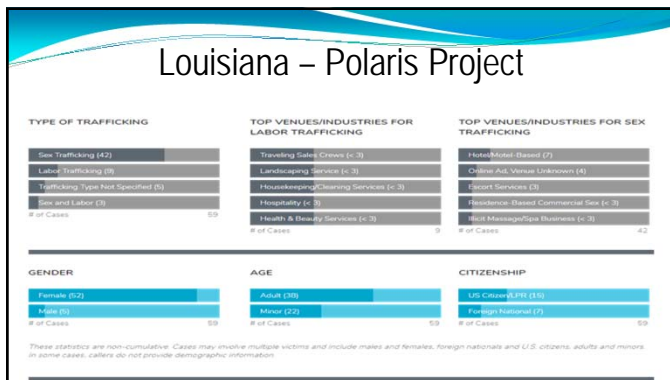
Become a Partner
LACAHT is a coalition of local and state organizations that aim to alleviate the issue of human trafficking. We believe that action is unity to move further than setting policies and law. Therefore, we encourage an alliance to combat the issue of human trafficking in Louisiana.

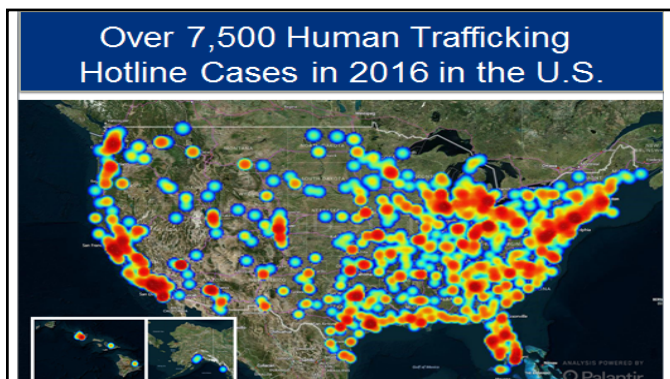
The Free Inland Home
The Free Inland Home will house and provide holistic services of care trafficking in the Greater New Orleans area, while providing comprehensive rehabilitative services. LACAHT hopes to have the home open in early 2018.



If you or someone you know is affected by human trafficking, please contact the National Human Trafficking Resource Center by calling 1-888-373-7888 or texting 888-373-7888, or contact an LACAHT representative at 504-334-3733 or 504-334-3733. All services are available 24 hours a day, 7 days a week.







Polaris
Freedom begins now.

Polaris-Operated Anti-Human Trafficking Hotlines

NATIONAL HUMAN TRAFFICKING HOTLINE
1-888-373-7888

Polaris

Contact the National Hotline?

A NATIONAL HOTLINE AND RESOURCE CENTER

1-888-373-7888

CONFIDENTIAL | TOLL FREE | 24/7

Contact the National Hotline

CALL TOLL FREE
1-888-373-7888, 24/7
in 200 languages

SEND AN EMAIL
help@polaris.org
or info@polaris.org

REPORT A TIP ONLINE
Call: 1-888-373-7888
or: 1-888-373-7888

VISIT THE BEFREE
WEB PORTAL
www.befree.org

Polaris

Contact BEFREE

Text "HELP" or "INFO" to:

233733 (BEFREE)


CONFIDENTIAL | MON-SUN | 3-11PM

Questions

Arlene Armijo
Victim Specialist
BIA-OJS Victim Assistance Program
District IV (NM)
Service Area: The Northern and Southern Pueblos of NM
arlene.armijo@bia.gov

Course Evaluation

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciate and allow us to improve your experience



Course Eval - Human Trafficking
When survey is active, respond at PollEv.com/nlge

Start the presentation to activate live content
If you see this message in presentation mode, you'll find pollEv on the left or get help at PollEv.com/app



Wisconsin Coalition Against Sexual Assault, Inc.

600 Williamson St., Suite N2 • Madison, Wisconsin • 53703
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org

Wisconsin Human Trafficking Resources

STATE AGENCIES

Wisconsin Office of Justice Assistance (OJA)

State-wide Human Trafficking Committee <http://oja.wi.gov/vawa>

OJAVAWA@wisconsin.gov or trafficking@wcasa.org

- For the full list of Human Trafficking Committee members please contact OJA

WI Department of Justice

Human Trafficking Resource Website www.doj.state.wi.us/cvs/trafficking.asp

Office of Crime Victim Services (DOJ-OCVS) www.doj.state.wi.us/cvs

DOJ-OCVS Victim Resource Center: 1-800-446-656

Crime Victims' Compensation Program: 608-264-9497

Division of Criminal Investigation (DOJ-DCI) www.doj.state.wi.us/dci/tech

WI Clearinghouse for Missing and Exploited Children www.missingpersons.doj.wi.gov

COALITIONS

Wisconsin Coalition Against Domestic Violence (WCADV) www.wcadv.org

Morgan Young, Immigration / Poverty Attorney, morgany@wcadv.org

Phone: 608-255-0539

TASKFORCES

Milwaukee Federal Human Trafficking Taskforce

US Department of Justice (US DOJ) Eastern District of Wisconsin

Tracy Johnson, Assistant US Attorney, tracy.johnson@usdoj.gov

Phone: 414-297-1580

Milwaukee Police Department

Linda Stott, Detective, ldstot@milwaukee.gov

Phone: 414-935-7405

Denmark Morrison (main taskforce grant administrator) Phone: 414-935-7876

- * For the full list of Human Trafficking Taskforce members please contact US DOJ

LOCAL ORGANIZATIONS

❖ **Dane County**

Slave Free Madison (SFM) <http://slavefreemadison.squarespace.com>

JoAnn Gruber-Hagen, Chair, slavefreemadison@gmail.com

Phone: 608-712-7788

- * For the full list of Slave Free Madison members please contact SFM

❖ **Dane County (continued)**

Project Respect, ARC Community Services www.arcomserv.org/programs.html#RESPECT

Jan Miyasaki, Director, jan@respectmadison.com

Phone: 608-332-4955

Five Stones www.5-stones.org

Ben Stewart, Director, bstewart@5-stones.org

Phone: 920-277-5510

WE International www.weinternational.org

David Lippiatt, Executive Director dlippiatt@weinternational.org

Phone: 608-334-2064

WE International UW-campus branch

Brenna, Campus Organizer, bcyr@weinternational.org

LOVE 146 UW-Madison chapter

Megan Brey, Campus Organizer, mbrey2@wisc.edu

Zonta Club of Madison www.madison.com/communities/zonta/

Dane County SA CCR Committee on Commercial Sexual Exploitation of Children (CSEC)

Co-chairs: Jan Miyasaki & JoAnn Gruber-Hagen

❖ **Fox Valley**

Congregation of Sisters of St. Agnes (CSA) www.csasisters.org

Stella Storch, Justice Coordinator, ssorch@csasisters.org

Phone: 920-907-2315

Five Stones www.5-stones.org

Connie Campbell, Head of Development, ccampbell@5-stones.org

Phone: 920-277-5510

F.R.E.E. International www.free-international.org & tkoslowki.webs.com

Terra Koslowski, Wisconsin Representative, terrakma@gmail.com

Phone: 920-279-2325

❖ **Greater Milwaukee**

Trafficking Ends with Action (TEA) www.teawisconsin.org

Darius Alemzadeh, Director, info@traffickingendswithaction.org

Phone: 414-507-3631

Sojourner Truth House www.sojournertruthhouse.org

Human Trafficking Services

Christine Langkau, Community Resource Advocate and Legal Advocate

Phone: 414.276.1911 ext. 204 christinel@familypeacecenter.org

Human Trafficking, Domestic Violence and Sexual Assault Support Group

Nataliya Runte, nrunte@sojournertruthhouse.org

Phone: 414-933-2722

UMOS www.umos.org

Human Trafficking Outreach Program

Gina Allende, gina.allende@umos.org & Astrid Ryan, aryan9@wi.rr.com

Latina Resources Center

Mariana Rodriguez, Director, mariana.rodriguez@umos.org

Rethink Resources: Youth in Sex Trade www.rethinkresources.net

Claudine O'Leary, claudine@rethinkresources.net

Phone: 414-212-5121

❖ **Greater Milwaukee (continued)**

Basics www.basicsinmke.org

Afterschool Program Coordinator mike@basicsinmke.org

Franciscan Peace Makers: Street Outreach www.franpax.com

Lemonade Stand www.lemonadestandinc.org

IMMIGRATION ASSISTANCE

National Immigrant Justice Center www.immigrantjustice.org

(member of Freedom Network USA www.freedomnetworkusa.org)

Angela Hernandez, Trafficking Attorney, ahernandez2@heartlandalliance.org

Phone: 312-660-1322

Katharine Egan, Social Services Advocate, kegan@heartlandalliance.org

Phone: 312-660-1421

RISE Law Center (Formerly IP-WCADV)

<http://www.wcadv.org/?go=whatwedo/immigration>

Immigration Attorney (608) 256-1015

Catholic Charities, Archdioceses of Milwaukee www.archmil.org

Barbara Graham, Immigration Attorney, Bgraham@ccmke.org

International Institute of Wisconsin

Benjamin Shryock, Immigration Attorney, bshryock@iiwisconsin.org

Phone: 414-225-6220

National Resource Center and Hotline

Polaris Project

Phone: 202-745-1119

www.polarisproject.org

<http://nhtrc.polarisproject.org/>

National Trafficking Hotline

1-888-373-7888

Freedom Network USA

www.freedomnetworkusa.org

Active Shooter Training Course



ACTIVE SHOOTER AWARENESS

National Indian Gaming Commission

DC Regional Training Course

Paragon Casino Resort

Marksville, LA

September 2017



Homeland Security

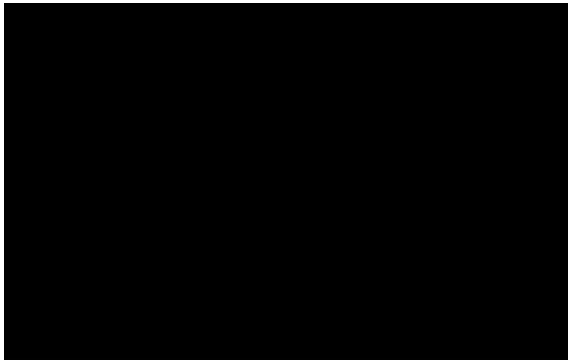


Homeland Security

Federal Protective Service HQ
Specialized and Advanced Training
Weapons and Tactics Branch
Consolidated Training Facility
(703) 235-6170

Matthew Peris
Weapons & Tactics Branch / Senior Instructor
matthew.j.peris@hq.dhs.gov

RUN > HIDE > FIGHT Video



Homeland Security

Today's Discussion

- Active shooter statistics and previous incidents
- Evolution of police response
- How YOU react to an active shooter
 - Run, Hide, Fight
 - Facility lockdown procedures
- Emergency response planning
- What to do when law enforcement arrives



4

DHS definition of active shooter:

"an individual actively engaged in killing or attempting to kill people in a confined and populated area; in most cases, active shooters use firearm[s] and there is no pattern or method to their selection of victims."



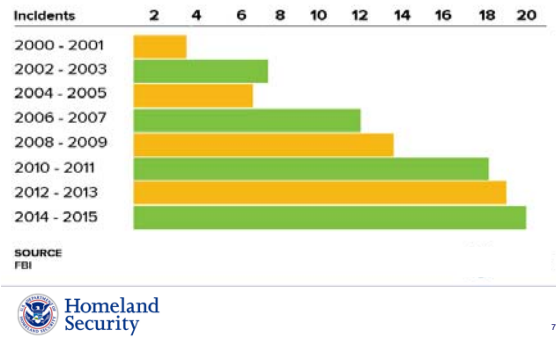
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Deadliest mass killings in U.S history

- PULSE NIGHTCLUB Orlando, FL June 12, 2016
50 Killed, 53 Wounded
Suspect killed by SWAT after taking hostages
- VIRGINIA TECH Blacksburg, VA April 16, 2007
32 Killed, 23 Wounded
Suspect committed suicide
- SANDY HOOK Newtown, CT Dec 14, 2012
27 Killed, 1 Wounded
Suspect committed suicide



Average # of Active Shooter Incidents on the rise **per year**



Active Shooter Incidents 2014-2015

- 40 total incidents over a 2 year span
- 231 Casualties,
 - 92 Killed, 139 Wounded (excluding the shooters)
 - Inland Regional Center, San Bernardino – 14 killed, 22 wounded
 - Isla Vista, CA – 6 killed, 14 wounded
 - 4 Law Enforcement officers (LEO) Killed and 10 Wounded in 6 Incidents
 - 3 Unarmed Security Guards Wounded
- 6 Incidents ended when citizens acted to end the threat
- 26 incidents ended with Law Enforcement at the scene
- 42 Shooters
 - 39 male, 3 female (2 husband-and-wife teams)
 - 16 Shooters committed suicide, 14 killed by LEOs, 12 Shooters Apprehended



8

Active Shooter Incidents 2014-2015

LOCATIONS

- 15 in areas of Commerce
 - 9 in business environments generally open to pedestrian traffic - 23 killed, and 38 Wounded
 - 3 in businesses closed to the general public - 3 killed, 8 wounded
 - 3 in malls - 3 killed, 9 wounded
- 6 in a variety of different open space locations
- 19 in other environments (schools, Fed Property, health care, religious)



9

Previous Casino Shootings Nationwide

- **Sept 2016 – CEASAR’S CASINO, Atlantic City, NJ**
 - One Killed and 2 Police Officers shot and critically wounded investigating “criminal activity” which turned out to be a robbery.
 - 1 suspect killed and 2 taken into custody
- **Apr 2016 – POTAWATOMI HOTEL AND CASINO, Milwaukee, WI**
 - Individual fires shots over what he believed was a stolen vehicle and then inside at the “High Rollers” tables and described patrons as “Snakes” after stealing chips.
 - Suspect taken into custody
- **Mar 2015 – EMERALD QUEEN CASINO, Tacoma, Wash**
 - Suspect was driving around in parking lot confronting people with firearm. When confronted by another driver, suspect shot and killed him and drove away.
 - Suspect later taken into custody



10

Previous Casino Shootings Nationwide

- **Oct 2013 – BALLY’S HOTEL and CASINO, Las Vegas, NV**
 - 1 killed and 2 wounded, over an argument of cover charge.
 - Suspect tackled by Security and taken into custody
- **July 2011 – MUCKLESHOOT CASINO – Auburn, Wash**
 - 7 shot and Wounded, after suspect allegedly seeing his wife with another man.
 - Suspect tackled by security and taken into custody
- **Aug 2007 – NEW YORK NEW YORK HOTEL CASINO, Las Vegas, NV**
 - “Distressed” Gunman on balcony opens fire (6 Shots) on gamblers below, Wounding 4.
 - Suspect tackled by military patrons and taken into custody



11

The Evolution of Police Response



12

What Is Situational Awareness?

Situational awareness involves being aware of your surroundings and the environment.

The ability to identify, process, and comprehend information about what is occurring or about to occur and how one's own actions will impact both immediate and future outcomes.



Potential Indicators of Violent Behavior:

- Is there any previous behavior or emotional state that raises a "Red Flag"??
- "Watch List"; Disgruntled persons or complaint file

Pre-Attack Indicators

- What are some signs / signals that person presents that are possible out of the ordinary?

Armed Robbery v. Active Shooter

- What are some signals / signs and or differences between the two?
- What are the differences in your actions?



14

How do *YOU* respond to an active shooter?

Your location and the location of the incident dictate your actions!

- RUN
- HIDE
 - Cover v. Concealment
- FIGHT



15

Building Lock Down Procedures

- Activate the emergency plan
- Lock doors
- Communicate
- Use signals and/or codes if rehearsed
- Determine a Safe Area
- Account for employees
- Do not open door until police arrive



16





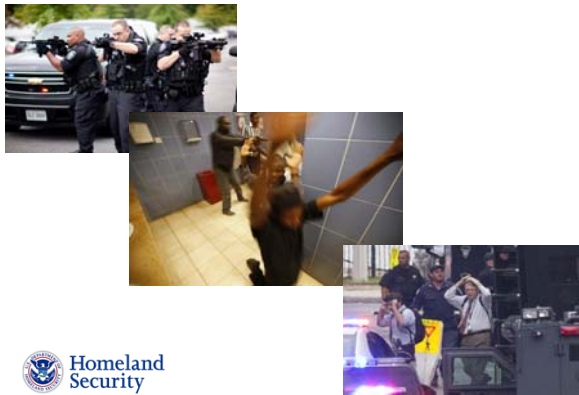


 Homeland Security



 Homeland Security

When Law Enforcement Arrives



 Homeland Security

What are Soft Targets?

- Typically defined as publicly accessible locations that are not generally "fortified."
- Recognize that any soft target is vulnerable to an act of violence / terrorism
- You CAN dramatically reduce your risk profile and provide for a safer, more secure facility by identifying policies and procedures that can effectively address acts of violence and terrorism



How can we harden Soft targets?

- Safety, Security and Emergency Plans
- Conduct a comprehensive vulnerability assessment to identify weaknesses in your current facility emergency action plan
- Assess the facilities security and life safety product inventory



What Is Your Role?

- Be Vigilant (Be Present & Observe)
- Should you Intervene?
- What resources do you have?
 - What are Security forces doing?
 - Camera surveillance
 - Signals, codes
 - Prior training, drills
- Notify and Communicate Information
- Take Control
 - Assist the public in escaping the threat
 - Alert occupants and provide assistance (evacuate or shelter in place)
 - Render aid



After the Incident?

- Closures? What, and for how long?
 - Remember it is now a Crime Scene
 - Return to Normalcy
- Loss of Business
- Media
- Public Relations
- Counseling
- After Actions / Lessons Learned



Plan, Plan, Plan!

Chaos, panic and fear can never be eliminated. But they can be minimized and controlled when there is preparation, planning and rehearsal prior to the event that causes them.

Success depends upon previous preparation, and without such preparation there is sure to be failure."
~ Confucius



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Questions and Answers



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Course Evaluation

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciated and allow us to




Course Eval - Active Shooter Training
When survey is active, respond at PollEv.com/nigc

Start the presentation to activate live content
If you see this message in presentation mode, install the iOS-in or get help at PollEv.com/app

© 0 surveys underway


AUP-120 Internal
Audit:
A to Z Approach Course
Part 1






**Internal Audit:
An A to Z Approach
Part 1**

Josh Benefield
Lead Auditor






Course Outline

<p>First Day</p> <ul style="list-style-type: none"> • Fundamentals • Ethics • Understanding the Regs • Independence • Charter • Audit types • Audit P&Ps • Audit Schedule • Audit Program 	<p>Second Day</p> <ul style="list-style-type: none"> • Sampling • Gathering Data • Performing Audit Procedures • Testing and Exceptions • Report Writing • Exit Meeting and Management Response • Final Report • Follow-up
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Session Outline


- Fundamentals
- Purpose of Internal Audit
- Ethics
- Understanding the Regulations
- Independence
- Charter
- Audit types

4/13/2017 3

 **Fundamentals**


- Internal Audit (IA):
 - Independent & objective
 - Adds value and improves organization's operations
 - Helps accomplish objectives
 - Systematic, disciplined evaluation
 - Improve effectiveness of risk management, control, and governance
- The Institute of Internal Auditors (IIA): an international professional association

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 **Purpose**

- Internal audit
 - “To enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight.” (Mission, IIA)
 - Well performed IAs identify areas of risk

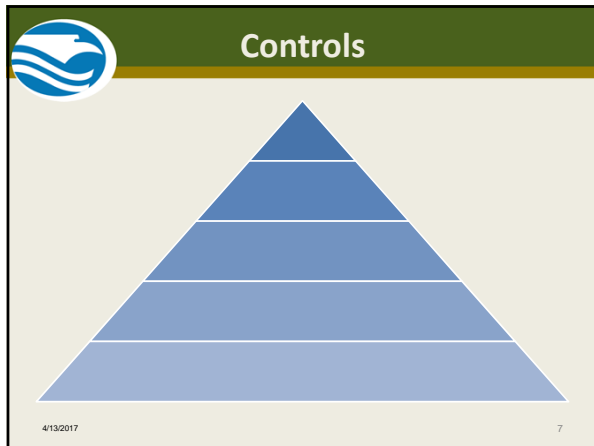
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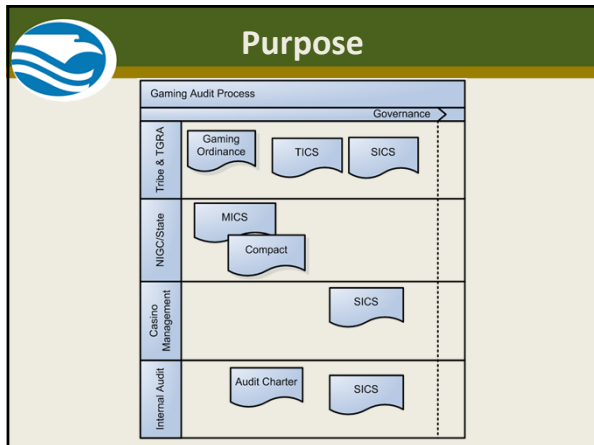
 **Exercise**

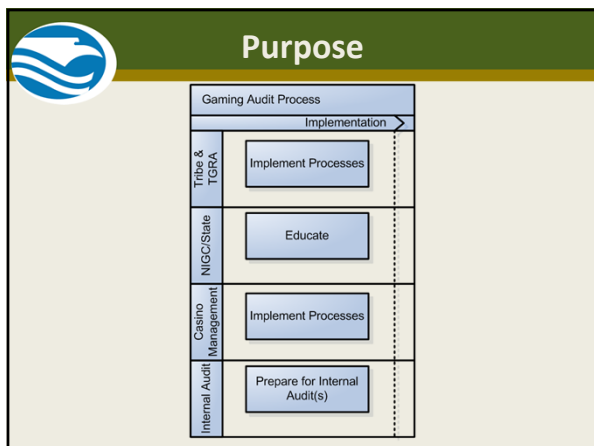
What controls govern the gaming operation?

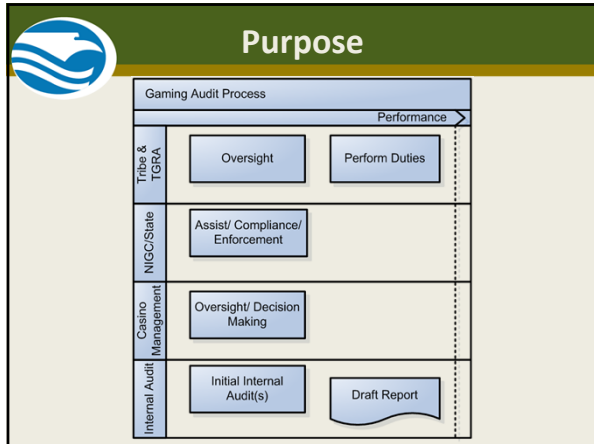


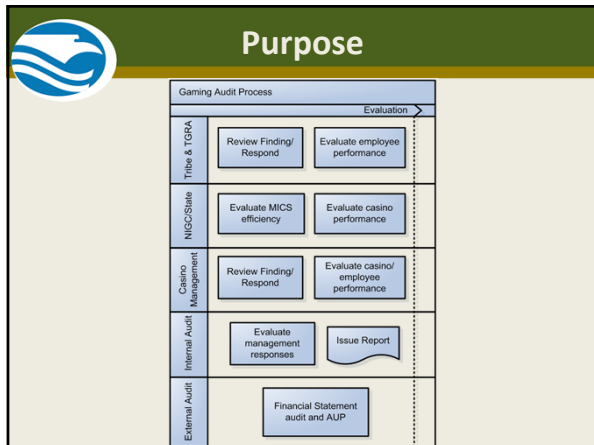
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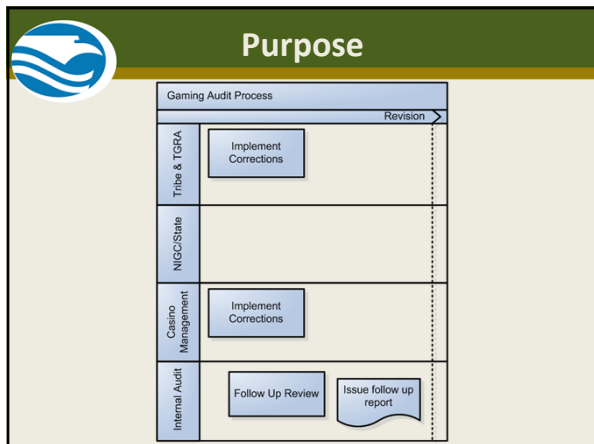


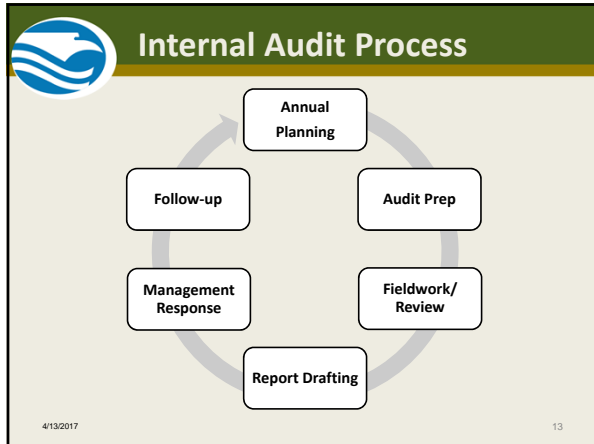













-
- Internal Audit Process**
- Internal audits involve three types of people
 - Those directly involved with the process being audited
 - The internal auditor(s)
 - Those using the assessment
- 4/13/2017 14


Ethics

What are ethics?


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 **Ethics**

- IIA ethics code of conduct include the following areas:
 - Integrity
 - Objectivity
 - Confidentiality
 - Competency



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 **Ethics**

Integrity




- Perform work with honesty, diligence, and responsibility
- Observe law and make disclosures expected by law and profession
- Keep it legal
- Respect and contribute to legitimate and ethical objectives of organization

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 **Ethics**

Objectivity




- Remain unbiased in activities and relationships
- Bribes and gifts are bad
- Disclose material facts which may distort reporting of activities under review

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 **Ethics**

Confidentiality

- Protect information acquired in course of duties
- Information should not be used for:
 - Personal gain
 - Contrary to law
 - Where detrimental to objectives of organization




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 **Ethics**

Competency

- Maintain or obtain necessary knowledge, skills, and experience
- Perform services in accordance with standards
- Continually improve proficiency, effectiveness, and quality of services



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 **Understanding Regulations**

MICS

- Determine applicable sections
- Seek clarifications where necessary


TICS

- Compare TICS to MICS; Review updates to TICS
- Understand thresholds and specific requirements

SICS


- Read policies prior to audit for increased efficiency
- Compare SICS to TICS/MICS

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 **Independence**


- Separation of functions
 - Ensures agent reviewing controlled activity is separate from those performing the work
- Obtained through the organizational reporting relationship
 - Internal audit should not be under gaming management direction

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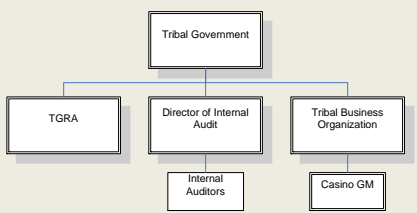
 **Independence**

- Independence creates objectivity
- Objectivity
 - Uses facts without distortion
 - Remains free of personal feeling and prejudices
- Allows unbiased performance
- Need to recognize threats to independence

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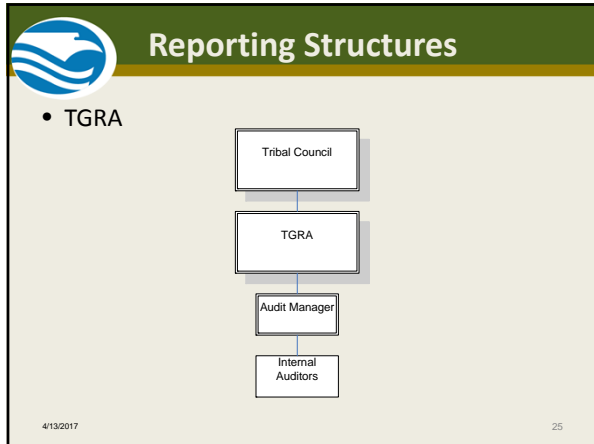
 **Reporting Structures**

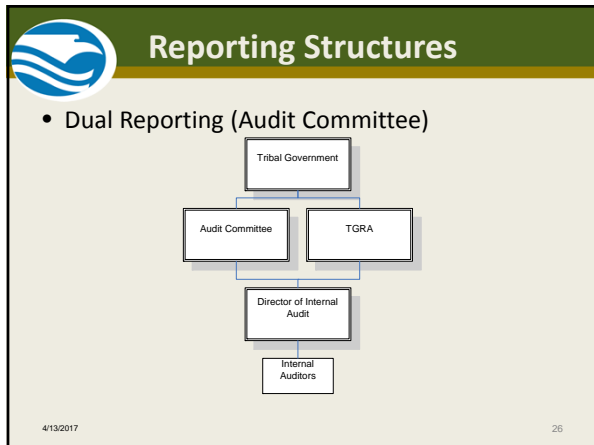
- Independent Audit Department

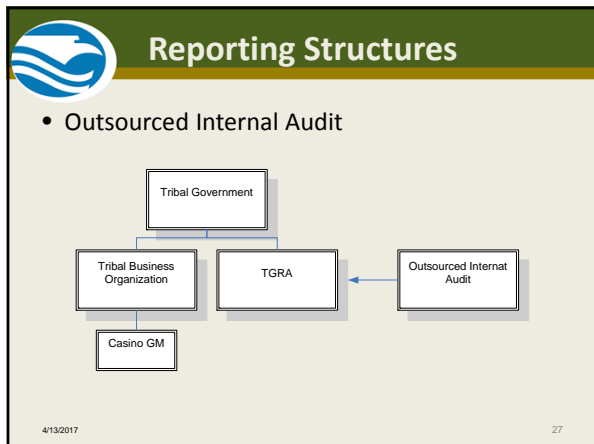



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graph TD; TG[Tribal Government] --- TGRA[TGRA]; TG --- DIA[Director of Internal Audit]; TG --- TBO[Tribal Business Organization]; DIA --- IA[Internal Auditors]; TBO --- CGM[Casino GM]
```

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Charter

Defines the Internal Audit Department's

- Purpose
- Authority
- Responsibility

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Charter

- Establishes IA's position within organization
- Outlines functional and reporting relation
- Authorizes access to
 - Records
 - Personnel
 - Physical property

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Gaming Ordinance

- May outline the requirements for internal audits to be performed

Audit Charter

- Establishes IA's position within organization
- Outlines functional and reporting relation
- Authorizes access to
 - Records, Personnel, and Physical property

Policies & Procedures

- Outlines specific auditor responsibilities



Audit types

COMPLIANCE

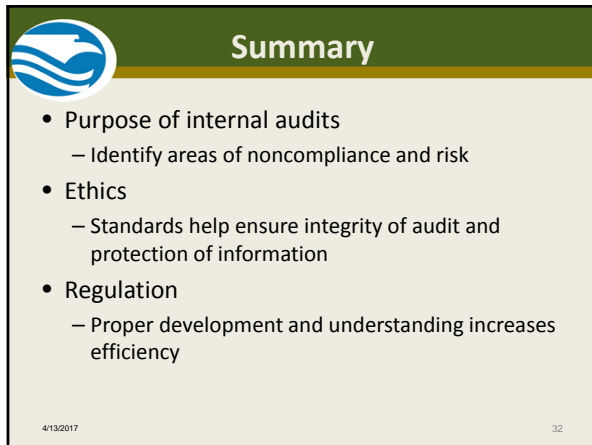
- Transparency
- Regulations
- Rules
- Policies
- LAW
- Standards
- Requirements

Performance

PROCESS IMPROVEMENT

- GROWTH
- BUSINESS PLAN
- PROJECT
- METHOD
- PLAY
- RESEARCH
- COST
- BENEFIT
- ANALYSIS
- GOAL
- EVA

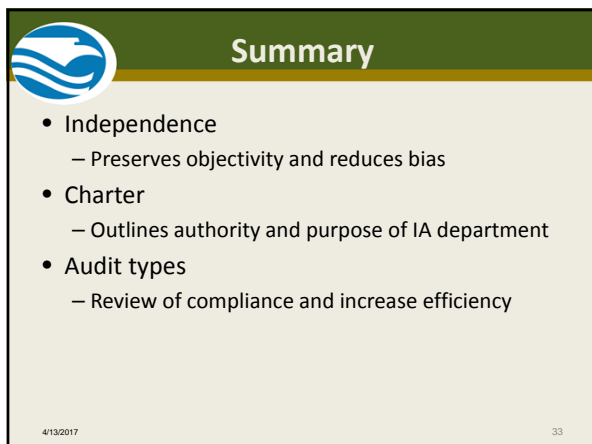
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Summary

- Purpose of internal audits
 - Identify areas of noncompliance and risk
- Ethics
 - Standards help ensure integrity of audit and protection of information
- Regulation
 - Proper development and understanding increases efficiency


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Summary

- Independence
 - Preserves objectivity and reduces bias
- Charter
 - Outlines authority and purpose of IA department
- Audit types
 - Review of compliance and increase efficiency

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Questions & Answers



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Glossary

Definitions from IIA International Standards for the Professional Practice of Internal Auditing unless otherwise noted.

The **Mission of Internal Audit** is to enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight. (IIA)

Add Value

The internal audit activity adds value to the organization (and its stakeholders) when it provides objective and relevant assurance, and contributes to the effectiveness and efficiency of governance, risk management, and control processes.

Adequate Control

Present if management has planned and organized (designed) in a manner that provides reasonable assurance that the organization's risks have been managed effectively and that the organization's goals and objectives will be achieved efficiently and economically.

Audit Program (Business Dictionary)

Step by step procedure laid down by the auditing firm that (depending upon the audit scope) must be followed by its accountant(s) in conducting an audit.

Assurance Services

An objective examination of evidence for the purpose of providing an independent assessment on governance, risk management, and control processes for the organization. Examples may include financial, performance, compliance, system security, and due diligence engagements.

Charter

The internal audit charter is a formal document that defines the internal audit activity's purpose, authority, and responsibility. The internal audit charter establishes the internal audit activity's position within the organization; authorizes access to records, personnel, and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities.

Code of Ethics

The Code of Ethics of The Institute of Internal Auditors (IIA) is Principles relevant to the profession and practice of internal auditing, and Rules of Conduct that describe behavior expected of internal auditors. The Code of Ethics applies to both parties and entities that provide internal audit services. The purpose of the Code of Ethics is to promote an ethical culture in the global profession of internal auditing.

Compliance

Adherence to policies, plans, procedures, laws, regulations, contracts, or other requirements

Conflict of Interest

Conflict of interest is any relationship that is, or appears to be, not in the best interest of the organization. A conflict of interest would prejudice an individual's ability to perform his or her duties and responsibilities objectively.

Consulting Services

Advisory and related client service activities, the nature and scope of which are agreed with the client, are intended to add value and improve an organization's governance, risk management, and control processes without the internal auditor assuming management responsibility. Examples include counsel, advice, facilitation, and training.

Control

Any action taken by management, the board, and other parties to manage risk and increase the likelihood that established objectives and goals will be achieved. Management plans, organizes, and directs the performance of sufficient actions to provide reasonable assurance that objectives and goals will be achieved.

Control Processes

The policies, procedures (both manual and automated), and activities that are part of a control framework, designed and operated to ensure that risks are contained within the level that an organization is willing to accept.

Core Principles for the Professional Practice of Internal Auditing

The Core Principles for the Professional Practice of Internal Auditing are the foundation for the International Professional Practices Framework and support internal audit effectiveness.

Engagement

A specific internal audit assignment, task, or review activity, such as an internal audit, control self-assessment review, fraud examination, or consultancy. An engagement may include multiple tasks or activities designed to accomplish a specific set of related objectives.

Engagement Objectives

Broad statements developed by internal auditors that define intended engagement accomplishments.

Engagement Opinion

The rating, conclusion, and/or other description of results of an individual internal audit engagement, relating to those aspects within the objectives and scope of the engagement.

Engagement Work Program

A document that lists the procedures to be followed during an engagement, designed to achieve the engagement plan.

Ethics (Webster's)

Behavior based on ideas about what is morally good and bad.

Fraud

Any illegal act characterized by deceit, concealment, or violation of trust. These acts are not dependent upon the threat of violence or physical force. Frauds are perpetrated by parties and organizations to obtain money, property, or services; to avoid payment or loss of services; or to secure personal or business advantage.

Governance

The combination of processes and structures implemented by the board to inform, direct, manage, and monitor the activities of the organization toward the achievement of its objectives.

Independence (NIGC)

The separation of functions to ensure that the agent or process monitoring, reviewing, or authorizing the controlled activity, function, or transaction is separate from the agents or process performing the controlled activity, function, or transaction

Independence (IIA)

The freedom from conditions that threaten the ability of the internal audit activity to carry out internal audit responsibilities in an unbiased manner

Information Technology Governance

Consists of the leadership, organizational structures, and processes that ensure that the enterprise's information technology supports the organization's strategies and objectives

Internal auditing

An independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. (IIA)

Internal Audit Activity

A department, division, team of consultants, or other practitioner(s) that provides independent, objective assurance and consulting services designed to add value and improve an organization's operations. The internal audit activity helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes.

Material Weakness (AICPA)

Deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Moral (Webster's)

Concerning what is right and wrong in human behavior.

Objectivity (IIA)

An unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made. Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others.

Objectivity (Webster's)

Expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations

Overall Opinion

The rating, conclusion, and/or other description of results provided by the chief audit executive addressing, at a broad level, governance, risk management, and/or control processes of the organization. An overall opinion is the professional judgment of the chief audit executive based on the results of a number of individual engagements and other activities for a specific time interval.

Performance audits (AICPA)

Provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

Risk

The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood.

Risk Management

A process to identify, assess, manage, and control potential events or situations to provide reasonable assurance regarding the achievement of the organization's objectives.

Significance

The relative importance of a matter within the context in which it is being considered, including quantitative and qualitative factors, such as magnitude, nature, effect, relevance, and impact. Professional judgment assists internal auditors when evaluating the significance of matters within the context of the relevant objectives.

Exercise #1

Governance of Controls

Instructions: Enter each word into the pyramid in order of controls hierarchy.

MICS

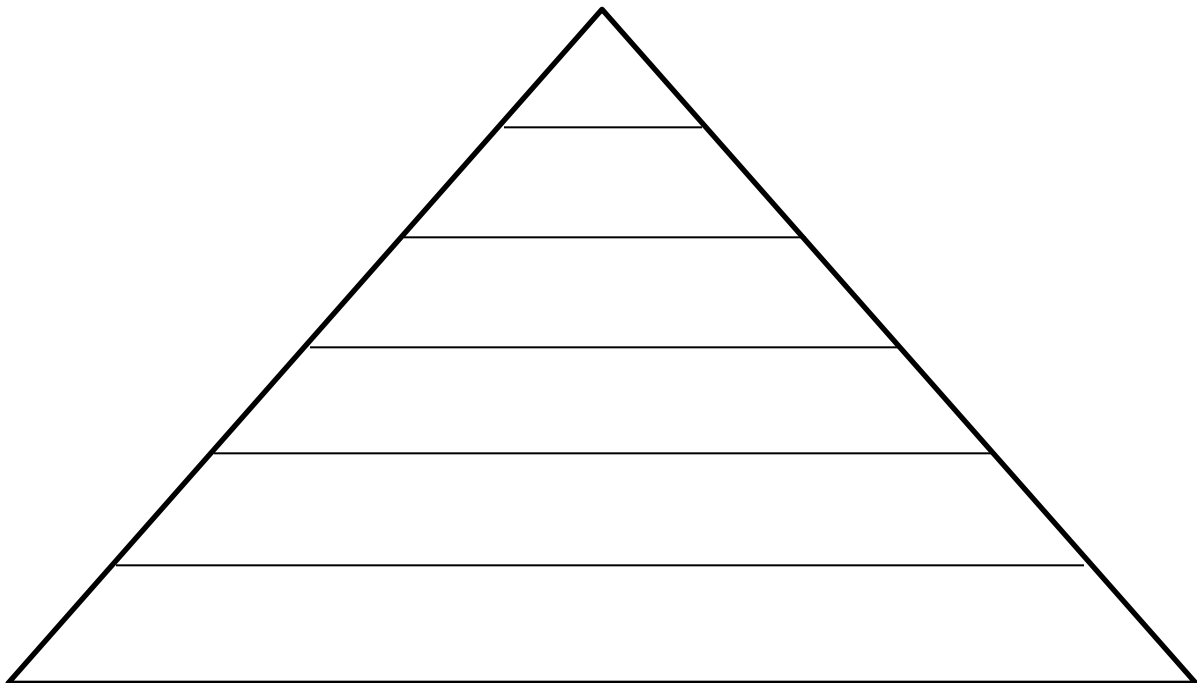
IGRA

SICS

State Compact

TICS

Gaming Ordinance



Gaming Audit Process

Governance

Implement

Performance

Evaluation

Revision

Tribe &
TGRA

Gaming Ordinance

TICS

SICS

Implement Processes

Oversight

Perform Duties

Review Finding/
Respond

Evaluate employee performance

Implement Corrections

NIGC/State

MICS

Compact

Educate

Assist/
Compliance/
Enforcement

Evaluate MICS efficiency

Evaluate casino performance

Casino Management

SICS

Implement Processes

Oversight/
Decision Making

Review Finding/
Respond

Evaluate employee performance

Implement Corrections

Internal Audit

Audit Charter

SICS

Prepare for Internal Audit(s)

Initial Internal Audit(s)

Draft Report

Evaluate management responses

Issue Report

Follow Up Review

Issue follow up report

External Audit

Financial Statement audit and AUP

Example Charter

(Modified from IIA model charter)

Introduction:

Internal Auditing is an independent and objective assurance and consulting activity that is guided by a philosophy of adding value to improve the operations of the [Tribe]'s gaming operation(s). It assists [Tribe/Casino] in accomplishing its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of the organization's governance, risk management, internal control.

Role:

The internal audit department is established by the [Audit Committee, TGRA, governing body]. The internal audit activity's responsibilities are defined by the [Audit Committee, TGRA, governing body] as part of their oversight role. The internal audit activity will adhere to [TGRA/etc.] relevant policies and procedures and the internal audit activity's standard operating procedures manual.

Authority:

The internal audit activity, is authorized full, free, and unrestricted access to any and all of [Tribe/Casino] records, physical properties, and personnel pertinent to carrying out any engagement. Internal audit will maintain strict accountability for confidentiality and safeguarding records and information which is obtained. All employees are requested to assist the internal audit activity in fulfilling its roles and responsibilities.

Organization:

The [Chief Audit Executive/Audit Manager/etc.] will report functionally to the [Audit Committee/TGRA/governing body/etc.] and administratively (i.e. day to day operations) to the [TGRA/etc.].

The [Audit Committee/TGRA/ governing body/etc.] will

- Approve the internal audit charter.
- Approve the risk based internal audit plan.
- Approve the internal audit budget and resource plan.
- Receive communications from the [Chief Audit Executive/Audit Manager/etc.] on the internal audit activity's performance relative to its plan and other matters.
- Approve decisions regarding the appointment and removal of the [Chief Audit Executive/Audit Manager/etc.].
- Approve the remuneration of the [Chief Audit Executive/Audit Manager/etc.].
- Make appropriate inquiries of management and the [Chief Audit Executive/Audit Manager/etc.] to determine whether there are inappropriate scope or resource limitations.

The [Chief Audit Executive/Audit Manager/etc.] will communicate and interact directly with the [Audit Committee/TGRA/governing body/etc.], including in executive sessions and between [Audit Committee/TGRA/governing body/etc.] meetings as appropriate.

Independence and Objectivity:

The internal audit activity will remain free from interference by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of a necessary independent and objective mental attitude.

Internal auditors will have no direct operational responsibility or authority over any of the activities

Example Charter

(Modified from IIA model charter)

audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity that may impair internal auditor's judgment.

Internal auditors will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all the relevant circumstances and not be unduly influenced by their own interests or by others in forming judgments.

The [Chief Audit Executive/Audit Manager/etc.] will confirm to the [Audit Committee/TGRA/ governing body/etc.], at least annually, the organizational independence of the internal audit activity.

RESPONSIBILITY:

The scope of internal auditing encompasses, but is not limited to, the examination and evaluation of the adequacy and effectiveness of the organization's governance, risk management, and internal controls as well as the quality of performance in carrying out assigned responsibilities to achieve the organization's stated goals and objectives. This includes:

- Evaluating risk exposure relating to achievement of the organization's strategic objectives.
- Evaluating the reliability and integrity of information and the means used to identify, measure, classify, and report such information.
- Evaluating the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations which could have a significant impact on the organization.
- Evaluating the means of safeguarding assets and, as appropriate, verifying the existence of such assets.
- Evaluating the effectiveness and efficiency with which resources are employed.
- Evaluating operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.
- Monitoring and evaluating governance processes.
- Monitoring and evaluating the effectiveness of the organization's risk management processes.
- Evaluating the quality of performance of external auditors and the degree of coordination with internal audit.
- Performing consulting and advisory services related to governance, risk management and control as appropriate for the organization.
- Reporting periodically on the internal audit activity's purpose, authority, responsibility, and performance relative to its plan.
- Reporting significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by the [Audit Committee/TGRA/ governing body/etc.].
- Evaluating specific operations at the request of the [Audit Committee/TGRA/ governing body/etc.] or [Tribe/Casino], as appropriate.

INTERNAL AUDIT PLAN:

At least annually, the [Chief Audit Executive/Audit Manager/etc.] will submit to the [Audit Committee, TGRA, governing body] an internal audit plan for review and approval. The internal audit plan will consist of a work schedule as well as budget and resource requirements for the next fiscal/calendar year. The [Chief Audit Executive/Audit Manager/etc.] will communicate the impact of resource limitations and significant interim changes to the [Audit Committee, TGRA, governing body].

The internal audit plan will be developed based on a prioritization of the audit universe using a risk-based

Example Charter

(Modified from IIA model charter)

methodology, including input of [Tribe/Casino] and the [Audit Committee, TGRA, governing body]. The [Chief Audit Executive/Audit Manager/etc.] will review and adjust the plan, as necessary, in response to changes in the organization's business, risks, operations, programs, systems, and controls. Any significant deviation from the approved internal audit plan will be communicated to the [Audit Committee, TGRA, governing body] through periodic activity reports.

REPORTING AND MONITORING:

A written report will be prepared and issued by the [Chief Audit Executive/Audit Manager/etc.] or designee following the conclusion of each internal audit engagement and will be distributed as appropriate. Internal audit results will also be communicated to the [Audit Committee, TGRA, governing body] and [Tribe/Casino].

The internal audit report may include management's response and corrective action taken or to be taken in regard to the specific findings and recommendations. Management's response, whether included within the original audit report or provided thereafter (i.e. within thirty days) by management of the audited area should include a timetable for anticipated completion of action to be taken and an explanation for any corrective action that will not be implemented.

The internal audit activity will be responsible for appropriate follow-up on engagement findings and recommendations. All significant findings will remain in an open issues file until cleared.

The [Chief Audit Executive/Audit Manager/etc.] will periodically report to [Tribe/Casino] and the [Audit Committee, TGRA, governing body] on the internal audit activity's purpose, authority, and responsibility, as well as performance relative to its plan. Reporting will also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by [Tribe/Casino] and the [Audit Committee, TGRA, governing body].

QUALITY ASSURANCE AND IMPROVEMENT PROGRAM:

The internal audit activity will maintain a quality assurance and improvement program that covers all aspects of the internal audit activity. The program will include an evaluation of the internal audit activity's conformance with applicable Internal Auditing standards and an evaluation of whether internal auditors apply the Code of Ethics. The program also assesses the efficiency and effectiveness of the internal audit activity and identifies opportunities for improvement.

Internal Audit Activity charter

Approved this _____ day of _____, _____.

[Chief Audit Executive /Audit Manager / etc.]

Chairman of the [Audit Committee, TGRA, governing body]

AUP-120 Internal
Audit:
A to Z Approach Course
Part 2



Internal Audit: A to Z Approach Part 2

Kirian Fixico,
Training Coordinator

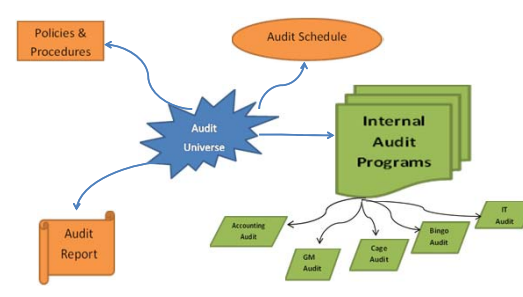


Session Outline

- Internal Audit Polices & Procedures
- Audit Schedule
- Audit Program

2


IA Policies & Procedures




The diagram illustrates the internal audit framework. At the center is the 'Audit Universe' (blue starburst). It is connected to 'Policies & Procedures' (orange box) and 'Audit Schedule' (orange oval) via double-headed arrows. A single-headed arrow points from 'Audit Universe' to 'Internal Audit Programs' (green stack of boxes). Below 'Internal Audit Programs', arrows point to six specific audit types: Accounting Audit, IGA Audit, CAGE Audit, Bingo Audit, and IT Audit. A single-headed arrow points from 'Internal Audit Programs' to 'Audit Report' (orange box).

3

IA Policies & Procedures




- Duties and Responsibilities
- Operating Procedures
- Planning and Performance
- Fieldwork Phase
- Internal Audit Work papers
- Management of Audit
- Quality Assurance and improvement program
- Approvals
- Internal Audit Approach to Fraud
- Audit of Computerized Systems




What is an Audit Schedule?




FY 2017 Audit Schedule




Audit No.	Audit Area	Start Date	End Date	Total Hours	# of Weeks	# Employees
17Title	Audit Area	10/7/2016	11/7/2016	360	3	3
17KCA-1	Audit Area	10/7/2016	10/24/2016	160	2	2
17KCA-2	Audit Area	11/10/2016	11/28/2016	160	2	2
17KCA-3	Audit Area	12/1/2016	12/12/2016	160	2	2
17KCA-4	Audit Area	12/15/2016	1/2/2017	160	2	2
17KCA-5	Audit Area	1/5/2017	1/19/2017	160	2	2
17KCA-6	Audit Area	1/19/2017	1/23/2017	40	1	1
17KCA-7	Audit Area	1/19/2017	1/23/2017	40	1	1
17KCA-8	Audit Area	1/26/2017	2/13/2017	360	3	3
17KCA-9	Audit Area	2/16/2017	3/19/2017	480	4	3
17KCA-10	Audit Area	4/6/2017	4/16/2017	160	2	2
17Title	Audit Area	4/12/2017	4/30/2017	360	3	3
17KCA-11	Audit Area	4/12/2017	4/23/2017	720	2	5
17KCA-11	Audit Area	4/26/2017	5/14/2017	360	3	2
17KCA-12	Audit Area	5/17/2017	5/28/2017	160	2	2
17KCA-13	Audit Area	6/7/2017	6/18/2017	240	2	3
17KCA-14	Audit Area	6/21/2017	6/25/2017	80	1	2
17KCA-15	Audit Area	6/28/2017	7/9/2017	240	2	3
17KCA-16	Audit Area	7/12/2017	7/18/2017	40	1	1
17KCA-17	Audit Area	7/19/2017	8/13/2017	480	4	3
17KCA-18	Audit Area	7/19/2017	7/30/2017	160	2	2
17KCA-19	Audit Area	8/16/2017	8/20/2017	40	1	1
17KCA-20	Audit Area	8/23/2017	9/23/2017	360	3	3
17Title	Audit Area	9/13/2017	10/1/2017	360	3	3
Year End FY2017	Year End Observations	9/30/2017	10/1/2017	144	2	9
Budgeted Audit Hours				5964	55	



What does this mean?

2080
2080


7



Exercise 1

	Budgeted Audit Hours			5,984
	Total Working Hours: 6 auditors x 40hr x 52 weeks		0	
Minus	Holidays: 13 days x 6 auditors x 8 hrs	0		
	Budgeted Training Hours: 6 auditors x 56 hrs	0		
	"Other" Hours: 6 auditors x 40 hrs	0		
	Estimated Leave Hours: 6 auditors (6 wks)	0	0	
	Total Available Hours			0
	Hours Remaining			0

8



Answer

	Budgeted Audit Hours			5,984
	Total Working Hours: 6 auditors x 40hr x 52 weeks		12,480	
Minus	Holidays: 13 days x 6 auditors x 8 hrs	624		
	Budgeted Training Hours: 6 auditors x 56 hrs	336		
	"Other" Hours: 6 auditors x 40 hrs	240		
	Estimated Leave Hours: 6 auditors (6wks)	1,440	2,640	
	Total Available Hours			9,840
	Hours Remaining			3,856

9



What is the Objective?

Detailed Example: *The purpose of this audit program is to conduct an internal control review of the Bingo Department, focusing on bingo card sales, statistical reports, bingo card inventory, cash controls, system software verification, logs, authorizations and signatures.*

What is the Objective?

Broad Example: *Our objective was to perform such observations and testing to measure compliance with the Tribal Internal Control Standards (TICS) and the National Indian Gaming Commission (NIGC) Regulation 25 CFR Part 543 MICS for class II gaming.*



What is the Scope?

It tells:

- When audit shall be conducted (start and end date)
- What/who are we going to audit
- Where the audit shall be done
- Audit period

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Detailed Scope

The internal audit department will audit the Bingo Department of the gaming operation. Internal Audit will begin the audit on March 6th, 2017 and end March 24th, 2017. Internal Audit will review process for all three shifts, perform inquires, observations, review and test relevant documents associated with the conduct of bingo for the period of February 1, 2016 – February 28, 2017.

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Broad Scope

The audit was conducted as a full scope review for processes in place from February 2016 through February 2017. Audit procedures included interviews with management and staff, observations of implementation of controls and examination of current source documentation utilized to comply with the aforementioned requirements.

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Exercise

Potential Hazards	Who is at Risk?	Existing Control Measures	What further action is necessary?	Action by whom?	Action by When?	Risk Rating

20

-
- Audit Criteria**
- Examples:
- Federal Agency/NIGC MICS
 - State Compact
 - TGRA TICS
 - Gaming Operations SICS
- 21



Procedures

Determine what procedures you will use to evaluate compliance:

- Inquiry
- Observation
- Test documents
- Questionnaire
- Examine Gaming Operation P & Ps
- Examine Gaming Operation Org chart
- Examine Gaming Operation job descriptions

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Create an Audit Program




23



Audit steps




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 **Step One Example**

Review Permanent File:

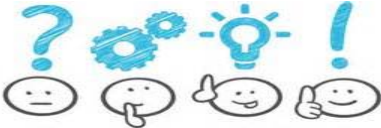
Review prior working papers, including policies/procedures, organizational charts, agreements, etc

25


 **Step Two Example**

Establish Criteria:

Take the standard and turn it into a question and figure out the best way to test compliance with the standard.

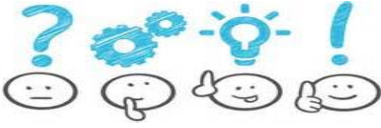


26

 **Criteria**

How would we establish a test question?

(5) *Authorization and signatures.*
(i) At least two agents must authorize, sign, and witness all manual prize payouts above \$1,200, or a lower threshold as authorized by management and approved by the TGRA.




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EXERCISE



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Summary


To summarize, to have a successful audit we need tools to help us achieve the objective. Such as:

- Internal Audit Polices & Procedures
- Audit Schedule
- Audit Program


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Questions & Answers



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 **Course Evaluation**

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciated and allow us to improve your experience



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Course Eval - Day 1: Internal Audit A to Z
When survey is active, respond at PollEv.com/nigc

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at PollEv.com/app
0 surveys underway

**Example Audit Schedule
FY2017**

Audit No.	Audit Area	Start Date	End Date	Total Hours	# of Weeks	# Employees
17KCA-1	Audit Area	10/7/2016	11/7/2016	360	3	3
17KCA-2	Audit Area	10/7/2016	10/24/2016	160	2	2
17KCA-3	Audit Area	11/10/2016	11/28/2016	160	2	2
17KCA-4	Audit Area	12/1/2016	12/12/2016	160	2	2
17KCA-5	Audit Area	12/15/2016	1/2/2017	160	2	2
17KCA-6	Audit Area	1/5/2017	1/16/2017	160	2	2
17KCA-7	Audit Area	1/19/2017	1/23/2017	40	1	1
17KCA-8	Audit Area	1/19/2017	1/23/2017	40	1	1
17KCA-9	Audit Area	1/26/2017	2/13/2017	360	3	3
17KCA-10	Audit Area	2/16/2017	3/19/2017	480	4	3
17KCA-11	Audit Area	4/6/2017	4/16/2017	160	2	2
17KCA-12	Audit Area	4/12/2017	4/30/2017	360	3	3
17KCA-13	Audit Area	4/12/2017	4/23/2017	720	2	5
17KCA-14	Audit Area	4/26/2017	5/14/2017	360	3	2
17KCA-15	Audit Area	5/17/2017	5/28/2017	160	2	2
17KCA-16	Audit Area	6/7/2017	6/18/2017	240	2	3
17KCA-17	Audit Area	6/21/2017	6/25/2017	80	1	2
17KCA-18	Audit Area	6/28/2017	7/9/2017	240	2	3
17KCA-19	Audit Area	7/12/2017	7/16/2017	40	1	1
17KCA-20	Audit Area	7/19/2017	8/13/2017	480	4	3
17KCA-21	Audit Area	7/19/2017	7/30/2017	160	2	2
17KCA-22	Audit Area	8/16/2017	8/20/2017	40	1	1
17KCA-23	Audit Area	8/23/2017	9/23/2017	360	3	3
17KCA-24	Audit Area	9/13/2017	10/1/2017	360	3	3
Year End FY2017	Year End Observations	9/30/2017	10/1/2017	144	2	9
	Budgeted Hours			5984	55	

Exercise #1 BUDGETING

The Internal Audit Department has 6 full-time employees and is trying to determine if it has available man-hours to accommodate the request to complete several other non-gaming audits.

Using Handout #1, determine and write in the amount of hours estimated to complete the gaming audits. Write this number in the “Less Budgeted Audit Hours”

Next determine the missing information. Then complete your calculations.

QUESTION:

1. Based on your calculations, will the IA Department be able to complete additional audits? _____

	Total Working Hours: 6 auditors x 40hr x _____ weeks				
Minus	Holidays: 13 days x 6 auditors x _____ hrs.				
	Training Hours: 6 auditors (56 hrs. each)				
	"Other" Hours: 6 auditors (1 week each)				
	Estimated Leave Hours: 6 auditors (6 weeks each)				
	Total Available Hours				
	Less Budgeted Audit Hours				
	Hours Remaining				

Internal Audit Department
Name of Audit
Audit Program

Objectives: *The purpose of this audit program is to conduct an internal control review of the Bingo Department, focusing on bingo card sales, statistical reports, bingo card inventory, cash controls, system software verification, logs, authorizations and signatures.*

Scope: *The internal audit department will audit the Bingo Department of the gaming operation. Internal Audit will begin the audit on March 6th, 2017 and end March 24th, 2017. Internal Audit will review process for all three shifts, perform inquires, observations, review and test relevant documents associated with the conduct of bingo for the period of February 1, 2016 – February 28, 2017.*

AUDIT STEPS TO BE COMPLETED	FINDING Y/N	COMPLETED BY	W/P REF
PLANNING/PREP:			
1. If this is a repeat or follow-up audit, review the Permanent File including policies/procedures, organizational charts, etc.			
2. Prepare engagement memo and obtain approval from the Internal Audit Director.			
3. Schedule an audit meeting with applicable management. Discussions held should be documented and include the following: <ul style="list-style-type: none"> • Timing of the audit • Audit objectives • Key contacts for the audit 			
PERFORMANCE:			
1. <i>Perform testing of transactions to evaluate the effectiveness of the controls. List general test steps to be performed.</i>			

AUDIT STEPS TO BE COMPLETED	FINDING Y/N	COMPLETED BY	W/P REF
2.			
3.			
4.			

AUDIT STEPS TO BE COMPLETED	FINDING Y/N	COMPLETED BY	W/P REF
5.			
WRAP-UP:			
1. Prepare Draft Report and submit for review.			
2. Submit work papers for manager review as audit steps are completed. This will help facilitate timely review.			
3. Clear all appropriate review notes.			
4. Complete Audit Report Checklist and include in the work papers.			
5. Schedule exit meeting with management.			
6. Conduct an exit meeting with auditee to discuss issues noted during the audit and obtain agreement on the issues. Discuss the recommendations, action plans and timelines for addressing the issue.			
7. Based on discussion make any necessary changes to the report and submit for appropriate review.			
8. Based on the review of management responses received determine if they are accepted by the Internal Audit Department.			
9. Insert Management Responses into Report			
10. Distribute Final Report after review is completed.			

End Of Audit Steps

§543.8 What are the minimum internal control standards for bingo?

(a) *Supervision.* Supervision must be provided as needed for bingo operations by an agent(s) with authority equal to or greater than those being supervised.

(b) *Bingo cards.* (1) Physical bingo card inventory controls must address the placement of orders, receipt, storage, issuance, removal, and cancellation of bingo card inventory to ensure that:

(i) The bingo card inventory can be accounted for at all times; and

(ii) Bingo cards have not been marked, altered, or otherwise manipulated.

(2) *Receipt from supplier.*

(i) When bingo card inventory is initially received from the supplier, it must be inspected (without breaking the factory seals, if any), counted, inventoried, and secured by an authorized agent.

(ii) Bingo card inventory records must include the date received, quantities received, and the name of the individual conducting the inspection.

(3) *Storage.*

(i) Bingo cards must be maintained in a secure location, accessible only to authorized agents, and with surveillance coverage adequate to identify persons accessing the storage area.

(ii) For Tier A operations, bingo card inventory may be stored in a cabinet, closet, or other similar area; however, such area must be secured and separate from the working inventory.

(4) *Issuance and returns of inventory.*

(i) Controls must be established for the issuance and return of bingo card inventory. Records signed by the issuer and recipient must be created under the following events:

(A) Issuance of inventory from storage to a staging area;

(B) Issuance of inventory from a staging area to the cage or sellers;

(C) Return of inventory from a staging area to storage; and

(D) Return of inventory from cage or seller to staging area or storage.

(ii) [Reserved]

(5) *Cancellation and removal.*

(i) Bingo cards removed from inventory that are deemed out of sequence, flawed, or misprinted and not returned to the supplier must be cancelled to ensure that they are not utilized in the play of a bingo game. Bingo cards that are removed from inventory and returned to the supplier or cancelled must be logged as removed from inventory.

(ii) Bingo cards associated with an investigation must be retained intact outside of the established removal and cancellation policy.

(6) *Logs.*

(i) The inventory of bingo cards must be tracked and logged from receipt until use or permanent removal from inventory.

(ii) The bingo card inventory record(s) must include:

(A) Date;

(B) Shift or session;

(C) Time;

(D) Location;

(E) Inventory received, issued, removed, and returned;

(F) Signature of agent performing transaction;

(G) Signature of agent performing the reconciliation;

(H) Any variance;

(I) Beginning and ending inventory; and

(J) Description of inventory transaction being performed.

(c) *Bingo card sales.* (1) Agents who sell bingo cards must not be the sole verifier of bingo cards for prize payouts.

(2) Manual bingo card sales: In order to adequately record, track, and reconcile sales of bingo cards, the following information must be documented:

(i) Date;

(ii) Shift or session;

- (iii) Number of bingo cards issued, sold, and returned;
- (iv) Dollar amount of bingo card sales;
- (v) Signature, initials, or identification number of the agent preparing the record; and
- (vi) Signature, initials, or identification number of an independent agent who verified the bingo cards returned to inventory and dollar amount of bingo card sales.

(3) Bingo card sale voids must be processed in accordance with the rules of the game and established controls that must include the following:

- (i) Patron refunds;
- (ii) Adjustments to bingo card sales to reflect voids;
- (iii) Adjustment to bingo card inventory;
- (iv) Documentation of the reason for the void; and
- (v) Authorization for all voids.

(4) Class II gaming system bingo card sales. In order to adequately record, track and reconcile sales of bingo cards, the following information must be documented from the server (this is not required if the system does not track the information, but system limitation(s) must be noted):

- (i) Date;
- (ii) Time;
- (iii) Number of bingo cards sold;
- (iv) Dollar amount of bingo card sales; and
- (v) Amount in, amount out and other associated meter information.

(d) *Draw*. (1) Controls must be established and procedures implemented to ensure that all eligible objects used in the conduct of the bingo game are available to be drawn and have not been damaged or altered. Verification of physical objects must be performed by two agents before the start of the first bingo game/session. At least one of the verifying agents must be a supervisory agent or independent of the bingo games department.

(2) Where the selection is made through an electronic aid, certification in accordance with 25 CFR 547.14 is acceptable for verifying the randomness of the draw and satisfies the requirements of paragraph (d)(1) of this section.

(3) Controls must be established and procedures implemented to provide a method of recall of the draw, which includes the order and identity of the objects drawn, for dispute resolution purposes.

(4) *Verification and display of draw.* Controls must be established and procedures implemented to ensure that:

(i) The identity of each object drawn is accurately recorded and transmitted to the participants. The procedures must identify the method used to ensure the identity of each object drawn.

(ii) For all games offering a prize payout of \$1,200 or more, as the objects are drawn, the identity of the objects are immediately recorded and maintained for a minimum of 24 hours.

(e) *Prize payout.* (1) Controls must be established and procedures implemented for cash or cash equivalents that address the following:

(i) Identification of the agent authorized (by position) to make a payout;

(ii) Predetermined payout authorization levels (by position); and

(iii) Documentation procedures ensuring separate control of the cash accountability functions.

(2) *Verification of validity.*

(i) Controls must be established and procedures implemented to verify that the following is valid for the game in play prior to payment of a winning prize:

(A) Winning card(s);

(B) Objects drawn; and

(C) The previously designated arrangement of numbers or designations on such cards, as described in 25 U.S.C. 2703(7)(A).

(ii) At least two agents must verify that the card, objects drawn, and previously designated arrangement were valid for the game in play.

(iii) Where an automated verification method is available, verification by such method is acceptable.

(3) *Validation.*

(i) For manual payouts, at least two agents must determine the validity of the claim prior to the payment of a prize. The system may serve as one of the validators.

(ii) For automated payouts, the system may serve as the sole validator of the claim.

(4) *Verification.*

(i) For manual payouts, at least two agents must verify that the winning pattern has been achieved on the winning card prior to the payment of a prize. The system may serve as one of the verifiers.

(ii) For automated payouts, the system may serve as the sole verifier that the pattern has been achieved on the winning card.

(5) *Authorization and signatures.*

(i) At least two agents must authorize, sign, and witness all manual prize payouts above \$1,200, or a lower threshold as authorized by management and approved by the TGRA.

(ii) Manual prize payouts above the following threshold (or a lower threshold, as authorized by management and approved by TGRA) must require one of the two signatures and verifications to be a supervisory or management employee independent of the operation of Class II Gaming System bingo:

(A) \$5,000 for a Tier A facility;

(B) \$10,000 at a Tier B facility;

(C) \$20,000 for a Tier C facility; or

(D) \$50,000 for a Tier C facility with over \$100,000,000 in gross gaming revenues.

(iii) The predetermined thresholds, whether set at the MICS level or lower, must be authorized by management, approved by the TGRA, documented, and maintained.

(iv) A Class II gaming system may substitute for one authorization/signature verifying, validating or authorizing a winning card, but may not substitute for a supervisory or management authorization/signature.

(6) Payout records, including manual payout records, must include the following information:

(i) Date and time;

(ii) Amount of the payout (alpha & numeric for player interface payouts); and

(iii) Bingo card identifier or player interface identifier.

(iv) Manual payout records must also include the following:

(A) Game name or number;

(B) Description of pattern covered, such as cover-all or four corners;

(C) Signature of all, but not less than two, agents involved in the transaction;

(D) For override transactions, verification by a supervisory or management agent independent of the transaction; and

(E) Any other information necessary to substantiate the payout.

(f) *Cash and cash equivalent controls.* (1) Cash or cash equivalents exchanged between two persons must be counted independently by at least two agents and reconciled to the recorded amounts at the end of each shift or session. Unexplained variances must be documented and maintained. Unverified transfers of cash or cash equivalents are prohibited.

(2) Procedures must be implemented to control cash or cash equivalents based on the amount of the transaction. These procedures must include documentation by shift, session, or other relevant time period of the following:

(i) Inventory, including any increases or decreases;

(ii) Transfers;

(iii) Exchanges, including acknowledging signatures or initials; and

(iv) Resulting variances.

(3) Any change to control of accountability, exchange, or transfer requires that the cash or cash equivalents be counted and recorded independently by at least two agents and reconciled to the recorded amount.

(g) *Technologic aids to the play of bingo.* Controls must be established and procedures implemented to safeguard the integrity of technologic aids to the play of bingo during installations, operations, modifications, removal and retirements. Such procedures must include the following:

(1) *Shipping and receiving.*

(i) A communication procedure must be established between the supplier, the gaming operation, and the TGRA to properly control the shipping and receiving of all software and hardware components. Such procedures must include:

(A) Notification of pending shipments must be provided to the TGRA by the gaming operation;

(B) Certification in accordance with 25 CFR part 547;

(C) Notification from the supplier to the TGRA, or the gaming operation as approved by the TGRA, of the shipping date and expected date of delivery. The shipping notification must include:

(1) Name and address of the supplier;

(2) Description of shipment;

(3) For player interfaces: a serial number;

(4) For software: software version and description of software;

(5) Method of shipment; and

(6) Expected date of delivery.

(ii) Procedures must be implemented for the exchange of Class II gaming system components for maintenance and replacement.

(iii) Class II gaming system components must be shipped in a secure manner to deter unauthorized access.

(iv) The TGRA, or its designee, must receive all Class II gaming system components and game play software packages, and verify the contents against the shipping notification.

(2) *Access credential control methods.*

(i) Controls must be established to restrict access to the Class II gaming system components, as set forth in §543.20, Information and Technology.

(ii) [Reserved]

(3) *Recordkeeping and audit processes.*

(i) The gaming operation must maintain the following records, as applicable, related to installed game servers and player interfaces:

(A) Date placed into service;

(B) Date made available for play;

(C) Supplier;

(D) Software version;

(E) Serial number;

(F) Game title;

(G) Asset and/or location number;

(H) Seal number; and

(I) Initial meter reading.

(ii) Procedures must be implemented for auditing such records in accordance with §543.23, Audit and Accounting.

(4) *System software signature verification.*

(i) Procedures must be implemented for system software verifications. These procedures must include comparing signatures generated by the verification programs required by 25 CFR 547.8, to the signatures provided in the independent test laboratory letter for that software version.

(ii) An agent independent of the bingo operation must perform system software signature verification(s) to verify that only approved software is installed.

(iii) Procedures must be implemented for investigating and resolving any software verification variances.

(iv) Internal audits must be conducted as set forth in §543.23, Audit and Accounting. Such audits must be documented.

(5) *Installation testing.*

(i) Testing must be completed during the installation process to verify that the player interface has been properly installed. This must include testing of the following, as applicable:

(A) Communication with the Class II gaming system;

(B) Communication with the accounting system;

(C) Communication with the player tracking system;

(D) Currency and vouchers to bill acceptor;

(E) Voucher printing;

(F) Meter incrementation;

(G) Pay table, for verification;

(H) Player interface denomination, for verification;

(I) All buttons, to ensure that all are operational and programmed appropriately;

(J) System components, to ensure that they are safely installed at location; and

(K) Locks, to ensure that they are secure and functioning.

(ii) [Reserved]

(6) *Display of rules and necessary disclaimers.* The TGRA or the operation must verify that all game rules and disclaimers are displayed at all times or made readily available to the player upon request, as required by 25 CFR part 547;

(7) TGRA approval of all technologic aids before they are offered for play.

(8) All Class II gaming equipment must comply with 25 CFR part 547, Minimum Technical Standards for Gaming Equipment Used With the Play of Class II Games; and

(9) Dispute resolution.

(h) *Operations.* (1) *Malfunctions.* Procedures must be implemented to investigate, document and resolve malfunctions. Such procedures must address the following:

(i) Determination of the event causing the malfunction;

(ii) Review of relevant records, game recall, reports, logs, surveillance records;

(iii) Repair or replacement of the Class II gaming component;

(iv) Verification of the integrity of the Class II gaming component before restoring it to operation; and

(2) *Removal, retirement and/or destruction.* Procedures must be implemented to retire or remove any or all associated components of a Class II gaming system from operation. Procedures must include the following:

(i) For player interfaces and components that accept cash or cash equivalents:

(A) Coordinate with the drop team to perform a final drop;

(B) Collect final accounting information such as meter readings, drop and payouts;

(C) Remove and/or secure any or all associated equipment such as locks, card reader, or ticket printer from the retired or removed component; and

(D) Document removal, retirement, and/or destruction.

(ii) For removal of software components:

(A) Purge and/or return the software to the license holder; and

(B) Document the removal.

(iii) For other related equipment such as blowers, cards, interface cards:

(A) Remove and/or secure equipment; and

(B) Document the removal or securing of equipment.

(iv) For all components:

(A) Verify that unique identifiers, and descriptions of removed/retired components are recorded as part of the retirement documentation; and

(B) Coordinate with the accounting department to properly retire the component in the system records.

(v) Where the TGRA authorizes destruction of any Class II gaming system components, procedures must be developed to destroy such components. Such procedures must include the following:

(A) Methods of destruction;

(B) Witness or surveillance of destruction;

(C) Documentation of all components destroyed; and

(D) Signatures of agent(s) destroying components attesting to destruction.

(i) *Vouchers*. (1) Controls must be established and procedures implemented to:

(i) Verify the authenticity of each voucher redeemed.

(ii) If the voucher is valid, verify that the patron is paid the appropriate amount.

(iii) Document the payment of a claim on a voucher that is not physically available or a voucher that cannot be validated such as a mutilated, expired, lost, or stolen voucher.

(iv) Retain payment documentation for reconciliation purposes.

(v) For manual payment of a voucher of \$500 or more, require a supervisory employee to verify the validity of the voucher prior to payment.

(2) Vouchers paid during a period while the voucher system is temporarily out of operation must be marked "paid" by the cashier.

(3) Vouchers redeemed while the voucher system was temporarily out of operation must be validated as expeditiously as possible upon restored operation of the voucher system.

(4) Paid vouchers must be maintained in the cashier's accountability for reconciliation purposes.

(5) Unredeemed vouchers can only be voided in the voucher system by supervisory employees. The accounting department will maintain the voided voucher, if available.

(j) All relevant controls from §543.20, Information and Technology will apply.

(k) Revenue Audit. Standards for revenue audit of bingo are contained in §543.24, Revenue Audit.

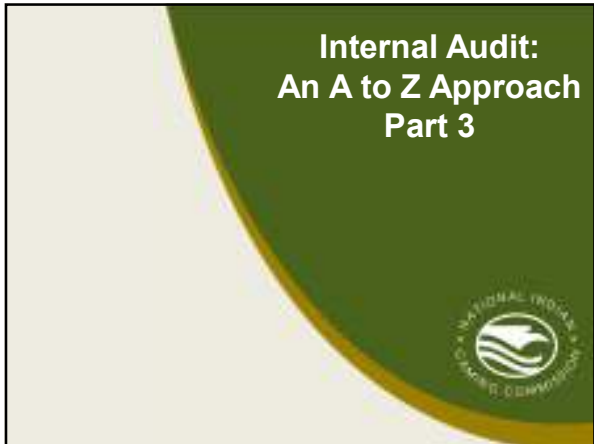
(l) *Variance*. The operation must establish, as approved by the TGRA, the threshold level at which a variance, including deviations from the mathematical expectations required by 25 CFR 547.4, will be reviewed to determine the cause. Any such review must be documented.

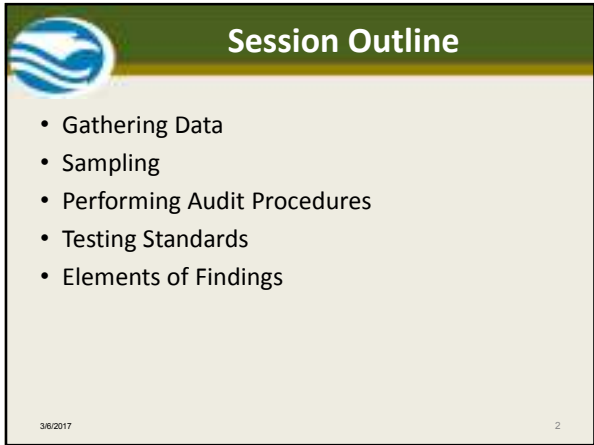
Exercise #2 Risk Assessment

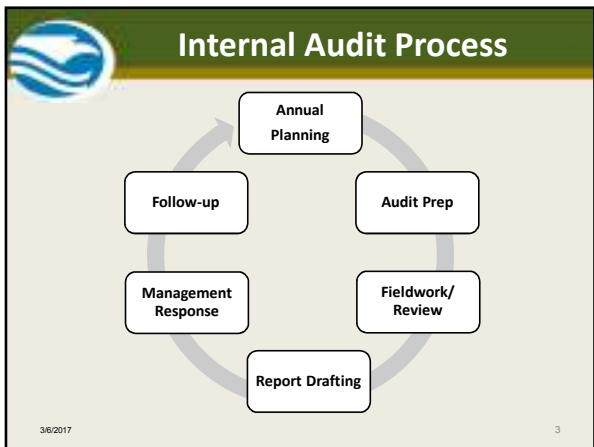
Potential Hazards	Who is at Risk?	Existing Control Measures	What further action is necessary?	Action by whom?	Action by When?	Risk Rating


AUP-120 Internal
Audit:
A to Z Approach Course
Part 3











 **Exercise**

- From the regulation
 - Determine the intent
 - Determine sufficient checklist question(s)
 - Determine method(s) of testing


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 **Data Gathering**

 **When do we start gathering data?**


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 **Data Gathering**

- Review of policies
 - Comparison of TICS to MICS & SICS to TICS
 - Use to develop program
 - Tailor checklists
 - Note outlined processes on checklists


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 **Data Gathering**

- Questionnaire
 - Completion of questionnaire for operations and individuals can be helpful
 - Could range from simple questions (high level overview) to questions on audit checklist




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 **Data Gathering**

- Review of prior audit reports
 - Provides assistance into issues the operation has experience in previous audits
 - Ensures findings were corrected and remain compliant


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 **Sampling**

Why do Internal Auditors need samples?




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 **Sampling**


- Auditors can not review all paperwork
- Samples are needed as representation of entire population
- Proper sampling
 - Provides evidence
 - Increases efficiency of audit

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 **Sampling**

- How do you determine samples?
 - Review the questions
 - What needs to be sampled
 - Sample size
 - Dates of samples


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Sampling

Ex.
§543.24 Auditing Revenue
(1) Bingo.
(i) At the end of each month, verify the accuracy of the ending balance in the bingo control log by reconciling it with the bingo paper inventory. Investigate and document any variance noted.


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Performing Audit Procedures

- Inquiry
 - Don't just read the questions
 - You want more than yes/no
 - Start high level
 - Clarify responses specific to intent of questions
 - Having an understanding of processes will help identify any issues
 - Trust but verify


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Performing Audit Procedures


- Auditing paperwork
 - It is essential to understand HOW the paperwork is completed
 - Review of policies is critical to ensure paperwork is completed properly
 - Explanation from someone responsible for completing paperwork is helpful in understanding process

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 **Performing Audit Procedures**


- Collecting work papers
 - Determine the necessary samples to retain
 - Everything
 - Specific doc and all exceptions
 - Only exceptions

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 **Performing Audit Procedures**

- Retaining Work Papers
 - Formats
 - Electronic and/or hard copies
 - Create system to identify work papers
 - Necessary when there is review of IA department
 - Referencing system will help identify relevant W/P
 - Department code & Question #
 - » CDC73 (Drop and Count question 73)
 - Department code and document number
 - » 104 (100 series for Accounting & doc #4)
 - Document 101 may be Accounting P&Ps


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 **Document Performance**


- What was reviewed?
 - What was discovered?
 - Do the TICS/SICS satisfy the requirement?
 - Is the process fully outlined?
 - Are the individuals involved identified?
 - Are thresholds/timeframes defined?




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 **Document Performance**


- What was observed?
 - What was discovered?
 - Who was doing it?
 - When was it done?
 - What were they doing?
 - Did it match what the policy said?




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 **Document Performance**


- What was examined?
 - What was discovered?
 - What docs needs to be completed for the process?
 - Was it completed?
 - Are all appropriate fields completed?
 - How many samples were reviewed?
 - How many exceptions are present?
 - Are there any required elements missing?
 - Does the supporting paperwork sufficiently document the records?




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 **Document Performance**

- Who did you talk to? (By title)
 - What did they say?
 - Does it match policy?
 - Did they identify any new forms of paperwork?
 - Did they identify anyone else that might be able to better explain a process?
 - Are they the SME for the questions you are asking?
 - When did you talk to them?



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Testing the Standards

- Review gathered data
- Review documented discoveries
- Compare information to checklist question
- Formulate conclusion
 - Were there exceptions?
 - Was there compliance?

Would an informed person would reach the same conclusion?


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Testing the Standards

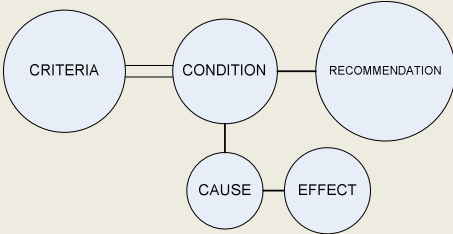
- What does the standard/question want to know?
 - 543.17(c)(4): Are **controls established** and **procedures implemented** to ensure security of the count and the count room to prevent unauthorized access, misappropriation of funds, forgery, theft, or fraud, to include the following:
 - Are functions performed by count team agents rotated on a routine basis?
 - Inquiry, observation, and review TICS/SICS & supporting docs

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Findings


Elements of a finding:



```

graph TD
  CRITERIA --- CONDITION
  CONDITION --- RECOMMENDATION
  CAUSE --- EFFECT
  CONDITION --- CAUSE
  
```

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Findings

- Criteria
 - How things should be
 - The authority (says who?)
 - Typically the standards for compliance audits

MICS
TICS
SICS


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Findings

- Condition
 - Current state found by auditors
 - What was discovered/Problem
 - Determined during the audit process


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Findings

- Cause
 - Why aren't things the way they should be?
 - May be several causes for a given finding
 - Possibilities may include:
 - Inadequate procedures
 - Procedures not being followed
 - Inadequate supervision
 - Unqualified/untrained employees


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 **Findings**


- Effect
 - This is the impact of the condition and cause
 - Compelling reason why it should be fixed

“WHY SHOULD THEY CARE?”


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 **Findings**

- Recommendation
 - Attempts to resolve
 - Condition
 - Cause




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 **Findings**

Based on an observation, it was determined that the cage and vault inventories are not counted independently by at least two agents at the end of each shift during which the activity took place.


What are we missing?

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 **Findings**

- **Material weakness**
 - A deficiency or combination of deficiencies in internal control
 - Suggests reasonable possibility that material misstatement of the Casino’s AFS would not be prevented, or detected and corrected, on a timely basis
 - Scope may be expanded when potential exists

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 **Findings**

SIGNIFICANCE

Material ↑


Material Weakness

↓ Immaterial

LIKELIHOOD


← Remote Probable →

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 **Summary**

- **Gathering Data**
 - Begins during audit prep
 - Continues in performing audit procedures
- **Sampling**
 - Sufficient evidence
- **Performing Audit Procedures**
 - Know what you are looking at
 - Ask effective questions

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Summary

- Testing Standards
 - Ensure program was followed
 - Be aware of things that seem off
- Elements of Findings
 - Cause and effect

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Questions & Answers



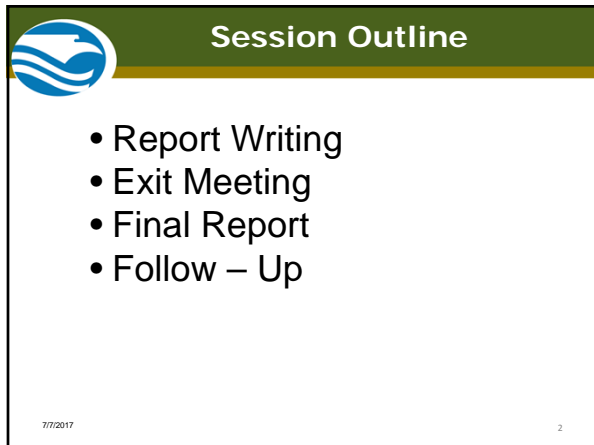
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Reference	Standard	Intent	Question(s)	Method(s) of Testing
§543.17(c)(4)	<p>(c) Count team. Controls must be established and procedures implemented to ensure security of the count and the count room to prevent unauthorized access, misappropriation of funds, forgery, theft, or fraud. Such controls must include the following:</p> <p>(4) Functions performed by count team agents must be rotated on a routine basis.</p>			
§543.8(b)(4)	<p>(4) Issuance and returns of inventory.</p> <p>(i) Controls must be established for the issuance and return of bingo card inventory. Records signed by the issuer and recipient must be created under the following events:</p> <p>(A) Issuance of inventory from storage to a staging area;</p> <p>(B) Issuance of inventory from a staging area to the cage or sellers;</p> <p>(C) Return of inventory from a staging area to storage; and</p> <p>(D) Return of inventory from cage or seller to staging area or storage.</p>			
§543.18(i)(2)	<p>(i) Cage and vault access. Controls must be established and procedures implemented to:</p> <p>(2) Limit transportation of extraneous items such as personal belongings, tool boxes, beverage containers, etc., into and out of the cage.</p>			
§543.10(c)(1)	<p>(c) Playing cards. (1) New and used playing cards must be maintained in a secure location, with appropriate surveillance coverage, and accessible only to authorized agents.</p>			

AUP-120 Internal
Audit:
A to Z Approach Course
Part 4










 **Report Writing**

NIGC


WHAT DID THEY SAY 

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 **Detailed Example**

The purpose of this audit program is to conduct an internal control review of the Bingo Department, focusing on bingo card sales, statistical reports, bingo card inventory, cash controls, system software verification, logs, authorizations and signatures.

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 **Broad Example:**

Our objective was to perform such observations and testing to measure compliance with the Tribal Internal Control Standards (TICS) and the National Indian Gaming Commission (NIGC) Regulation 25 CFR Part 543 MICS for class II gaming.

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Detailed Scope Example

The internal audit department will audit the Bingo Department of the gaming operation. Internal Audit will begin the audit on March 6th, 2017 and end March 24th, 2017. Internal Audit will review process for all three shifts, perform inquires, observations, review and test relevant documents associated with the conduct of bingo for the period of February 1, 2016 – February 28, 2017.

7/7/2017

7



Broad Scope Example

The audit was conducted as a full scope review for processes in place from February 2016 through February 2017. Audit procedures included interviews with management and staff, observations of implementation of controls and examination of current source documentation utilized to comply with the aforementioned requirements.


8



ELEMENTS OF FINDING EXERCISE

7/7/2017


9

 **Reporting Phase**


Exit Meeting:

- Schedule the meeting
- Who should attend
- Determine how you want to receive management response

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 **Schedule**

When should you send the draft report?



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 **WHO SHOULD ATTEND?**



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Draft Report



Make sure your work papers are in order to support the findings



Work Papers Exercise




Criteria:

(v) For manual payment of a voucher of \$500 or more, require a supervisory employee to verify the validity of the voucher prior to payment.

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Work Papers Exercise



Finding/ Exception:

Based on review of four days of bingo paperwork, we found that 10 manual payouts of over \$500 are not being authorized by a supervisory employee.

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Exit Meeting



The slide features a green header with the text "Exit Meeting" and a blue wave logo. The main content includes three overlapping speech bubbles in purple, orange, and blue. A separate speech bubble contains the text "Please discuss". A blue banner at the bottom left reads "Have your say".

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Exit Meeting

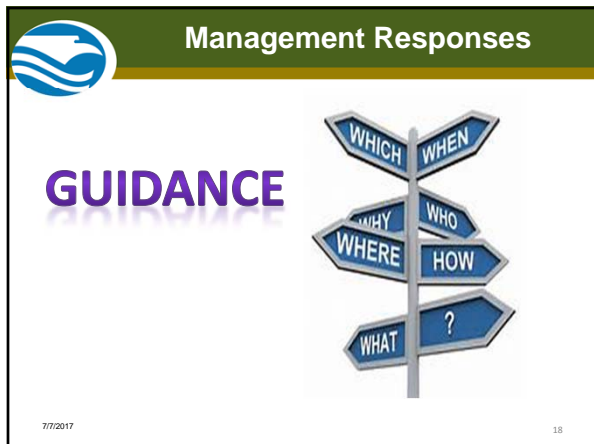


The slide features a green header with the text "Exit Meeting" and a blue wave logo. The main content is a cartoon illustration of five people sitting around a table in a meeting.

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Management Responses

GUIDANCE



The slide features a green header with the text "Management Responses" and a blue wave logo. The word "GUIDANCE" is written in large purple letters. To the right is a signpost with seven directional signs labeled: WHICH, WHEN, WHY, WHO, WHERE, HOW, and WHAT.

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 **Management Response**

#RESPONSETIME




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 **Final Report**


Remove findings???



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 **Final Report**

Insert management responses into report and distribute final report



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Follow-Up Audit

It is time for Internal Audit to follow-up with management to ascertain what improvements have been made.




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Follow-Up Audit

How is a follow-up audit performed?

- Original finding(s)
- Conduct test procedures
- Determine if corrective action was taken




7/7/2017

Follow-Up Audit

How do we test for a follow-up audit?




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 **Follow-Up Audit Report**

Include:

- Original criteria
- Original finding
- Follow-up finding
- Recommendations (if Applicable)

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 **Follow-Up Audit**

**REPORT
WRITING
EXERCISE**


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 **Wrap-Up**

**Place everything into
the permanent file**





7/7/2017 27

 **Summary**


To summarize, to have a successful audit we need tools to help us achieve the objective.

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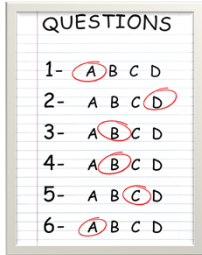
 **Questions**




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 **Knowledge Review**


- Be sure to include your name and email address
- Do your best
- Be on the lookout for the survey email 90 days from today



30

 **Course Evaluation**

- Provide an honest assessment of your experience
- Written suggestions and comments are greatly appreciated and allow us to improve your experience



31

Course Eval - Day 2: Internal Audit A to Z
When survey is active, respond at PollEv.com/nigc

Start the presentation to activate live content
If you see this message in presentation mode, install the add-in or get help at PollEv.com/app
© 0 surveys underway

Exercise

Finding Elements:	Bingo write- up for Performance Step#1
	<p><i>(5) Authorization and signatures.</i></p> <p>(i) At least two agents must authorize, sign, and witness all manual prize payouts above \$1,200, or a lower threshold as authorized by management and approved by the TGRA.</p> <p>TICS 543.8(e)</p>
	<p>Review 4 days of bingo paperwork (in Revenue Audit) to determine if bingo agents are following proper procedures for appropriate authorization by signature of payouts over \$1200</p> <p>Review policies and inquire with management to determine threshold level.</p> <p>Observe one payout per shift over \$1200 to determine if the payout is witnessed.</p>
	<p>Through a review of four days of bingo paperwork, we found the following:</p> <ul style="list-style-type: none"> • June 16, 2016 – one signature on bingo payout slip for the amount of \$2000 • September 28, 2016 – two payout slips with one signature on bingo payout slip in the amounts of \$2000 and \$5000 • November 02, 2016 - one signature on bingo payout slip in the amount of \$3000 • March 20, 2017 - one signature on bingo payout slip for the amount of \$2000 <p>Further, observed on March 20, 2017 that one person paid out the prize payout and signed the bingo payout slip.</p>
	<p>On 03/20/17, we interviewed the Bingo supervisor and were informed that the payout was witnessed from the office and there was every intention to sign the payout slip and it did not get done before paperwork went to Revenue Audit.</p>
	<p>Failure to two agents to authorize and witness payouts over \$1200 could result in fraudulent payouts.</p>
	<p>Based on review of four days of bingo paperwork, we found that the bingo prize payouts over \$1200 are not being authorized by two agents.</p>
	<p>It is recommended that the gaming operation ensure that bingo payouts over \$1200 are authorized by two agents.</p>

Exercise #2

Organization/ Department:	Bingo Department John Smith 03/16/17 Audit no. 35
TICS 543.8(e)	(v) For manual payment of a voucher of \$500 or more, require a supervisory employee to verify the validity of the voucher prior to payment.
	<p>Observed on February 28th, 2017 a manual payout of \$800 and the voucher was paid after two cashiers verified the voucher.</p> <p>Through a review of four days of bingo paperwork, we found the following:</p> <ul style="list-style-type: none"> • On June 16, 2016 – six manual payouts over \$500 • November 2, 2016 – one manual payout over \$500 • March 20, 2017 – ten manual payouts over \$500
Exception	Based on review of four days of bingo paperwork, we found that 10 manual payouts of over \$500 are not being authorized by a supervisory employee.
Do you agree with the Exception?	
Should the exception be in the Final Report?	
Why or Why Not?	

INTERNAL AUDIT REPORT

BINGO DEPARTMENT

ANNUAL REPORT FOR FISCAL YEAR ENDING
SEPTEMBER 30, 2017

TO:

FROM:

DATE: April 1, 2017

CC:

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AUDIT OBJECTIVES

The purpose of this audit program is to conduct an internal control review of the Bingo Department, focusing on bingo card sales, statistical reports, bingo card inventory, cash controls, system software verification, logs, authorizations and signatures.

AUDIT SCOPE

The internal audit department will audit the Bingo Department of the gaming operation. Internal Audit will begin the audit on March 6th, 2017 and end March 24th, 2017. Internal Audit will review process for all three shifts, perform inquires, observations, review and test relevant documents associated with the conduct of bingo for the period of February 1, 2016 – February 28, 2017.

FINDING 1

Criteria:

5) *Authorization and signatures.*

(i) At least two agents must authorize, sign, and witness all manual prize payouts above \$1,200, or a lower threshold as authorized by management and approved by the TGRA.

TICS 543.8(5)

Condition:

Based on review of four days of bingo paperwork, we found that the bingo prize payouts over \$1200 are not being authorized by two agents.

Recommendation:

It is recommended that the gaming operation ensure that bingo payouts over \$1200 are authorized by two agents.

Management Response:

Follow-Up

Recommendation:

Management Response:

INTERNAL AUDIT REPORT

CARD GAMES DEPARTMENT

ANNUAL REPORT FOR FISCAL YEAR ENDING
SEPTEMBER 30, 2012

TO:

FROM:

DATE: February 7, 2012

CC:

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Standards for Promotional Progressive Pots and Pools	page 3
Promotional Progressive Pots and Pools	page 3

AUDIT OBJECTIVES

The Casino Resort card games department in accordance with the audit procedures and scope defined below. The objective of the audit was to ensure that the applicable departments were in compliance with the Minimum Internal Control Standards (MICS), the System of Internal Control, generally accepted industry best practices and departmental and company Standard Operating Procedures (SOPs).

AUDIT PROCEDURES AND SCOPE

The audit procedures and the scope of the audit included the following:

1. Completion of the NIGC MICS Audit Checklists for Card Games and Drop and Count.
2. Unannounced observations of the card games department drop procedures on January 20, 2012.
3. Unannounced observations of soft count procedures on January 20, 2012, and subsequent transfer of drop proceeds into the cage accountability.
4. A review of the Poker Bad Beat Logs from December 2011, and the procedures for recording the promotional jackpot amounts in the general ledger for December 2011, and the procedures for posting the promotional jackpot amounts in the Card Room.
5. A review of the procedures for the control of cards.
6. A review of the Security's Poker Card Inventory Log dated June 2, 2011, through November 28, 2011.
7. A review of the Security's Poker Used Card Inventory Log dated June 2, 2011, through August 25, 2011.
8. A review of the Card Room's card inventory log book dated July 24, 2011, through February 6, 2012.
9. A tracing of the card games department revenues from source documents to the Financial Statement dated December 2011.
10. A review of the Card Room Main Bank reconciliation procedures on January 30, 2012.
11. A count of the Card Room Main Bank on January 30, 2012.
12. A review of the licenses of approximately fifteen (15) employees to ensure they had valid licenses in their possession.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

Based on the audit procedures performed and the scope of the audit, it was determined that the appropriate departments were operating in conformity with required and stated procedures except for the item noted in the following finding. This finding details an instance of non-compliance with the required MICS and the System of Internal Control, which was noted during this audit. This finding is followed by recommendation made by _____ to prevent future instances of non-compliance followed by management response to that recommendation.

Compliance with regulatory requirements is the responsibility of _____ Management. _____ responsibility is to ascertain proper compliance by testing and evaluating the appropriate departments as to whether adequate procedures and controls have been established and complied with, and then to report any findings, with recommendations, to Management in order that corrective action can be taken.

STANDARDS FOR DROP AND COUNT

No exceptions to the regulatory requirements were noted during this audit.

STANDARDS FOR SUPERVISION

No exceptions to the regulatory requirements were noted during this audit.

STANDARDS FOR PLAYING CARDS

No exceptions to the regulatory requirements were noted during this audit.

PLASTIC CARDS

No exceptions to the regulatory requirements were noted during this audit.

STANDARDS FOR SHILLS

This section was not applicable.

STANDARDS FOR RECONCILIATION FOR CARD ROOM BANK

1. MINIMUM INTERNAL CONTROL STANDARD (g) (1): The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

SYSTEM OF INTERNAL CONTROL PAGE #7: The Card Room Main Bank is counted and reconciled to the imprest balance by the incoming and outgoing Card Room Supervisors at the completion of each shift. The Card Room Main Bank is also counted each time a Table Games Supervisor or above, relieves the Poker Room Supervisor for his/her break and each time he/she returns from break.

FINDING: During observation and count of the Card Room Main Bank on January 30, 2012, it was noted that the day shift Card Room Supervisor had left for the day before the swing shift Card Room Supervisor had counted the Card Room Main Bank and was able to reconcile it against what the day shift Card Room Supervisor had documented as the ending shift count.

RECOMMENDATION: It was recommended that the VP of Table Games reiterates the requirement that both the incoming and outgoing Card Room Supervisors must count the Card Room Main Bank at the completion of each shift and reconcile their counts before the count sheet is signed by both Card Room Supervisors.

MANAGEMENT RESPONSE: [redacted] stated that he will, by February 13, 2012, reiterate the requirements for counting the Card Room Main Bank to all Card Room Supervisors.

STANDARDS FOR PROMOTIONAL POTS AND POOLS

No exceptions to the regulatory requirements were noted during this audit.

PROMOTIONAL PROGRESSIVE POTS AND POOLS

No exceptions to the regulatory requirements were noted during this audit.