



COQUILLE INDIAN TRIBE

3050 Tremont Street North Bend, OR 97459
Phone: (541) 756-0904 Fax: (541) 756-0847
www.coquilletribe.org

March 24, 2018

SENT VIA EMAIL ONLY

Vannice Doulou
National Indian Gaming Commission
Vannice_Doulou@nigc.gov

RE: 2018 Consultation Items
“Management” and “Sole Proprietary Interest”

Dear Ms. Doulou:

Dai’sla! I am the Chairperson of the Coquille Indian Tribe. I am sending you this correspondence in response to the NIGC’s 2018 tribal consultation letter. That letter references proposed regulatory changes that would cause real problems throughout Indian country.

The changes of concern are the proposed revisions to the definitions of “Management” (proposed as 25 CFR Part 502.25) and “Sole Proprietary Interest” (proposed as an addition to the Compliance and Enforcement regulations at 25 CFR Part 573). I would like to individually address each of these proposed revisions.

1. “Management”

a. The proposed definition states:

*2. Management includes but is not limited to, **planning, organizing directing, coordinating or controlling:***

(k) the supervision of construction or improvements.

(Emphasis added).

This definition would present significant real-world problems for tribes that rely on lending to financing the construction or improvement of their gaming

operations. It is common practice for construction project lenders to have controls on the disbursement of funds to ensure that construction is proceeding according to plans and that construction loan funds are properly applied. The definition of “management” should exclude these common construction loan practices.

- b. The proposed language also should include language that clearly authorizes lenders to enforce their rights under loan agreements if those rights do not otherwise constitute management activities.

2. “Sole Proprietary Interest”

The proposed definition of “Sole Proprietary Interest” raises a few issues:

- a. First, under subsection “a)”, the proposed regulation authorizes the NIGC to find a violation of the Sole Proprietary Interest standard based on only a single listed factor. However, it appears that some of these factors, alone, should not warrant such a finding.

Moreover, this language provides little predictability or guidance for tribes and lenders trying to negotiate a good faith transaction with affordable capital. Are all factors weighted equally? What facts would change the Chairperson’s opinion to rely on one factor versus all of them? The answers to these questions are unclear and could have a substantial chilling effect on financing opportunities for tribes. .

- b. Second, under (a)(7)(a), a proposed factor indicating a Sole Proprietary Interest violation is described as, “the provision of Tribal rights to the third party, including, but not limited to: *** , the third party’s access to records or financial information regarding the gaming operation or part thereof;”

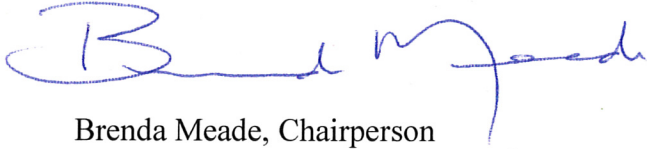
Lenders very frequently require tribal gaming borrowers to provide financial data related to gaming operations – this is basic due diligence that lenders always require. By making such a contractual provision a factor in this section, you will substantially raise the real or perceived costs of capital access and/or scare away lenders from gaming transactions throughout Indian country. Moreover, many financial institutions are required by law to report certain loan related information. This factor should either be eliminated or significantly amended.

- c. Finally, at a)(7)(c), a grant of a security interest in the gaming operation could be considered a factor in determining whether or not a tribe has a Sole Proprietary Interest. But it is extremely common for tribes to grant lenders security interests in multiple aspects of gaming operations. These security interests include things like: accounts, revenue, and equipment. By keeping this proposed rule as written the NIGC will surely scare multiple credible lenders away from Indian country

gaming projects and raise the cost of capital for those lenders that choose to remain in that space.

Thank you for the opportunity to submit comments on these proposed regulatory changes. If you have any questions regarding this matter, please contact me at (541) 756-0904.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenda Meade". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brenda Meade, Chairperson
Coquille Indian Tribe

Cc: Lael Echo-Hawk
Scott Crowell
Brett Kenney