

SUPPORTING STATEMENT
FOR RECORDKEEPING AND REPORTING REQUIREMENTS
NATIONAL ENVIRONMENTAL POLICY ACT

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, and the Council on Environmental Quality's (CEQ) implementing regulations, federal agencies are required to prepare (or cause to be prepared) environmental documents for agency actions that may have a significant impact on the environment. Under NEPA, an Environmental Assessment (EA) must be prepared when the agency action cannot be categorically excluded. The EA determines whether or not the management agreement has the potential to cause significant environmental effects. Based on the EA, the NIGC may determine that the action will not have a significant environmental impact and issue a Finding of No Significant Impact (FONSI). If the EA determines that the environmental impacts of a proposed contract approval will be significant, and Environmental Impact Statement (EIS) is prepared. (The categorical exclusion, EA, FONSI, and/or their supporting documents, will be singularly or collectively referred to herein as the "NEPA document(s)".)

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100-497, 25 U.S.C. 2701, *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or Commission) and set out a comprehensive framework for the regulation of gaming on Indian lands. The Act sets standards for the regulation of Indian gaming, including the responsibility of the NIGC Chair to review and approve third-party management contracts that involve the operation of tribal gaming facilities. The Commission has taken the

position that the NEPA process is triggered when a tribe and a potential contractor seek approval of a management contract under 25 U.S.C. 2711. Normally, an EA or EIS and its supporting documents are prepared by an environmental consulting firm and submitted to the Commission by the tribe. In the case of an EA, the Commission must independently evaluate the NEPA document, verify its content, and assume responsibility for the accuracy of the information contained therein. In the case of an EIS, the Commission directs and is responsible for the preparation of the NEPA document, but the tribe or potential contractor is responsible for paying for the preparation of the document. The information collected includes, but is not limited to, maps, charts, technical studies, correspondence from other agencies (federal, tribal, state, and local), and comments from the public.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information contained in an EA or EIS is used to ensure compliance with NEPA. The NIGC Chair uses these NEPA documents to determine whether there is a significant impact on the environment as a consequence of the proposed action.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

While the Commission encourages the public and other agencies to submit the information under this collection by compatible automated, electronic, and/or mechanical means, other agencies specifically request or mandate that the NEPA documents be in paper form.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The CEQ's NEPA regulations encourage the reuse of information "to reduce duplication and paperwork." 40 CFR § 1506.4. However, due to the highly individualized nature of the analysis conducted for NEPA compliance, most information will not be transferable. Where information in studies, such as regional impact studies (water, traffic, air) is relevant in another project, the Commission does not require that an additional study be conducted but instead encourages that the appropriate and all readily existing information be included as part of the NEPA document being prepared.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

None of the respondents meet the Small Business Administration's definition of a small business.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The Commission has taken the position that the collection of a NEPA document is required by law. If the information is not collected and the NIGC Chair was to approve a management contract without documenting and considering the environmental consequences of that agency action, the Commission could be subject to a legal challenge under NEPA and/or the Administrative Procedures Act.

As a general matter, a NEPA document is only collected once, unless the initial information collected becomes stale or unreliable due to the great length of time between when the initial information was collected and the final agency action is taken.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly:**

N/A.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:**

N/A.

- **requiring respondents to submit more than an original and two copies of any document:**

N/A.

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years:**

N/A

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study:**

N/A.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB:**

N/A.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use, or:**

N/A.

- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

N/A.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On July 1, 2019, a 60-notice containing the information collection renewals was published in the Federal Register allowing the public an opportunity to comment on the requirements. See 84 FR 31338 (July 1, 2019). The public comment period closed on August 1, 2019. No public comments were received.

In addition, the Commission reached out to 6 Tribal gaming operations to consult on the submission requirements contained in the regulations. Unfortunately, the Commission only received information from only 2 of these tribes, both located in California. Specifically, the Commission asked tribal gaming commissioners to provide annual hourly estimates of the Tribal labor that was required to fulfill the requirements, as well as any added cost estimates. More information from these consultations is provided below.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

Not applicable. The NIGC does not provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

In accordance with the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, some of the information collected and used in a NEPA document may be considered confidential and may be withheld from public disclosure.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable. No sensitive questions are asked.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item**

As stated in Item 8 above, the Commission consulted with 2 tribal gaming operations. In order to obtain tribal feedback, tribes were assured that information they provided would be held confidentially. Appropriate tribal gaming commission and/or operation personnel were asked how much time it took to maintain compliance with each information collection regulation requirement. The Commission was able to obtain annual hourly burden and added-cost estimates from 2 tribal operations. Using these annual hourly and cost figures, the Commission could calculate average hour and cost estimates and multiplied these averages by the total number of responses in order to produce the estimated annual total hours and total costs. The table below reflects these calculations.

ESTIMATED ANNUAL BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE HOURS PER RESPONSE	AVERAGE (WAGE) COST PER RESPONSE	TOTAL ANNUAL HOURS	TOTAL (WAGE) COST
EIS	1	Varies	1	16	\$800	16	\$800
EA	1	Varies	1	2.5	\$125	2.5	\$125
CATEX/ OTHER	6	1	6	4	\$200	24	\$1,200
TOTAL		Varies	8			42.5	\$2,125

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The total dollar cost for this information collection is the estimated amount that the tribes will pay to outside environmental consulting firms to prepare the NEPA documents for

submission to the Commission. This estimate is based on the average of the costs submitted by the consulted tribes, which was then multiplied by the number of annual respondents.

ESTIMATED ANNUAL BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSES PER YEAR	TOTAL ANNUAL RESPONSES	AVERAGE ANNUAL COSTS	TOTAL COSTS
EIS	1	1	1	\$256,000	\$256,000
EA	1	1	1	\$238,132	\$238,132
CATEX/ OTHER	6	1	6	\$0	\$0
TOTAL			8		\$494,132

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Commission determined its cost and burden hour estimates, inclusive of operational expenses, based on the workflows of the agency, and the functions specific to the receipt, recording, and analysis of the submissions. The wage rates are based on hourly compensation at the level of a GS-14/7.

ESTIMATED ANNUAL AGENCY BURDEN TOTALS

CFR CITE/ COLLECTION	NUMBER OF ANNUAL RESPONDENTS	FREQUENCY OF RESPONSE PER YEAR	TOTAL ANNUAL RESPONSES	REVIEW HOURS PER RESPONSE	TOTAL HOURS	HOURLY RATE	TOTAL AGENCY COSTS
EA/EIS	2	Varies	2	120	120	\$52.11	\$6,253
CATEX / OTHER	6	1	6	2	12	\$52.11	\$625.32
TOTAL		Varies	8		132		\$6,878

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

It should be noted at the outset that tribal gaming operations and their business practices are unique to each gaming Tribe and influenced by many local, state, and regional factors. Tribal gaming facilities vary in size and complexity and range from small truck stops to world-class casino resorts. The amount of time and resources that gaming tribes expend fulfilling regulatory requirements can vary dramatically and is further complicated by their varying levels of investment in, and adoption of, new technologies and technical expertise. For these reasons, estimates provided by a statistically insignificant group of rotating tribal contacts has limited value and it would be improper to claim to be able to extrapolate from this feedback any definitive trends.

It should also be noted that, in previous years, the NIGC did not include wage costs in its data but it does so now and will continue doing this in all future renewals.

As mentioned in item number 8, the Commission consulted with 2 tribal gaming financial directors and/or tribal gaming commissioners. Consultation with stakeholders is an important source of information on the burdens of information collections. NIGC notes that, due to the heterogeneity of respondents, it is difficult to develop a representative estimate of respondent burden hours. Nevertheless, based on this tribal feedback, the Commission has made the following adjustments to its estimated burdens:

- the estimated annual burden hour total has slightly increased, however, behind these numbers there is marked decline in EA/EIS burden hours and this is mainly due to two reasons: 1) the NEPA process for the construction of a gaming operation is sometimes triggered prior the NIGC action and, therefore, the NIGC is able to incorporate some of the time already invested in the NEPA process, and 2) there is a concomitant rise in

handling NEPA requirements under the Categorical Exclusion process which, generally requires less investment of time than an EA or an EIS.

- the estimated annual total cost has been significantly reduced and this is primarily due to the fact that the estimated average cost of an EIS has been reduced from \$7,304,277 to \$256,000. Add to this, based on information gained since the last renewal cycle, the number of estimated total annual EA/EIS responses has been reduced 3 to 2 per annum.

NIGC recognizes there are limitations with these modes of estimation and will continue to consider stakeholder consultation in the development of its estimated burden hours.

CHANGES FROM THE PREVIOUS COLLECTION

	Requested in this collection	Previously Approved Collection	Net Change
Annual Number of Responses	8	3	5
Annual Time Burden (Hr)	43	27	16
Annual Cost Burden (\$)	494,132	14,846,686	-14,352,554

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The information collected is published at the conclusion of the NEPA process by making the EA or EIS available to the public in places easily accessible to the public, including on the internet. Because NEPA documents usually contain complex analytical techniques, the Commission uses public information workshops to explain these techniques. These are ongoing information collections with no ending date.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19,
“Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.**

Not applicable. The NIGC certifies compliance with 5 CFR § 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This section is not applicable. Statistical methods are not being employed.