

cannot guarantee that we will be able to do so.

**Dianna Brink,**

*Acting Deputy State Director for Natural Resources.*

[FR Doc. E9-28867 Filed 12-3-09; 8:45 am]

BILLING CODE 4310-40-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-MB-2009-N254; [91200-1231-9BPP-L2]

#### Service Regulations Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on February 3, 2010, to identify and discuss preliminary issues concerning the 2010-11 migratory bird hunting regulations.

**DATES:** The meeting will be held February 3, 2010.

**ADDRESSES:** The Service Regulations Committee will meet at the Embassy Suites Hotel, Denver—International Airport, 7001 Yampa Street, Denver, CO (303) 574-3000.

**FOR FURTHER INFORMATION CONTACT:** Robert Blohm, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703-712), the Service regulates the hunting of migratory game birds. We update the migratory game bird hunting regulations, located at 50 CFR part 20, annually. Through these regulations, we establish the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. To help us in this process, we have administratively divided the nation into four Flyways (Atlantic, Mississippi, Central, and Pacific), each of which has a Flyway Council. Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on February 3, 2010, at 8:30 a.m. to identify preliminary issues concerning the 2010-11 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Department of the Interior (hereinafter Department) policy

regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation.

Dated: November 23, 2009.

**Paul R. Schmidt,**

*Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service.*

[FR Doc. E9-28987 Filed 12-3-09; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### The National Environmental Policy Act Procedures Manual

**AGENCY:** The National Indian Gaming Commission, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to provide an opportunity for public review and comment on the National Indian Gaming Commission (NIGC) draft manual containing policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, Executive Order 11514, as amended, and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA. Pursuant to CEQ regulations, the NIGC is soliciting comments on its proposed procedures from members of the interested public.

**DATES:** Comments and related material must be post marked no later than 45 days after publication of this notice.

**ADDRESSES:** Please submit your comments by only one of the following means: (1) By mail to: Brad Mehaffy, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (2) by hand delivery to: National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (3) by facsimile to: (202) 632-7066; (4) by e-mail to: [nepa\\_procedures@nigc.gov](mailto:nepa_procedures@nigc.gov); or (5) online at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bradley Mehaffy, NEPA Compliance Officer at the National Indian Gaming Commission: 202-632-7003 or by facsimile at 303-632-7066 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The NIGC encourages interested persons to submit written comments. Persons submitting information concerning the NEPA Procedures Manual should include their name, address, and other appropriate contact information. You may submit your information by one of the means

listed under **ADDRESSES**. If you submit information by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit information by mail and would like to know it was received, please enclose a stamped, self-addressed postcard or envelope. The NIGC will consider all comments received during the comment period.

#### Background

This manual will clarify policy and procedures to ensure the integration of environmental considerations into major Federal actions of the NIGC that trigger NEPA review. At present, the NIGC has identified only one type of major Federal action that it performs under the Indian Gaming Regulatory Act (IGRA) that triggers NEPA review—approving contracts for the management of Indian gaming facilities pursuant to 25 U.S.C. 2711. This manual clarifies the NEPA-related roles and responsibilities and establishes a framework for the preparation and consideration of appropriate NEPA documentation, thereby ensuring a balanced and systematic consideration of environmental impacts in the decision-making process of the NIGC.

The proposed manual includes processes for preparing Environmental Assessments, Findings of No Significant Impact, and Environmental Impact Statements. The NIGC proposes to use this manual in conjunction with NEPA, the CEQ regulations at 40 CFR 1500-1508, and other pertinent environmental regulations, Executive Orders, statutes, and laws developed for the consideration of environmental impacts of Federal actions.

This manual identifies several categories of actions taken by the NIGC that are categorically excluded from further NEPA review. In identifying these categories of actions, the NIGC relied on several environmental professionals' opinions and comparisons with other Federal agency actions that are categorically excluded.

A copy of this **Federal Register** publication, as well as the administrative record for the list of categorical exclusions, is available at <http://www.nigc.gov/Portals/0/NIGC%20Uploads/EPHS/projectsapproved/MANUAL07.pdf>.

A copy of the **Federal Register** publication is available at <http://www.regulations.gov>. The NIGC solicits public review of its draft NEPA Procedures Manual and will review and consider those comments before the manual is finalized.

## National Environmental Policy Act Procedures Manual Forward

This manual was prepared and intended for use by the National Indian Gaming Commission (NIGC) and those parties who seek approval of the NIGC in undertaking actions pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721. Specifically, NIGC personnel, Indian gaming proponents (Tribes), their management or development contractors, and those contractors/consultants involved in the development of environmental review documents must use this manual in order to ensure compliance with the applicable requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347. These procedures are adopted pursuant to the procedural and substantive requirements established by the White House Council on Environmental Quality (CEQ) in its NEPA implementing regulations, 40 CFR 1505.1 and 1507.3.

As of the publication date of this procedures manual, the NIGC has identified only one type of major Federal action it undertakes that requires review under NEPA—approving third-party management contracts for the operation of gaming activity under IGRA, 25 U.S.C. 2711, and the NIGC's implementing regulations, 25 CFR part 533. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA review (*See* Chapter 3); it may require the preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) (*See* Chapter 4); or it may require the preparation of an Environmental Impact Statement (EIS) and Record of Decision (ROD) (*See* Chapter 5). In any case, the proponents of the management contract will be expected to assist the NIGC develop the required NEPA documentation, primarily by paying for environmental consultants to gather information and prepare the required documentation.

The NIGC is aware that the preparation of NEPA documents can be expensive. By adopting this procedures manual, the NIGC hopes to reduce such costs by making clear its procedural and substantive requirements so that Indian Tribes and their management partners will know what is expected and can plan accordingly.

### Acronym List

BIA Bureau of Indian Affairs  
 CADD Computer Aided Design and Drafting  
 CATEX Categorically Excluded  
 CEQ Council on Environmental Quality  
 CFR Code of Federal Regulations

CZMA Coastal Zone Management Act  
 EA Environmental Assessment  
 EIS Environmental Impact Statement  
 EMS Environmental Management System  
 EO Executive Order  
 EPA Environmental Protection Agency  
 ESA Endangered Species Act  
 FOIA Freedom of Information Act  
 FONSI Finding of No Significant Impact  
 GIS Geographic Information System  
 IGRA Indian Gaming Regulatory Act  
 LOS Level of Service  
 MOU Memorandum of Understanding  
 NEPA National Environmental Policy Act  
 NHPA National Historic Preservation Act  
 NIGC National Indian Gaming Commission  
 NOA Notice of Availability  
 NOI Notice of Intent  
 OGC Office of General Council  
 POC Point of Contact  
 ROD Record of Decision  
 SHPO State Historic Preservation Office(r)  
 SOW Scope of Work  
 THPO Tribal Historic Preservation Office(r)

### Chapter 1: Introduction

**1.1 Purpose.** This manual provides National Indian Gaming Commission (NIGC) policy and procedures to ensure agency compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations for implementing the provisions of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4321–4347, 40 Code of Federal Regulations (CFR) parts 1500–1508 and other related statutes and directives.

**1.2 Distribution.** Notice of adoption and availability of this manual is distributed to all NIGC Directors and the General Counsel for distribution to appropriate NIGC personnel. The manual is available to Indian Gaming proponents, environmental consultants, the public, and other interested parties in electronic form. The manual will be located for viewing and downloading at <http://www.nigc.gov> by clicking on the link to the Environmental, Public Health and Safety page. If the public does not have access to the Internet, they may obtain a computer disc containing the manual or a paper copy by contacting the NEPA Compliance Officer at (202) 632–7003 or in writing at 1441 L Street, NW., Suite 9100, Washington, DC 20005. The NIGC reserves the right to charge a fee equal to the reproduction costs.

**1.3 Cancellation.** (SECTION RESERVED)

**1.4 Authority.** NEPA and its implementing regulations, promulgated by CEQ in accordance with Executive Order (E.O.) 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991 (sections 2(g) and 3(h)), May 24, 1977, establish a broad national policy

to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, sometimes called “action-forcing” provisions (40 CFR 1500.1(a), 1500.3, and 1507) on how to implement the goals of NEPA. The major provisions include the requirement to use a systematic, interdisciplinary approach (section 102(2)(A)) and develop implementing methods and procedures (section 102(2)(B)). Section 102(2)(C) requires detailed analysis for proposed major Federal actions significantly affecting the quality of the human environment, providing authority to prepare environmental impact statements (EISs).

**1.5 Policy.** It is the NIGC's policy to:

**1.5.1** Comply with the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to NIGC actions. The NIGC furthermore shall provide guidance designed to enhance and protect the national, Tribal, State and local environmental quality that may be impacted by NIGC actions;

**1.5.2** Seek and develop partnerships and cooperative agreements with other Federal, Tribal, State and local organizations/departments/agencies early in the NEPA process;

**1.5.3** Ensure that NEPA compliance and its documentation includes public involvement. Public involvement shall be sought during the appropriate stages of the NEPA process. Public involvement also includes disclosing information in a timely fashion to assist in the public's understanding of NIGC actions and impacts associated with those actions;

**1.5.4** Interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered by the NIGC, including IGRA, in accordance with sections 101 and 102 of NEPA;

**1.5.5** Consider the environmental factors and potential impacts of Tribal proposals and NIGC actions;

**1.5.6** Consult and coordinate with, and consider policies and procedures of other Federal, tribal, State and local organizations/departments/agencies;

**1.5.7** Employ a systematic and interdisciplinary approach to NEPA compliance and documentation prior to taking a major Federal action, such as approving a third-party management contract.

**1.6 General Responsibilities.** All NIGC officials (including the NIGC

Chairman, NEPA Compliance Officer, and other NIGC staff) responsible for making decisions are also responsible for taking the requirements of NEPA into account in those decisions.

**1.7 Scope.** The NEPA process evaluates, identifies, and addresses impacts of the NIGC's actions on the human environment, including but not limited to noise, socioeconomic factors, land uses, air quality, and water quality. Chapter 2 of this manual presents an overview of the NEPA process. Depending upon the context and potential impacts, NEPA processes can differ. Chapter 3 of this manual addresses those types of NIGC actions that do not normally require preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS), called categorical exclusions, absent extraordinary circumstances. Chapters 4 and 5 of this manual outline the processes for preparing EAs and EISs. These procedures apply to classes of NIGC actions that have or may have a significant impact on the human environment. Appendix A, "Environmental Impact Categories," presents a list of environmental resource categories to be evaluated in all EAs or EISs prepared for or submitted to the NIGC. Appendix B contains a draft Memorandum of Understanding that outlines the roles and responsibilities of cooperating agencies. The draft shall be used as a template. Appendix C provides Third Party Contracting guidance.

## 1.8 Definitions

**1.8.1** The terminology used in the CEQ regulations (*See* 40 CFR part 1508) and title 49 of the United States Code is applicable.

**1.8.2** *Controversial* means a substantial dispute exists as to the size, nature, or effect of the proposed action. The effects of an action are considered highly controversial when a reasonable disagreement exists over the proposed action's/project's risk of causing environmental effects. Opposition of this nature from Federal, tribal, State, or local agencies/organizations or by a substantial number of persons affected by the proposed action should be considered in determining whether or not a reasonable disagreement exists.

**1.8.3** *Human environment* shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and

natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**1.8.4** *Reasonable alternatives* means those alternatives that meet the purpose and need statement. In some cases, where there is a consensus among all interested parties regarding the proposed action, other alternatives are not necessary. (*See* CEQ Guidance Memo, "Emergency Actions and NEPA," dated September 8, 2005, and Section 102(2)(E) of NEPA). The NIGC may consider economics, technical feasibility, and agency statutory missions when establishing the range of reasonable alternatives studied in an EA or EIS (*See* 40 CFR 1505.2(b)).

**1.8.5** *Proposed action(s)* can take two different forms. The first are proposed actions that the NIGC is initiating and will undertake on its own. These are actions where the NIGC will be solely responsible for analyses and documentation of the environmental impacts. The second are actions where a tribe is requesting the NIGC take some action. In cases where the tribe is requesting the NIGC take an action, the tribe will be involved in the analyses and documentation of the environmental impacts.

**1.8.6** *Scoping* is a process used to determine the extent of analyses to be contained within an environmental impact statement or environmental assessment (*See* 40 CFR 1508.25). The process shall include gathering information on the range of alternatives to be studied, impacts associated with those alternatives, and information regarding the methodologies used to identify the impacts, from other Federal agencies, State/local/tribal agencies, other interested parties and the public. This definition and process does not apply to the scope (size, capacity, or scale) of the project being proposed by a Tribe.

**1.9** *Applicability.* The provisions of this manual and the CEQ regulations apply to major Federal actions by the NIGC that may affect the quality of the human environment. These actions may be directly undertaken by the NIGC or where the NIGC has sufficient control and responsibility to condition approvals of a non-Federal entity.

As of the publication date of this procedures manual, the NIGC has identified only one type of major Federal action it undertakes that requires review under NEPA—approving third-party management contracts for the operation of gaming activity under IGRA, 25 U.S.C. 2711, and the NIGC's implementing

regulations, 25 CFR part 533. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA review (*See* chapter 3); it may require the preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) (*See* chapter 4); or it may require the preparation of an Environmental Impact Statement (EIS) and Record of Decision (ROD) (*See* chapter 5). In any case, the proponents of the management contract will be expected to assist the NIGC develop the required NEPA documentation, primarily by paying for environmental consultants to gather information and prepare the required documentation. The procedures in this manual shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date, except that this manual does not apply to decisions made and draft or final environmental documents issued prior to the effective date of this manual.

## 1.10 Section Reserved

### Chapter 2: The NEPA Process

**2.1** *Introduction.* This chapter will provide guidance to the responsible NIGC official (NEPA Compliance Officer), approving official (NIGC Chairman), and other NIGC decision makers in the NEPA process.

**2.2** *The relationship between the NIGC and NEPA.* It is the responsibility of the NIGC to regulate Indian gaming in accordance with the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701–2721. It is important that the NIGC comply with NEPA and other environmental laws/regulations/orders during its administration of these responsibilities. Compliance with NEPA and other environmental laws/regulations/orders will ensure that the NIGC makes informed decisions prior to taking an action. It also goes to the furtherance of the NIGC's policies outlined in chapter 1.

**2.3** *Application of NEPA to NIGC decisions/actions.* In accordance with NEPA, environmental issues shall be identified and considered early in the process for reviewing a proposed management contract or other applicable action. The NIGC shall use a systematic, interdisciplinary approach. As appropriate, NIGC shall also involve local communities and coordinate with agencies and governmental organizations. Environmental permits and other forms of approval, concurrence, or consultation may be required, often from other agencies.

Awareness of any applicable permit application and other review process requirements should be included in the planning process to ensure that necessary information is collected and provided to the permitting or reviewing agencies in a timely manner. This is especially true if applicable laws, regulations, or executive orders specify timeframes for these processes. Tribes/contractors or consultants should prepare a list noting all obvious environmental resources the Tribe's proposed action and alternatives would affect, including specially protected resources. Tribes/contractors or consultants should complete these tasks at the earliest possible time during project planning to ensure full consideration of all environmental resources and facilitate NIGC's NEPA process.

#### 2.4 Levels of NEPA Review

2.4.1 There are three (3) levels of NEPA review. The level of NEPA review will be dependent on the type and potential impacts of the action being taken. The types of actions taken by the NIGC will be:

2.4.1.1 An action that "normally requires an environmental impact statement [EIS]" (40 CFR 1501.4(a)(1));

2.4.1.1.1 An EIS is required when an Environmental Assessment (EA) has been done for a proposed action and the impacts of that action will exceed the applicable threshold of significance for any resource category and those impacts cannot be mitigated to a level below the threshold of significance. The threshold of significance for any resource category must be clearly identified within the EA. If the NIGC anticipates that significant impacts will result from a proposed action, it can elect to prepare an EIS without first developing an EA. The NIGC may issue its Record of Decision (ROD) 30 days following the EPA's publication in the **Federal Register** of the NOA of the Final EIS. The ROD represents the agency's official decision on the proposed action. The ROD must include all appropriate mitigation measures, as discussed in the Final EIS. (See also Section 5.12 of this manual).

2.4.1.2 An action that is subject to NEPA but does not qualify for a CATEX (See Chapter 3) or warrant the preparation of an EIS requires the preparation of an Environmental Assessment (EA).

2.4.1.2.1 An EA is not required if the NIGC has elected to prepare an EIS on the proposed action. An EA is appropriate when the NIGC believes that impacts of the proposed action will not result in impacts that meet or

exceed the threshold of significance for any impacted resource category. When an EA is prepared and it is determined that the proposed action's impacts will not exceed the threshold of significance, the responsible NIGC official will prepare a Finding Of No Significant Impact (FONSI) to be issued by the NIGC Chairman. The FONSI must include all mitigation measures identified in the EA and required to avoid, eliminate, or reduce the impacts of the proposed action. The FONSI is the official NIGC determination that the proposed action will not result in any significant impacts to the human environment. It does not represent the agency's decision to implement or approve the proposed action.

2.4.1.3 An action that "normally does not require either an environmental impact statement or an environmental assessment is categorically excluded" (40 CFR 1501.4(a)(2));

2.4.1.3.1 A categorical exclusion (CATEX) identifies a group of actions that typically will not have a significant individual or cumulative impact on the human environment. Unless the proposed action involves an extraordinary circumstance (See Section 2.1.3.1.4 of this manual), an EIS or EA is not required.

2.4.1.3.2 An action that is typically categorically excluded may or may not have to be documented. The NIGC has determined which types of CATEX actions will be documented and which will not (See Chapter 3).

#### 2.5 Activities Not Subject to NEPA

2.5.1 There are some NIGC activities that for NEPA purposes do not meet the traditional meaning of "Federal actions" and therefore are not subject to NEPA review:

2.5.2 *Advisory Actions:* When the NIGC takes an action that is advisory in nature, the requirement to comply with NEPA does not apply. As a result, a CATEX, EA or EIS is not required. However, if the NIGC knows or anticipates that a subsequent Federal action that is subject to NEPA might occur, it must point that fact out in the advisory action. The following are typical actions taken by the NIGC that are advisory in nature:

2.5.2.1 NIGC's Office of General Counsel issuance of Indian Lands opinions;

2.5.2.2 NIGC's Office of General Counsel issuance of game classification opinions;

2.5.2.3 NIGC's Office of General Counsel issuance of advisory opinions regarding whether a contract is a management contract requiring the

NIGC Chairman's approval or violates IGRA's sole proprietary interest requirement.

2.5.3 *Enforcement Actions:* The following NIGC actions are administrative enforcement actions that are not considered to be "Federal actions" and are not subject to review under NEPA (40 CFR 1508.18(a)). As a result, a CATEX, EA or EIS is not required.

2.5.3.1 Issuance of orders of temporary closure of gaming activities as provided in § 2713(b) of IGRA;

2.5.3.2 Levying and collecting civil fines as provided in § 2713(a) of IGRA;

2.5.3.3 Making permanent a temporary order of the NIGC Chairman closing a gaming activity as provided in § 2713(b)(2) of IGRA;

2.5.3.4 Issuance of subpoenas pursuant to an enforcement action as authorized in § 2715 of IGRA;

2.5.3.5 Holding such hearings, sit and act at such times and places, take such testimony, receive such evidence, and render such decisions as the Commission deems appropriate, when done pursuant to an enforcement action, as authorized in § 2706(b)(8) of IGRA;

2.5.3.6 Administering oaths or affirmations to witnesses appearing before the Commission, when done pursuant to an enforcement action, as authorized in § 2706(b)(9) of IGRA;

2.5.3.7 Issuance of warning letters, notices of violation, civil fine assessments, closure orders, or any other action consistent with the Commission's authority to enforce IGRA, the NIGCs regulations, and approved Tribal gaming ordinances.

2.5.4 *Emergency Actions:* In the event of an emergency situation, the NIGC may be required to take an action to prevent or reduce the risk to the environment, public health, or safety that may impact the human environment without evaluating those impacts under NEPA. Upon learning of the emergency situation, the NIGC NEPA Compliance Officer will immediately inform CEQ of the emergency situation when the proposed NIGC action is expected to result in significant impacts on the human environment. In some cases, the emergency action may be covered by an existing NEPA analysis or an exemption. In other cases, it may not be covered. In these cases, the NIGC NEPA Compliance Officer (in consultation with CEQ) will obtain guidance on NEPA compliance. The NIGC NEPA Compliance Officer will provide continued follow-up consultation with CEQ throughout the duration of the emergency situation. The provisions of this section do not apply to actions

taken after the emergency situation has been resolved or those related to recovery operations.

In cases where the NIGC proposed action is not expected to result in significant impacts on the human environment, the NIGC NEPA Compliance Officer shall ensure the appropriate NEPA documentation (CATEX or EA) is prepared following the actions required to control the emergency and before any follow-up actions are taken.

**2.5.5 Statutory Conflict:** In some cases, the NIGC's statutory requirements are inconsistent with NEPA. The following NIGC action(s) have been determined to fit into this category:

**2.5.5.1 Approval of Tribal gaming ordinances or resolutions as provided in § 2710 of the IGRA,** which must be completed within ninety (90) days of submission to the NIGC.

## 2.6 Early Application of NEPA

**2.6.1** Before a Tribe submits a proposed action to the NIGC, it should consult with the NIGC's NEPA Compliance Officer at 1441 L Street, NW., Washington, DC 20005 or (202) 632-7003. The Tribe should notify the NEPA Compliance Officer as early in the Tribal planning process as possible. The NEPA Compliance Officer will assist the Tribe by identifying the studies and information required for the NIGC action and initiating consultation with Federal, State, and local agencies and other Tribal governments, if necessary. The consultation should informally present the proposed action as the Tribe has planned it. The NEPA Compliance Officer will then assist the Tribe to identify the action's potential environmental impacts. This will help ensure that there will be an evaluation of a suitable range of alternatives. It will also allow the NIGC to ensure that the appropriate level NEPA review has been selected.

**2.6.2** Early consultation with the NIGC's NEPA Compliance Officer and the *Cooperating Agency* environmental personnel will help determine which agency will be "Lead Federal Agency."

**2.6.3** Consultation with other Federal, Tribal, State and local agencies will ensure the analysis of environmental impacts for individual resource categories is sufficient for approval, concurrence, or permitting by another agency.

**2.6.4** Early and frequent involvement of the public will ensure the public is provided with the most accurate information regarding the proposed action and meets the NEPA policy to "Encourage and facilitate public involvement in decisions which

affect the quality of the human environment" (40 CFR 1500.2(d)).

## 2.7 Responsibilities

### 2.7.1 NIGC Responsibilities

**2.7.1.1 NIGC Chairman (Chairman):** The Chairman shall approve and sign all NEPA decision documents (FONSI, ROD).

**2.7.1.2 NIGC Director of Contracts (Director):** The Director will supervise the day-to-day activities of the NEPA Compliance Officer. The Director will ensure that all matters raised by the NEPA Compliance Officer will get the attention due from the appropriate NIGC personnel.

**2.7.1.3 NIGC NEPA Compliance Officer (Officer):** The Officer shall be responsible for providing the NIGC with the most up-to-date environmental information that could affect NIGC actions. The Officer shall develop and propose NIGC policy as it relates to NEPA. The Officer will be responsible for the technical review of all CATEX documentation, EAs and EISs. The Officer shall consult and work with Tribes requesting a NIGC action to prepare and develop the appropriate NEPA documentation (a CATEX or an EA). The Officer shall independently review and evaluate the CATEX or Draft/Final EA to ensure the NIGC's decision is made objectively and no conflict of interest exists. The Officer will then make recommendations regarding the decision to prepare an EIS. When an EIS is required, the Officer shall review the qualifications and select the third-party contractor. The Officer will be the NIGC's Project Manager and direct all work being done for inclusion in the EIS. The Officer will prepare or have prepared NEPA decision documents (FONSIs or RODs) for proposed actions. The Officer may also be referred to in this manual as the "responsible NIGC official."

**2.7.1.4 NIGC Office of General Counsel (OGC):** The OGC shall be responsible for reviewing all EISs and providing a determination regarding the EISs' legal sufficiency. The OGC shall be consulted on legal matters that arise during the preparation of any NEPA compliance document.

**2.7.2 Lead/Cooperating Agencies responsibilities:** The roles of lead and cooperating agencies can be found in CEQ regulations § 1501.5 through § 1501.6. In addition to the rights and responsibilities found in the CEQ regulations, a Memorandum of Understanding (MOU) should be executed to document each agency's rights and responsibilities that are specific to a particular proposed action.

When other Federal, Tribal, State and local agencies/organizations request cooperating agency status, the NIGC's decision regarding their status should be documented by entering into a Memorandum of Understanding (MOU) (See Appendix B).

**2.7.3 Tribal responsibilities:** The Tribe, after consultation with the NIGC NEPA Compliance Officer, shall be responsible for assisting in the preparation of the CATEX or EA documentation for its proposed action. The Tribe is also responsible for correcting deficiencies in the documentation to the satisfaction of the NIGC. During the preparation of an EIS, the Tribe's role will be limited to providing planning information and other environmental information, as appropriate. The Tribe or its proposed management contractor also will be responsible for funding the preparation of the appropriate NEPA documentation (See Section 2.7.6).

**2.7.4 Contractors/Consultants (Consultants) responsibilities:** Consultants that prepare NEPA review documents for the NIGC or for a non-NIGC party seeking NIGC approval must comply with this manual. Consultants preparing EISs are required to sign a disclosure statement in accordance with 40 CFR 1506.5(c). Consultants shall keep and maintain an administrative record for all EA/EIS(s) prepared for proposed NIGC action(s).

**2.7.5 Public involvement:** NEPA is a process that requires public involvement. It not only requires an agency to consider environmental information when it makes a decision, but also requires that the agency consider the public's views concerning that environmental information. At appropriate times in the NEPA process, the NIGC and Tribe shall take necessary steps to ensure the public is made aware of the environmental information concerning a proposed action and will be given an opportunity to provide their views to the NIGC. In addition, the NIGC shall ensure the public is provided an opportunity to participate before the NIGC makes substantial changes to this manual.

**2.7.5.1** The NIGC or Tribe should involve the public early in the NEPA process. In most cases, the public's first involvement will be during scoping. The extent to which the public is involved in scoping will be dependent on the complexity and context of the proposed action.

**2.7.5.2** The public must also be involved during the draft and final EA/EIS stages. The public must be given an opportunity to review and provide comments on the NEPA document.

Comments received on a draft EIS and the NIGC's responses will be contained in an appendix to the final document. Final EAs should document that public comments on the draft were considered before the final EA was published.

2.7.5.3 When possible, the public process used to satisfy NEPA should also be used to meet the other statutory requirements that require public involvement (*e.g.*, Section 106 of the National Historic Preservation Act, Executive Order 12898, *etc.*).

2.7.6 *Funding responsibilities:* When a Tribe requests NIGC approval of a management contract, the Tribe or its proposed management contractor will be responsible for funding the preparation of the appropriate NEPA documentation, as determined by the NIGC. If the NIGC is proposing an action subject to NEPA compliance, the NIGC will be responsible for funding the preparation of the appropriate NEPA documentation. When an EIS is required, the NIGC must maintain the authority to direct the work of the environmental contractor/consultant hired to prepare the EIS, even if a Tribe or management company is paying for the environmental contractor's services (*See* Sections 2.7.1.3 and 5.2).

## 2.8 Public Hearings, Workshops and Meetings

2.8.1 The environmental information presented to the public can occur in one or more types of forums (*e.g.* a public hearing, workshop or meeting) and will greatly contribute to the success of the NEPA process. In determining which is the appropriate forum to disclose environmental information about the proposed project, the complexity and potential magnitude of environmental impacts must be considered. Also consider the degree of interest that is exhibited by other Federal, Tribal, State and local authorities and the public.

2.8.1.1 When the NIGC plans to hold a public hearing, workshop or meeting for the purposes of obtaining public comments on a draft EA or EIS, the draft document should be available to the public for at least 15 days before the hearing/workshop/meeting occurs. A public announcement regarding the hearing/workshop/meeting on a draft NEPA document should appear in local newspapers that have general circulation. For a draft EIS, a Notice of Availability (NOA) will also be published in the **Federal Register** by EPA. The content of notices announcing a hearing, workshop or meeting will vary depending on the type of NEPA document being prepared. *See* sections 4 and 5 of this manual for content of

notices announcing a draft, final EA and/or FONSI or a draft, final EIS and/or ROD, respectively.

## 2.9 Plain Language and Geographic Information

2.9.1 Information contained in a NEPA document prepared in accordance with this manual must be disclosed in a manner in which the public will be able to participate in the NEPA process. The written language within a NEPA document shall comply with 40 CFR 1502.9. In addition, preparation of NEPA documents by or for the NIGC must comply with Executive Order 12906, Coordinating Geographic Data Acquisition and Access.

## 2.10 Reducing Paperwork

2.10.1 CEQ regulation 40 CFR 1500.4 encourages the reduction of paperwork. Without compromising the administrative record for a proposed action, the NIGC should, to the greatest extent possible, combine NEPA requirements with other applicable environmental laws and regulations. The NIGC will also have joint documents prepared whenever possible. In addition, information may be incorporated by reference when appropriate.

## 2.11 Reducing Delay

2.11.1 CEQ regulations require agencies to reduce delay (*See* 40 CFR 1500.5). The responsible NIGC official shall reduce delay by doing the following:

2.11.1.1 Integrating other environmental requirements (*e.g.* permitting and approvals) early in the NEPA process. In some cases, integration may require NEPA and other environmental requirements to be addressed concurrently.

2.11.1.2 Develop and maintain relationships with other Federal, Tribal, State and local agencies/organizations. As a part of maintaining a relationship, the responsible NIGC official shall ensure prompt resolution of disputes under 40 CFR 1501.5.

2.11.1.3 Ensure the Tribes and consultants develop reasonable and achievable goals and milestones as part of the NEPA process.

2.11.1.4 Use the NEPA documentation to fulfill other environmental documentation requirements.

## 2.12 Intergovernmental and Interagency Coordination and Consultation

The NIGC official or the Tribe, when appropriate, will consult with other

Federal, Tribal, State and local agencies/organizations early and often in the NEPA process. During the NEPA process, consultation will include scoping, commenting on the environmental impacts of the proposed action, reviewing draft and final NEPA documents, providing input on the preparation of NIGC findings, and developing appropriate mitigation strategies. In addition to these agencies' input during the NEPA process, these agencies may also be consulted regarding other environmental requirements (*e.g.* permitting and approvals).

2.12.1 Tribal Consultation shall be conducted in accordance with the NIGC's Government-to-Government Tribal Consultation Policy, as may be amended.

## Chapter 3: Categorical Exclusions (CATEX) and Extraordinary Circumstances

3.1 *Introduction.* This chapter will explain the types of NIGC actions that must comply with NEPA but are typically categorically excluded. This chapter will also discuss the circumstances in which those actions will not be categorically excluded and will require the preparation of an EA or EIS. The responsible NIGC official shall be consulted if there is a question regarding the applicability of a CATEX or possible extraordinary circumstances to a proposed action/project.

### 3.2 Categorical Exclusion (CATEX) Screening

The use of a CATEX can only be applied to an action if all of the following criteria are met:

3.2.1 The responsible NIGC official must determine that the NIGC action is encompassed by one of the listed CATEXs in Section 3.3 of this manual.

3.2.2 The responsible NIGC official must determine that the action has not been segmented in order for the NIGC action to meet the definition of an action that can qualify for a CATEX. Segmentation occurs when an action is broken into smaller parts in an effort to avoid properly documenting impacts associated with the complete action. Segmentation also occurs when the NIGC action is too narrowly defined and the potential impacts are minimized in order to avoid a higher level of NEPA documentation. Connected and cumulative actions must be considered (*See* 40 CFR 1508.25).

3.2.3 The responsible NIGC official must determine if the NIGC action will involve any of the extraordinary circumstances as defined in Section 3.4 of this manual.

### 3.3 Categorical Exclusions

In accordance with Chapter 2, Section 2.4.1.3, the NIGC, based on past experience with similar actions, has determined that the following types of actions are categorically excluded and do not require the preparation of an EA or EIS because they will not individually or cumulatively result in a significant impact on the human environment. These types of Federal actions meet the criteria established in 40 CFR 1508.4.

#### 3.3.1 Category 1—Administrative and Routine Office Activities:

A. Normal personnel, fiscal, and administrative activities involving personnel (recruiting, hiring, detailing, processing, paying, supervising and records keeping).

B. Preparation of administrative or personnel-related studies, reports, or investigations.

C. Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts, conducted in accordance with applicable procurement regulations, executive orders, and policies (e.g. Executive Order 13101).

D. Normal administrative office functions (recordkeeping; inspecting, examining, and auditing papers, books, and records; processing correspondence; developing and approving budgets; setting fee payments; responding to requests for information).

E. Routine activities and operations conducted in an existing non-historic structure that are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any. In these cases, a Record of Environmental Consideration (REC) documentation is required.

F. NIGC training in classrooms, meeting rooms, gaming facilities, or via the Internet.

#### 3.3.2 Category 2—Regulation, Monitoring and Oversight of Indian Gaming Activities:

A. Promulgation or publication of regulations, procedures, manuals, and guidance documents.

B. Support of compliance and enforcement functions by conducting compliance training for Tribal gaming regulators and managers in classrooms, meeting rooms, gaming facilities, or via the Internet.

C. Preparing and issuing subpoenas, holding hearings, and taking

depositions for informational gathering purposes, not associated with administrative enforcement actions.

(NOTE: Activities associated with administrative enforcement actions are not subject to NEPA review, See Section 2.5.3 of this manual.)

#### 3.3.3 Category 3—Management Contract and Agreement Review Activities:

A. Approval of management contracts and collateral agreements (e.g. development, construction, or financial agreements) or management contract amendments that meet the following criteria: (1) Involve no physical construction, other than interior renovations and minor exterior work on or in structures that are not listed or eligible for listing on the National Register of Historic Places; and (2) are not associated with plans to considerably increase patronage.

B. Conducting background investigations in connection with a management contract amendment that only changes the persons or entities with a financial interest in or management responsibilities for the contract.

### 3.4 Extraordinary Circumstances

Some types of actions that would normally be categorically excluded may not qualify for a CATEX because an extraordinary circumstance exists (See 40 CFR 1508.4). The responsible NIGC official must evaluate each proposed action and use best professional judgment to determine if it meets the CATEX requirements in Section 3.2.1 and does not have any extraordinary circumstances. If the proposed action has one or more of the following conditions, extraordinary circumstances exist and the action cannot be categorically excluded:

3.4.1 There is a reasonable likelihood the proposed action/project will have a significant impact on public health or safety.

3.4.2 There is a reasonable likelihood the proposed action/project would involve effects on the environment that involve risks that are highly uncertain, unique, or are scientifically controversial.

3.4.3 There is a reasonable likelihood the proposed action/project would violate one or more Federal, Tribal, State, or local environmental laws/regulations/orders.

3.4.4 There is a reasonable likelihood the proposed action/project will have an adverse effect on a property or structure eligible for listing or listed on the National Register of Historical Places, including degradation of scientific, cultural, or historic resources

protected by the National Historic Preservation Act of 1966, as amended.

3.4.5 There is a reasonable likelihood the proposed action/project will have an impact on natural, ecological, or scenic resources of Federal, Tribal, State and/or local significance. These resources include Federal or State listed endangered, threatened, or candidate species or designated or proposed critical habitat under the Endangered Species Act (ESA); resources protected by Coastal Zone Management Act (CZMA); resources protected by the Fish and Wildlife Coordination Act; prime, unique, Tribal, State or locally important farmlands; and Federal or State listed wild or scenic rivers.

3.4.6 There is a reasonable likelihood the proposed action/project will cause a division or disruption of an established community, planned development, or is inconsistent with existing community goals/plans.

3.4.7 There is a reasonable likelihood the proposed action/project will cause an increase in surface transportation congestion that will decrease the level of service below acceptable levels, as defined by the appropriate Federal, Tribal, State, or local agency with jurisdiction for that portion of the transportation system.

3.4.8 There is a reasonable likelihood the proposed action/project will impact air quality or violate Federal, Tribal, State, or local air quality standards under the Clean Air Act Amendments of 1990.

3.4.9 There is a reasonable likelihood the proposed action/project will impact water quality, sole source aquifers, public water supply systems or Tribal, State, or local water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

3.4.10 There is a reasonable likelihood the proposed action/project will have effects that are likely to be highly controversial on environmental grounds.

### 3.5 Categorical Exclusion Documentation

3.5.1 The purpose of categorical exclusions is to reduce paperwork and delay. The NIGC is not required to repeatedly document actions that qualify for a categorical exclusion and do not involve an extraordinary circumstance (See 40 CFR 1500.4(p)). This also allows NIGC environmental resources to focus on proposed actions that require an EA or EIS.

3.5.2 In some cases, the NIGC will document its decision to treat a particular action as categorically

excluded from further NEPA review. In those cases, a Record of Environmental Consideration (REC) will include:

- A complete description of the proposed action/project.
- The CATEX relied upon, including a brief discussion of why there are no extraordinary circumstances.
- Supplemental documentation that supports the conclusions in the narrative. Examples include exhibit(s) showing boundaries of historical or archeological site(s) previously identified near the proposed project, documentation from the U.S. Fish and Wildlife Service noting that no endangered species or habitat is present near the proposed project, evidence that the proposed project site is located outside any non-attainment area(s), *etc.* In some cases, a "no effect" determination from the SHPO/THPO may be required.
- The following statement: *I certify that, to the best of my knowledge, the information provided is the best available information and is accurate.*
- A signature from an environmental professional with a signature block that includes the professional's credentials.

#### **Chapter 4: Environmental Assessments (EA) and Findings of No Significant Impacts (FONSI)**

This chapter will provide information regarding the preparation of an EA and FONSI. The EA must provide all pertinent information to aid the NIGC in its decision-making process. If the information contained in the EA demonstrates that the proposed action will not have significant impact on the human environment, the NIGC can then issue such a finding of no significant impact, otherwise known as a FONSI.

**4.1 When to prepare an EA.** An EA will be prepared when a proposed action meets the following conditions:

**4.1.1** The proposed action is not categorically excluded in accordance with Chapter 3;

**4.1.2** The proposed action is normally categorically excluded, but extraordinary circumstances exist in accordance with Chapter 3; or

**4.1.3** The proposed action is not one that requires the preparation of an EIS in accordance with Chapter 5;

**4.2 Proposed action not causing a significant environmental impact.** When the NIGC, upon reviewing the EA, has determined that the proposed action will not cause a significant environmental impact, the NIGC NEPA Compliance Officer will prepare or have prepared a Finding of No Significant Impact (FONSI) for review and signature by the NIGC Chairman.

**4.3 Proposed action causing a significant environmental impact.** When the NIGC, upon reviewing the EA, has determined that the proposed action will cause a significant environmental impact, and mitigation measures will not reduce the impact below the appropriate threshold of significance, the NIGC NEPA Compliance Officer will prepare and issue a Notice of Intent (NOI) to prepare an EIS (*See* Chapter 5). If it is anticipated that the proposed project will result in a significant environmental impact that cannot be mitigated, the NIGC can decide to prepare an EIS without first developing an EA.

#### **4.4 Content of an EA**

**4.4.1** Any EA prepared for the NIGC must contain a brief discussion of the proposed action, the need for the proposed action, a range of reasonable alternatives (as required by Section 102(2)(E) of NEPA), the environmental impacts of the proposed action and alternatives, a list of alternatives eliminated from further analysis with an explanation of why they were eliminated, mitigation measures needed to reduce environmental impacts to below the level of significance, and a list of the agencies and persons consulted.

**4.4.2** The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether the proposed action or alternatives retained for further analysis would result in any significant environmental impacts.

**4.4.3** The EA will contain objective analyses to support its environmental impact conclusions. The EA must not draw any conclusions regarding the decision to prepare an EIS. The decision whether to prepare an EIS will be made by the responsible NIGC official and documented in either an NOI or a FONSI.

**4.4.4** Previous NEPA analyses should be used in a tiered analysis or transferred and used in a subsequent analysis to enhance the content of an EA whenever possible. The use of previous NEPA analyses can be incorporated by reference or may be adopted, as per Section 4.7 of this manual.

**4.5 Actions normally requiring an Environmental Assessment (EA).** The following are examples of actions that normally will require the preparation of an EA. When a proposed project involves multiple actions by the NIGC, Cooperating Agency and/or other Federal agencies, the overall significance of these actions, when viewed together, governs whether an EA or an EIS is required. Consultation with

the other agencies or organizations may be required to ensure all Federal actions are adequately covered by the NEPA document prepared.

**4.5.1** Approval of a new management contract, or a modification of an existing management contract that involves, either directly or through a collateral agreement, development of a new Indian gaming facility, and after a preliminary review, the potential environmental impacts are not expected to exceed, or can be mitigated to a level below, the appropriate level(s) of significance.

**4.5.2** Approval of a new management contract, or a modification of an existing management contract, that involves, either directly or through a collateral agreement, a physical expansion of an existing facility, and after a preliminary review, the potential environmental impacts are not expected to exceed, or can be mitigated to a level below, the appropriate level(s) of significance.

**4.5.3** Approval of a new management contract, or a modification of an existing management contract, that does not involve a physical expansion of the facility, but where the management contractor plans to considerably increase patronage, and after a preliminary review, the potential environmental impacts of the increased patronage are not expected to exceed, or can be mitigated to a level below, the appropriate level(s) of significance.

**4.6 Time limits for EAs.** The information contained in an EA is only valid for a finite period of time. This section will outline when an EA's information must be updated.

**4.6.1** A draft EA is normally valid for a period of three (3) years unless there are substantial changes in the proposed action or there are significant new circumstances or information relevant to environmental concerns regarding the proposed action or its impacts. In cases where there is significant new circumstances or information, a written re-evaluation must be undertaken. (*See* Section 4.15). If the NIGC has not issued a FONSI within three (3) years of receipt of the Final EA, a written re-evaluation (*See* Section 4.15) must be prepared and submitted to the responsible NIGC official for consideration and determination if the alternatives, impacts, existing environment, and mitigation measures in the EA remain applicable, accurate, and valid. If there has been a significant change in these factors from that which was originally considered in the EA, a supplement to the EA (*See* Section 4.16) or a new EA

must be prepared in accordance with the procedures of this chapter.

4.6.2 For EAs where the NIGC has approved and issued a FONSI, the EA's information must be reviewed and updated when the following conditions have been established:

4.6.2.1 If major steps toward implementation of the project (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within three (3) years from the date of issuance of the FONSI, a written re-evaluation (See Section 4.15) of the continued adequacy, accuracy, and validity of the EA will be prepared and submitted to the responsible NIGC official. If there have been significant changes in the project, the affected environment, anticipated environmental impacts, or proposed mitigation measures, as appropriate, a new or supplemental EA (See Section 4.16) will be required.

4.6.2.2 If the proposed project is to be implemented in stages or requires successive Federal approvals, a written re-evaluation (See Section 4.15) of the adequacy, accuracy, and validity of the EA will be made at major approval points that occur more than three (3) years after issuance of the FONSI, and a new or supplemental EA may be required.

4.7 *Adoption.* In some cases, the NIGC may adopt, in whole or in part, a draft or final EA or the EA portion of an EA/FONSI prepared for another Federal, Tribal, State or local agency/organization if it meets the requirements of this chapter. As part of the adoption process:

4.7.1 Prior to adoption of another agency/organization's EA, the NIGC must complete an independent evaluation of the information contained in the EA, take full responsibility for scope and content that addresses NIGC

actions, and issue its own FONSI. If the EA is found to comply with this chapter and relevant provisions of CEQ regulations, the responsible NIGC official will recommend adoption and signature to the NIGC Chairman.

4.7.2 When appropriate and efficient, the responsible NIGC official may augment such an EA when it is essentially, but not entirely, in compliance with this chapter and/or relevant provisions of CEQ regulations, in order to make it compliant.

4.7.3 Adoption or augmentation of an EA shall receive the same public participation that the EA would have received if it had originated with the NIGC.

4.7.4 If the NIGC decides to adopt, in whole or in part, a draft or final EA or the EA portion of an EA/FONSI prepared for another Federal, Tribal, State or local agency/organization, the time requirements established in Section 4.6 shall apply.

4.8 *Impact Categories.* Appendix A of this manual identifies resource categories that the NIGC examines for its actions under NEPA. It should be noted that the list of resource categories in Appendix A is not exhaustive. In some circumstances, additional resource categories may need to be added. It is recommended that prior to conducting analysis under any of these categories, the responsible NIGC official be consulted regarding methodologies, thresholds of significance, mitigation measures, and permitting.

4.9 *Environmental Assessment (EA) Process.* This section shall apply when the responsible NIGC official has determined that the proposed action cannot be categorically excluded and the anticipated environmental impacts do not warrant preparation of an EIS.

4.9.1 The EA process begins with the responsible NIGC official or Tribe

requesting an NIGC action, gathering background data, and coordinating/consulting with other agencies. This information will be used to formulate the proposed action and reasonable alternatives to achieve the project's purpose and need.

4.9.2 If a Tribe is proposing an action, the Tribe will draft a purpose and need statement for the proposed project and the responsible NIGC official will determine its adequacy. If the NIGC is proposing an action, the responsible NIGC official will develop a purpose and need statement for the proposed project.

4.9.3 While not required by CEQ regulations, the responsible NIGC official and Tribe proposing the action may elect to initiate scoping. If it is determined to conduct scoping, the public will be notified of how they can participate in the scoping process.

4.9.4 The responsible NIGC official or Tribe proposing the action will have the EA document prepared with a level of analysis sufficient to:

4.9.4.1 Understand the purpose and need for the proposed action, identify a range of reasonable alternatives (including the no-action alternative), and assess potential environmental impacts.

4.9.4.2 Determine if potential environmental impacts are significant enough to require the preparation of an EIS or if a FONSI can be issued.

4.9.4.3 Identify any permits, licenses, other approvals, or reviews that apply to the proposed action.

4.9.4.4 Identify agencies, including cooperating agencies, consulted or to be consulted.

4.9.4.5 Identify all public involvement activities (e.g. scoping or public workshops).

FIGURE 4-1—ENVIRONMENTAL ASSESSMENT PROCESS FOR AN NIGC ACTION

Step 1 .....	• The responsible NIGC official or Tribe proposing the action formulates the proposed action and a range of reasonable alternatives, in accordance with Section 102(2)(E) of NEPA, to achieve the project's purpose and need.
Step 2 .....	• Responsible NIGC official or Tribe proposing the action collects background data.
Step 3 .....	• Responsible NIGC official determines the need for an EA.
Step 4 .....	• Initiate scoping, if appropriate, and determine issues and alternatives to be addressed.
Step 5 .....	• Prepare preliminary draft EA.
Step 6 .....	• Responsible NIGC official and other cooperating agencies review preliminary draft EA.
Step 7 .....	• Prepare a revised draft EA in accordance with appropriate comments from the responsible NIGC official and other cooperating agencies.
Step 8 .....	• Circulate the revised draft EA to the public and other Federal, Tribal, State and local agencies/organizations for comment.
Step 9 .....	• Prepare final EA based on comments received.
Step 10 .....	• Responsible NIGC official determines significance of impacts.
Step 10a .....	• If impacts are NOT significant, responsible NIGC official prepares or has prepared a FONSI for the NIGC Chairman's review and decision.
Step 10b .....	• If impacts ARE significant, responsible NIGC official proceeds with an EIS (See Chapter 5). Do not go to Step 11.
Step 11 .....	• Publish the final EA and FONSI.
Step 12 .....	• NIGC proceeds with action, and if applicable, mitigation and monitoring.

4.9.5 The EA should present detailed analysis, commensurate with the level of impact of the proposed action and alternatives, to determine whether any impacts will be significant. If the proposed action and its alternatives will not cause significant impacts within the applicable resource categories (See Appendix A), a brief statement describing the factual basis for the conclusion that the action is not likely to cause significant environmental impacts is sufficient. If the NIGC or Tribe has experience with an environmental management system (EMS) that includes monitoring of the implementation of actions similar to the proposed action and alternatives, the EMS may provide a factual basis for an assessment of the potential impacts.

4.9.6 To ensure that the EA is concise and clear about the basis for its conclusions, the NIGC may incorporate by reference other documents and analyses. Referenced material must be reasonably available to the public, either in existing NEPA documents or in general background information, documents or studies prepared for other purposes.

4.9.7 Internal review of a preliminary draft EA is conducted by the NIGC NEPA Compliance Officer, any cooperating agency's NEPA points of contact, and the Tribe proposing the action. The NEPA Compliance Officer is responsible for reviewing the EA and ensuring technical requirements have been met. Cooperating agency NEPA points of contact are responsible for ensuring the EA meets their agency's

NEPA requirements. The Tribe shall review the EA to ensure it fully encompasses the project that it has proposed and that the Tribe is prepared to undertake all proposed mitigation measures. Upon completion of the internal review, the NIGC NEPA Compliance Officer will consolidate comments and forward them to the Tribe or the consultant with instructions to revise the EA.

4.9.8 Following the internal review, preparation of the EA should be coordinated with other agencies when the action involves resources protected by special purpose laws or administrative directives. Those agencies that have special expertise should also be consulted, as necessary. Examples of special purpose laws or directives include, but are not limited to, actions involving: Section 404 of the Clean Water Act; Section 106 of the National Historic Preservation Act; Section 7 of the Endangered Species Act; and Section 307 of the Coastal Zone Management Act. Examples of agencies with special expertise include, but are not limited to, the Federal Highway Administration, State transportation authorities, and local planning agencies with expertise in developing and building roads.

4.9.9 The public, other Federal, Tribal, and State agencies, and other government entities shall be given an opportunity to review and comment on the draft EA. The review and comment period for the draft EA shall not be less than 30 days. During the comment period, it is recommended that a public

meeting/workshop be held, no sooner than fifteen (15) days following the draft EA being circulated, to further explain the methodologies used in the analysis and conclusions reached in the document. Notice of the meeting/workshop must be published in a local newspaper with general circulation. At a minimum, the notice must contain the following information: (1) Date, time, place, and time period during which written comments will be accepted; (2) Description of the proposed action/project; (3) Location(s) where the document can be reviewed; (4) Contact information of the responsible NIGC official (NEPA Compliance Officer). Upon receipt of comments, the responsible NIGC official will determine whether the analyses used to evaluate the impacts on each environmental resource category in the EA are sufficient, or if additional environmental analysis is needed, and will have the final EA prepared accordingly.

4.9.10 The final EA and FONSI will then be made available to the public, and Federal, Tribal, State and local agencies/organizations. This availability period shall not be less than 30 days. Notice of the final EA and FONSI's availability shall at a minimum be published via local media (e.g. local newspapers), but may in some cases be published in the **Federal Register**. The decision to publish the notice in the **Federal Register** is at the discretion of the NIGC.

FIGURE 4-2—ENVIRONMENTAL ASSESSMENT CONTENT

Purpose .....	Assist agency planning and decision-making by summarizing environmental impacts to determine need for: <ul style="list-style-type: none"> <li>• An EIS.</li> <li>• Mitigation Measures.</li> </ul>
Scope .....	Addresses the proposed action's and reasonable alternatives' impacts on the affected environmental resources.
Content .....	Describes and identifies: <ul style="list-style-type: none"> <li>• Purpose and need for the proposed action/project.</li> <li>• Proposed action/project.</li> <li>• Range of reasonable alternatives considered (including a no-action alternative), in accordance with Section 102(2)(E) of NEPA.</li> <li>• Affected environment (existing conditions).</li> <li>• Environmental impacts of the proposed action and alternatives.</li> <li>• Mitigation measures (if necessary).</li> <li>• Federal, Tribal, State and local agency/organizations consulted.</li> </ul>
Public Participation .....	Provide opportunities for public participation to the extent practicable.

4.10 *Preferred Environmental Assessment Format.* This section will provide information regarding the NIGC's preferred EA format. While CEQ does not specify what format should be used for an EA, use of the following format will aid the NIGC in its review of the EA and ensure integrated compliance with other environmental laws, regulations, and applicable

Executive Orders with NEPA review. All preliminary, draft, and final EAs shall be submitted to the NIGC in both hardcopy and digital (e.g., compact disc) form.

4.10.1 *Cover Page:* The cover should be clearly label "Environmental Assessment." It should also identify, where applicable, the subject Tribe, the name of the subject gaming facility, the

location of the proposed project, all cooperating agencies, and the consultant, if one is preparing the EA. When an EA is prepared by a consultant, the cover page should also include "This Environmental Assessment becomes a Federal document when evaluated and signed/dated by the responsible NIGC official."

4.10.2 *Proposed Action/Project:* The beginning of the document should briefly describe the proposed Tribal project (e.g., construction and management/operation of a gaming facility) and the proposed Federal action (e.g., approval of a management contract between ABC and XYZ). It should contain enough information so as to be understandable to individuals who are not familiar with the proposed action/project.

4.10.3 *Purpose and Need:* This section should clearly identify the problem facing the Tribe proposing the action (that is, what is the need for the proposed action/project), the purpose of the action/project (that is, how will the proposed action/project solve the problem of Tribe). A timeframe for implementation of the proposed action/project should also be included, if known. The purpose and need for the proposed action should be justified and defined in terms that are understandable to individuals who are not familiar with needs of Native American Tribes. Any references to supporting data, studies, or other analyses can be incorporated by reference, so long as they meet the requirements established in Section 4.9.6.

4.10.4 *Alternatives:* The alternatives evaluated in the EA are those that will be considered by the NIGC approving official. The alternatives have to provide the NIGC approving official sufficient information to make a reasoned decision. At a minimum, the alternatives section should contain the following:

4.10.4.1 A list of all alternatives considered, including the proposed action, the no-action alternative, other reasonable alternatives, and alternatives that were considered but not retained for further evaluation. For each alternative evaluated, any connected actions or cumulative impacts should be considered. The number of reasonable alternatives evaluated will be determined by the number of alternatives that can meet the purpose and need statement for the project and Section 102(2)(E) of NEPA.

4.10.4.2 A statement identifying the Tribe's preferred alternative, and the NIGC's preferred alternative (if one has been identified).

4.10.4.3 A statement explaining why any alternatives were considered and eliminated from further study. Alternatives that were considered but not fully evaluated are those alternatives that either do not meet the purpose and need or are unreasonable from an implementation stand-point. Examples of alternatives that are unreasonable from an implementation stand-point

include, but are not limited to, those for which construction costs are unreasonable, proposals on lands that do not, and cannot reasonably be made to, qualify for Indian gaming, and those for which preliminary environmental screening has identified an insurmountable barrier (e.g. Corps of Engineers' unwillingness to issue a Clean Water Act § 404 permit). Discussions of these alternatives should articulate why each alternative was considered and eliminated from further analysis.

4.10.4.4 If appropriate to aid understanding, a visual depiction (using photos, Geographic Information System (GIS), other sources) of each alternative evaluated. This should include, but is not limited to, aerial photos and/or maps showing project locations, GIS figures showing detailed information, and Computer Aided Design and Drafting (CADD) depictions showing project site layouts.

4.10.5 *Affected Environment:* The "Affected Environment" section should succinctly describe the existing environmental conditions of the potentially affected geographic areas. The geographic areas described in this section may vary depending on the anticipated impacts (e.g. the socioeconomic geographic area may be larger than the geographic area described for noise impacts). The descriptions provided in this section should be commensurate with the potential for impact and importance of that aspect of the environment. Where appropriate, the use of GIS and other mapping tools should be used to avoid superfluous written descriptions. Examples of items included in this section follow:

4.10.5.1 Location map, vicinity map, project layout plan, and photographs.

4.10.5.2 Existing and planned land uses and zoning, including: Descriptions of industrial and commercial growth characteristics in the affected area; affected residential areas, schools, churches, hospitals, public parks and recreational areas, wildlife/waterfowl refuges; areas with known or suspected Federal or State threatened or endangered species or critical habitat; wetlands; floodplains; farmlands; coastal zones/barriers; Federal or State wild and scenic rivers; and historic/cultural/archeological sites listed or eligible for listing on the National Register of Historic Places.

4.10.5.3 Political jurisdictions that may be affected by the proposed action.

4.10.5.4 Population estimates and other demographic information.

4.10.6 *Environmental Consequences:* The EA must evaluate the

environmental consequences that will be the result of the no-action alternative, the proposed action, and any other reasonable alternatives that were retained for further analysis. The evaluation must provide enough information on and evidence of the environmental consequences for each alternative being evaluated so as to allow the NIGC to determine whether to prepare an EIS or a FONSI. The environmental consequences section must provide analysis that the NIGC determines to be sufficient to address the significance factors (See 40 CFR 1508.27). The analysis should focus on those resource categories that will be directly, indirectly, and cumulatively impacted by the proposed action. The EA should note any resource categories that will not be impacted by the proposed action, the no-action, and other alternatives retained for further analysis. It is appropriate to incorporate by reference background data to support the environmental consequences analysis.

4.10.6.1 The results of the analysis must include the adverse effects that cannot be avoided and mitigation measures necessary to reduce the environmental consequences to a level below the significance threshold if the proposed action is implemented. This section should not duplicate the information contained in the Alternatives section. Information in this section should contain the following for each alternative retained for further analysis:

4.10.6.1.1 Direct effects and their significance;

4.10.6.1.2 Indirect effects and their significance;

4.10.6.1.3 Cumulative effects and their significance (this analysis should evaluate the effects of the proposed action when combined with other past, present, and reasonably foreseeable actions taken by either another Federal, Tribal, State, local, or private entity. For additional information on properly analyzing the cumulative effects, refer to CEQ guidance "Considering Cumulative Effects Under the National Environmental Policy Act," issued January 1997 and "Guidance on the Consideration of Past Actions in Cumulative Effects Analysis," issued June 2005)

4.10.6.1.4 Any possible conflicts between the proposed action and the objectives of Federal/State/local and other Tribal plans, policies, and controls in the affected area.

4.10.6.2 The proposed action, the no-action alternative and each alternative retained for further study must be analyzed for environmental

consequences to each of the resource categories contained in Appendix A, "Environmental Resource Categories." If required and as a matter of practice, the NIGC supports the issuance of permits and approvals for a proposed action with or shortly after the issuance of the Final EA and FONSI. In order to facilitate this, the responsible NIGC official may: (1) Participate in coordination efforts with other Federal, Tribal, State and/or local agencies or organizations, (2) identify information needed by other Federal, Tribal, State and/or local agencies or organizations, and (3) integrate items (1) and (2) into the EA process.

**4.10.7 Mitigation:** Any mitigation measures included in the EA must be reasonable and should contain enough detail to describe the benefits of the proposed mitigation measure. Mitigation measures should only be included after consultation with the Federal, Tribal, State or local agency or organization that has jurisdiction over the resource being impacted. Mitigation measures should be considered when they will avoid, minimize, rectify, reduce, eliminate, or compensate for significant impacts. Any proposed mitigation measure should describe how it will reduce or eliminate the impact(s) and if the resulting impacts are significant. If mitigation is proposed to reduce impacts below the appropriate level of significance, an EIS is not required, provided that:

**4.10.7.1** The agency took a "hard look" at the environmental impacts.

**4.10.7.2** The agency identified the relevant areas of environmental concern.

**4.10.7.3** The EA supports the agency's determination that potential impacts are not significant.

**4.10.7.4** The agency has identified mitigation measures that will be sufficient to reduce potential impacts below the threshold of significance and has obtained commitments from the Tribe to implement those measures.

**4.10.8 List of Preparers:** The EA shall contain a list of names and qualifications of personnel (NIGC, Cooperating Agency, Tribal representatives, consultants and sub-consultants) who prepared the EA. The list should include individuals responsible for analysis, review and comment, and other background information that is included or referenced.

**4.10.9 List of Agencies and Persons Consulted:** The EA shall include at a minimum those Federal, Tribal, State and local agencies and organizations with whom the consultation or coordination was done.

**4.10.10 Appendices:** The EA should include the following appendices, as appropriate:

**4.10.10.1** Documentation that supports or evidences conclusions, references, and methodologies.

**4.10.10.2** Documentation that supports or evidences consultation and/or coordination with Federal, Tribal, State and/or local agencies and organizations. This documentation may take the form of comments provided on the EA, letters/other correspondence, and/or meeting minutes.

**4.10.10.3** Documentation that supports or evidences the public's opportunity to participate in the development of the EA. This documentation may include, but is not limited to, published notices for public hearings or workshops, transcripts of public hearings, sign-in sheets from public workshops, and comment letters received during the public's review period.

#### **4.11 Finding of No Significant Impact (FONSI)**

**4.11.1 Purpose:** The purpose of an EA is to support the NIGC's determination that the proposed action does or does not have the potential to create significant impacts. If none of the potential impacts are likely to be significant, the responsible NIGC official shall prepare or have prepared a "finding of no significant impact" (FONSI), which will briefly present, in writing, the reasons why the proposed action will not have a significant impact on the human environment. The NIGC Chairman shall make the final decision whether to approve the FONSI. Approval of a FONSI signifies that the NIGC will not prepare an EIS and has completed its NEPA documentation for the proposed action. Approval of a FONSI does not mean that the NIGC has decided to take the proposed Federal action. Instead, it only means that the NIGC found the proposed action, if taken, will not have a significant impact on the environment (See Section 4.10.6).

**4.11.2 Scope:** While there is no particular format for a FONSI, it must contain all the information noted in 40 CFR 1508.13.

**4.11.2.1** The FONSI must be combined with the final EA to create a single document. The FONSI must include a brief description of the proposed action, the purpose and need, a reference to the alternatives considered, those impacts for which mitigation is proposed, and the NIGC's findings that resulted from the EA. The FONSI shall document or reference relevant material necessary to support the conclusion that the action is not a

major Federal action significantly affecting the human environment.

**4.11.2.2** The FONSI should determine the proposed action's consistency or inconsistency with community planning, and should document or reference the basis for the determination.

**4.11.2.3** The FONSI shall present any measures required to mitigate adverse impacts on the environment and which are a condition of the decision to forego the preparation of an EIS. The FONSI should also reflect coordination of proposed mitigation commitments with, and consent and commitment from, those with the authority to implement specific mitigation measures committed to in the EA and FONSI.

**4.11.2.4** The FONSI should reflect compliance with applicable environmental laws and requirements, including interagency and intergovernmental coordination and consultation, public involvement, and documentation. The FONSI should also contain findings and determinations required under special purpose environmental laws, regulations, and executive orders, if not made in the EA.

#### **4.11.3 Internal Review Process and Approval**

**4.11.3.1** The responsible NIGC official will coordinate the review of the FONSI with the NIGC's Office of General Counsel. The FONSI may be reviewed by other NIGC personnel, when necessary.

**4.11.3.2** Each FONSI shall include the following at the end of the document:

#### **Recommendations/Approvals**

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of the NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment.

*Environmental Assessment and FONSI reviewed and recommended by:*

\_\_\_\_\_  
NIGC NEPA Compliance Officer

\_\_\_\_\_  
Date

*Approved by:*

\_\_\_\_\_  
NIGC Chairman

\_\_\_\_\_  
Date

**4.11.4 Agency Distribution:** A copy of the FONSI and EA shall be sent to

reviewing agencies and organizations or individuals that made substantive comments or specifically requested copies. When a project impacts a resource protected under a special purpose law or administrative directive (e.g. Section 7 of the Endangered Species Act), the responsible NIGC official shall send a signed copy of the FONSI and the EA supporting it to the agency(ies) with whom the NIGC consulted to comply with the applicable law or directive.

4.11.5 *Public review:* In some cases, it may be appropriate to give the public an opportunity to review the FONSI before the agency takes its action (See 40 CFR 1501.4(c)(2) and CEQ's "40 Most Asked Questions," number 37b). When one of the following circumstances exists, the final EA/FONSI will be made available to the public for a minimum of 30 days:

4.11.5.1 The proposed action is, or is closely similar to, one normally requiring the preparation of an EIS;

4.11.5.2 The nature of the proposed action is one without precedence; or

4.11.5.3 A special purpose environmental law, regulation, or executive order requires public notice of specific findings or determinations apart from the FONSI.

4.11.6 *Internal Distribution:* The FONSI and EA shall be kept on file with the NIGC and sent to the National Records Center in accordance with the NIGC records retention policy.

4.11.7 *Public Availability:* In accordance with CEQ regulations, the NIGC shall make the FONSI available to interested or affected persons or agencies (See 40 CFR 1506.6). When the FONSI is made available, a notice of availability shall be made public using the appropriate method, as defined by 40 CFR 1506.6(b). The announcement will identify the location(s) where the FONSI and final EA may be reviewed. Copies of the FONSI and final EA will be provided upon request, free of charge or at a fee commensurate with the cost of reproduction.

#### 4.12 Monitoring Mitigation

4.12.1 In accordance with 25 CFR 531.1(b)(16), a pending management contract will assign either the Tribe or casino manager the responsibility to supply the NIGC with all information necessary for the NIGC to comply with NEPA. This shall include documentation that all mitigation and other conditions established in the final EA and FONSI, or in agreements with State/local agencies or organizations, and included as a condition of the project approval, have been implemented.

#### 4.13 Decision Documents for Findings of No Significant Impact

4.13.1 Immediately following the approval of a FONSI, except in the circumstances identified in Section 4.11.5, the NIGC decisionmaker may decide whether to take the proposed action. Mitigation measures that were made a condition of the approved FONSI and the steps taken to assure appropriate commitment and follow-up shall be incorporated in the decision to implement the action.

#### 4.14 Programmatic Environmental Assessments

4.14.1 The concept of programmatic EISs may also be applied to EAs. The responsible NIGC official may elect to prepare a tiered document from a completed EA or EIS if the official finds that the selected EA or EIS is current and meets NIGC requirements. Permitting and review agencies may have independent requirements for review of the previously prepared documents.

#### 4.15 Written Re-Evaluations

4.15.1 The NIGC will prepare or have prepared a written re-evaluation of an EA or EA/FONSI when there are substantial or significant new circumstances or information related to the proposed action or to the environmental concerns of the proposed action, which may have a bearing on the proposed action or its impacts. The re-evaluation will assist the responsible NIGC official in determining whether the preparation of a supplemental EA or EA/FONSI is necessary. The preparation of a supplemental EA or EA/FONSI is not necessary when it can be documented that:

4.15.1.1 The proposed action generally conforms in scope to plans or projects for which a prior FONSI has been issued;

4.15.1.2 The data and analyses contained in the previous EA and FONSI are still substantially valid and applicable; and

4.15.1.3 All material conditions and requirements of the prior approval(s) have been, or will be, met in the current action.

4.15.2 An evaluation, signed by the responsible NIGC official, or a letter documenting the evaluation, will either conclude that the contents of the previously prepared environmental document(s) remain valid or that significant changes require the preparation of a supplemental or new EA or EA/FONSI.

4.15.3 The written re-evaluation will be reviewed by the NIGC's Office of General Counsel.

#### 4.16 Supplemental Environmental Assessments or EA/FONSIs

4.16.1 The NIGC will prepare or have prepared a supplement to an EA or EA/FONSI when there are substantial or significant new circumstances or information related to the proposed action or to the environmental concerns of the proposed action, which bear on the proposed action or its impacts. Substantial or significant new circumstances/information means information showing dramatic changes to the impacts of the proposed project compared to those identified in the original EA or FONSI. The agency may also prepare or have prepared a supplement when the purposes of NEPA will be furthered by doing so.

4.16.2 Supplemental documents will be prepared and circulated in accordance with the procedures of this chapter.

4.16.3 When a supplemental EA is prepared, a new FONSI must be issued.

#### 4.17 Review/Comments on EAs

Federal, Tribal, State, local agencies/organizations, and the public may review and comment on a draft EA. When comments are submitted to the NIGC, they should be specific in nature and organized in a manner consistent with the structure of the draft EA and may identify modifications that might enhance environmental quality or avoid or minimize adverse environmental impacts, and will correct inaccuracies or omissions. Comments must be submitted within the time limits set forth in the request for comments, unless the commentor seeks and receives an extension from the responsible NIGC official.

#### 4.18 Review/Comments on EAs Prepared by Other Agencies

If the NIGC is commenting as a cooperating agency, the responsible NIGC official shall specify in his or her comments whether any additional information is needed or describe the mitigation measures the NIGC considers necessary to adopt or concur with the other agency's findings.

### Chapter 5: Environmental Impact Statements and Records of Decision

5.1 *Introduction.* The purpose of this chapter is to provide guidance on the process and preparation of an Environmental Impact Statement (EIS) and Record of Decision (ROD). The EIS shall provide environmental impact information, including required or agreed to mitigation measures, to the decisionmaker and the public. The two main differences between an EIS and an EA are the level of analysis conducted

and the formalities regarding public participation.

5.2 *Roles and Responsibilities of the EIS Team.* The EIS team has several key personnel. The following section will outline the roles and responsibilities of each member of the team.

5.2.1 *Lead Federal Agency:* The Lead Federal Agency for Indian gaming projects will either be the National Indian Gaming Commission (NIGC) or the Bureau of Indian Affairs (BIA). When the NIGC is the Lead Federal Agency, the NIGC shall assume the following roles and responsibilities:

5.2.1.1 Serve as the Project Manager for the preparation of the EIS and ROD;

5.2.1.2 Select an EIS consultant (See Appendix C);

5.2.1.3 Prepare, or direct an EIS consultant to prepare, the EIS/ROD and all supporting documents;

5.2.1.4 Consult with agencies responsible for special purpose laws or administrative directives; and

5.2.1.5 Ensure that the analysis contained in the EIS/ROD complies with NEPA.

5.2.2 *Cooperating Agency(ies):* A cooperating agency is "any Federal agency \* \* \* which has jurisdiction by law or special expertise with respect to any environmental impact \* \* \*" (40 CFR 1508.5). This definition also goes on to say that "a State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe" may be a cooperating agency. When cooperating agencies are identified, a Memorandum of Understanding will be prepared to outline their roles and responsibilities (See MOU Example in Appendix B). In addition to those roles and responsibilities, each cooperating agency shall be responsible for ensuring the content of the EIS meets its own NEPA compliance procedures.

5.2.3 *EIS Consultant:* The EIS consultant will be responsible for the preparation of the EIS. The EIS consultant will prepare the EIS at the direction of the Lead Federal Agency (for the purposes of this Manual, the NIGC).

5.2.4 *Tribe:* The individual Tribe proposing a project will be responsible for providing information and funding needed for the preparation of the EIS in accordance with Section 2.7.6. Information shall include, but is not limited to, a detailed description of the proposed project and potential alternatives to the proposed project. In addition, the Tribe should appoint a

Tribal Point of Contact (POC). The POC shall serve as a liaison between the Tribe and the rest of the EIS team. When appropriate, the Tribe may also act as a Cooperating Agency.

5.3 *Actions Normally Requiring an Environmental Impact Statement.* An EIS is required when a major Federal action will significantly affect the quality of the human environment.

5.3.1 Significance is defined in terms of context and intensity (See 40 CFR 1508.27).

5.3.2 If an EA was prepared for a proposed action, and based on that analysis, it was determined that one or more of its impacts would be significant, an EIS must be prepared. The EA that was prepared should then be used in the scoping process described below.

5.3.3 If the responsible NIGC official, based on his or her professional judgment, has determined that a proposed action has the potential to cause significant impacts, he or she may elect to prepare an EIS without first preparing an EA.

5.3.4 The addition of mitigation to reduce impacts below significance may avoid the requirement to prepare an EIS. If mitigation is integrated into the design of the proposed action, or if through scoping or the EA process the proposed action is redefined to include mitigation, or if all potentially significant impacts are mitigated below the appropriate thresholds of significance, then the responsible NIGC official may rely on the mitigation measures in determining that the overall effects would not be significant and prepare an EA/FONSI. (See Section 4.11.5).

5.3.5 Following the preparation of an EA or if a decision has been made to prepare an EIS without first preparing an EA, an EIS must be prepared when the Federal action has the potential to cause:

5.3.5.1 A significant adverse effect on cultural or historic resources pursuant to the National Historic Preservation Act of 1966, as amended;

5.3.5.2 A significant impact on natural, ecological, or scenic resources of Federal, Tribal, State or local significance (e.g., Federally listed or proposed endangered, threatened, or candidate species, or designated or proposed critical habitat); resources protected by the Fish and Wildlife Coordination Act; wetlands; floodplains; coastal zones; prime or unique State or locally important

farmlands; energy supply and natural resources; or wild and scenic rivers;

5.3.5.3 A substantial division or disruption of an established community or planned development, or is likely not to be reasonably consistent with plans or goals that have been adopted by the community in which the proposed project is to be located;

5.3.5.4 A significant increase in congestion from surface transportation (by causing a decrease in the Level of Service (LOS) below acceptable levels determined by an appropriate transportation agency, such as a highway agency);

5.3.5.5 A significant increase in noise levels on noise-sensitive areas, as defined by Federal Highway Administration or State transportation department;

5.3.5.6 A significant impact on air quality or a violation of Federal, Tribal, State or local air quality standards under the Clean Air Act, as amended;

5.3.5.7 A significant impact on water quality or sole source aquifers, or contamination of a public water supply system, or a violation of State or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act;

5.3.5.8 A violation of any Federal, Tribal, State, or local law relating to the environmental aspects of the proposed action; or

5.3.5.9 A significant impact on the human environment, including, but not limited to, actions likely to cause a significant lighting impact on residential areas or business properties, or likely to cause a significant impact on the visual nature of surrounding land uses.

5.4 *Resource Categories.* Appendix A of this manual identifies the environmental resource categories that may be impacted. It should be noted that the list of resource categories in Appendix A is not exhaustive. In some circumstances, additional resource categories may need to be added. It is recommended that prior to conducting analysis under any of these categories, the responsible NIGC official be consulted regarding methodologies, thresholds of significance, mitigation measures, and permitting.

5.5 *Environmental Impact Statement Process Overview.* When a determination has been made to prepare an EIS, the following Figure provides an overview on the EIS process.

FIGURE 5-1—THE ENVIRONMENTAL IMPACT STATEMENT OVERVIEW

Step 1 .....	Responsible NIGC official or applicant formulates a proposed action, purpose and need, and a range of preliminary alternatives.
Step 2 .....	Responsible NIGC official or applicant collects background data and the responsible NIGC official analyzes the information.
Step 3 .....	Responsible NIGC official determines the need for an EIS (anticipated significant impact).
Step 4 .....	Notice of Intent (NOI) published in <b>Federal Register</b> and local press.
Step 5 .....	Initiate scoping activities, inviting participation of affected agencies and interested persons to aid in determining issues and alternatives to be addressed.
Step 6 .....	Perform the environmental analyses.
Step 7 .....	Prepare a draft EIS.
Step 8 .....	Circulate copies of draft EIS to the public and other Federal, Tribal, State and local agencies/organizations for review and comment.
Step 9 .....	File draft EIS with EPA (EPA will publish a Notice of Availability (NOA)). The responsible NIGC official may choose to publish a separate NOA under the NIGC heading in the <b>Federal Register</b> .
Step 10 .....	Provide a public comment period for the draft EIS (60 days minimum from the EPA NOA date).
Step 11 .....	Responsible NIGC official receives and evaluates comments. Comment periods may be extended (See Section 5.7.1).
Step 12 .....	Revise draft EIS after consideration of public comments.
Step 13 .....	Make copies of final EIS available to public, to include commenters.
Step 14 .....	File final EIS with EPA (EPA will publish an NOA). The responsible NIGC official may choose to publish a separate NOA under the NIGC heading in the <b>Federal Register</b> .
Step 15 .....	Responsible NIGC official must wait a minimum of 30 days from the EPA NOA date to allow for review, or allow for requests of reconsideration or technical corrections.
Step 16 .....	Responsible NIGC official prepares, or directs to be prepared, a Record of Decision (ROD).
Step 17 .....	NIGC approving official signs the ROD, takes or approves the Federal action, and has the ROD published in accordance with Section 5.12.6 of this manual.

5.6 Additional EIS Process Information

5.6.1 *Notice of Intent and Notice of Availability:* A Notice of Intent (NOI) must be prepared when it has been determined that an EIS must be prepared. The information that must be included in an NOI can be found in Figure 5-2. If a scoping hearing or meeting is planned and sufficient information is available at the time, the NOI should also announce the hearing or meeting, including the time and place of the hearing or meeting. The scoping hearing or meeting can also be announced separately. If the scoping hearing or meeting is being used to satisfy requirements of another environmental law/regulation, or executive order in addition to NEPA, the NOI should include a statement to that effect with a reference to the specific law, regulation, or executive order. Other forms of publication (other

than the **Federal Register**) shall be sought out to publish the NOI (40 CFR 1506.6).  
 5.6.1.1 The responsible NIGC official shall prepare the NOI in accordance with **Federal Register Document Drafting Handbook**. Once the NOI has been reviewed by the appropriate OGC attorney and the NIGC's Director of Contracts, three copies of the NOI will be sent to the Chairman for his signature. Upon receipt of the signed copies, the responsible NIGC official will send a cover letter, the three signed copies and a copy on a computer disc to: Director, Office of the Federal Register, National Archives & Records Administration, 800 North Capitol St., NW., Suite 700, Washington DC 20001.  
 5.6.1.2 While preparing the NOI for publication in the **Federal Register**, the responsible NIGC official will begin working with the consultant selected to prepare the EIS and the Tribe proposing

the action to establish an interdisciplinary approach to the preparation of the EIS (see 40 CFR 1502.6), EIS schedule and the channels of communication necessary to manage the preparation of the EIS.  
 5.6.1.3 A Notice of Availability (NOA) is used to announce the availability of either the draft EIS or the final EIS. The draft or final EIS is filed with the U.S. Environmental Protection Agency (EPA) and the EPA prepares and publishes an NOA. The NIGC may publish its own NOA in the **Federal Register**, but this is not mandatory. In most cases, the NIGC will publish its own NOA when the proposed action is highly controversial on environmental grounds. For additional information, check the EPA Web site (<http://www.epa.gov/compliance/nepa/index.html>). Finally, the NOA should be published in local newspaper(s).

FIGURE 5-2—NOI

Purpose .....	• Notice of Intent (NOI) announces to the public that the EIS process has begun for a proposed NIGC action.
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FIGURE 5-2—NOI—Continued

Content .....	<ul style="list-style-type: none"> <li>• If appropriate, the NOI announces the availability of a scoping document (or a previously prepared EA).</li> <li>• The NOI announces the scoping meeting, if one is planned, to include time and place. A separate notice can be prepared if the details of the scoping meeting(s) are unknown.</li> <li>• NOI must be published at least 15 days in advance of the scoping meeting(s).</li> <li>• Proposed action and possible alternatives.</li> <li>• Proposed scoping process including whether, when, and where scoping meeting will be held.</li> <li>• Identifies the NIGC point of contact for public inquiries.</li> </ul>
Public Participation .....	<ul style="list-style-type: none"> <li>• The NIGC and Tribe or consultant publishes NOI in the <b>Federal Register</b> and local newspaper(s), respectively.</li> <li>• NOI or other notice of scoping should be published at least 15 days prior to the scoping meeting.</li> </ul>

5.6.2 *Scoping (Also defined in Section 1.8.5):* The scoping process is used to identify the environmental issues that should be considered during the EIS process. In addition, the scoping process should be used to help identify other reasonable alternatives. The CEQ regulations at 40 CFR 1501.7 describe the scoping requirements.

5.6.2.1 In cases where an EA has been prepared and the impacts of the proposed project were determined to be significant, the EA shall be the basis on which to move forward in the EIS scoping process.

5.6.2.2 The responsible NIGC official will lead the scoping process. This includes, but is not limited to, inviting or have invited all potentially affected Federal, Tribal, State and local agencies/ organizations and/or other interested parties, determining issues to be analyzed in depth, identifying other environmental review and consultation requirements, and assigning responsible lead and cooperating agencies for input to the EIS. In some cases, a scoping meeting may be appropriate and will provide an opportunity to present additional information on the proposed project and solicit input from those interested and affected parties to:

- 5.6.2.2.1 Determine the scope of analysis required within the EIS;
- 5.6.2.2.2 Identify and eliminate insignificant issues and those covered in previous environmental reviews;
- 5.6.2.2.3 Identify alternatives; and
- 5.6.2.2.4 Identify any other EAs or EISs that are being or will be prepared which are related, but are not part of the scope of the EIS under consideration.

5.6.2.3 Scoping is the point at which substantial efforts should be made to begin the consultation process with local governmental bodies, Federal and State agencies, and other Tribes which may be affected by the proposed project.

5.6.3 *Preparation of the EIS (Format):* The NIGC preferred format follows the format found in 40 CFR 1502.10, with one exception (See Table of Contents), and is outlined below. All preliminary, draft, and final EAs shall be submitted to the NIGC in both hardcopy and digital (e.g. compact disc)

form. A summary is presented in Figure 5-3.

5.6.3.1 *Cover sheet:* The cover sheet shall include: A title (project name, location, and Tribe); the name of each responsible agency (lead and cooperating); lead agency point of contact information; designation of the document as draft or final (prior to the document being released to the public in draft form, it will be designated as a "Preliminary Draft EIS Version XX").

5.6.3.2 *NIGC Declaration Page:* This section shall contain the project title, location, designation as Draft or Final Environmental Impact Statement, legal authority citation (National Environmental Policy Act, 42 U.S.C. 4332(2)(C) and Indian Gaming Regulatory Act, 25 U.S.C. 2711); the month and year the draft EIS was made available (only for a final EIS); "Lead Agency: National Indian Gaming Commission;" any cooperating agencies; an abstract containing project description and EIS process; and the date on which comments are due (only for a draft EIS).

5.6.3.3 *Table of Contents:* The table of contents should include each chapter, figures, maps, tables, a glossary, references, and appendices. If the table of contents contains sufficient detail, an index may not be required. The responsible NIGC official will determine if an index is necessary.

5.6.3.4 *Executive Summary:* The Executive Summary shall summarize the information in the EIS. It shall focus on the primary conclusions, areas of interest to other agencies and the public, issues resolved (emphasis on the alternatives studied) and unresolved decisions with opinions or recommendations.

5.6.3.5 *Purpose and Need:* The purpose and need for a proposed project has two parts. The "need" identifies what the Tribe proposing the project lacks or what it needs. The "purpose" identifies that which the Tribe wants to obtain to satisfy its "need." For example, if a Tribe lacks sufficient revenues to pay for essential governmental services, then the Tribe's "need" for the project may be to

generate funds for essential governmental programs. The Tribe's "purpose" may be to enter into a management contract with a casino developer to construct and manage a casino that will generate sufficient revenues to provide essential governmental services for Tribal members.

5.6.3.6 *Alternatives (including the proposed action and the no-action alternative):* Based on information from the "Affected Environment" and "Environmental Consequences" sections, the alternatives section should "rigorously explore and objectively evaluate all reasonable alternatives. \* \* \*" (See 40 CFR 1502.14(a)). In conducting this evaluation, it is recommended that screening criteria be developed to identify those alternatives that will not be studied in detail. For example, if a proposed action (with the exception of the no-action alternative) will not meet the "Purpose and Need," it should not be studied in detail and would not be evaluated in the "Environmental Consequences" section. When screening potential alternatives, the NIGC along with cooperating agencies, the Tribe proposing the project, and the EIS consultant should work to identify appropriate screening factors. The NIGC's preferred alternative may be noted in the draft EIS, if one exists. Otherwise, the NIGC's preferred alternative shall be identified in the final EIS unless prohibited by another law.

5.6.3.7 *Affected Environment:* This section of the EIS will describe the existing conditions in the area potentially impacted by each alternative. This section should provide enough information to understand the potential effects the alternatives will have on particular resources. The amount of information provided in this section and its sub-sections should be commensurate with the significance of the potential impacts. The area to be described is not limited to the immediate project area and will vary depending on the particular resource category being described. For example, if the project's construction site is the

only area that will experience a change in land use and all surrounding land uses are compatible, there will be no need to analyze changes in the land use description beyond the boundaries of the project site. However, if as part of the proposed project a waste water treatment plant will require discharge to a particular stream and that stream is tributary to another larger body, it may be necessary to expand the water quality description several miles from the project site. The NIGC, cooperating agencies, the Tribe proposing the project and the EIS consultant should work collectively and use input received from interested parties during scoping or information from agencies with jurisdiction or special expertise to identify appropriate "Affected Environment" boundaries.

5.6.3.8 *Environmental Consequences*: This section should first describe the methodology used to evaluate the potential impacts to each particular resource category being evaluated. That methodology should be applied to all of the alternatives selected to be studied in detail. The impacts identified for each alternative should then be presented in a manner that allows a comparative analysis of the impacts. This section should then identify those impacts that cannot be avoided; the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposed project's implementation. Direct, indirect, and cumulative impacts should be evaluated

in this section. (Cumulative impacts may be included within each resource category or may be evaluated as a stand alone sub-section. In addition to the analysis and potential impacts, this section must also include information regarding the status of interagency, intergovernmental consultation required by any special purpose environmental law(s), regulation(s), or executive order(s).

5.6.3.9 *Mitigation*: This section shall describe mitigation measures that were considered and planned to minimize environmental harm that may result from the proposed project. It is expected that the following types of mitigation will be included: design and construction actions to avoid or reduce impacts; design measures that reduce impacts; management actions that reduce impacts during operation of the facility; and replacement, restoration, reuse, conservation, preservation, and compensation measures. In accordance with 25 CFR 531.1(b)(16), the management contract (if approved) will assign either the Tribe or casino manager the responsibility to "supply the National Indian Gaming Commission...with all information necessary for the Commission to comply with...the National Environmental Policy Act (NEPA)." This shall include, but is not limited to, documentation that all mitigation and other conditions established in the EIS and committed to in the ROD, or in agreements with State/local agencies or organizations, and included as a condition of the project approval, will be implemented.

5.6.3.10 *List of Preparers*: This section shall include a list of each

person's name and their qualifications (e.g. expertise, experience, professional disciplines) of the NIGC staff, cooperating agency(ies) staff, EIS consultant staff and sub-contractors staff who assisted in preparing the EIS or associated environmental studies.

5.6.3.11 *List of Agencies, Organizations, Person(s) to whom and Locations where Copies of the EIS were Sent*: This list is provided for reference purposes and to demonstrate that the EIS has been circulated and the public review process followed.

5.6.3.12 *Appendices*: This section consists of material that substantiates any analysis that is fundamental to the EIS and its conclusions, but would substantially contribute to the length of the EIS or detract from the document's readability, if included in the body of the EIS. This section should contain information and documentation about formal and informal consultation conducted and related agreement documents prepared pursuant to other applicable environmental laws, regulations, and executive orders.

All comments received on any version of the draft EIS and the preliminary final EIS are assessed and responded to in the final EIS. Any comments received on the final EIS are assessed and responded to in the Record of Decision (ROD). Comments shall be responded to in any or all of the following ways:

- Written into the text of the final EIS;
- Included or summarized and responded to in an appendix to the final EIS or ROD, and if voluminous, may be compiled in a separate supplemental volume for reference.

FIGURE 5-3—ENVIRONMENTAL IMPACT STATEMENT CONTENT

Purpose .....	<ul style="list-style-type: none"> <li>• Provide an in-depth review of environmental impacts for all major NIGC actions before a decision is made.</li> <li>• Examines the environmental impacts of a range of reasonable alternatives to the proposed action.</li> <li>• Discloses to the public and the decision maker the alternatives, impacts, and mitigation.</li> </ul>
Scope .....	<ul style="list-style-type: none"> <li>• Provide a comprehensive review of all impacts of the proposed action and alternatives, including a no-action alternative.</li> </ul>
Content .....	<ul style="list-style-type: none"> <li>• Include the following:                             <ul style="list-style-type: none"> <li>• Cover sheet,</li> <li>• Table of Contents,</li> <li>• Executive Summary,</li> <li>• Purpose and Need,</li> <li>• Alternatives considered, including the proposed action and the no-action alternative,</li> <li>• Affected Environment,</li> <li>• Environmental Consequences,</li> <li>• Mitigation,</li> <li>• Coordination and Consultation,</li> <li>• List of Preparers,</li> <li>• Appendices, and</li> <li>• Summary of Public comments.</li> </ul> </li> <li>• Changes to this format must be approved by the NIGC.</li> </ul>

FIGURE 5-3—ENVIRONMENTAL IMPACT STATEMENT CONTENT—Continued

Public Participation .....	<ul style="list-style-type: none"> <li>• Provide for 60-day comment period on the draft EIS.</li> <li>• Hold at least one (1) public hearing.</li> <li>• Provide a 30-day waiting period following the publication of the final EIS before issuing the ROD.</li> </ul>
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5.7 Timing of Actions

5.7.1 While the minimum comment period for the draft EIS is 45 days (40 CFR 1506.10(c)), the NIGC has chosen to provide a 60-day draft EIS comment period. The NIGC has the discretion to voluntarily extend any comment period beyond those included in this manual, the CEQ regulations, or other environmental laws. The same discretion shall be applied to the NIGC's decision to approve or deny any request for an extension to any comment period. A public hearing shall be held no sooner than 15 days following publication of the notice of availability (NOA). The NIGC's final record of decision (ROD) on the proposed action cannot be made until 90 days after the filing of the draft EIS (40 CFR 1506.10(b)(1)) and 30 days after filing of the final EIS. If another Federal agency provides a showing of compelling reasons regarding national policy to the EPA, the EPA may extend the comment period after consultation with the NIGC. If the NIGC does not concur with the extension proposed by EPA, the EPA cannot extend the time period for more than 30 days. The EPA may also reduce the comment period if the NIGC shows a compelling reason of national security (See 40 CFR 1506.10(d)). The NIGC may issue its own detailed NOA in addition to the NOA published by the EPA. However, a NOA issued by the NIGC cannot substitute for the NOA issued by the EPA. If the NIGC decides to extend the comment period, the EPA must be notified so it may modify its **Federal Register** notice accordingly.

5.7.2 In order to have the EPA publish a NOA, the NIGC shall send five (5) copies of the draft EIS to the U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7241, 1200 Pennsylvania Ave., NW., Washington DC 20460. (**Special Note:** For all deliveries by courier, including express delivery services other than the U.S. Postal Service, use 20004 as the zip code.) The responsible NIGC official should access the NEPA Web site of the EPA's Office of Federal Activities to verify that the filing instructions provided herein are current (<http://www.epa.gov/compliance/nea/>).

5.8 Draft EIS

5.8.1 *Internal Review:* Prior to releasing the draft EIS to the public and other agencies, the draft EIS will be prepared and reviewed by the NIGC, and all cooperating agencies. This version of the draft EIS will be designated as the "preliminary draft EIS." This review is intended to ensure that the document is technically and legally sufficient. It is intended to ensure that the concerns of NIGC and cooperating agencies are properly discussed in the document prior to its public release.

5.8.2 *Filing the DEIS:* Once the internal review is complete, the document should then be designated as the "draft EIS" and five (5) copies of it must be sent to the EPA at the address in Section 5.7.2.

5.8.3 *Public Notice:* The responsible NIGC official, in accordance with 40 CFR 1502.19, shall ensure the draft EIS has been delivered to interested parties, appropriate libraries, and other public venues that provide the public an opportunity to review and comment on the draft EIS.

5.8.3.1 Once delivery to appropriate public venues has been confirmed, the responsible NIGC official shall attach a letter with five (5) copies to be sent to the EPA certifying that the draft EIS has been delivered. The EPA will normally publish the draft EIS NOA in the **Federal Register** two (2) weeks after receiving the NIGC's certification of distribution. Once delivered, it is recommended that the responsible NIGC official contact the EPA for the exact date that it will be published.

5.8.3.2 The responsible NIGC official shall ensure that an NIGC NOA be published in the **Federal Register**, other notices are published in local media (e.g. local newspapers), and that the NIGC issue a press release. Every effort should be made to have the above mentioned notices published on the same date the EPA's notice will be published.

5.8.3.3 The following standard language shall be used in the certification to EPA, notices to local media, and the NIGC press release:

The NIGC encourages all interested parties to provide comments concerning the scope and content of the draft EIS. Comments should be as specific as possible and address the analysis of potential environmental

impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the reviewer's interests and concerns using quotations and other specific references to the text of the draft EIS and related documents. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the NIGC in a timely manner so that the NIGC has an opportunity to address them.

5.8.4 Distribution and Coordination for Intergovernmental Review

5.8.4.1 Comments from appropriate Federal, Tribal, State, and local agencies and organizations that did not act as cooperating agencies, but have jurisdiction by law, have special expertise, will be impacted by the proposed action, or are otherwise an interested party, shall be requested and accepted.

5.8.4.2 Copies of the draft EIS shall be sent to:

5.8.4.2.1 Appropriate Federal, Tribal, State and local agencies and organizations as described in 40 CFR 1503.1, and

5.8.4.2.2 Regional EPA office with jurisdiction over the proposed project site (1 copy).

5.8.4.2.3 If the proposed project occurs within a State that has an established clearinghouse, delivery of the draft EIS should follow the clearinghouse's procedures.

5.8.5 *Copies:* The responsible NIGC official shall have a sufficient number of draft EISs prepared to meet the anticipated demand of Section 5.8.4. Copies will be prepared for those agencies/organizations noted in Section 5.8.4.2 free of charge. A fee, not to exceed reproduction costs, may be charged for copies requested by the public if the original set of copies has been exhausted. Material used in developing or referenced in the draft EIS must be available for review at an NIGC designated location. In an effort to decrease printing cost and increase distribution, the draft EIS should be prepared and circulated in Adobe Acrobat format (pdf) on a CD-ROM and placed on the Internet to the greatest degree possible.

5.8.6 *Comments:* The responsible NIGC official shall take into consideration all comments received

from Federal, Tribal, State, local agencies and organizations, and the public. As a part of the consideration process, the NIGC official must respond to all substantive comments in the final EIS. Any comments on the draft EIS, including those made during the public hearing, shall accompany the final EIS through its internal review process. The draft EIS will be revised, as appropriate, to reflect comments received, and issues raised through the entire public involvement process. Copies of substantive comments shall be included in the final EIS or as a separate accompanying appendix. If the number of comments is too voluminous to include, the comments may be summarized. (See also Section 5.6.3.12 of this manual.)

### 5.9 Review and Approval of Final EIS

5.9.1 As part of the EIS process, environmental issues are defined and mitigation measures identified. All efforts should be made to complete environmental consultation and coordination requirements before publication of the final EIS to ensure consideration of meaningful public comment provided on the draft and to streamline the environmental review and permitting/approval processes. The final EIS shall reflect that there is compliance with the consultation and coordination requirements of all applicable environmental laws, regulations, and executive orders. If it is not possible to complete environmental consultation and coordination requirements prior to publication of the final EIS, the final EIS will reflect the state of ongoing consultation(s) and coordination(s) with appropriate agencies and note that the requirements will be met. Any unresolved environmental issues and efforts to resolve them through further consultation will be identified and discussed in the final EIS. The required consultation and coordination must be completed prior to the NIGC issuing a ROD.

5.9.2 *Internal Review:* This review shall follow the same format as that set out in Section 5.8.1. The internal review document shall be titled "Preliminary Final EIS."

#### 5.9.3 Final EIS Approval

5.9.3.1 The following declaration shall be added to the NIGC Declaration page:

After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal, Tribal, State, and local agencies authorized to develop and enforce environmental standards or having jurisdiction by law or

special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in § 101(a) of the National Environmental Policy Act of 1969.

5.9.3.2 The Declaration page shall include signature and date blocks for the decisionmaker (the NIGC Chairman).

### 5.10 Notice of Availability of Final EIS

5.10.1 The Notice of Availability for the approved final EIS should follow the same process as that for the draft EIS (See § 5.7.2 and 5.8.2).

### 5.11 Distribution of Approved Final EIS

5.11.1 Distribution of the approved final EIS shall follow the same process as that for the draft EIS (See §§ 5.8.4 and 5.8.5).

### 5.12 Record of Decision

5.12.1 The ROD is the NIGC's decision document. The NIGC may not make a decision until 90 days after the draft EIS NOA and 30 days after the final EIS NOA are published.

5.12.2 The NIGC Chairman shall be responsible for signing all RODs.

5.12.3 Any mitigation measures contained in the final EIS must be included in the ROD. A monitoring and enforcement plan may be adopted to ensure compliance with all mitigation measures. Proposed changes to mitigation measures must be reviewed by the same Federal, Tribal, State, or local agencies/organizations that reviewed the final EIS and must be approved by the NIGC Chairman.

5.12.4 In addition to the alternatives considered in the draft and final EIS, the ROD must identify the "environmentally preferable" alternative (See 40 CFR 1505.2(b)).

5.12.5 The NIGC Chairman may choose an alternative that was included in the final EIS but was not the environmentally preferred alternative(s) nor the NIGC's preferred alternative identified in the final EIS. If the final EIS's preferred alternative is not selected, the Federal, Tribal, State and local agencies/organizations may need to be consulted to ensure that the selected alternative complies with special environmental laws, regulations, and executive orders. In some cases, a supplemental final EIS may be necessary and should be reviewed and approved in accordance with Section 5.16.

5.12.6 An NOA for a ROD is not required unless the action is of national concern, but the ROD must be made

available to the public. It is recommended that a notice be published via local media (e.g. local newspapers) and the ROD be made available at local libraries or other public depository. The notice and ROD also may be published and made available via other means (e.g., on the NIGC Web site or the project's individual Web site).

### 5.13 Programmatic EISs

5.13.1 *Programmatic EISs:* Given that most NIGC actions that require an EIS are specific to individual Tribes, it is not anticipated that a Programmatic EIS would be appropriate. Therefore, this section is reserved.

### 5.14 Time Limits for EISs

5.14.1 A draft EIS is normally valid for a period of three (3) years except when there are substantial changes in the proposed action, there are significant new circumstances, or there is new information relevant to environmental concerns regarding the proposed action or its impacts. In cases of significant new circumstances or information, a written re-evaluation must be undertaken. (See Section 5.15.) In cases of significant new circumstances or information that affect the NIGC's consideration of the proposal, a supplement to the draft EIS or a new draft EIS will be prepared and circulated (See Section 5.16).

5.14.2 A final EIS shall be assumed to be valid for a period of three (3) years. For a final EIS more than three (3) years old, the following conditions apply:

5.14.2.1 If major steps toward implementation of the proposed project/action (e.g. start of construction or land being taken into trust by the Department of the Interior) have not commenced within three (3) years from the date of the final EIS approval, a written re-evaluation (See Section 5.15) of the adequacy, accuracy, and validity of the final EIS will be prepared by or for the responsible NIGC official. If the responsible NIGC official determines that there have been significant changes that affect the NIGC's consideration of the proposal, a supplement to the final EIS or a new final EIS will be prepared and circulated.

5.14.2.2 If the proposed action is to be implemented in stages or requires successive Federal approvals, a written re-evaluation (See Section 5.15) of the continued adequacy, accuracy, and validity of the final EIS will be made at each major approval point that occurs more than three (3) years after approval of the final EIS and a new or supplemental EIS prepared, if necessary.

## 5.15 Written Re-Evaluation

5.15.1 The preparation of a new or supplemental EIS is not necessary when it can be documented that the:

5.15.1.1 Proposed action is reasonably consistent with plans or projects for which a prior EIS has been filed and there are no substantial changes in the proposed action that are relevant to environmental concerns;

5.15.1.2 Data and analyses contained in the previous EIS are still substantially valid and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; and

5.15.1.3 All pertinent conditions and requirements of the prior approvals have, or will be, met in the current action.

5.15.2 The analysis and conclusions in a written re-evaluation must be made and certified by an environmental professional. The written re-evaluation must contain enough information for the responsible NIGC official to independently evaluate the changes and conclude the contents of the previously prepared environmental documents remain valid or that significant changes require the preparation of a new EIS.

5.15.3 A written re-evaluation may be circulated to the public at the discretion of the responsible NIGC official.

## 5.16 Supplemental EISs

5.16.1 The NIGC shall prepare or have prepared supplements to either the draft or final EISs (1) if there are substantial new circumstances or there is new information (*See* 40 CFR 1502.9(c)(1)(i & ii) regarding the proposed action that is relevant to environmental concerns, or (2) if there are significant new circumstances or there is information relevant to environmental concerns and bearing on the proposed action or its impacts. Significant information is information showing dramatic changes to the impacts of the proposed project compared to those identified in the original draft or final EIS.

5.16.2 Supplemental documents will be prepared and circulated in accordance with the procedures of this chapter.

5.16.2 If a ROD was issued prior to a supplemental EIS, a new ROD shall be prepared and issued after the supplement has been circulated for 30 days.

## 5.17 Referrals to Council on Environmental Quality (CEQ)

5.17.1 A project may be referred to CEQ when a cooperating or commenting

agency disagrees regarding the proposed project's potential to cause unsatisfactory environmental effects. Referrals to CEQ shall be made in accordance with 40 CFR part 1504.

5.17.2 If the NIGC disagrees regarding another agency's proposed project's potential to cause unsatisfactory environmental effects, the NIGC may refer that project to CEQ. Referrals to CEQ are made in accordance with 40 CFR part 1504.

## 5.18 Review/Comment and Adoption of EISs

5.18.1 *Comments:* Federal, Tribal, State and local agencies/organizations may review and comment on the draft and final EIS. When comments are submitted to the NIGC, they should be specific in nature and organized in a manner consistent with the structure of the draft or final EIS and may identify modifications that might enhance environmental quality or avoid or minimize adverse environmental impacts, and will correct inaccuracies or omissions. Comments will be submitted within the time limits set forth in the request, unless the agency/organization responsible for submitting comments seeks and receives an extension from the responsible NIGC official.

When the NIGC is participating in the preparation of an EIS as a cooperating or commenting agency, the responsible NIGC official shall provide comments that are specific in nature and organized in a manner consistent with the structure of the draft or final EIS and may identify modifications that might enhance environmental quality or avoid or minimize adverse environmental impacts, and will correct inaccuracies or omissions. Comments will be submitted within the time limits set forth in the request, unless the NIGC seeks and receives an extension from the lead Federal agency.

5.18.2 *Adoption:* The NIGC may adopt, in whole or in part, a draft or final EIS prepared by another agency in accordance with 40 CFR 1506.3. When the NIGC adopts another agency's EIS, the responsible NIGC official must independently evaluate the information contained in the EIS, take full responsibility for the scope and content that addresses the NIGC action, issue its own ROD, and provide notification to EPA that the NIGC has adopted the EIS. The same time limits described in Section 5.14 also apply to EIS prepared by other agencies and adopted by the NIGC.

## 5.19 Reserved

George Skibine,  
*Acting Chairman.*

## Appendix A—Resource Categories

The purpose of this Appendix is to provide a list of resource categories to be evaluated in an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The following list is not exhaustive. Resource categories may be added when the proposed action has the potential to impact a resource not listed below.

### Resource Categories

Geology and Soils  
Land Use  
Farmlands  
Air Quality  
Water Quality (Surface and Ground)  
Floodplains  
Wild and Scenic Rivers  
Coastal Resources  
Wetlands  
Biotic Communities  
Endangered Species  
Historic, Architectural, Archeological, and Cultural Resources  
Traffic  
Noise  
Light and Aesthetics  
Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety  
Hazardous Materials, Pollution Prevention and Solid Waste  
Public Services (municipal water supply, waste water services, electric, *etc*)  
Public Safety (Police, Fire, Emergency Medical, *etc*)

## Appendix B—Example MOU for EIS Cooperating Agencies

The following is an example of a Memorandum of Understanding (MOU) used when cooperating agencies will be participating in the preparation of an EIS. It is strongly recommended that any potential cooperating agency sign an MOU before being accepted as an official cooperating agency in the preparation of an EIS. The example MOU is only an example and may be modified to fit the individual circumstances of each EIS being prepared. Each cooperating agency representative must sign the MOU. The MOU must then become part of the administrative record.

### Draft Memorandum of Understanding Between the Lead and Cooperating Agencies for the (Tribe Name) Proposed (Project Title) Environmental Assessment or Environmental Impact Statement.

This Memorandum of Understanding (MOU) between the National Indian Gaming Commission (NIGC), the lead Federal agency, and, inclusively, the *Cooperating Agency*, and the *Tribe name (if designated as a cooperating agency)* the cooperating agencies, is for the consultation, preparation assistance, and review of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that will describe and analyze the potential environmental effects of the proposed NIGC approval of a

management contract for the *Project Title* (the Project) located in *Location*. The *Tribe name* is the tribe that has the proposed project. The cooperating agencies' involvement is intended to assist the NIGC with all issues involving the environmental review under their jurisdiction associated with the project. This MOU describes the agencies' (signatories) respective responsibilities regarding completion of an EIS pursuant to the requirements of the National Environmental Policy Act (NEPA) and, if applicable, other environmental reviews pursuant to the requirements of the state NEPA-like statute.

### I. Purpose

The purpose of this MOU is:

(1) To confirm the formal designation of the *Cooperating Agency* and the *Tribe name* as cooperating agencies in the preparation of the EIS;

(2) To define each signatory's role, obligations, and jurisdictional authority regarding the EIS;

(3) To provide input in the preparation of an EIS that will enable the NIGC to adequately consider impacts to the natural and human environment and the *Cooperating Agency* and the *Tribe name* to properly address potential project related environmental impacts in connection with their regulatory objectives; and

(4) To provide a framework for cooperation and coordination among the signatories to facilitate completion of the NEPA process including issuance of required findings and to fulfill other environmental responsibilities each signatory may have.

### II. Regulatory Criteria

Under NEPA [42 U.S.C. 4371 *et seq.*], the NIGC, as lead Federal agency, has the responsibility to designate those portions of EA or EIS upon which each cooperating agency will focus its evaluation of environmental issues. The designations will be based upon legal jurisdiction or special expertise of the cooperating agency, and will not limit that agency's ability to comment on other environmental resources or aspects of the EIS.

The signatories to this MOU shall cooperate fully and share information and technical expertise to evaluate the potential environmental effects of the proposed action and its alternatives. Each signatory shall give full recognition and respect to the authority, expertise, and responsibility of the others. Participation in this MOU does not imply endorsement of the proposed project, nor does it abridge the independent review of the Draft and Final EIS by the signatory agency. The agencies will make every effort to raise and resolve issues during scoping and EIS preparation. The signatories acknowledge that the NIGC, as lead agency, has the responsibility for the content of the Draft and Final EIS and its conclusions.

### III. Procedures

1. The NIGC is the lead Federal agency for this project. It is ultimately responsible for preparing the Draft and Final EIS and for assuring compliance with the requirements of NEPA and other applicable laws and regulations. The NIGC agrees to give full

respect and recognition to the jurisdiction of the *Cooperating Agency* and the *Tribe name*. The NIGC is responsible for considering impacts to the quality of the natural and human environments associated with the proposed project. In meeting its core NEPA responsibilities, the NIGC will use the environmental analyses, proposals, and special expertise of the cooperating agencies to the maximum extent possible consistent with its responsibilities, and as the lead agency, will retain ultimate responsibility for the EIS's content (See 40 CFR 1501.6(a)(2) and CEQ's 40 Questions, No. 14.b.). This includes defining the issues, determining purpose and need of the project, selecting or approving alternatives and mitigation measures, reviewing any required modification of the EIS, responding to comments on the Draft EIS, and retaining responsibility for the conclusions of its environmental analysis. In addition to responding to comments and conducting the appropriate level of public involvement in advance of the combined undertaking, the NIGC may employ other opportunities to involve and obtain input from all interested parties. Other opportunities include but are not limited to informal/formal consultation and environmental conflict resolution.

2. The goal of the signatories is to assist in the preparation of an EIS that contains all the information each signatory needs to fulfill its responsibilities under NEPA or, if applicable, tribal or state NEPA-like statute, and make independent decisions within its jurisdiction. As such, *Cooperating Agency* and the *Tribe name* are to participate in the NEPA process at the earliest appropriate time, make staff support available, exchange relevant information throughout the EIS process, submit independent recommendations, and assist the NIGC in developing responses to substantive comments received on the Draft and Final EIS, as resources allow. *Cooperating Agency* and the *Tribe name* will be responsible for the preparation of any portion of the EA/EIS or related technical reports described below in the roles and responsibilities section. In addition, they will also have the opportunity to provide comments to the NIGC on the other portions of the EA/EIS.

3. The procedures for EIS project development and interagency coordination contained in NEPA; the Clean Water Act—Sections 401, 402, and 404; the Clean Air Act; Endangered Species Act (ESA); and National Historic Preservation Act (NHPA); and other applicable environmental laws are incorporated herein by reference.

4. As appropriate, and to enhance the effectiveness of this MOU, the NIGC will work with *Cooperating Agency* and the *Tribe name* to ensure access to the NIGC expertise, data, information, analyses, and comments received. It is understood that any necessary communication with the NIGC's EIS consultant will be in coordination with the responsible NIGC official.

5. The *Cooperating Agency* and the *Tribe name* will each identify a designated Point of Contact (POC) for coordination and consistency on this project. Due to the complexity of the project, the agencies realize that this is a long-term commitment of

resources and will make every effort to maintain the same POC through the duration of the NEPA process. If reassignment of the POC becomes necessary, the agency will notify the MOU signatories of said change. In such cases, previous agreements, concurrences, and positions will not be revisited unless there is significant new information or significant changes to the project, environment, or laws and regulations.

6. The signatories will ensure that appropriate coordination, communication, project updates and status reviews occur, as needed, to keep each other current on the project's progress.

7. The NIGC will appropriately incorporate the comments, analysis, recommendations, and/or data submitted by the *Cooperating Agency* and the *Tribe name* in the Draft and Final EIS, and will utilize a systematic, interdisciplinary approach that will ensure the integrated use of the submitted material [40 CFR 1501.6(a)(2) and 1502.6].

8. The NIGC will promptly inform *Cooperating Agency* and the *Tribe name* of all schedule changes that would affect *Cooperating Agency* and the *Tribe name's* ability to provide timely input for a document review. Adequate time will be given for agency reviews especially when there is significant new information or significant changes to the project, environment, or laws or regulations.

9. To the maximum extent permitted by applicable federal, tribal, or state law, *Cooperating Agency* and the *Tribe name* will keep confidential and protect from public disclosure any and all documents received prior to determination of suitability for public review or release under the directives of the Freedom of Information Act (FOIA). The *Cooperating Agency* and the *Tribe name* will coordinate all FOIA requests received on the project with the NIGC prior to releasing documents. The NIGC will promptly respond to such coordination requests in order to enable the *Cooperating Agency* and the *Tribe name* to meet its FOIA obligations.

10. *Cooperating Agency* the *Tribe name* agree not to employ the services of any representative or party having a financial interest in the outcome of the proposed project in a capacity directly related to *Cooperating Agency* and the *Tribe name* obligations as a cooperating agency. *Cooperating Agency* and the *Tribe name* will take all necessary steps to ensure that no conflict of interest exists with its consultants, counsel, or representatives employed in this undertaking. [40 CFR 1506.5 (c)] If disclosure statements are obtained as a result of contractor or other selection regarding this action, copies of the disclosure statements will be forwarded to the NIGC.

### IV. Roles and Responsibilities

The NIGC and each of the cooperating agency(s) agree to the following roles and responsibilities:

- Follow the procedures as outlined in Section III of this MOU.
- Comply with timelines and deadlines as established by the NIGC or contact the NIGC as soon as possible if timelines or deadlines cannot be met.

• Act in good faith when conducting cooperating agency duties identified within this MOU and the NIGC NEPA Procedures Manual.

• *Other roles and responsibilities as identified prior to signing this MOU.*

All parties will work together to provide oversight, guidance, and comment to assure the EIS's consistency for compliance with all appropriate federal, tribal, state and local laws, statutes, orders, regulations, and guidance within their jurisdiction by law or special expertise.

**V. Administration**

1. Nothing in this MOU will be construed as affecting the authority of any signatory beyond those agreements contained within this MOU.

2. This MOU does not obligate the NIGC to provide funding for the [Cooperating Agency Name] and the [Tribe Name] involvement in this effort, nor does it require [Cooperating Agency Name] and the [Tribe Name] to obligate or expend funds in excess of available appropriations.

3. If a disagreement should develop between the agencies, the POC's will expeditiously attempt to resolve the disagreement through consensus. If timely amicable resolution is not achieved at the POC level, the matter shall be promptly referred to mid-level management of these agencies for their participation in the resolution process. In the event that mid-level managers are unable to reach a satisfactory solution, the persons whose signature appears in Section VI of this MOU will work to resolve the dispute.

4. This MOU shall be terminated when the NIGC issues a Record of Decision or for reasons of good cause upon 30 days prior written notice. An example of good cause would be the Tribe name withdrawal of the proposed action.

5. Any signatory may request re-negotiation or modification of this MOU at any time. All signatories will consider the proposed changes, and upon mutual agreement, adopt the proposed changes. The signatory that proposed the change shall provide copies of the adopted revised MOU to the other signatories.

6. This MOU shall be incorporated into or referenced in the Draft and Final EIS for public review so that each signatory's respective roles may be fully understood.

**VI. Agreement To Participate in This MOU**

\_\_\_\_\_  
Name, Chairman  
National Indian Gaming Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Cooperating Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Tribal Chairperson/President/etc.  
Tribal Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title  
Other Cooperating Agencies

\_\_\_\_\_  
Date

**Appendix C—Third Party Contracting Guidance**

**C-1: Introduction and Purpose**

According to CEQ regulation (40 CFR 1506.5(c)), an Environmental Impact Statement (EIS) must be prepared by the lead agency or an environmental consultant/contractor (contractor). The contractor must be selected by the lead agency (NIGC). The purpose for the lead agency selecting the contractor is to avoid conflicts of interest. However, in most cases, the proponent of a project usually pays for the contractor's services. This is commonly known as "Third Party Contracting." The purpose of this appendix is to provide guidance on important issues raised when selecting and using a contractor.

**C-2: Scope of Work**

Before a contractor can be selected, a Scope of Work (SOW) must be developed. It is important to involve the project proponent in the development of a SOW. Both the NIGC, as the lead agency, and the Tribe, as the project proponent, should come to terms on what will be included in the SOW. The SOW should only contain those tasks the NIGC and Tribe have identified as being required to comply with NEPA, NIGC procedures contained in this manual, and other laws, and keeping of the administrative record during the preparation of the EIS. The SOW should not contain any tasks that would be undertaken after the EIS is complete and the ROD is issued.

As a general rule, a SOW should contain the following: An introduction of the project, the conceptual design of the proposed project, a task-by-task listing of the analysis required to complete the EIS, the requirements needed to comply with NEPA, the NIGC procedures contained in this manual, and other laws, and the keeping of the administrative record. The task(s) that identify the analysis should include any specific methodologies that are known to be

needed. The task(s) should also include the identification of and support for meetings, teleconferences, and hearings. The important thing to remember when developing a SOW is to include everything needed to comply with NEPA. The SOW should provide the flexibility to add to or delete tasks identified through the scoping process and subsequent development of analysis.

The SOW should also identify how prospective contractors package their proposals. Establishing a single format for proposals will make it easier to evaluate each contractor's proposal against the others. If a contractor plans to use sub-contractors for some tasks, it should be noted in their proposal. It may be necessary for the NIGC to consult with the Tribe to identify prospective contractors. The SOW will then serve as the backbone of the "Request for Proposal" (RFP).

**C-3: NIGC Evaluation and Selection**

Once all prospective contractors have submitted their proposal to prepare the EIS, the NIGC official will review and evaluate each proposal. The evaluation can take one or more of the following forms: Interviews with the proposed Project Manager, calling references, and/or reviewing other EISs they have prepared. The NIGC official should develop a ranking system to aid in identifying the best contractor candidate. Once the NIGC official has evaluated each proposal and ranked it, the contractor should be notified. In addition, the Tribe should also be notified. At this point it is important for the NIGC official to consult with the Tribe to ensure a financial mechanism is in place so as not to delay the start of the EIS preparation by the contractor.

In notifying the Tribe and the contractor, the NIGC official should develop a Memorandum of Understanding (MOU). This MOU should delineate the roles and responsibilities of the NIGC, the Tribe, and the contractor during the preparation of the NEPA analysis and documentation. All three parties (the NIGC, the Tribe, and the Contractor) should then have the appropriate person with that organization sign the MOU.

**C-4: Financial and Other Interest Disclosure**

In accordance with 40 CFR 1506.5(c), the contractor is required to sign a disclosure form that states their company has no financial or other interest in the outcome of the EIS. (See Form on next page.) If the contractor plans to use sub-contractors, they are also required to sign a disclosure form. These forms must be kept in the administrative record.

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**Appendix D: Financial Disclosure Form****Disclosure Statement****for the *Project Title*****Environmental Impact Statement**

CEQ Regulations at 40 C.F.R. §1506.5(c), require contractors who will prepare an Environmental Impact Statement (EIS) to execute a disclosure statement, specifying that they have no financial or other interest in the outcome of the EIS. The term “financial or other interest in the outcome of the project” means any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g. if the project would aid proposals sponsored by the firm’s other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit.

In accordance with these requirements, \_\_\_\_\_  
 (company/individual name)  
 hereby certifies that they have no financial or other interest in the outcome of the project.

Certified by:

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Company Name