

April 14, 2010

Mr. Brad Mehaffy
National Indian Gaming Commission
1441 L Street, N.W.
Suite 9100
Washington, D.C. 20005

Dear Mr. Mehaffy:

Dragonslayer, Inc. and Michels Development, LLC (the Companies) submit these comments on the draft NIGC NEPA Manual noticed in the Federal Register on December 4, 2009. 74 Fed. Reg. 63,765. The Companies own non-tribal card rooms in La Center, Washington. We have extensive experience with the NIGC, and BIA, NEPA procedures as a result of our participation in the ongoing and highly flawed gaming trust land acquisition request of the Cowlitz Tribe. The process on this proposal, in which the NIGC and BIA are co-lead agencies, demonstrates everything that is wrong with the NEPA process when applied to Indian gaming and off-reservation casinos. It confirms the need for strong reform of NEPA compliance at both agencies. The Companies are pleased that NIGC has taken the initial steps in this regard by publishing the proposed NEPA Manual. Important changes in process are set forth in the Manual, and the Companies encourage its adoption subject to the comments in this letter.

Before providing comments, we summarize the principal defects with the NIGC/BIA NEPA process for the Cowlitz application. At the outset, the Cowlitz Tribe attempted to slip through a trust land request for what would be the largest casino in the Pacific northwest merely under a categorical exclusion, claiming that the agricultural land subject to the request, and owned by the powerful tribal member David Barnett (son of the then tribal Chairman), would not experience any change in use. The public concern over the likelihood of a casino on the site caused the Tribe to admit its plans. Still it attempted only to use an EA, arguing that it would be a small casino with no significant effects. Again the public forced the Tribe to concede its true plans for a massive casino resort.

The Tribe then embarked on an EIS that it sought to control in every way possible. It hired a consultant for the EIS before BIA made a selection. It developed a weak and ineffective MOU, which the agencies adopted. It then proceeded to dominate and manipulate the EIS process, meeting on a frequent basis with the consultant and participating in the development of policy choices designed to avoid the consideration

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participating in the development of policy choices designed to avoid the consideration of any alternatives not appropriate for its preferred choice of land—the same parcel owned by Barnett and eventually transferred into a gaming partnership between him and the Mohegan Tribe. (Barnett subsequently sold part of his interest to the Paskenta Band.) The result was an extremely biased EIS that does not meet the central legal requirements of NEPA.

While BIA has been responsible for the processing of the EIS, and hence is responsible for allowing these problems to develop, the NIGC shares the legal obligation to ensure the sufficiency of the document and the objectivity of the review process. In fact, the NIGC has itself taken actions in the form of ordinance approvals that refute the notion that the only action it takes that is subject to NEPA is for management contract approval. In the Cowlitz case, the NIGC conducted a site-specific ordinance approval that has been used by the Tribe to force an unlawful and incorrect restored lands advisory opinion. That ordinance approval concerns a specific casino proposal at a specific location and as such is an action that triggers NEPA review. As the Cowlitz example confirms, the 90-day deadline under IGRA for ordinance review is not controlling. In this case, the NIGC took six months to issue a decision, more than ample time to conduct a NEPA review through an EA. If the EA determined an EIS was needed, then the NIGC would have been in the position to direct the Tribe to withdraw the application until the full EIS process was completed. Indeed, this procedure could even be completed within the 90-day period.

This concern serves as the basis for our first comment, which is that the NIGC must withdraw the statement that NEPA does not apply to ordinance approval. Instead, in the Manual, and through NEPA regulations, the NIGC should require that the NEPA process be completed before an ordinance approval request is filed in every case where, like Cowlitz, a site-specific ordinance is being used. This approach is the only way to ensure that the environmental effects of NIGC ordinance approvals are fully considered under NEPA.

Another serious defect in the NEPA review of the Cowlitz proposal has been the failure to treat all nearby local governments as cooperating agencies and to require consistent and continuous involvement by them in the review process. BIA, in its leadership role, has not been open in dealing with the cooperating agencies. It has given the Tribe a favored status role in EIS preparation. The Companies support the NIGC Manual

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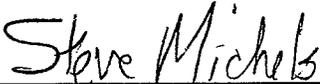
provisions that use an inclusive approach for defining cooperating agencies and for not giving preferential treatment to the Tribe. The NIGC Manual also encourages, and allows for, adequate participation by the public. The Companies support these provisions.

The Companies support the correct and essential limitation that the Manual would impose on the role of tribes in preparing NEPA documents. As the Cowlitz experience indicates, BIA has allowed the Tribe to play a dominant role in drafting the EIS for its own casino trust land proposal. The NIGC Manual correctly limits the role of the Tribe, as that of any other applicant involved in an EIS, to providing information, not making decisions over important issues such as purpose and need and alternatives, and defeating the objections from parties who are concerned about the effects of casino development. In addition to limiting the role of a tribe to providing information, NIGC should develop provisions for the MOU that will establish clear procedures that prevent tribes from improperly becoming involved in EIS preparation.

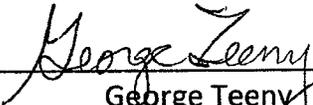
Finally, the Companies request that the Manual's discussion of purpose and need be revised to avoid the suggestion that it is the interests of the tribe that control and define the scope of the EIS. The courts have made it clear that the purpose and need statement must be defined by the agency's mission – in the case of the NIGC, the regulation of Indian gaming to meet the purposes of IGRA. Unless this revision is made, the scope of the EIS or EA will not be properly balanced or directed at fulfilling the requirements of the law that the NIGC must enforce.

Thank you for considering these comments.

Sincerely,



Steve Michels
Michels Development, LLC



George Teeny
Dragonslayer, Inc.