



# THE SUQUAMISH TRIBE

## OFFICE OF TRIBAL COUNCIL

**LEONARD FORSMAN, CHAIRMAN**

Post Office Box 498

Suquamish, WA 98392-0498

Phone (360) 598-3311

Fax (360) 598-6295

June 17, 2011

Tracie Stevens, Chairwoman  
National Indian Gaming Commission  
1441 L Street N.W., Suite 9100  
Washington, D.C. 20005

**Via Electronic Mail**  
**reg.review@nigc.gov**

*Re: Comments on Preliminary Draft of Part 559*

Dear Chairwoman Stevens:

The Suquamish Tribe (“Tribe”) thanks you for the opportunity to comment on the proposed revisions to 25 C.F.R. Part 559, Facility License Notifications, Renewals, and Submissions. As the Tribe commented earlier this year in response to the Notice of Inquiry, the Tribe views the current Part 559 as seriously infringing on tribal sovereignty, being unduly burdensome for tribes, likely exceeding the expertise and staffing levels of the National Indian Gaming Commission (NIGC), and far overstepping the bounds of the authority granted to the NIGC by the Indian Gaming Regulatory Act (IGRA). For these reasons, the Tribe sees the revision of Part 559 as a matter of the highest priority. The Tribe is accordingly pleased that the National Indian Gaming Commission (NIGC) has taken the step of drafting proposed revisions to Part 559. The Tribe believes the proposed revisions are a vast improvement over the current Part 559.

As you know, IGRA only requires a license for each gaming facility, and gives the NIGC the authority to review a tribal ordinance governing class II gaming to determine if it provides that “the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.” 25 U.S.C. § 2710(b). If an ordinance does so provide, and if it meets the other requirements of Section 2710(b)(2), then the Chairperson of the NIGC does not even have discretion—he or she “shall approve” the tribal gaming ordinance. The requirements of subsection (b) are incorporated into the requirements for class III gaming activities as well. 25 U.S.C. § 2710(d). Notably, these provisions of IGRA only give the NIGC the authority to review a tribal gaming ordinance for specific content and approve it. It does not give the NIGC any authority to review other tribal laws, or any say over the substance of other tribal laws.

Viewing the proposed draft in light of the authority specifically granted to the NIGC by IGRA, the Tribe makes the following comments:

- Revisions to 559.1. The Tribe is somewhat concerned with the addition of the language allowing the NIGC to “obtain verification” that the construction and maintenance of the gaming facility and the operation of the gaming is conducted in a manner which adequately protects the environment and the public health and safety. While the Tribe believes the current commission would act in good faith and not overstep the authority granted to it by IGRA, as discussed above, the Tribe worries that the phrase “obtain verification” could be misused by future commissions. The phrase is certainly preferable to the laundry list of requirements that appear in the current Part 559, but verifying construction, maintenance, and public health/safety standards is still likely outside the realm of the NIGC’s expertise, and probably something that is better addressed by other governmental agencies. If the language is retained, it should be limited to the initial issuance of a facility license (and not apply to renewals).
- Revisions to 559.2. The Tribe supports reducing the notice period in Section 559.2(a) from 120 days to 60 days. The insertion of Section 559.2(b) is also acceptable to the Tribe, because it understands that the intent of the provision is to establish a time frame within which the NIGC must make an Indian lands determination, so that its decision-making process does not drag on indefinitely. The Tribe would like it clarified that the standard timeframe is 60 days (with the possibility of a one-time extension of an additional 60 days, as is already clearly stated). The initial 60-day timeframe is not as clearly stated in Section 559.2(b) as it could be.
- Deletion of 559.3. The Tribe fully supports the deletion of Section 559.3, which currently requires renewal of facility licenses at least once every 3 years. Determining whether and when to renew facility licenses is more appropriately a matter for tribal law.
- Deletions and Revisions regarding what a tribe must submit with each facility license. The Tribe strongly supports the deletion of the laundry list of requirements that is imposed in the current Section 559.5. These requirements as they are currently written epitomize the overstepping of the NIGC’s authority and infringement on tribal sovereignty. It is therefore essential that the requirements be deleted, as the NIGC is now proposing. The proposed revisions to that Section (which would be Section 559.4 under the proposed draft) are also acceptable to the Tribe. Requiring tribes to certify that the construction and maintenance of the gaming facility is conducted in a manner which adequately protects the environment and public health and safety exceeds the authority granted to the NIGC by IGRA, as discussed above. This is particularly true with respect to requiring the certification for facility license renewals. However, the Tribe views the requirement as reasonable, especially if renewals are carried out as a function of tribal law, and not overly burdensome (and vastly preferable to the laundry list of requirements imposed by the current Section 559.5), and therefore would not object to the requirement, although it would prefer to see the requirement limited only to the initial issuance of a facility license.

- Revisions regarding notice of license terminations/expirations. The Tribe believes these revisions are reasonable and appropriate. The appropriate duration for a temporary closure that does not require notice should be either 60 or 90 days.
  
- Requests for documentation. The Tribe is concerned by the retention without modification of the current Section 559.7 (proposed Section 559.6), which allows the Chair to request in his or her discretion environmental and public health and safety documentation. This provision could easily be abused by a future commission, as it has been in the past. As discussed above, IGRA does not authorize the NIGC to request such documentation. If the provision is to be retained, the Tribe would like to see some restrictions placed on it to at least limit the potential for abuse. This way, tribes who already operate safe, well-run facilities would not have to worry about being unnecessarily burdened by these requirements. Suggested limitations might include:
  - The ability to request documentation only (a) in connection with the initial issuance of a license; and (b) thereafter at certain limited times or upon certain limited occurrences;
  - A reasonableness standard;
  - An element of causation, such as “if the Chair has good cause to believe that the construction and maintenance of the gaming facility, or the operation of the gaming is not conducted in a manner which adequately protects the environment or the public health and safety;” and
  - A limit on the type of documentation that must be provided, such as only that documentation reasonably necessary to address the specific concerns giving rise to the request.

Finally, the Tribe urges the NIGC to also consider revising the related provisions of Parts 502 and 522. Specifically, the Tribe believes that 25 C.F.R. Section 502.22 far exceeds the scope of the IGRA by requiring tribes to identify, adopt, and enforce laws on specific topics. The Tribe views this as a blatant and severe encroachment on tribal sovereignty. Moreover, the second sentence of Section 502.22 is a substantive provision, which does not belong in a definition. For these reasons, the Tribe suggests that the NIGC remove or substantially revise this definition. Likewise, the Tribe believes the NIGC should consider eliminating or revising 25 C.F.R. Section 522.2(i), which requires tribes to provide “Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request as needed.” The Tribe’s comments above regarding requests for documentation apply to this provision as well. The Tribe views these provisions of Parts 502 and 522 as going hand in hand with Part 559, and hopes that the NIGC will reconsider its apparent decision not to review these provisions along with Part 559.

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The Tribe has no further comments at this time. Once again, the Tribe thanks you for the opportunity to help the NIGC develop the best possible regulations and polices, and looks forward to commenting further as this process unfolds.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Forsman". The signature is written in a cursive style with a long horizontal flourish at the end.

Leonard Forsman  
Chairman  
The Suquamish Tribe