



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A People of Vision

A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

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June 16, 2011

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005
VIA EMAIL: reg.review@nigc.gov

Re: **Comments on the Draft Changes Facility Licensing Regulations**

**Joint Comments of the Confederated Salish and Kootenai Tribes and the
Confederated Salish and Kootenai Tribal Gaming Commission**

Dear Chairwoman Stevens:

We write on behalf of the Confederated Salish and Kootenai Tribes (CSKT) and Tribal Gaming Commission (TGC) to comment on the National Indian Gaming Commission's (NIGC) discussion draft facility licensing regulation.

In reviewing the draft facility licensing regulations, we are encouraged by the NIGC's proposed changes, which are consistent with the fact that the Indian Gaming Regulatory Act (IGRA) does not establish the NIGC as a licensing authority. Section 2710(b)(1)(B) of the IGRA specifically vests tribal governments with licensure authority and recognizes the issuance of gaming facility licenses as a proper exercise of a tribe's inherent sovereignty and jurisdiction. We are also encouraged by the NIGC's proposed change to eliminate difficult Indian lands eligibility requirements, which we believe are inconsistent with the purposes of the IGRA.

Additionally, we oppose the requirements for Tribes to certify that each facility is compliant with the tribe's environmental public health and safety regulations is a back door attempt to impose a mandatory new system of Federal regulation on Indian Tribes. We are already taking steps and requiring our facilities to provide us with policies and procedures to address these issues because the CSKT and the TGC are looking to protect our citizens from harm and following current laws that are already in place. IGRA is quite clear that the Tribe must issue a license for each facility and that the NIGC has

authority to review the authorizing tribal ordinance. However, the NIGC does not have authority to actually write the facility licensing requirements for the Tribe. The certification would appear to be a unilateral attempt by the NIGC to assume authority not provided in federal law.

These regulations also purport to provide unnecessary intrusion on already existing federal and tribal laws that are currently in place or creates new burdensome ones that interfere with existing federal and tribal regulations.

While the NIGC's draft regulation on facility licensing is a significant improvement over existing regulations, it raises important issues that need additional clarification. The regulations should be clear that tribal governments possess authority to independently issues facility licenses and may open new tribal facilities while the NIGC's "verification process" is pending. If after the requisite period the NIGC cannot verify the Indian lands status of the new facility site, the NIGC may issue a notice of inquiry and the tribe should be allowed to continue operations of its new gaming facility. The proposed regulation provides for the verification of land status by Bureau of Indian Affairs trust deed, tribal governments may also demonstrate the Indian land status of lands by treaty, statute, executive order, court order or other appropriate documentation and the regulation should say that.

The regulations should also clarify that after the passage of 60 days (or if there is an extension to 120 days), there is a presumption that the tribe has made the required submission and that based on the submission, the NIGC has verified the Indian lands status of the new facility site unless the NIGC notifies the tribe otherwise.

Further, we support the NIGC's proposed removal of the three-year renewal requirement. We believe that Congress did not intend to impose such affirmative regulatory mandates on tribal governments. In sum, we commend the NIGC's efforts to amend its facility licensing requirements to more closely comport with the purposes and language of the IGRA.

In closing, we would like to reiterate our appreciation for the opportunity to provide comments on this important regulation. We hope our comments are helpful as you proceed with your deliberations.

Sincerely,



E.T. "Bud" Moran
Tribal Chairman



Lissa Peel
Tribal Gaming Commission Chairwoman