

Quapaw Tribal Gaming Agency
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Via Electronic Mail: reg.review@nigc.gov

March 30, 2012

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Notice of Proposed Rulemaking, 25 C.F.R. Part 559 – Facility License Notifications, Renewals, and Submissions

Dear Chairwoman Stevens:

The Quapaw Tribal Gaming Agency (“QTGA”) would like to thank the National Indian Gaming Commission (“NIGC”) for this opportunity to submit comments on the NIGC’s Notice of Proposed Rulemaking on 25 C.F.R. Part 559. The QTGA is encouraged by the NIGC’s efforts to improve the regulatory process for facility license notifications, renewals, and submissions, and hopes the comments below prove both useful and helpful as the rulemaking process moves forward.

RECEIVING INFORMATION FROM TRIBES ABOUT THE INDIAN LANDS STATUS OF EACH GAMING FACILITY

In proposed § 559.2, tribes are required to provide notice of a new facility license “at least 120 days before opening,” but may request for an “expedited review” of 60 days. We are concerned that such language may operate to unreasonable delay of the opening of a new gaming facility until confirmation is received from the NIGC, an interpretation, which we believe is inconsistent with the stated purpose and intent of the notification process. As the NIGC explains in the preamble to this proposed rule, “the proposed regulation does not require a verification or action on whether the land is Indian land eligible for gaming, as that term is defined in IGRA.” Since the notification process does not involve verification of the Indian lands status of the property on which a new gaming facility will be located, the purpose of the review process in proposed § 559.2 should be to confirm that sufficient and timely notice has been submitted in accordance with the information requirements set forth in proposed § 559.2(b)(1)-(5).

Under proposed § 559.2(b)(1)-(5), if the property on which the gaming facility is going to be located is under the superintendence of the Bureau of Indian Affairs, as is the case with most tribal gaming properties, all that is required in the notice submission is the name, address, legal

description, and tract number for the property. A 120-day notice period seems unreasonably long if all the NIGC is required to verify is that the notice submission contains the above information. Additionally, the 60-day expedited review request seems altogether unnecessary if all that is being verified is the information contained in the notice submission. We believe a much shorter notice period of 15 or 30 days from the date of opening would be a more appropriate timeframe given the type of review being conducted during this period.

The QTGA therefore recommends that proposed § 559.2(a) be revised to reflect a 15- or 30-day notice period; if this recommendation is accepted, proposed § 559.2(a)(1) should be deleted in its entirety as it will no longer be relevant. In the alternative, we ask that the NIGC include language allowing for a waiver of the notice period for reasonable cause shown.

OBTAINING INFORMATION FROM TRIBAL GOVERNMENTS CERTIFYING THAT THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF THE GAMING FACILITIES ARE CONDUCTED IN A MANNER THAT ADEQUATELY PROTECTS THE ENVIRONMENT AND THE PUBLIC HEALTH AND SAFETY

The QTGA is pleased by the NIGC's decision to eliminate the difficult environment, public health and safety reporting requirements contained in the proposed rule in favor of a much simpler tribal attestation. However, the QTGA is highly concerned about the lack of minimum standards to govern the Chair's overly broad discretion in requesting Indian lands or environmental and public health and safety documentation, as provided in proposed § 559.6. We believe a standard of at least reasonableness should be included so as to minimize the risk of arbitrary and capricious decision-making. Among other benefits, minimum standards would provide greater predictability and consistency with respect to agency actions, which is beneficial to both the agency and the tribes regulated by these provisions.

EXCEPTIONS TO NOTIFICATION REQUIREMENTS FOR TEMPORARY GAMING FACILITIES

The QTGA appreciates the NIGC's exception to the notification procedures for temporary closures of less than 180 days in § 559.5. The QTGA asks that a similar exception be included for temporary facility licenses that are issued when a tribe *opens* a temporary gaming facility on its Indian lands for an estimated period of one year or less. The unexpected closure of a gaming operation due to a natural disaster or some other unforeseeable catastrophe can have a devastating impact on a tribe's economy and ability to provide services and programs for its members. Under such circumstances, a tribe may consider opening a temporary gaming facility on its Indian lands to mitigate damages caused by such closure and ensure continued funding of governmental programs and services.

By requiring tribes to provide 30 days' notice of *all* facility openings, whether permanent or temporary, the proposed rule anticipates the possibility of a potential delay in the opening of a temporary gaming facility until the NIGC confirms receipt of a timely and complete notice submission. However, in light of the time-sensitive nature of opening and operating a temporary gaming facility, we ask that the NIGC include language acknowledging the tribal gaming regulatory agency's authority to issue temporary facility licenses without being subject to any notice requirements under the regulation. We believe such change is not only consistent with

principles of tribal sovereignty and self-governance, but that it will help minimize disruptions to tribal gaming operations and alleviate any financial damages resulting from the forced closure.

CONCLUSION

In closing, the QTGA would like to reiterate its appreciation for this opportunity to provide the above comments to the NIGC's proposed changes. It is our hope that you will accept our comments in the positive spirit in which they are intended.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Kyser-Collier".

Barbara Kyser-Collier
Director, QTGA