

June 22, 2015

Jonadev Chaudhuri, Chairman  
National Indian Gaming Commission  
1849 C Street, NW, MS-1621  
Washington, D.C. 20240  
ATTN: Vannice McCoy

Re: Comments on National Indian Gaming Commission ("NIGC")  
Proposals Outlined in NIGC's February 26, 2015, Tribal Leader  
Letter (the "NIGC Letter")

Dear Chairman Chaudhuri:

I write on behalf of the Jamul Indian Village ("Jamul") to provide comments on the National Indian Gaming Commission ("NIGC") potential actions related to the Class III Minimum Internal Control Standards ("MICS"), 25 CFR Part 542. Jamul supports NIGC's efforts to update the current MICS. Up to date minimum internal control standards are essential for tribal gaming operations and tribal gaming regulators to ensure the integrity of Class III gaming activities and the protection of tribal gaming assets.

The Jamul Indian Village is located in San Diego County, California, approximately 30 miles east of the city of San Diego. Jamul executed a Tribal-State Class III Gaming Compact with the State of California in October, 1999. Even though Jamul has been a party to a Class III compact for over 15 years, it is only in the last 2 years that Jamul has actually begun building a gaming facility on its lands. In preparation for the opening and operation of the Jamul gaming facility, the Jamul tribal government is implementing the internal legal and regulatory infrastructure necessary to support its gaming operations. It is important to Jamul gaming to be able to adopt up to date internal control standards that meet the requirements of its gaming compact with the state and support sound regulatory and business practices of the Jamul gaming enterprise.

In response to the NIGC's request for comments, we offer the following:

#### Class III MICS Regulations

In 2006, the United States Court of Appeals for the District of Columbia Circuit ruled in *Colorado River Indian Tribes (CRIT) v. NIGC* that the NIGC lacks authority to enforce the Class III MICS published at 25 C.F.R. Part 542.



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Some legal commentators, and even the NIGC Office of General Counsel, have suggested that the NIGC lacks the authority to promulgate Class III MICS. In its communications with Tribal Leaders, and at the several consultation sessions conducted earlier this year, the NIGC has stated that it is considering several options with regard to the Class III MICS: updating the Class III MICS, developing and publishing the updated standards as a “non-binding guidance document,” and withdrawing the Part 542 Class III MICS regulations.

We support the NIGC’s efforts to update the Class III MICS to bring the current standards up to date with new regulatory practices, technology advances, and industry best practices. NIGC and Tribes have a strong regulatory interest in protecting the integrity of gaming activities and operations and the protection of tribal gaming assets. Because the Class III MICS have not been updated since 2008, those standards have fallen behind industry and tribal gaming operations practices, as well as fast moving technology advances.

While a “non-binding guidance document” certainly gives the NIGC flexibility in maintaining minimum internal control standards, we recommend a different approach. We recommend that NIGC develop, through a structured regulatory process, Model MICS.<sup>1</sup> Model MICS, much like a model “code,” would carry more persuasive weight to the importance of the MICS, which in turn would promote widespread adoption of the Model MICS by Tribes. The NIGC could, through its Part 542 Regulations, establish the process to develop the Model MICS, including the creation of a Model MICS coordinating committee comprised of tribes, industry, and other experts. This approach promotes transparency and involvement, furthering the goals of tribal adoption of the new MICS, and bolstering the authority and vitality of the new MICS. A more structured approach, supported by the regulations, would facilitate the NIGC’s efforts to maintain up-to-date standards that reflect best practices with respect to rapidly changing technology and business practices, while promoting a more open and transparent process that benefits from the collective experience of tribal gaming regulators, operators, and industry.

Based on this recommendation, rather than repealing and removing Part 542, the NIGC could amend the Part 542 regulations to:

- 1) Repeal the MICS provisions.
- 2) Create the establishment of a process to develop Model MICS.
- 3) Authorize the creation and publication of Model MICS, but clarify that the Model MICS do not run afoul of the CRIT decision because they are voluntary.

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<sup>1</sup> NIGC could look to one of its sister agencies – the Food and Drug Administration and its Model Food Code – as an example of promoting uniform standards, adopted nationally. The FDA Model Food Code is amended and updated on a regular basis – approximately every 4 years. The FDA has a committee of professionals, experts, and governments officials that assist in the updating of the Model Food Code. The FDA then promotes the adoption of the Model Food Code by state, local, and tribal governments. See FDA Food Code website: <http://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm374275.htm>

- 4) Retain Section 542.4 (Tribal-State Compacts) but refashion the section to incorporate the Model MICS by reference, thereby protecting the status quo for those tribes that have negotiated Part 542 into their Compacts.

**NEPA Categorical Exclusions**

The NIGC proposes to adopt a policies and procedures manual that includes a Categorical Exclusion (“CATEX”) for approvals of management contracts and collateral agreements and management contract amendments. In addition, the NIGC’s manual proposes two other categorical exclusions: (1) administrative and routine office activities; and (2) regulation, monitoring and oversight of Indian gaming activities. If these CATEX are adopted, the NIGC would not be required to prepare an Environmental Assessment or an Environmental Impact Statement except under extraordinary circumstances.

We also support the NIGC’s CATEX proposal for approval of management contracts and collateral agreements. Review and approval of these contracts is not equivalent to approval of a gaming facility. The relevant criteria to approve a management contract largely relate to financial and personal qualifications of a prospective manager, and not one of the criteria relates to environmental issues or concerns. In short, review and approval of a management contract does not “individually or cumulatively have a significant effect on the human environment.” 40 C.F.R. §1500.4. The NIGC’s proposal is a positive step to remove artificial barriers to gaming development, as well as comport with the NEPA regulations’ goals of reducing paperwork and delay in the NEPA process. 40 C.F.R. §§ 1500.4 - 1500.5 (promoting the use of categorical exclusions to reduce delay and paperwork).

Thank you for your consideration.

Sincerely,



Erica Pinto  
Chairwoman  
Jamul Indian Village