

May 12, 2005

Re: Draft of the Proposed Facility Licensing Regulations

Dear Tribal Chairman:

As you know, the Indian Gaming Regulatory Act (IGRA) requires that each tribe issue a license for each place, facility, or location where gaming will occur. The Act also requires that gaming be on Indian lands eligible for gaming, and that the construction and maintenance of a gaming facility, and the operation of that gaming, must be conducted in a manner which adequately protects the environment and the public health and safety. The IGRA does not specify what a facility license must contain, nor how the National Indian Gaming Commission (Commission) is to readily ascertain that gaming facilities are in compliance with these provisions.

Therefore, the Commission is in the process of developing new Facility Licensing Regulations that address these ordinance requirements. The intent of these regulations is to provide a method of identifying the Indian lands on which tribes are gaming and assuring that the environmental and public health and safety standards are adopted by each tribe. Over the past year we met with many tribes in individual consultations and solicited their views. As a result, the draft regulations are limited in scope and purpose.

Enclosed is a copy of the Commission's latest working draft of the proposed Facility Licensing Regulations. In accordance with the Commission's consultation policy, we are soliciting your comments on these draft regulations and methods of improving them.

Please note that the deadline for your pre-rulemaking comment on the enclosed working draft of the proposed Facility Licensing Regulations is June 30, 2006.

Comments should be addressed to:

Facility Licensing Regulations Comments
Attn: Jerrie Moore
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Sincerely,

Philip N. Hogen
Chairman

Enclosure

DRAFT Facility Licensing Regulations

25 C.F.R. Part 559 Annual Facility Licenses

559.1 What Is The Scope and Purpose Of This Part?

- (a) The purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming under the Indian Gaming Regulatory Act and has been constructed and maintained, and is conducted, in a manner which adequately protects the environment and public health and safety.
- (b) Each gaming place, facility, or location conducting class II or III gaming pursuant to the Indian Gaming Regulatory Act or on which a tribe intends to conduct class II or III gaming pursuant to the Indian Gaming Regulatory Act is subject to the requirements of this part.

559.2 When Should the Tribe Issue a Facility License?

At least annually, a tribe shall issue a separate license to each place, facility, or location on Indian lands where class II or III gaming will occur and shall submit a copy of this license to the Commission. A license may only be issued to any place, facility, or location located on Indian lands eligible for gaming that has been constructed and maintained, and where the gaming will be conducted, in a manner which adequately protects the environment and public health and safety. Each license shall be issued with appropriate certifications.

559.3 For Open, Licensed Gaming Operations, What Should the Tribe Submit to the Commission?

- (a) For the first annual facility license issued under this regulation, the tribe will provide to the Commission the following:
 - (1) A certification from the tribe's governing body that the gaming operation will be or is located on Indian lands eligible for gaming pursuant to the Indian Gaming Regulatory Act.
 - (2) A legal opinion from a licensed attorney affirmatively stating that each gaming place, facility, or location is located on Indian lands eligible for gaming pursuant to the Indian Gaming Regulatory Act. The legal opinion shall be entitled "Indian Lands Gaming Eligibility Opinion", shall be signed by the attorney, and shall contain adequate documentation supporting the legal conclusion.
- (b) The first annual facility license, certification, and legal opinion with supporting documentation shall be submitted in a joint package to the Commission headquarters no later than one hundred and eighty (180) days after the regulations are published as a final rule in the Federal Register.

559.4 What Supporting Documentation Should Be Submitted With The Indian Lands Gaming Eligibility Opinion?

- (a) Supporting documentation for the Indian Lands Gaming Eligibility Opinion must include:

- (1) a name and address of the place, facility, or location;
 - (2) a legal description of the gaming site;
 - (3) a road map or plat map of the area indicating the gaming site that is eight inches by ten inches in size;
 - (4) a copy of the trust or other deed(s) for the property if one exists, or if such documentation does not exist, then an explanation as to why such documentation does not exist; and
 - (5) documentation indicating that the tribe has jurisdiction and exercises governmental authority over the gaming site if not located within a reservation.
- (b) Supporting documentation for the Indian Lands Gaming Eligibility Opinion may include, but is not limited to:
- (1) documentation detailing all landowners or trust beneficiaries of the land, including i) whether each owner or beneficiary is a member of the tribe planning to game on the site, a member of another Indian tribe, or a non-Indian; and ii) the fractional share of the property for each person;
 - (2) copies of any applicable court settlement agreements, Congressional Acts, Executive Orders, or Secretarial Proclamations or decisions; and
 - (3) any necessary historical records or other documentation used in the analysis.
 - (4) documents indicating a tribal leasehold interest in the property, including any approvals of the lease agreement by the Secretary; and
 - (5) any documents evidencing that the operation is individually owned.
- (c) The Commission may in its discretion request additional documentation as needed to assess the eligibility of the lands for gaming.

559.5 For New Gaming Facilities, What Should be Submitted With The First Facility License and When Should it be Submitted?

- (a) A tribe shall notify the Commission that it intends to open a gaming facility at least one hundred and twenty (120) days prior to the opening of a new gaming place, facility, or location on Indian lands, and shall at that time provide the tribal certification and the Indian Lands Gaming Eligibility Opinion with the supporting documentation listed in 25 C.F.R. 559.4 to the Commission.
- (b) A tribe may request a waiver of the one hundred and twenty day (120) prior notice period if the new gaming facility will be located within the tribe's reservation boundaries or on land acquired into trust by the United States for the benefit of the tribe before October 17, 1988.

559.6 For Open And New Gaming Facilities, What Must The Tribe Submit To Certify 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?

- (a) Each year, prior to issuing its annual facility license, a tribe shall certify that, at each place, facility, or location on Indian lands where gaming will occur, 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.

- (b) The tribe shall annually submit the table of contents for each of the standards adequate to protect the environmental and public health and safety that have been adopted by the tribe. These standards shall include, but are not limited to standards for the following: 1) emergency preparedness; 2) food and water; 3) construction and maintenance; 4) hazardous and other materials; 5) sanitation; 6) law enforcement and security; and 7) other environmental or public health and safety standards adopted by the tribe in light of local climate, geography, and other local requirements and applicable to its gaming operations.
- (c) A complete copy of such standards must be readily available upon request of the Commission.
- (d) Each licensed place, facility, or location on Indian lands where gaming will occur shall remain in compliance with the environmental and health and safety standards adopted by the tribe.
- (e) The certification, and list of tribal standards required in this subsection shall be submitted to the Commission each year at the same time as the gaming operation's facility license.

559.7 Are There Any Situations Where The Commission May Act Even If The Tribe Is Meeting Its Own Standards?

Yes, the Commission may take an enforcement action to protect the environment and public health and safety if imminent jeopardy exists or if the tribal standards are clearly inadequate to protect the environment and public health and safety.

559.8 What Situations Rise To The Level Of Imminent Jeopardy?

Imminent jeopardy exists if conditions are present that pose a real and immediate threat (a) to the environment, which, if left uncorrected, would result in actual harm to life, serious degradation of the natural environment, or destruction of property; or (b) to public health and safety which, if left uncorrected, would result in serious harm to human health and well-being, including conditions that may result in serious injury or death.