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Via Electronic Mail

Mr. E. Sequoyah Simermeyer, Chair
National Indian Gaming Commission
1849 C Street, N.W.
Mail Stop # 1621
Washington, D.C. 20040
Email: NIGC.Outreach@nigc.gov

Re: Comments on the NIGC Proposed Regulatory Revisions

Dear Chairman Simermeyer:

These comments are submitted on behalf of the Seminole Tribe of Florida on the National Indian Gaming Commission's ("NIGC") proposed changes to its regulations implementing the Indian Gaming Regulatory Act ("IGRA"). The Tribe supports the NIGC's effort to amend IGRA's implementing regulations to reflect the current state of Indian gaming in the United States. The proposed revisions serve to streamline procedures, clarify requirements, and facilitate efficient and effective regulatory administration.

The Need to Evaluate Statutory Amendments to the IGRA

At the outset, the Tribe wants to call attention to a significant omission in the NIGC's presentation of its consultation policy, strategic plan, and its proposed regulatory changes: The NIGC has not indicated whether the NIGC perceives a need for statutory amendments to the IGRA. The Tribe expects the NIGC's engagement and leadership on this issue. Not only has Indian gaming substantially evolved over the past three decades, but also significant developments in technology and law have transformed how gaming is conducted in the United States.

The Tribe believes that in order for IGRA's implementing regulations to reflect the current state of Indian gaming, the IGRA itself must be amended to take into account conditions and circumstances not anticipated when IGRA was enacted 30 years ago. Given the evolution of Indian gaming and the transformation of non-Indian gaming in the United States, the NIGC has a role to play in working with tribes in the evaluation of whether and how IGRA might be amended to ensure Indian gaming remains a means of generating tribal revenue for the future. The Tribe asks the NIGC to consider including consultation with tribes to evaluate the need for amendments to IGRA as part of its strategic plan, consultation plan, and/or other NIGC planning processes.

Discussion of Proposed Regulatory Changes

Key Employee and Primary Management Official Definitions (25 C.F.R. Part 502)

The Tribe welcomes the NIGC's proposed revisions to 25 C.F.R. §§ 502.14 and 502.19, as they would help address problems created by the NIGC's 2019 policy change regarding NIGC/FBI processing of Criminal History Records Information (CHRI) for tribal gaming regulatory officials and employees.

In particular, the Tribe supports the proposed changes to the definition of key employee (KE) by raising the level of the individual's total cash compensation from \$50,000 to \$100,000, and by removing the term "of a gaming operation" in 25 C.F.R. § 502.14(c). The Tribe also views the changes that further define "custodian of cash" and "access to a secured area" to be helpful revisions that will add clarity to our current processes.

The Tribe also views as positive the NIGC's proposed revision of the definition of Primary Management Official (PMO) to include "*any* person having management responsibility for a management contract" (25 C.F.R. § 502.19(a)).

With respect to the NIGC's proposal to delete the current language in subsection 502.14(d), the Tribe requests that the NIGC consider alternative terms that would permit some level of tribal discretion as to who may constitute a KE. For example, the NIGC should consider a new subsection (e) that might be drafted as follows: "If not otherwise included herein, any executive, employee, or agent of a gaming operation that the tribe determines to have the power to exercise a significant influence over decisions concerning any part of the operation of a gaming facility."

Background Investigations and Licensing (25 C.F.R. Parts 556 and 558)

The proposed change in 25 C.F.R. § 558.3(c) with regard to the 90-day licensing period is a clarification that is especially helpful to the Tribe, as the employment process time can vary by each of the Tribe's gaming facilities and may affect the timing of the Notice of Results (NOR) process.

The Tribe would like the NIGC to provide greater certainty that the proposed changes are prospective only. The Tribe requests that the NIGC clearly state that these changes to the regulations will not require the reexamination of files for individuals that have already been approved under the current regulatory process. The burden to the Tribe associated with reevaluating and updating existing files for over 10,000 licensees would be time consuming and costly. The NIGC regulations should clearly establish that the proposed regulatory changes are to be applied prospectively only and will not require retroactive review of any licenses already approved.

NIGC Fee Regulations (25 C.F.R. Part 514)

The Tribe welcomes and supports the NIGC's proposed amendment to the Commission's fee regulation that allows for the deduction of promotional credits issued to patrons from "the total amount of money wagered." 25 C.F.R. § 514.4(f). The deduction of promotional credits that are wagered is consistent with the concept of "net win" in the Tribe's Class III Compact with the State of Florida.

NIGC Regulations Pertaining to Gaming Ordinances (25 C.F.R. Part 522)

The Tribe supports the regulatory changes proposed by the NIGC regarding gaming ordinances. The changes provide greater flexibility and certainty to tribes by modernizing and streamlining the process for submitting gaming ordinances or resolutions and amendments.

Facility License Notifications and Submissions (25 C.F.R. Part 559)

The Tribe supports the NIGC proposal to update the facility license notifications and submissions regulation found at 25 C.F.R. § 559.2 to require the submission of the name and address of the property only if known at the time when a facility license notification is submitted to the NIGC Chair. The Tribe welcomes the NIGC's recognition that tribes may begin the facility licensing process before they have secured a name or address for the gaming operation. This change may be helpful to the Tribe in the future as the Tribe's 2021 Compact with the State of Florida authorizes the Tribe to establish new gaming facilities located on the Tribe's land.

Conclusion

The Tribe supports the NIGC's effort to revise the IGRA implementing regulations to conform to the current state of Indian gaming. The Tribe views many of the proposed revisions to be positive changes that will facilitate effective and efficient regulation of Indian gaming. Given the significant technological and legal developments affecting gaming conducted on Indian lands and elsewhere in the United States, the Tribe calls on the NIGC to engage with tribes in evaluating whether and how the IGRA should be amended in order to sustain Indian gaming as a means of generating tribal revenue.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

By: Joseph H. Webster

cc: Jim Shore, Esq.