NATIONAL INDIAN GAMING COMMISSION

PORTLAND REGION

REGULATORY REVIEW CONSULTATION

LITTLE CREEK RESORT & CASINO

February 16, 2012

Shelton, Washington

Job No. NJ381812
BE IT REMEMBERED that on Thursday, February 16, 2012, at Little Creek Resort & Casino, 91 West State Route 108, Shelton, Washington, at 2:50 p.m., before BARBARA L. BRACE, CCR, RPR, Certified Court Reporter, the following proceedings were had, to wit:

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CHAIRWOMAN STEVENS: So now we will need everybody to speak into the microphone. You'll need to state your name and which tribe you're with if you have comments.

So what we'll do is move on to Group 4, and that should be next in line in your packet.

MR. ROBERTS: We're going to talk about Parts 556 and 558 dealing with the background investigations and then gaming licenses for key employees and primary management officials, and then also Part 537, background investigations for those entities that have a financial interest in or responsibility for a management contract.

All of these proposals were published on December 22, and so the comment period closes very shortly, next week.

So 556 attempts to formalize what the Commission had
been doing with the pilot program for some time, and the Commission circulated a preliminary draft for comments from tribes. Part 556 includes all the procedures before a gaming license is issued.

Basically, 556.6 provides for NIGC to receive notification of background results within 60 days of someone starting work. The proposed rule clarifies that tribes with the access to prior investigative materials from a different tribe could use those materials or update those materials if they receive them from another tribe or NIGC.

Part 558 includes all the procedures after a gaming license is issued, and so it provides for a notification. After a notification of results, the tribe can license a key employee or primary management official and that the tribe notify NIGC within 30 days of the license. NIGC then has 30 days to request additional information.

If a license is issued prior to objection, then the licensee has a right to a notice of hearing. The tribe must suspend the license until the hearing, and then following the hearing the tribe notifies NIGC of its licensing decision.

You'll see in here in 558.3, we're asking if a tribe doesn't license a particular applicant that the tribe must notify NIGC and provide NIGC a copy of the
eligibility determination and investigative report if
they don't license an applicant.

So 556 and 558, the proposed rule is intended to
basically formalize what has been the pilot program which
most tribes throughout the country are already operating
under. So if there are any comments or questions on the
proposed rule, I'll be happy to hear those.

CHAIRWOMAN STEVENS: If we can get a
microphone over here.

MR. MATHERLY: Andrew Matherly,
Spokane Tribe.

Under 556.3, we recommend changing the proposed part
to require the tribe to forward information to the NIGC
only if the tribe denies the license and not if the tribe
simply does not license the applicant.

MR. ROBERTS: To clarify --

MR. MATHERLY: It's actually 558.3.

Sorry.

CHAIRWOMAN STEVENS: Just to be clear,
only upon denial?

MR. MATHERLY: We'll have that in our
comments.

CHAIRWOMAN STEVENS: Okay. Great.

Any other comments on licensing?

Okay. Again, this is open until February 21, if you
need to take this back and put together written comments. We welcome them.

We'll move on to Part 537.

MR. ROBERTS: Okay. So during the regulatory review process, one of the comments that the Commission heard from tribes is providing a mechanism to streamline the process for background investigations for those parties that have a financial interest and are having management responsibility for a management contract for certain entities. And currently under 537, some entities, the Chair already has that discretion.

The proposed rule provides further discretion to the Chair to reduce the scope of the background information for tribally-owned entities, for national banks and for other institutional investors that are already either federally regulated or required to undergo background investigations and licensure pursuant to either state law or tribal-state compact.

So what this -- it's a relatively short change, but the change is to -- if those entities already have background -- had their background investigated or have already received a license from another state entity, let's say, or pursuant to a tribal-state compact, that if this -- if this individual comes before the Commission, that the Chair has the discretion to reduce the scope
based on that other information.

So in some comments that we've received during consultations, we've received some tribes basically saying that we should provide more detail in here, that we should detail, try to clarify more which particular entities this would apply to. Right now we've tried to identify those that are tribally-owned entities.

So if there are any comments on this, I don't know if folks have had problems with the management contract process or the length of time it takes, but the idea is if they've already -- if the entity has already gone through, let's say, licensure by a state on gaming issues, that NIGC could reduce the scope and rely on some of that information from the licensor pursuant to a tribal-state compact.

MR. HARJU: Phil Harju from the Cowlitz Tribe.

Under 537.3, fees for background investigations, do you have a schedule for that? It just says "as follows," and then dot, dot, dot.

MR. ROBERTS: Yeah. It should already be in our --

MR. HARJU: It's not changing any existing fees?

MR. ROBERTS: This is the only change.
MR. HARJU: Okay. It would be pursuant to your current fee schedule for backgrounds?

MR. ROBERTS: Right.

MR. HARJU: Thank you.

MR. ROBERTS: Okay. We'll move to Part 518, Self Regulation of Class II Gaming. This is the last part for consultation for today. The proposed rule was issued at the end of January, and the comment period closes beginning of April.

The current rule focuses on the gaming operation. The proposed rule attempts to shift the focus not so much from the gaming operation itself but to the tribe's gaming regulatory agency. We've tried to streamline some information. So if we already have that information, tribes don't have to submit it again as part of Part 518 if we already have it.

We're trying to maintain, obviously, the existing standards but making the process more accessible to all tribes, and how we've done that is with the submission requirements.

So in the proposed Rule 518.4, we have a history of gaming operations. We ask for the organizational chart, the employment criteria of the TGRA regulators, funding description, a list of TGRA regulators, a description of the gaming operations accounting system, some of the --
listing the internal controls, the record-keeping system, providing the tribe's current gaming regulations if they're not already included in the approved tribal gaming ordinance.

Again, we've tried to remove the requirement to submit the ordinance and the facility license if we already have that information. That's what this proposed draft does.

518.5 lists the criteria that must be met to satisfy Part 518 and to receive a self regulation. This is based on the statutory language of IGRA. The criteria that must be met that the tribe has adequate systems for accounting of revenues, investigations, enforcement at prosecution of violations.

And then 518.5(b) lists examples of how a tribe can illustrate that it has met those criteria. There is a long list of examples. They're examples only.

One of the -- I guess one of the more noteworthy changes in 518.7 is the process for review of those petitions. Basically, the Commission right now -- currently the Office of Self Regulation handles most of the process.

This would instead provide a process where, within 120 days of application, the office provides a recommendation and report to the Commission and to the
The tribe has 30 days to respond to that report, and then the Commission itself reviews the report and issues preliminary findings, and the tribe can then request a hearing before the Commission after receiving those preliminary findings.

The Commission then issues a final decision within 30 days after the preliminary findings or a hearing if it's requested, whichever is later. And the regulation makes clear a tribe may withdraw a petition at any time prior to a final decision.

We received comments that again the Commission itself should consider the petitions, and so the proposed rule attempts to make that change with the Commission issuing preliminary findings and making final determinations.

And we received general comments that the process should basically facilitate collaboration, so that if a tribe is not able, let's say, at the time of the petition to meet a certain criteria, that the tribe and NIGC are working together through technical assistance to petitioning tribe through the process, so that through that technical assistance they can achieve the criteria.

One of the more other significant changes in this is 518.10. Right now the regulations require an annual
report to be submitted by the tribe.

This has changed a little bit, and what we've -- the proposed change is that an independent audit and then a resume for all employees of the tribal regulatory body -- for the tribal regulatory body hired and licensed by the tribe after receiving the notice of self regulation.

This tracks more closely to the language of IGRA itself. IGRA doesn't speak to an annual report. It speaks to a license of all employees -- not a license, a resume of all employees. So this proposed draft, the Commission has proposed interpreting the phrase "all employees" to mean all the employees of the tribal regulatory body.

So the annual reporting requirement or the annual report itself, while we've removed that, 518.11 makes clear that the tribe has a continuing duty to inform the Commission of any change in circumstances material to the approval. And so given that a tribe already has this duty to notify or inform a change in circumstance, that the annual report itself was removed.

We did receive some comments asking the Commission to define "tribal regulator." This proposed rule does not do that. I think one of the issues that the Commission was considering is that every tribe is defining tribal regulator differently, and so we have
not -- the Commission has not made that definition in this proposed rule.

We received comments on -- it was unclear and overbroad what powers NIGC has during the period of self regulation. We've provided -- the proposed rule just provides reference to the statutory language of IGRA.

Some comments suggested removing the section altogether or just reiterating the statutory language.

For the proposed rule, the Commission decided to move forward with a reference to IGRA.

And that's a general overview of the Part 518. Are there any comments or questions?

CHAIRWOMAN STEVENS: Just for general purposes, currently there are only two tribes across the country that are self regulated for Class II. They're certified to be.

What we heard when we came in the office was that there were a number of tribes that were interested in becoming self regulated for Class II but that the submission requirements in the annual report were overburdensome and really not worth it.

So in response to this interest and comments we received so far, this reflects some of the thoughts that have -- and ideas that have been given to us by tribes.

So comments on this one close on April 2nd, so we
have some time. Please do these. And if you have
written submissions, please make them.

If there are no -- sort of a last call. Last call.

Our next consultation will be in Albuquerque next
week, February 22, at the Isleta Hard Rock. We are
planning more in March so that we can get to some other
areas while we have comment periods open for those parts
that are due on April 2nd.

MR. BARR: Which tribes are self
regulated?

CHAIRWOMAN STEVENS: Grand Ronde and
Menominee.

MR. MATHERLY: Andrew Matherly,
Spokane Tribe.

What's the status on the Class III MICS? What's
NIGC's position, withdrawing them or discussing them?

CHAIRWOMAN STEVENS: We don't know
yet, we're so busy right now. We're up to here with 547
and 543 for Class II.

You'll notice on the bottom of your agenda it states
that Group 3 -- originally when we started back in April,
we had Part 547, Technical Standards. And all Minimum
Internal Controls that are now under 543 have been put
over into a Tribal Advisory Committee.

I can tell you the status of the Tribal Advisory
Committee's work. They started with the Class II portions where there was clear interest from tribes that we address those immediately because Class II Minimum Internal Control Standards have been sort of in abeyance for a number of years, and tribes have expressed a strong desire to have those finished up and done, and 547 as well.

So the tribal committee was formed. They started in October or November -- no. October. Sorry. And they have been meeting and reviewing 543 for Class II MICS and 547.

They've just yesterday sent us their final recommendations on 543, Minimum Internal Control Standards for Class II, and had previously in January sent us their final recommendations for Technical Standards, 547.

So we haven't gotten to that question yet. We wanted to get to the things that we know that were clear to us and were strongly supported by tribes that we make a priority, so we will certainly keep you updated as we address that issue.

MR. MATHERLY: I don't see it as a priority. I'm just saying. Just delete it.

CHAIRWOMAN STEVENS: So we embarked on a pretty hefty agenda, and you see that in all these
consultations and these regs that are coming out trying to address concerns for tribes, especially for Class II MICS because they have just been in limbo, and you all have just been in limbo for Class II, and we want to address that.

MR. DANIELS: Melvin Daniels, Muckleshoot.

Are those recommendations that the committee forwarded available?

CHAIRWOMAN STEVENS: Yes. They'll be up on the Web site at some point. I'm not sure if they're there yet or not.

And just -- it's an advisory committee, and the Commission will review and consider their recommendations and take them under advisement so that we can make a fully informed decision about those regulations, but as we move forward we'll continue to consult when we come up with drafts.

So that's why we're going to do more in March, so that if we have anything new at that point we can talk about it.

MR. SAMUELS: Ron Samuels, Spokane Tribe.

I would just ask that the NIGC, when they get the external audit reports and they make reference to
Class III MICS, that I'm hoping that all tribes have basically commented on, there may be material weaknesses or findings or exceptions.

However, in their CPA, the wording they use that they've commented on, especially on the TLS machines that are operative in this state versus any other slot machine that may be operating in Nevada or any other state, that there's a significant difference between the games, so that when you review your reports, your compliance, your auditors, whoever, that they have an understanding that when an external auditor makes reference to a Class III MICS that it may not be binding on us.

CHAIRWOMAN STEVENS: Okay. Thank you for your comment.

Any other comments? If not -- did you raise your hand back there, Chairman?

If not, I want to thank everybody for taking the time. I know it's been a long week for ATNI, and I appreciate you coming all the way out for this consultation.

Again, I want to encourage everybody, good or bad, supportive or suggesting changes, to submit comments in writing. I wish you all safe travels back to where you're coming from. Thank you.

(Consultation concluded at 1:07:38 P.M.)
STATE OF WASHINGTON )    I, Barbara L. Brace, CCR, RPR, 
                   ) ss a certified court reporter 
County of Mason     )    in the State of Washington, do 
                   ) hereby certify:

That the foregoing proceedings were taken before 
me and completed on February 16, 2012, and thereafter was 
transcribed under my direction; that the foregoing is a 
full, true and complete transcript of the proceedings; 

That I am not a relative, employee, attorney or 
counsel of any party to this action or relative or employee 
of any such attorney or counsel and that I am not 
financially interested in the said action or the outcome 
thereof;

IN WITNESS WHEREOF, I have hereunto set my hand 
and affixed my official seal on the 22nd day of 
February, 2012.

____________________________________
Barbara L. Brace, CCR, RPR
Certified Court Reporter No. 3010
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