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National Indian Gaming Commission

Sent via email at: NIGC.Outreach@nigc.gov

Re: Comments for Tribal Consultation Series A

Dear Chairman Simermeyer and Commissioners,

The Unified Legal Department of the Little River Band of Ottawa Indians submits these comments related to the consultation discussion topics for Series A. LRBOI Gaming Commission regulatory staff attended the July 27, 2021 session and at that time sought clarification on some potential issues with proposed changes. These comments seek to further clarify those issues and to articulate LRBOI's position on these changes. We appreciate your time and consideration.

Proposed Changes to 25 C.F.R. Part 522 (Gaming Ordinance Regulations)

- *Authorize the submission of documents in electronic or physical form*

LRBOI response: We support this change.

- *Clarify that the ordinance submission requirements in § 522.2 also apply to amendments*

LRBOI response: We do not object to this clarification and this has always been LRBOI's interpretation of the regulations.

- *Eliminate the requirement that a tribe submit copies of all gaming regulations*

LRBOI response: We support this change though obvious changes to part i mean there is still a requirement to submit regulations upon request.

- *Require a tribe to include a copy of its constitution with its submission*

LRBOI response: We do not object to this change, but understand from our fellow tribes that some nations do not have a "constitution" as implied by the regulation language. We would defer to those nations on the how to amend the proposed change to be inclusive of all tribal nations' practices.

- *Authorize the Chair to request copies of all tribal gaming regulations in its discretion and compel the tribe to respond to requests for additional information in 30 days*

LRBOI response: We do not object to the listed information or the timeline imposed upon the tribe to respond, however in the interest of timely consideration of gaming ordinance approvals it would also be beneficial for there to be a timeline for the Chair to exercise that discretion and make the requests for additional documentation. Please see suggestion:

(i) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in their discretion within 30 days of submission. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

- *Add the requirement that a tribe submit a conforming copy of its entire ordinance or resolution that contains requested amendments*

LRBOI response: We do not object to these changes, but would suggest a slight amendment to the proposed changes in part (b)(2) in order to minimize the need to make additional requests of the tribe after information is submitted. Please see suggestion:

(2) Any submission under §§522.2(b) through (h) of this part that have been modified since their prior conveyance to the Chair for an ordinance, resolution, or amendment approval or a certification from the tribe stating no modifications have been made since their prior conveyance to the Chair.

- *Initiate the 90-day deadline for the Chair's ruling upon receipt of a complete submission*

LRBOI response: We do not object to this change; however, we would understand this amendment to put the onus on the NIGC to identify the specific date to a tribe that their submission is complete. This may present possible problems if there is an unreasonable delay in deeming submissions complete.

- *Clarify that a tribe that subsequently amends a gaming ordinance or amendment pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission*

LRBOI response: We do not object to this change.

- *Eliminate the requirement that the Chair publish the tribe's entire gaming ordinance in the Federal Register*

LRBOI response: We do not object to this change, understanding that publication also occurs on NIGC's website.

- *Simplify the language in Part 522*

LRBOI response: We do not object to this change, but minor note for the Commission that at times the Chair's pronouns are "it" and sometimes "they", either is fine but we see no reason that this cannot be uniform.

Proposed Changes to 25 C.F.R. Parts 502, 556, & 558 (Key and PMO definitions)

LRBOI response: Prior to addressing specific changes to this section of the regulations, we would like to express that these potential changes greatly concern LRBOI. Accepting these changes with a conservative

interpretation to assure compliance would affect no less than 52 positions at LRBOI's casino resort, with no less than 36 changing from Key to PMO licensing. To be clear, that is number of positions, not employees, which is a larger number. Moreover, we are aware of several instances where this shift would result in the elimination of a tribal member from our workforce due to the new licensing requirements. LRBOI requires non-gaming licenses for all positions at the resort that are not otherwise licensed and completes background investigations on all employees for this practice but these changes would still have a significant impact. Our understanding is that these changes have been prompted by concerns not at all grounded in the protection of tribal gaming assets, but rather friction between the FBI and NIGC's interpretation/implementation of licensing classifications and background requirements. In fact, there has been no suggestion that any of these changes present a benefit to the tribes because there is no guarantee that these changes would solve the issue the tribes had when the Commission required an update to the FBI MOU. As NIGC is aware, that change impacted allowable submissions for fingerprints through the FBI. Many tribes, LRBOI included, attended training sessions regarding the changes and implemented new policies to adjust our compliance. While we can appreciate that NIGC is trying to amend the regulations to minimize the impact of the changes the FBI is imposing, we cannot support this solution as presented. Please see direct suggestions below.

- *Address FBI's concerns regarding who constitutes a key employee or a primary management official*

LRBOI response: We do not believe that this approach is in keeping with the spirit or intent of IGRA. The FBI's concerns about CHRI management are legitimate to some extent from their perspective, but those concerns have almost no connection to the intent of IGRA and should not be the basis for regulatory change. Our specific concerns with the changes in definition are addressed further below.

- *Provide for custodians of licensing records and/or compliance inspectors or monitors to qualify as key employees, if designated as such in a gaming ordinance approved by the NIGC Chair*

LRBOI response: We do not support this approach though we appreciate the objective of allowing tribes to license gaming commissioners and commission staff, if they so choose. It is not clear what tribe would make that choice with the proposed changes to PMO licensing. Perhaps a more sound approach would be create a third optional classification for regulator licensing that would comply with the FBI's concerns but would not unnecessarily change the scope of key or PMO licensing. We would suggest further investigation and consultation into this solution prior to expanding current definitions. On the currently presented changes we would like clarification on the meaning of "cash" in section 502.14(a)(9). This could be accomplished by limiting it to gaming related cash.

- *Ensure that volunteers and employees of other entities who undertake the duties, functions, or responsibilities of a key employee are included in the key employee definition*

LRBOI response: We do not object to this change.

- *Include persons with unescorted access to secured areas as key employees*

LRBOI response: The term "secured areas" requires clarification. Through participation in the calling session, we understand that this term is not meant to apply broadly to the back of the house, but would

appreciate some language to address more specifically what NIGC would deem a secured area and would further like that limited to the gaming related operations.

- *Raise the total cash compensation qualifier for key employees*

LRBOI response: We support this change and appreciate NIGC addressing the issue.

- *Consolidate certain subsections of the key employee definition*

LRBOI response: We do not support the change that removes the tribe's discretion to identify key employees (part 5.02.14(d)). Understanding the FBI's concern that this may be too vague, we would request NIGC to further consult with the FBI to determine if an allowance for tribes to identify specific key license designation in their gaming ordinances, which may be broader than NIGC's designation, addresses their concern about the over broadness of the current language.

- *Expand the primary management official definition to include any person who has authority to supervise a key employee*

LRBOI response: We do not support this change.

- *Add general managers or other persons who have management responsibility to the primary management official definition*

LRBOI response: We do not object to this change.

- *Clarify that key employees and primary management officials are such because of their duties, functions, and/or responsibilities, even if they work for an entity other than the gaming operation*

LRBOI response: We understand this change is meant to address those people like Commissioners or tribal gaming commission employees that do not work for the gaming operation, but we believe that above changes to PMO licensing may result in unintended consequences up the chain that could result in the requirement to license Commissioners or even Tribal Council members as PMOs. We do not believe that this is the actual intent of NIGC's changes and hope to see clarifying language to make this clear in the PMO definition as addressed above.

- *Focus on licensing of primary management officials and key employees instead of employment of them*

LRBOI response: We do not object to this change, however it is not clear that this change will ultimately satisfy the FBI's concerns as it relates to tribal licensing practices. Understanding that a joint consultation may not be possible, we would encourage NIGC to seek some kind of assurances prior to final implementation or all this effort may result in no practical change.

- *Simplify the licensing application retention requirement to just the information within it*

LRBOI response: We do not object to this change.

Proposed Changes to 25 C.F.R. Part 514.4 (NIGC Fee Regulations)

- *The proposed amendment to the Commission's fee regulation would permit a gaming operation to deduct from "the total amount of money wagered" the amounts the gaming operation can demonstrate were issued to patrons as promotional credits.*

LRBOI response: This is a welcome clarification on the calculations for amounts wagered. We would encourage a shift to mandatory rather than permissive language as follows:

(f) The amounts wagered that the gaming operation can demonstrate were issued by the gaming operation as promotional credits ~~may~~ shall be excluded from the total amount of money wagered.

Proposed Changes to 25 C.F.R. Part 559.2 (Facility License Notifications and Submissions)

- *The National Indian Gaming Commission seeks tribal comment and suggestions on changing 25 C.F.R. Part 559, Facility License Notifications and Submissions, 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.*

LRBOI response: We do not object to this change.

Proposed Changes to 25 C.F.R. Part 537 (Management Contract Regulations)

- *Currently, the NIGC regulations implementing IGRA require the chair to perform a background investigation of "the ten persons who have the greatest financial interest in the management contract" and "any entity with a financial interest in the management contract." The Commission has received feedback over the years, though, that this language is overly broad and may capture persons or entities whose financial interest in the contract is negligible. In response, the Commission is proposing to amend the regulations to require information only from persons or entities with 10% or more financial interest in the management contract.*

LRBOI response: We do not object to this change.

- *NIGC regulations allows for reduce the scope of required information and the background investigation for certain entities and individuals. The Commission proposes to amend the regulation to move the provision to its own sub-section of Part 537, and to clarify that such reduced scope investigation may be initiated either by request or unilaterally by the Chair.*

LRBOI response: We do not object to this change.

Once again, we thank you for your time and consideration. We look forward to further consultations.

Sincerely,



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