



SAN PASQUAL GAMING COMMISSION

August 25, 2021

Via Email NIGC.Outreach@nigc.gov

Chairman E. Sequoyah Simermeyer, Chairperson
National Indian Gaming Commission
1849 C. Street NW
Mail Stop #1621
Washington, D.C. 20240

Re: Tribal Comments NIGC's Consultation Series A | July 12, 2021, to August 12, 2021

Dear Chairman Simermeyer:

The San Pasqual Tribal Gaming Commission ("SPTGC") is pleased to submit the following comments to the NIGC's proposed changes outlined in the Dear Tribal Leader letters dated June 9, 2021, and July 12, 2021, outlined in Series A of the Consultation process that centers on areas that may need clarification as to reflect current practices of tribal governments, the NIGC, and tribal gaming regulatory agencies/commissions. More specifically, proposed changes to the NIGC's Consultation Policy, Strategic Plan, and regulations related to 1). key employees and primary management officials, 2). NIGC fee regulations, 3). facility license notifications and submission, and 4). management contracts.

Introduction. The SPTGC has provided general comments on the NIGC's Consultation Policy and Strategic Plan. Comments made to the proposed and revised regulatory language was approached from the perspective of whether the change provided a greater benefit than maintaining the language as currently written and is in keeping with the intent of the Indian Gaming Regulatory Act (IGRA).

NIGC Consultation Policy Comment. The NIGC through the inclusion of the use of technology within the consultation process can have a positive impact by engaging tribes on a more regular basis and providing for a more meaningful engagement as tribal leaders and tribal regulators are provided with an opportunity to actively participate in the process. While technology provides advantages, there can be unintended consequences; therefore, technology should be used to enhance in-person engagements when travel is restricted, and not as a replacement. Unintended consequences may include:

- Challenges that may discourage attendance and engagement, such as comfort level, connectivity, and technological knowledge.
- Communication becoming less fluid and more rigid and systematic.

Additionally, it is recommended that the NIGC include in their protocol a platform for regional consultations, continue to provide monthly training opportunities both virtually and in person, and continued participation in panels with national tribal organizations and associations that build trust and familiarity, resulting in open and constructive dialogue during the consultation process.

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The NIGC Consultation process as currently implemented is generally beneficial, however, a drawback to the current process is the short turnaround time provided to respond. It is recommended that an open comment period throughout the series be provided as well as extending an additional 30-day comment period at the conclusion, which will provide adequate time for comments to be drafted, reviewed, internally approved, and filed with the NIGC.

NIGC Strategic Plan. The SPTGC appreciates the outreach to tribes and the opportunity to provide feedback on the NIGC's Strategic Plan. The SPTGC is supportive of the NIGC building upon past strategic plans, goals, and emphasis areas. The Tribal Gaming Commission encourages the NIGC to continue to articulate the NIGC's priorities through continual engagement and outreach with their regulator partners, provide updates on the strategic goals; as well as on the performance measurements on a routine basis. The goals and priorities within the strategic plan should refer back to activities, training, and outreach outlined in the strategic plan.

The SPTGC strongly encourages the NIGC to include in the strategic goals training on cybersecurity, ransomware, pandemic response, cashless wagering, and other technological advances that will benefit tribes economically, but bring internal and external threats that could negatively impact tribes.

25 CFR § 522.2 (a) Submission Requirements. The Tribal Gaming Commission agrees with proposed change to 25 C.F.R §522.2 (a) as the proposed changes provides a greater benefit to a tribe. It is our opinion that the proposed revisions provide an alternative when submitting an ordinance or regulation in a manner that is most convenient, most efficient, and provides for improved record keeping to a tribe.

25 C.F.R § 522.2 (d) Submission Requirements. The Tribal Gaming Commission strongly opposes the proposed change to 25 C.F.R §522.2 (d) as the proposed changes does not provide a greater benefit to a tribe. It is our opinion that the proposed revisions do not provide or account for the diversity of how tribal nations govern themselves internally. The proposed language would require a tribal government to submit a copy of its' constitution along with its' request for approval of a gaming ordinance, resolution, or amendment. The reasons provided by NIGC during the recent consultation was that NIGC needed a mechanism to verify that the action was properly

authorized pursuant to tribal law. As pointed out during the same consultation, tribes pointed out that resolutions have a certification component and that not all tribal governments are governed under a tribal constitution rather are governed traditionally.

25 C.F.R §§ 502.14; 502.19 – Definitions of Key Employee and Primary Management Official. After review of the proposed changes, it is the opinion of the Tribal Gaming Commission, that the proposed changes with a stated goal of allowing the NIGC to process fingerprints for Tribal Gaming Commission Employees and other employees of the gaming operation do not provide a greater benefit than maintaining the definition of a Key Employee and Primary Management Official as currently defined in 25 C.F.R §§ 502.14; 502.19. Therefore, we oppose the proposed changes. Furthermore, the Tribal Gaming Commission opposes the changes over concerns that the proposed language may be inconsistent with the Indian Gaming Regulatory Act ("IGRA"), that addresses the background investigation of primary management and Key Employees of the gaming operation (§2710 (b)(F)(i-ii)).

Further, the SPTGC is opposed to the proposed language change § 502.14 (c) as it would minimize the number of employees that would otherwise be backgrounded by using the FBI database and thereby diminishing the intent of the regulation to include those employees whose job functions who are not explicitly included in the



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definition of a Key Employee. However, if changes are to be made, changes should focus on job functions and not compensation amounts.

Additionally, the SPTGC is also opposed to including persons who have unescorted access to secured areas as Key Employees, this is not necessary, as it is the responsibility of each tribe to define secured areas in gaming regulations and the requirements for escorted and unescorted access within the gaming facility.

25 C.F.R. § 522.8 – Publication of Class III Ordinance and Approval. No comment.

25 C.F.R. § 522.9 – Substitute Approval. No comment.

25 C.F.R. § 559.2(b) – Facility License Notifications and Submissions. The Tribal Gaming Commission is supportive of the proposed change to 25 C.F.R §559.2 (b) as the proposed changes provide a greater benefit to a tribe. It is our opinion that providing the name and address of the property when a facility license is being considered for issuance is not information required to meet the requirements of IGRA. In some instances, requiring the information could lead to a delay in filing resulting in a negative economic impact to a tribe well as unintended non-compliance for failure to submit the required information within the required time frame. It is suggested that the NIGC propose language that addresses when the information is to be provided.

25 C.F.R. §552 – Submission of Gaming Ordinance or Resolution. No Comment.

25 C.F.R. § 514.4(c) – Annual Fee Calculation. The Tribal Gaming Commission is supportive of the proposed change to 25 C.F.R §514.4 (c) as the NIGC fee regulations are vague on the treatment of promotional credits or free play which can lead to misinterpretation.

25 C.F.R. § 537.1(a)(3) - Applications for Approval. No Comment.

Conclusion. The Tribal Gaming Commission welcomes and appreciates the opportunity to participate in the consultation process and meaningful dialogue. We look forward to further consultation efforts by the NIGC.

Sincerely,

Claudina H Masura (Aug 27, 2021 10:10 PDT)

Claudina Masura, Chairwoman

San Pasqual Tribal Gaming Commission

cc:

San Pasqual Tribal Gaming Commission

Celeste Hughes, Executive Director | San Pasqual Tribal Gaming Commission

Debbie Martinez, Director of Licensing | San Pasqual Tribal Gaming Commission

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