



**Confederated Tribes of Siletz Indians
Tribal Council**

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January 24, 2011

Lael Echo-Hawk, Esq.
Counselor to the Chair
National Indian Gaming Commission
1441 L St., N.W.
Suite 9100
Washington, D.C. 20005

Re: Comments of the Confederated Tribes of Siletz Indians of Oregon, NIGC
Notice of Inquiry and Request for Information; Notice of Consultation, 75
Federal Register 70680 (Nov. 18, 2010).

Dear Counselor Echo-Hawk:

I am the Tribal Chairman of the Confederated Tribes of Siletz Indians of Oregon ("Siletz Tribe"). I am responding on behalf of the Siletz Tribe to the notice published by the National Indian Gaming Commission in the Federal Register on November 18, 2010, at 75 Federal Register 70680. I will address the Notice, by Section number.

Part 502 – Definitions of This Chapter:

(1) Net Revenues.

The Siletz Tribe agrees that definition of "net revenues" needs to be modified. Technically, under the current definitions, the Tribe's principal loan payments must be made out of net revenues, and one of the five categories specified in IGRA. Because of this, the Siletz Tribe adopted a two part Net Revenues Ordinance, where 100% of net revenues first go to monthly loan principal payments and then, upon satisfaction of monthly loan payment amounts, the remaining net revenues are distributed by percentage to each of the five allowable categories. Changing the definition of net revenues to better accord with generally accepted accounting principles will allow the Siletz Tribe to better comply with laws and regulations without going through extreme circumstances.

(2) Management Contract.

The Siletz Tribe's position is that the definition of management contract should not be expanded to include slot lease agreements. These agreements are common in the industry, and are a well-accepted way of doing business. The Tribe agrees that in certain situations, a developer or management contractor's multiple fee agreements may sidestep the management contract reimbursement limits imposed by IGRA and by federal regulations. The Siletz Tribe is not sure, however, whether new regulations are needed to address this issue, or whether it can be dealt with under existing law and regulations. If NIGC decides to draft regulations in this area, they should be narrowly tailored to address egregious situations where a management contractor or other person or entity is attempting to take advantage of a tribe and to take all or much of its gaming revenues. Expanding the definition to include slot lease agreements would constitute unreasonable interference with tribal business decision-making.

Part 514 – Fees.

The Siletz Tribe does not use NIGC fingerprint processing services, so this section does not apply to the Tribe. The Siletz Tribe agrees that the definition of gross gaming revenue should be defined consistent with the GAAP definition of that term. The Siletz Tribe strongly believes that the NIGC should adopt a separate system such as a ticket system to handle late payment fees, and that it is inappropriate to use the NOV process to handle late payments. The NOV process should be reserved for substantive violations of IGRA or comments, and should not apply to Tribes unless the Tribe engages in conduct that is severe and/or repeated and substantial.

Part 518 – Self-Regulation of Class II.

The Siletz Tribe agrees that the current self-regulation procedure is extremely burdensome, and that the burdens of complying with such process significantly outweighs and potential benefit from achieving self-regulation. The process should be streamlined, and should make it easier for Tribes to achieve and comply with self-regulation. It would be useful to have a Tribal Advisory committee to meet on this issue. Achievement of self-regulation status should result in reduced federal oversight and financial burden to the Tribe.

Part 523 – Review and Approval of Existing Ordinances and Regulations.

The Siletz Tribe agrees that this section should be completely eliminated.

Part 531 – Collateral Agreements.

The Siletz Tribe believes that management contracts and collateral agreements should be all reviewed at the same time, to determine whether, overall, a management agreement violates the terms and intent of IGRA.

Part 533 – Approval of Management Contracts.

The Siletz Tribe does not fully understand NIGC's statements under this section. Usually, it is the Tribe who is requesting approval of a management contract or supporting the approval of a management contract. It does not make much sense to deny the Tribe's submission of a management contract for technical reasons, because the contract was not submitted in accordance with the submission requirements of Part 533. Instead, the Agency should work with the Tribe or company to make sure the contract is properly submitted. If the contract does not contain the regulatory requirements for approval pursuant to Part 531, it should be returned to the management contractor with an explanation of what is needed.

Part 537 – Background Investigations Related to Management Contracts.

The Siletz Tribe does not believe that NIGC generally has authority over Class III gaming under IGRA. The Tribe does acknowledge that NIGC has authority to approve Class III management contracts.

Appeals of Chairperson's actions to the Commission.

The Siletz Tribe believes that the primary change that needs to be made to the appeal regulations of NIGC is that the Chairperson must be prohibited from sitting with the Commission on any appeal. The Chairperson cannot make an administrative decision under IGRA and the NIGC regulations, and then sit as an appellate judicial officer to hear an appeal of his or her decision, along with the two other commissioners. This violates all principles of due process, and makes it likely that appeals will not occur by tribes because the whole system is so rigged against them. Otherwise, the Tribe cannot comment until the NIGC comes up with more detailed proposals on this subject.

Part 542 – MICS and Technical Standards.

The Siletz Tribe agrees that the Class III MICS should be struck and replaced by a set of recommended guidelines. NIGC does not have authority under IGRA over Class III gaming. Guidelines would be more appropriate. The Siletz Tribe has enacted its own MICS which meet or exceed all the NIGC MICS.

Part 543 – Class II MICS.

The Tribe has no comments under this section.

Part 547- Minimum Technical Standards.

The Siletz Tribe's position is that NIGC should continue with the document under this Section but the document should be revised, with tribes having a chance to comment.

Part 556 – Background Investigations for Licensing.

The pilot program can be put into regulations, so long as no changes are made to the program. The program as it currently exists works well for the Siletz Tribe.

Part 559 – Facility Licenses.

This entire regulation should be rescinded. It violates IGRA in many ways. The facility license provision of IGRA, requiring tribes to provide a copy of their facility licenses to NIGC, is an extremely minor part of the law. The Tribes have the authority to issue facility licenses, and those provisions must be in a tribal gaming ordinance. NIGC has improperly leveraged this obscure provision to require tribes to report to NIGC about environment, health and safety issues that NIGC does not otherwise have authority over under IGRA, and also to leverage Indian lands determinations. This back door attempt to regulate areas where NIGC does not have authority undermines NIGC's credibility with tribes in all other areas. Get rid of it.

Part 571 – Inspections and Access.

This section should be revised to explicitly deny NIGC the right to access Class III records of all kinds. NIGC has improperly used this section in an attempt to intimidate the Siletz Tribe with regard to NIGC's purported authority over Class III gaming, but subpoenaing all of the Tribe's casino records – to be provided only in Washington, D.C. - in response to the Tribe's position that NIGC lacks authority to come in and inspect and monitor the Siletz Tribe's Class III gaming operations. This authority should be explicitly limited.

Part 573 – Enforcement.

The Siletz Tribe's position is that the NIGC should have a process for withdrawal of an NOV. The NOV should be lifted or ended once the issue has been resolved. There should also be a time limit on an NOV. The Siletz Tribe once settled an NOV, and NIGC's position was that the Settlement terms remained in force forever, years after all the issues were resolved. The Chairperson should not have sole authority and discretion to withdraw an NOV; it should be a matter for the entire Commission under articulated standards.

Tribal Advisory Committee.

The Siletz Tribe's Tribal Gaming Commission believe that TACs are an effective way for the Tribes and NIGC to interact. However, any formal procedure must state explicitly that the tribes' participation in a TAC shall not be construed as an admission or acknowledgment that any NIGC regulation or action is legal or valid under IGRA. A TAC policy instead of a regulation, and flexibility in forming TACs because of cost, would be acceptable.

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Sole Proprietary Interest Regulation.

The Siletz Tribe's position is that there is no need for a Sole Proprietary Interest regulation.

Communications Policy or Regulation.

The Siletz Tribe's position is that there is no need for a policy or regulation on how and when NIGC communicates with Tribes.

Part 571.8 to .11 – Subpoenas and Depositions.

The Siletz Tribe believes these provisions should be changed to eliminate their misuse, where they are invoked merely to pressure a tribe to conform to an NIGC action or inspection. Such actions violate the government-to-government relationship between NIGC and the Tribes.

The Siletz Tribe has no other comments at this time. Please feel free to contact me if you have any questions.

Sincerely,



Delores Pigsley
Siletz Tribal Chairman

c: Siletz Tribal Council
Shawna Gray, Executive Director, Siletz Tribal Gaming Commission
Craig Dorsay, Tribal Attorney