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Via Email (reg.review@nigc.gov)

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. N.W., Suite 9100
Washington, D.C. 20005

Dear Chairwoman Stevens:

The Pala Band of Mission Indians conducts Class III gaming at the Pala Casino Resort Spa in Pala, California. We appreciate the National Indian Gaming Commission's recent Notice of Inquiry seeking tribal input on the need (if any) to review and revise existing federal regulations and provide our written comments below on those areas we believe are of greatest importance.

Revising Existing Regulations

During this review process, we think it will be important to exercise caution and care to avoid creating ambiguity or confusion regarding existing standards. The act of promulgating revisions to existing federal regulations should be reserved for those areas where revision is an actual necessity.

Part 542: Minimum Internal Control Standards for Class III Games

We support the NIGC's continued provision of minimum internal control standards for Class III gaming. These federal regulatory standards have an important and positive impact on the industry, serving since 1999 as a uniform and solid baseline for tribes to issue their own tribal internal control standards. The uniform federal minimum standard facilitates regulatory compliance in such areas as external audit and shortens the learning curve for internal audit, facility audit and regulators recruited from another state or tribal jurisdiction. The industry's reliance upon the federal standard has roots in the historical evolution of Indian gaming as well as their efficiency and effectiveness.

Our Tribe has adopted the federal MICS standard, and our tribal gaming ordinance approved by the NIGC confers regulatory oversight to the NIGC to monitor and enforce the MICS. The federal Class III MICS currently are used as the standard in tribal-state gaming compacts, regulations, tribal gaming ordinances, and Secretarial procedures. In

California, in addition to new compacts and compact amendments incorporating the federal Class III MICS, a new state-wide regulation called CGCC-8 enacted pursuant to the compact incorporates the federal MICS standards. It also provides an alternative NIGC compliance section that enables California tribes to opt for NIGC monitoring of MICS compliance, where a tribe has chosen to request such federal oversight in its gaming ordinance. This alternative, which is entirely voluntarily and up to the sovereign decision of each tribe, is a valuable asset for tribes.

We think that the federal Class III MICS standard should remain in place, and any review of these regulations at this stage should carefully take into account the important role these standards have played and continue to play for many tribes. If your inquiry regarding changing to a "guideline" means repeal of 25 CFR Part 542, then we believe that this change would negatively impact our Tribe and many others that have relied upon it as well as undermine the benefits of a federal industry-wide uniform standard.

We recognize the issues presented by the CRIT decision issued in 2006, where the court found the NIGC lacked authority to adopt mandatory internal control standards for Class III gaming and to impose MICS regulation on tribes. The important distinction here is that the NIGC is maintaining the valuable federal MICS standards for those tribes who have chosen to voluntarily rely upon them by adopting and incorporating the MICS into a regulation, tribal-state compact, tribal gaming ordinance, or Secretarial procedures, and providing regulatory oversight where chosen and agreed to by tribes.

We think it is premature to speculate about the most effective and efficient manner to update the federal MICS as necessary and believe this topic should be covered in the NIGC's upcoming tribal consultations this year.[1] Any resulting process should ensure that experienced tribal regulators and casino personnel participate and each tribe has a meaningful opportunity to comment during the process if desired.

Part 533 Management Contracts – Should the definition be expanded to include any contract that pays a fee based upon percentage of gaming revenue?

No, the definition of management contract should not be expanded to include any contract that pays a fee based upon percentage of gaming revenue.

The definition of "management contract" in the regulations should not be revised to capture vendors who have no management responsibility, when IGRA provides a

[1] Included among the options to discuss would be promulgating updated regulations. Another option for discussion may be publishing recommended updates or best practices recommendations for the 2006 MICS specifying that they meet or exceed the 2006 MICS and necessarily account for changes in the industry and technology. With either option, it could be made clear that tribes can chose to adopt the updates into their tribal MICS, preserving some of the federal uniformity of regulation in the industry and avoiding costly duplication of efforts. This is essentially the model used in our tribal gaming ordinance which incorporates the federal MICS as published or amended by agreement of the NIGC and the Tribe. This approach would also compliment the California state-wide regulation CGCC-8, which provides for the standard of compliance to be 25 CFR Part 542 as in effect on October 19, 2006, or as it may be amended, as well as an alternative material compliance standard where a tribe adopts MICS that meet or exceed 25 CFR Part 542, as in effect on October 19, 2006, or as it may be amended.

management contract is one in which another entity has responsibility for the operation and management of a gaming activity. (See 25 USC 2711(a)(1)).

Additionally, any such expansion would have a detrimental impact on the tribal gaming industry. Requiring a lengthy federal approval process for slot lease agreements based upon a percentage of revenue, including well known wide area progressive games, would cripple the ability to quickly change vendors based upon performance and would be cost prohibitive for vendors placing games on a trial basis. Nor does there appear to be any regulatory benefit. These vendors have no management responsibility and at our casino are subject to state suitability determinations and tribal licensing.

Part 514: Gross Gaming Revenue upon which the NIGC Annual Fee is based.

Should NIGC should consider amending this part to define gross gaming revenue consistent with the GAAP definition? While using the GAAP definition may make the calculation easier, the definition should not be revised in any way that eliminates the deduction for amortization of capital expenditures for structures, as provided for in IGRA at Section 25 U.S.C. Section 2717(a)(6).

Should NIGC consider adding a type of "ticket system" to part 514 so an NOV would only be issued instances of gross negligence or wanton behavior? Yes. However, it is equally important to maintain the current and past practice of the NIGC issuing a letter providing notice of a problem and an opportunity to cure. This approach provides an incentive for all parties to quickly a cure problem, and frequently achieves the regulatory result in the most expeditious manner. A ticket system is punitive in nature, and while it may serve a future role in NIGC regulation, it should not replace the collaborative approach which has been successfully used for years.

Part 556: Background Investigations for Licensing

Should the pilot program be formalized into regulations? Yes, the pilot program has enhanced greatly the efficiency and effectiveness of tribal licensing at our gaming facility. In any case, at a minimum, the NIGC should continue the existing pilot program offered through Memorandum of Agreements.

Should NIGC provide fingerprinting for vendors? Should NIGC perform background investigations? Yes, at the option of the Tribe. It would be helpful for NIGC to provide fingerprinting for vendors either by processing individual fingerprints or providing access to a database where such results have already been posted to avoid duplication and undue cost for vendors (which would be passed on to tribes). We think any NIGC background investigations should be careful to avoid duplication in states like California where many of the same vendors are licensed by each tribal gaming regulatory authority and found suitable by the State Gaming Agency.

We appreciate this opportunity to provide written comment and look forward to continued consultation on these issues.

Sincerely,

Robert Smith
Tribal Chairman

Cc: Anthony Barnes, Pala Gaming Commission
Jane Zerbi, Esq.