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NATIONAL INDIAN GAMING COMMISSION

PORTLAND REGION

REGULATORY REVIEW CONSULTATION

LITTLE CREEK RESORT & CASINO

February 16, 2012

Shelton, Washington

Job No. NJ381812

1 BE IT REMEMBERED that on Thursday, February
2 16, 2012, at Little Creek Resort & Casino, 91 West State
3 Route 108, Shelton, Washington, at 2:50 p.m., before
4 BARBARA L. BRACE, CCR, RPR, Certified Court Reporter, the
5 following proceedings were had, to wit:

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7 <<<<<< >>>>>>

8
9 CHAIRWOMAN STEVENS: So now we will
10 need everybody to speak into the microphone. You'll need
11 to state your name and which tribe you're with if you
12 have comments.

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

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

22 All of these proposals were published on December
23 22, and so the comment period closes very shortly, next
24 week.

25 So 556 attempts to formalize what the Commission had

1 been doing with the pilot program for some time, and the
2 Commission circulated a preliminary draft for comments
3 from tribes. Part 556 includes all the procedures before
4 a gaming license is issued.

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

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

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

23 You'll see in here in 558.3, we're asking if a tribe
24 doesn't license a particular applicant that the tribe
25 must notify NIGC and provide NIGC a copy of the

1 eligibility determination and investigative report if
2 they don't license an applicant.

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

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

10 MR. MATHERLY: Andrew Matherly,
11 Spokane Tribe.

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

16 MR. ROBERTS: To clarify --

17 MR. MATHERLY: It's actually 558.3.
18 Sorry.

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

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

23 CHAIRWOMAN STEVENS: Okay. Great.
24 Any other comments on licensing?

25 Okay. Again, this is open until February 21, if you

1 need to take this back and put together written comments.
2 We welcome them.

3 We'll move on to Part 537.

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

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

19 So what this -- it's a relatively short change, but
20 the change is to -- if those entities already have
21 background -- had their background investigated or have
22 already received a license from another state entity,
23 let's say, or pursuant to a tribal-state compact, that if
24 this -- if this individual comes before the Commission,
25 that the Chair has the discretion to reduce the scope

1 based on that other information.

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

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

16 MR. HARJU: Phil Harju from the
17 Cowlitz Tribe.

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

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

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

25 MR. ROBERTS: This is the only change.

1 MR. HARJU: Okay. It would be
2 pursuant to your current fee schedule for backgrounds?

3 MR. ROBERTS: Right.

4 MR. HARJU: Thank you.

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

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

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

21 So in the proposed Rule 518.4, we have a history of
22 gaming operations. We ask for the organizational chart,
23 the employment criteria of the TGRA regulators, funding
24 description, a list of TGRA regulators, a description of
25 the gaming operations accounting system, some of the --

1 listing the internal controls, the record-keeping system,
2 providing the tribe's current gaming regulations if
3 they're not already included in the approved tribal
4 gaming ordinance.

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

9 518.5 lists the criteria that must be met to satisfy
10 Part 518 and to receive a self regulation. This is based
11 on the statutory language of IGRA. The criteria that
12 must be met that the tribe has adequate systems for
13 accounting of revenues, investigations, enforcement at
14 prosecution of violations.

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

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

23 This would instead provide a process where, within
24 120 days of application, the office provides a
25 recommendation and report to the Commission and to the

1 tribe.

2 The tribe has 30 days to respond to that report, and
3 then the Commission itself reviews the report and issues
4 preliminary findings, and the tribe can then request a
5 hearing before the Commission after receiving those
6 preliminary findings.

7 The Commission then issues a final decision within
8 30 days after the preliminary findings or a hearing if
9 it's requested, whichever is later. And the regulation
10 makes clear a tribe may withdraw a petition at any time
11 prior to a final decision.

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

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

24 One of the more other significant changes in this is
25 518.10. Right now the regulations require an annual

1 report to be submitted by the tribe.

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

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

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

21 We did receive some comments asking the Commission
22 to define "tribal regulator." This proposed rule does
23 not do that. I think one of the issues that the
24 Commission was considering is that every tribe is
25 defining tribal regulator differently, and so we have

1 not -- the Commission has not made that definition in
2 this proposed rule.

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

7 Some comments suggested removing the section
8 altogether or just reiterating the statutory language.
9 For the proposed rule, the Commission decided to move
10 forward with a reference to IGRA.

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

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

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

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

25 So comments on this one close on April 2nd, so we

1 have some time. Please do these. And if you have
2 written submissions, please make them.

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

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

9 MR. BARR: Which tribes are self
10 regulated?

11 CHAIRWOMAN STEVENS: Grand Ronde and
12 Menominee.

13 MR. MATHERLY: Andrew Matherly,
14 Spokane Tribe.

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

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

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

25 I can tell you the status of the Tribal Advisory

1 Committee's work. They started with the Class II
2 portions where there was clear interest from tribes that
3 we address those immediately because Class II Minimum
4 Internal Control Standards have been sort of in abeyance
5 for a number of years, and tribes have expressed a strong
6 desire to have those finished up and done, and 547 as
7 well.

8 So the tribal committee was formed. They started in
9 October or November -- no. October. Sorry. And they
10 have been meeting and reviewing 543 for Class II MICS and
11 547.

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

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

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

24 CHAIRWOMAN STEVENS: So we embarked on
25 a pretty hefty agenda, and you see that in all these

1 consultations and these regs that are coming out trying
2 to address concerns for tribes, especially for Class II
3 MICS because they have just been in limbo, and you all
4 have just been in limbo for Class II, and we want to
5 address that.

6 MR. DANIELS: Melvin Daniels,
7 Muckleshoot.

8 Are those recommendations that the committee
9 forwarded available?

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

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

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

22 MR. SAMUELS: Ron Samuels, Spokane
23 Tribe.

24 I would just ask that the NIGC, when they get the
25 external audit reports and they make reference to

1 Class III MICS, that I'm hoping that all tribes have
2 basically commented on, there may be material weaknesses
3 or findings or exceptions.

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

13 CHAIRWOMAN STEVENS: Okay. Thank you
14 for your comment.

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

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

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

25 (Consultation concluded at

3:14 p.m.)

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1 STATE OF WASHINGTON) I, Barbara L. Brace, CCR, RPR,
) ss a certified court reporter
2 County of Mason) in the State of Washington, do
 hereby certify:

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

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

10

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

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

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