NATIONAL
INDIAN
GAMING
COMMISSION

AUG 12 1997

Hans Walker, Jr.
Hobbs, Straus, Dean & Walker
1819 H Street, NW, Suite 800
Washington, DC 20006

Dear Mr. Walker:

This responds to the May 14, 1997, appeal of the decision of Associate Commissioner Foley's disapproving the Native Village of Barrow Gaming Ordinance No. 01-96. Then Acting Chairman Ada Deer delegated responsibility for ordinance approval or disapproval to Commissioner Foley. We conclude that the Native Village of Barrow (Village) does not have Indian lands on which it can conduct tribal gaming. Therefore, the Village's appeal is denied. We rely on the analysis contained within the February 1, 1996, Commission decision, which denied the Village's appeal of the disapproval of previously submitted tribal gaming ordinance No. 95-01. A copy of that decision is enclosed.

With this latest appeal, Appellant relitigates an issue which the Commission has decided against Appellant on two prior occasions. Appellant provides neither new facts nor new evidence to support its position. Rather, appellant argues that the holding in Alaska v. Native Village of Venetie Tribal Government, 101 F.3d 1286 (9th Cir. 1996), cert. granted, 117 S.Ct. 2478 (1997) is controlling. However, the Venetie decision is on appeal to the United States Supreme Court, and the Ninth Circuit has stayed its ruling pending final disposition. (No. 96-35042, Order dated January 23, 1997).

The question of whether the allotment upon which the Village wishes to conduct gaming is Indian lands was decided first by the Chairman of the Commission on April 11, 1995, and again by the full Commission on February 1, 1996. On April 11, 1995, the Chairman disapproved the Village's gaming ordinance based on an April 10, 1995, determination by the Acting Associate Solicitor, Department of Interior, that the Village had failed to show that the Village exercises governmental power over the allotment, as required by 25 CFR § 502.12. The Commission defers to the Department of Interior on the question of the existence of Indian lands. The Village then submitted a new ordinance, together with documentation alleging to show that the Village did exert governmental authority over the allotment. The Chairman disapproved the ordinance, again relying on the Associate Solicitor's April 10 memorandum. The Village appealed this decision to the full Commission, alleging that the Chairman failed to consider the new evidence. The full Commission considered the new evidence, and on February 1, 1996, denied the appeal, again finding that the Village had failed to show that it exerted governmental authority over the allotment. This decision was based upon a thorough review of the evidence submitted. The Department of Interior declined to provide the Commission with any further assistance on the

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question of Indian lands held by the Village.

On November 20, 1996, the Ninth Circuit Court of Appeals decided, in the Venetie case, that the land the Village of Venetie occupies is Indian country. Appellant argues that the Venetie decision controls portions of this appeal, notwithstanding the fact that the United States Supreme Court has granted certiorari in the Venetie case. However, the relevance of the Venetie decision to appellant's argument is unclear. Moreover, the Ninth Circuit stayed its mandate in the Venetie case pending final disposition by the United States Supreme Court.

Finally, appellant argues that the ordinance must be deemed approved because it has not been disapproved by the Chairman; rather it was disapproved by Associate Commissioner Foley. Appellant argues that the power to disapprove an ordinance is reserved exclusively for the Chairman of the NIGC, and that the Chairman is defined as the Chairman of the NIGC "or his or her designee." 25 C.F.R. § 502.1. Appellant recognizes the authority of the Chairman to delegate responsibility as provided for in 25 C.F.R. § 502.1, but states that Appellant is unaware of any separate action whereby Associate Commissioner Foley became the designee of the Chairman. Such separate action was taken. By internal office Memorandum dated March 6, 1997, a copy of which is enclosed, Acting Chairman Ada Deer delegated several of her responsibilities to other members of the Commission. She did so pursuant to Part II, Chap. 1 of the NIGC Manual (enclosed), and her inherent authority to delegate. Acting Chairman Deer designated Associate Commissioner Foley the authority to approve or disapprove tribal gaming ordinances. Therefore, it cannot be found that the ordinance was approved based on an assertion that the Chairman did not personally disapprove it.

For the foregoing reasons, the Village's appeal is denied.

Tom Foley

Tom Foley, Commissioner

Philip N. Hogen, Commissioner

Enclosures