

COUNCIL ANNETTE ISLANDS RESERVE

METLAKATLA INDIAN COMMUNITY

KARL S. COOK, MAYOR
DIANA M. YLINIEMI, SECRETARY
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May 28, 2008

Via Hand Delivery

Philip Hogen, Chairman
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, D.C. 20005

Re: Amendment to Class II Gaming Ordinance

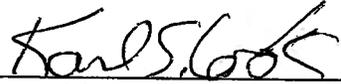
Dear Chairman Hogen:

On behalf of the Metlakatla Indian Community, pursuant to 25 C.F.R. Part 522 I am submitting for your review and approval the enclosed amendment to our Class II Gaming Ordinance. Please feel free to contact our attorney, Joseph Webster at Hobbs, Straus, Dean & Walker, LLP, if you have any questions or need additional information.

We appreciate your attention to this important issue.

Sincerely,

Metlakatla Indian Community


Honorable Karl S. Cook, Jr., Mayor

Encl.

cc: Joseph H. Webster, Esq.

RESOLUTION NO. 08-24
By the Metlakatla Indian Community Council

WHEREAS, the Metlakatla Indian Community Council is the governing body of the Metlakatla Indian Community, Annette Islands Reservation, Alaska by the authority of the Constitution and By-laws of the Metlakatla Indian Community as approved on August 23, 1944 by the Secretary of the Interior; and

WHEREAS, the Metlakatla Indian Community is an Indian Tribe organized under the provisions of Section 16 of the Indian Reorganization Act, 25 U.S.C. Section 476; and

WHEREAS, pursuant to Article VII, Section 3 of the Constitution and By-laws of the Metlakatla Indian Community the Tribal Council has the power to undertake commercial enterprises within the Reservation; and

WHEREAS, the Metlakatla Indian Community allows Class II gaming operations on the Reservation subject to the Indian Gaming Regulatory Act, the Community's Gaming Ordinance and regulations promulgated by the National Indian Gaming Commission; and

WHEREAS, the Metlakatla Indian Community's Class II gaming facility provides revenue which is used to support the Community's governmental programs and is an important source of employment for members of the Community; and

WHEREAS, due to the depressed local economy and lack of alternative economic opportunities, the Metlakatla Indian Community is seeking to increase revenue from its gaming facility by using modern technology to conduct its bingo games;

WHEREAS, the Metlakatla Indian Community Council is advised that one type of modern technology commonly used in non-Indian bingo halls is a bingo aid that assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player; and

WHEREAS, the Metlakatla Indian Community Council is advised that this type of bingo aid is often referred to as "auto-daub" or "one-touch"; and

WHEREAS, the Metlakatla Indian Community Council is further advised that this type of modern technology is likely to generate more revenue for the Community by increasing the speed of bingo game play and making the games more player-friendly; and

WHEREAS, the Indian Gaming Regulatory Act provides that Class II gaming includes "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith);" and

WHEREAS, the regulations of the National Indian Gaming Commission define “electronic, computer, or other technologic aid” to include “any machine or device” that “[a]ssists a player or the playing of a game.”

WHEREAS, the Metlakatla Indian Community Council, after reviewing the applicable provisions of the Indian Gaming Regulatory Act, regulations of the National Indian Gaming Commission, relevant court decisions (Tab A) and a legal analysis prepared by the Community’s attorneys (Tab B), has determined that “electronic, computer, or other technologic aids” to the Class II game of bingo include aids that assist the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player; and

WHEREAS, the Metlakatla Indian Community Council has further determined that the use of this type of bingo aid is consistent with the statutory definition of bingo set forth in the IGRA and would not cause the game to become a Class III “facsimile” of any game of chance; and

WHEREAS, the Metlakatla Indian Community Council has determined that it is desirable to clarify in its Gaming Ordinance that this type of bingo aid is permitted; and

WHEREAS, Article IV, Section 1 of the Constitution and By-laws of the Metlakatla Indian Community grants the Metlakatla Indian Community Council the power to pass ordinances for the local government of the Community;

NOW THEREFORE, BE IT RESOLVED, the Tribal Council hereby approves the attached AMENDMENT to TITLE 4 CIVIL CODE, CHAPTER 4, GAMING ORDINANCE, dated May 28, 2008 (Tab C); and

BE IT FURTHER RESOLVED, the Mayor is authorized to submit the amendment to the Gaming Ordinance to the National Indian Gaming Commission for review and approval.

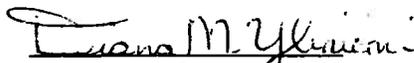
Signed and Dated: This 28th day of May, 2008 at Metlakatla, Alaska.

Signed:

Metlakatla Indian Community


Sean D. Enright, Acting Mayor

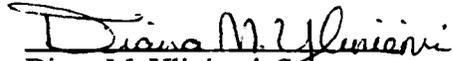
ATTEST:


Diana M. Yliniemä, Secretary

CERTIFICATION

I hereby certify that the foregoing resolution was duly approved at a meeting of the Council, held on May 28, 2008; at which a quorum was present by a vote of 8 FOR and 0 OPPOSED; the Mayor being authorized to sign said resolution.

Signed:


Diana M. Yliniemi, Secretary

TAB A

Original Submission
Includes 9th and 10th Circuit
MegaMania Cases

TAB B



MEMORANDUM

May 22, 2008

To: Tribal Council, Metlakatla Indian Community
From: Hobbs, Straus, Dean & Walker, LLP *Joseph H. Walker*
Re: Tribal Gaming Ordinance – Proposal to Add Language on Class II Aids

You have asked us to review a proposed amendment to the Metlakatla Indian Community's Gaming Ordinance. Specifically, we understand that the Tribal Council is considering adding the following language to Section 4.2 of its Gaming Ordinance:

Class II gaming includes an electronic, computer or other technologic aid to the game of bingo that, as part of an electronically linked bingo system, assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player.

As detailed below, we believe that the proposed amendment is consistent with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA") and the existing regulations of the National Indian Gaming Commission ("NIGC").

Discussion

1. Applicable Law and Regulations.

The IGRA establishes the parameters within which gaming may take place on Indian lands. A tribe may engage in Class II gaming on its lands without a tribal-state compact if the State permits such gaming for any purpose and the tribal governing body adopts an ordinance permitting such gaming, which ordinance is approved by the Chairman of the NIGC. 25 U.S.C. § 2710(b).

Class II gaming is defined under the IGRA:

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

...

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. §§ 2703(7)(A) - (B).

If a game of chance does not fit within the definition of Class II, it is defined as Class III and may only be played as permitted by an approved tribal-state compact or Secretarial procedures. 25 U.S.C. §§ 2703(8), 2710(d).

In addition to the statutory definition, the NIGC has promulgated regulations that give further guidance in determining what constitutes Class II gaming. The regulations at 25 C.F.R. § 502.3 define Class II gaming as:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo.

25 C.F.R. § 502.3.

The NIGC revised its definitions of technologic aids, facsimiles and other games similar to bingo in a final rule published on June 17, 2002 (67 Fed. Reg. 41166). Under the regulations, which went into effect on July 17, 2002, electronic, computer or other technologic aids are defined:

(a) *Electronic, computer or other technologic aid* means any machine or device that:

(1) Assists a player or the playing of a game;

(2) Is not an electronic or electromechanical facsimile; and

(3) Is operated in accordance with applicable Federal communications law.

(b) Electronic, computer or other technologic aids include, but are not limited to, machines or devices that:

(1) Broaden the participation levels in a common game;

(2) Facilitate communication between and among gaming sites; or

(3) Allow a player to play a game with or against other players rather than with or against a machine.

(c) Examples of electronic, computer or other technologic aids include pull tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

25 C.F.R. § 502.7. Electronic or electromechanical facsimile is defined:

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

25 C.F.R. § 502.8. Finally, the regulations define other games similar to bingo:

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

25 C.F.R. § 502.9.

These regulations were adopted to replace prior, more restrictive definitions in order to bring the Commission's rules into line with case law. As stated by the NIGC in the preamble, "The uncomfortable result is that the Commission cannot faithfully apply its own [previous] regulations and reach decisions that conform with the decisions of the courts." 67 Fed. Reg. 41168 (June 17, 2002).¹

¹ In late 2007, the NIGC published four related proposed rules concerning Class II gaming. See *Electronic or Electromechanical Facsimile Definition* (72 Fed. Reg. 60481 (October 24, 2007)); *Class II Classification Standards* (72 Fed. Reg. 60483 (October 24, 2007)); *Class II Technical Standards* (72 Fed. Reg. 60508 (October 24, 2007)); and *Class II Minimum Internal Control Standards* (72 Fed. Reg. 60495 (October 24, 2007)). However, none of those regulations have been finalized and thus have no present legal effect.

2. Analysis.

There has been significant disagreement in recent years between tribes and members of the NIGC concerning whether Class II bingo includes an electronic aid that automatically covers numbers for a player ("one-touch"). While this issue has not been resolved with certainty, the IGRA, legislative history, case law and the NIGC's current regulations support the position that it is permissible for an aid to a Class II bingo game to assist the player by allowing the player to push a button that instructs the aid device to cover numbers for the player after they are called.

We note that neither the IGRA nor the regulations prescribe the method by which a player must daub a card. Instead, the IGRA definition of bingo merely requires that the player "covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined." 25 U.S.C. 2703(7)(A)(i)(II). Further, the NIGC's implementing regulations expressly permit a Class II aid that "[a]ssists a player or the playing of a game." 25 C.F.R. 502.7(a)(1).

Significantly, the courts in the MegaMania cases rejected the argument that merely pressing a "daub" button does not meet IGRA's criteria for covering numbers. In MegaMania, the game allowed the player to push a lighted daub button, which caused the player terminal to cover matching numbers on the player's bingo card. Based on this feature, the Justice Department argued that the player did not actually daub the card. However, this argument was rejected by both district courts in the MegaMania cases. United States v. 162 MegaMania Gambling Devices, No. 97-C-1040-K, slip op. at 5 (N.D. Okla. Oct. 26, 1998) ("This argument is too weak to bear additional discussion."); 103 Electronic Gambling Devices, No. C 98-1984 CRB, 1998 WL 827587, at *6 (N.D. Cal. Nov. 23, 1998) ("There is nothing in the IGRA or its implementing regulations, however, that requires a player to independently locate each called number on each of the player's cards and manually 'cover' each number independently and separately."). In upholding the lower courts, neither circuit court mentioned the issue. United States v. 162 MegaMania Gambling Devices, 231 F.3d 713 (10th Cir. 2000); United States v. 103 Electronic Gambling Devices, 223 F.3d 1091 (9th Cir. 2000).²

Thus, we read the MegaMania cases to stand for the proposition that it is permissible for a Class II aid to assist the player with covering bingo numbers. Arguably, the legally significant issue is that the card not be covered until after the bingo numbers

² A further issue is whether an auto-daub aid device would transform the game into a facsimile of bingo, which would be Class III. Consistent with the legislative history of the IGRA, the NIGC's definition of facsimile (25 C.F.R. § 502.8) makes clear that the test for facsimile is not the level of assistance to the player, but whether the electronics allow a player to play alone with or against the machine rather than with or against other players. The proposed amendment provides that the aid must be used as part of a linked bingo system, which we understand would require more than one player in each game.

have been drawn and displayed to the players.³ Thus, even if the auto-daub function is activated before the ball draw (through the use of a button), the actual daubing must not take place until after the bingo numbers are drawn and displayed to the players in that game.

The feature described in the proposed amendment to the Community's Gaming Ordinance would appear to satisfy this standard. As we understand it, the aid device would assist the player by covering, at the player's request, numbers on the player's bingo card and the following sequence would be maintained: (1) player purchases bingo card, (2) bingo numbers are drawn and displayed, (3) matching numbers are covered on the player's bingo card, and (4) any prize is claimed. In no case would the actual daubing take place before the bingo numbers are displayed to the players in that game and the use of auto-daub would not change the game play sequence. For these reasons, use of such an aid would appear to be consistent with both the IGRA definition of bingo and the scope of permitted Class II aids.

We note that a contrary view is expressed in a number of advisory opinions issued by the NIGC Office of General Counsel. For example, in its Reel Time Bingo Advisory Opinion (Sep. 23, 2003), the Office of General Counsel advised:

Reel Time Bingo also meets the requirements that the person actually cover the predesignated pattern. This requirement would not be met if players could, in one motion, start the game, win, and claim their prizes. Bingo requires participation of some degree. Merely hitting a start button and having numbers covered would not comply with the degree of participation that the statutory language—"the first person to cover"—implies. Likewise, an automatic daub, in which the player need not have any response to the numbers that are called, would not

³ We understand that many bingo minders, permitted by many states as an aid to bingo, also cover bingo numbers automatically for the player. See, e.g., 50 012 CMSR 001 § LL(1)(i) (providing that Electronic Bingo Card Daubers may be used and "[t]he system may utilize an automatic mark feature that if turned on, will mark the participants cards automatically or the participant may input each number or symbol called by the licensee into memory of the dauber unit by use of a separate input function for each number or symbol."); N.D. Admin. Code § 99-01.3-04-03-11(j) (allowing bingo card marking devices, and providing that "[a] player may use an input function key on a device or an organization may use a radio frequency signal to mark each number as it is called. When a player inputs a number or an organization sends a radio frequency signal, a device may automatically mark all the player's cards that contain that number"). Such bingo minders allow a player to play dozens of bingo cards in a single game. We are advised that, in general, bingo numbers are electronically transmitted as they are called to a bingo minder, which then covers those numbers on any cards on which they appear. The use of bingo minders in bingo halls throughout the United States supports our view that bingo can be played with a device that covers cards for the player.

be acceptable. The statutory criterion is met in Reel Time because, after initiating play, players cover their numbers either by hitting the daub button on the game's hardware or touching the monitor screen when cued.

Similarly, in its Mystery Bingo Advisory Opinion (Sep. 26, 2003), it stated:

We conclude that a game offered as class II bingo or a "game similar of bingo" must provide a "daub" or "cover" requirement for all players after the bingo numbers are announced and not just for winning players. If the player has no involvement in covering the numbers, then the player is not participating in the game.

Thus, the NIGC Office of General Counsel would appear to allow a player to daub using a single button. However, the Office of General Counsel appears to take the view that the player must push the daub button after the bingo numbers are drawn and displayed, rather than initiating this aid feature at the beginning of the game.⁴

The fact that the Office of General Counsel has previously issued contrary advice on the permissibility of a "one-touch" feature on a bingo aid is not binding on the Chairman of the NIGC or the full Commission. Moreover, the views of the Office of General Counsel have evolved over time as it has continued to consider these issues. As explained above, there is a strong legal basis for approval of the proposed amendment. Thus, notwithstanding the views expressed in the past by the Office of General Counsel, we believe that the proposed amendment should be approved by the NIGC and, if it is not, then such rejection would be subject to legal challenge by the Community.

Please feel free to contact us if you have any questions or need further information.

⁴ We note that the advisory opinions issued by the Office of the General Counsel are not final decisions or rulings by the Commission. Rather, the opinions merely provide advice as to the current views of the Commission's legal staff. Thus, while the advisory opinions are a useful guide, they are not binding on Metlakatla or any other party.

TAB C

AMENDMENT to METLAKATLA GAMING ORDINANCE

By Authority of the Metlakatla Indian Community Council,

TITLE FOUR CIVIL CODE, CHAPTER 4, GAMING ORDINANCE, dated March 21, 1997 is hereby AMENDED as follows:

SECTION FOUR 4.2 GAMING AUTHORIZED is amended by adding the following sentence to the end of the section after the first paragraph:

“Class II gaming includes an electronic, computer or other technologic aid to the game of bingo that, as part of an electronically linked bingo system, assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player.”



June 4, 2008

Mayor Karl S. Cook Jr.
Metlakatla Indian Community
Post Office Box 8
Metlakatla, AK 99926

Dear Mayor Cook:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for the review and approval of an amendment to the Metlakatla Indian Community Tribal Gaming Ordinance ("the amendment"), received in this office on May 29, 2008. The amendment was approved by the Metlakatla Tribal Council on May 28, 2008, via Resolution No. 08-24.

Regretfully, this letter constitutes a disapproval of the amendment. I have disapproved the amendment because it does not comply with the Indian Gaming Regulatory Act ("IGRA"). Specifically, the amendment defines as Class II a "one touch," fully electronic, fully automated game based on bingo that does not meet the definition of bingo under IGRA, does not meet the definition of a "game similar to bingo" under IGRA, and is a facsimile of a game of chance. This game is therefore Class III and cannot be operated without a compact.

Applicable Law

The IGRA defines Class II gaming in relevant part to include:

- (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—
 - (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
 - (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
 - (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jats, instant bingo, and other games similar to bingo, and

...

(B) The term “class II gaming” does not include –

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(7)(A)-(B). Games that are not within the definition of Class II games are Class III. *See* 25 U.S.C. § 2703(8).

NIGC regulations similarly define class II gaming to include:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

- (1) Play for prizes with cards bearing numbers or other designations;
- (2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
- (3) Win the game by being the first person to cover a designated pattern on such card;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo[.]

25 C.F.R. § 502.3.

The regulations likewise define other games similar to bingo:

Other games similar to bingo means any game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

25 C.F.R. § 502.9

IGRA also provides that class II games may utilize “electronic, computer or other technologic aids.” 25 U.S.C. § 2703(7). NIGC regulations define a technologic aid as “any machine or device that: (1) assists a player or the playing of a game; (2) is not an electronic or electromechanical facsimile; and (3) is operated in accordance with applicable Federal communications law.” 25 C.F.R. § 502.7(a).

Further, the regulations provide examples of aids:

Examples of electronic, computer or other technologic aids include pull tabs dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

25 C.F.R. § 502.7(c).

NIGC regulations define electronic or electromechanical facsimile as follows:

Electronic or electromechanical facsimile means a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

25 C.F.R. § 502.8.

Analysis

The Metlakatla Indian Community ("Tribe") has not entered a compact with the State of Alaska, nor has the Secretary of the Interior issued procedures that would allow the Tribe to conduct Class III gaming.

If approved, the amendment would authorize the play of Class II gaming, defined in relevant part as follows:

Class II gaming includes an electronic, computer or other technologic aid to the game of bingo that, as part of an electronically linked bingo system, assists the player by covering, without further action by the player, numbers or other designations on the player's electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player.

Amended Metlakatla Gaming Ordinance, § 4.2.

Given this, I understand that the amendment is intended to authorize fully electronic, fully automated, multi-player bingo games. The players' only responsibility in this type of game is touching a button once to start the game. The gaming equipment thereafter automatically performs all other functions, including drawing numbers, covering the numbers on each player's card, and awarding any prizes earned based upon patterns achieved. In other words, the gaming equipment performs those functions traditionally performed by the operator, such as drawing the numbers, and those traditionally performed by the players, such as

covering numbers called and claiming a prize. I conclude that a game so designed does not meet IGRA's statutory definition of Class II bingo, does not meet the NIGC's definition of Class II "game similar to bingo," and is, in fact, a Class III facsimile of a game of chance.

Bingo

By definition, the game of bingo under IGRA has certain specific, essential elements. These include playing the game for prizes, monetary or otherwise, using cards bearing numbers or other designations. 25 U.S.C. § 2703(7)(A)(i)(I). These statutory elements also include ways in which the game is played. IGRA requires players to *cover* a previously designated arrangement of numbers or designations when such objects similarly numbered or designated are drawn. 25 U.S.C. § 2703(7)(A)(i)(II) (emphasis added). It also requires that the game be won by the *first person covering* a previously designated arrangement of numbers or designations on such cards. 25 U.S.C. § 2703(7)(A)(i)(III) (emphasis added).

Inherent in the language "first person covering," is an element of competition. IGRA's language is not "a person," not "any person," not "every person," but the "*first person*"—players must compete to be that "first person". Thus, the statutory language requires the game to have multiple players, and it requires them to compete with one another to be the first to cover or "daub" a particular pattern. In my view, the fully electronic, fully automated game described in the Tribe's amended ordinance does not meet this part of IGRA's statutory definition.

This reading of the "first person covering" language to require competition is not new. It is a fair description of the "game of chance commonly known as bingo," 25 U.S.C. § 2703(7)(A)(i), and it is consistent with advisory game classification opinions issued by the NIGC Office of General Counsel (OGC). For example, the OGC has opined:

Bingo requires participation of some degree. Merely hitting a start button and having numbers covered would not comply with the degree of participation that the statutory language – "the first person to cover" – implies. Likewise, an automatic daub, in which the player need not have any response to the numbers that are called, would not be acceptable.

Letter from Penny J. Coleman to Clifton Lind, "Reel Time Bingo game classification opinion" at 8. (Sept. 23, 2003).

This view is also consistent with the long-standing practice in the conduct of bingo games, specifically in the notion of "sleeping" a bingo. This describes the situation in which a player fails to cover one or more numbers on her card (or cards), with the result that she fails to cover a winning pattern before another player does. She would have won the game but for the fact that she was not paying attention or, for some other reason, did not cover the numbers on her card when they were called. "Sleeping" can also refer to a situation where a player has a winning combination on her card(s) but fails recognize this and shout "bingo"

to claim her win and her prize. The result is that another player who achieves a winning pattern and does claim her prize wins instead.

The possibility of sleeping a bingo, then, is an embodiment of the competition in the game and of the language in IGRA's definition of bingo that the winner is the "first person to cover." A small mistake or oversight can cost one player the game and enable another, more attentive player to win. Put somewhat less formally, competition is inherent in the game of bingo as defined in IGRA because "if you snooze, you lose."

The fully automated, fully electronic game described in the Tribe's amended ordinance lacks this element of competition. Though I understand that the game requires multiple players, I do not see how the players are competing against one another to be the first to cover a previously designated winning pattern. The game as described eliminates the element of competition that is a statutory requirement for bingo. The game starts – and ends – with the push of a button. It is not possible to sleep a bingo or fail to claim a prize. Indeed, I question in most cases whether the players are even aware of the existence of other players in the game, much less their participation, if all that happens is that a button is pressed, a video screen displays numbers drawn, matches them to a card, and informs the player of any wins.

That said, IGRA's definition of bingo, particularly the repeated use of the word "cover" in the second and third statutory elements of the game, 25 U.S.C. § 2703(7)(A)(i)(II) – (III), identifies another necessary element of the game – a requirement that the players actually and actively participate in the play of the game. The fully electronic, fully automated game described in the Tribe's amended ordinance eliminates this fundamental characteristic of bingo and does not meet this statutory requirement.

Again, this reading of IGRA's "cover" language to include active player participation is a fair description of the "game of chance commonly known as bingo," 25 U.S.C. § 2703(7)(A)(i), and is consistent with the views previously expressed by the Office of General Counsel. In its Mystery Bingo opinion, the OGC opined that:

We conclude that a game offered as class II bingo or a "game similar to bingo" must provide a "daub" or "cover" requirement for all players after the bingo numbers are announced and not just for the winning players. *If the player has no involvement in covering the numbers, then the player is not participating in the game.*

Letter from Penny J. Coleman to Robert A. Luciano "Mystery Bingo game classification opinion" at 12. (Sept. 26, 2003) (emphasis added).

Case law says the same. In *U.S. v. 162 MegaMania Gambling Devices*, 231 F. 3d 713 (10th Cir. 2000), the Tenth Circuit held that MegaMania was a Class II game. The court reached this conclusion after an analysis of the play of the game and whether it met the statutory criteria for bingo. The opinion was heavily dependent on the facts—the characteristics of the game and the manner in which it was played. *Id.* at 725 ("[o]ur holding in this case therefore is limited to the MegaMania form of bingo currently at issue").

In MegaMania, numbers were drawn by a bingo blower and released three at a time. If a player wanted to continue playing the game after the first three numbers were drawn, the player paid additional money to stay in the game for the release of the next three balls. Ball draws occurred approximately every ten seconds, and the game was won by the first person to cover a five-space straight line on an electronic bingo card. *Id. at 716.*

Intrinsic to the play of MegaMania were the successive rounds that a player had to engage in to win the game. The game could not be won after a single ball release. The Court's ruling—limited as it was to the facts—recognized an inherent characteristic of bingo: that the game requires a player to participate in a process of numbers being revealed. MegaMania could be won after two successive ball draws, each draw providing three numbered balls.

Most importantly, the Tenth Circuit, quoting an earlier case from the Ninth Circuit concerning MegaMania, *United States v. 103 Electronic Gaming Devices*, 223 F.3d 1091, 1100 (9th Cir. 2000), stated “unlike a slot machine, MegaMania is . . . being played outside the terminal; the terminal merely permits a person to connect to a network of players comprising each Megamania game, and without a network of at least 12 other players playing at terminals, an individual terminal is useless.” *162 MegaMania Gambling Devices*, 231 F. 3d at 723. Put slightly differently, the MegaMania terminals may facilitate the play of bingo but may not substitute for or eliminate the players' participation in the game.

Here, by contrast, a wholly electronic, wholly automated game eliminates player participation from bingo. It is the machine, and not the player, that is playing the game. IGRA's statutory requirement of player participation is not met, and, accordingly, I must disapprove the amendment.

Other Games Similar to Bingo

Similarly, I cannot approve the ordinance on the theory that the game described by the Tribe's proposed amendment is a Class II “game similar to bingo.” 25 U.S.C. § 2703(7)(A)(i). Just as the proposed game does not meet IGRA's definition of bingo because it eliminates competition among players, it does not meet the NIGC's definition of “game similar to bingo” either.

Though IGRA does not define “other games similar to bingo,” the Commission has done so. Initially, it defined the term to mean any game that met all the requirements for bingo and was not a house-banking game. 57 Fed Reg. 12,382 (April 9, 1992). In 2002, the Commission revised the definition, which now states:

[A]ny game played in the same location as bingo (as defined in 25 USC 2703(7)(A)(i)) constituting a variant on the game of bingo, provided that such game is not house banked and permits players to compete against each other for a common prize or prizes.

25 C.F.R. § 502.9.

In the preamble comment to the 2002 revision, the Commission explained that under the previous definition, “other games similar to bingo” were games that met the same precise statutory criteria set for bingo. 67 Fed. Reg. 41,166 (June 17, 2002). Such a definition would be illogical, the Commission said, because a game that met each of the statutory requirements of bingo simply would be bingo, making a class of games similar to bingo unnecessary. Instead, the Commission said, games similar to bingo should be understood to be games:

that are bingo-like, but that do not fit the precise statutory definition of bingo . . . “[O]ther games similar to bingo” constitute a “variant” on the game and do not necessarily meet each of the elements specified in the statutory definition of bingo.

67 Fed. Reg. 41,171 (June 17, 2002). Whatever elements of bingo a “game similar to bingo” may or may not meet, § 502.9 explicitly states that a game similar to bingo must permit players to compete against one another. As explained just above, the proposed game eliminates competition among players. The proposed game thus cannot be a Class II game similar to bingo. I must disapprove the amended ordinance accordingly.

Facsimile

Finally, the Tribe’s submission suggests that the analysis above is not correct insofar as the equipment envisioned by the amended ordinance is a permissible technologic aid to the play of Class II bingo. I disagree. A wholly electronic, fully automated implementation of the game described by the Tribe’s amended ordinance is a Class III “facsimile of any game of chance.” As such, it cannot be an “electronic, computer or other technologic aid,” which, by definition “is not an electronic or electromechanical facsimile.” 25 C.F.R. § 502.7(a)(2).

In enacting IGRA, Congress had a vision of two distinct kinds of gaming – bingo and similar games on the one hand and casino gaming on the other. For example, in the House and Senate floor debates on IGRA, several proponents of the legislation described this distinction as that between “bingo” and “casino gaming.” 134 Cong. Rec. H8157. While “casino gaming” was not defined per se, those who spoke associated the term with gambling halls filled with slot machines, venues separate and distinct from the bingo halls of the 1980s.

The distinction was not an arbitrary one. Congress perceived, rightly or wrongly, that there were complexities and regulatory difficulties associated with slot machines and casino gaming that did not exist for bingo. 134 Cong. Rec. H8157, 134 Cong. Rec. S12643. Some argued that only states – then the only governments experienced with the conduct and regulation of casino gaming – were up to the task of regulating casino gaming, and thus under IGRA, casino gaming is Class III and requires a tribal-state compact for play.

Much has changed, of course, since 1988, not the least of which is the sophistication and excellence of the tribes’ own gaming regulation. Tribes spend hundreds of millions of dollars annually regulating their gaming, both directly, through their own commissions, and indirectly, by funding the regulation done by states and the NIGC. Nonetheless, the

distinctions and classifications established in IGRA in 1988 still bind the Commission to identify and clarify the place at which Congress intended to separate Class II from Class III.

In this same vein, Congress also understood that the future of both kinds of gaming held technologic advances. In 1988, tribal bingo looked to telecommunications technology to connect bingo halls across the nation. This allowed operators to maximize the number of bingo cards sold per game and permitted the award of high-stakes prizes that otherwise would not be possible. This was the same technology that Congress favorably referenced in the report which accompanied the bill that became IGRA:

The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility.... The Committee recognizes that tribes may wish to join with other tribes to coordinate their class II operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take.

S. Rep. No. 100-446 (1988), reprinted in 1988 U.S.C.C.A.N. at 3079.

Similarly, in 1988 the dominant form of casino gaming was the play of slot machines. By that time, slot machines had already become computerized, though they maintained their mechanical reels. Machines with mechanical reels, though, were rapidly being supplemented and replaced by machines with video displays that replicated, and then expanded upon, the look and feel of the mechanical reel machines. Today, this technology is starting to give way to more sophisticated "server based" technology that will permit greater centralization of operations and perhaps more secure monitoring of the operation and play of that equipment.

Congress anticipated that bingo and casino gaming would both develop further and that the technology employed in both kinds of gaming would evolve. Knowing this, Congress nonetheless intended a continued separation of the two. One cannot assume that only the play of bingo would be fostered by technology. Rather, it must be assumed that "slot machines of any kind" and their future cousins, "electronic facsimiles of games of chance" would also evolve. It is not difficult to understand that at some point there would be a tendency for the technologies to converge. Notwithstanding that convergence, identifying a separation point remains essential to the structure – uncompact Class II gaming and compacted Class III gaming – that IGRA established. Thus, Congress observed the following limitation on the "maximum flexibility" in the use of technology:

Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as such technology does not change the fundamental characteristics of the bingo or lotto games and as long as such games are otherwise operated in accordance with Federal communications law.

S. Rep. No. 100-446 (1988), reprinted in 1988 U.S.C.C.A.N. at 3079. Not only, then, does the use of technology have to maintain the fundamental characteristics of bingo to remain Class II, the technologically aided bingo game must be different from those electronic facsimiles of games of chance, whose technology would also evolve:

[S]uch technology would merely broaden the potential participation levels and is readily distinguishable from the use of electronic facsimiles in which a single participant plays a game with or against a machine rather than with or against other players.

Id.

The point at which a technologically aided Class II game becomes a Class III facsimile of any game of chance is that point at which electronic gaming equipment incorporates all of the characteristics of a game. For example, consider pull tabs. As traditionally played, that game is played with two-ply paper cards. *Cabazon Band of Mission Indians v. National Indian Gaming Commission*, 14 F. 3d 633, 635 (D.C. Cir. 1994) (*Cabazon II*). Cards are purchased from the operator, which sells them from a set known as the “deal,” and a typical deal contains up to 100,000 cards. When the top layer or “tab” of a card is removed, the bottom layer reveals symbols in winning or losing patterns. The typical card will have three tabs, each an opportunity to win, and a pre-determined number of winning cards are randomly spaced within the deal. *Seneca-Cayuga Tribe of Oklahoma v. National Indian Gaming Commission*, 327 F. 3d 1019, 1024 (10th Cir. 2003).

In *Cabazon II*, the D.C. Circuit considered a wholly electronic, wholly automatic version of pull tabs, one that involved no physical, tangible cards. Rather, the pull tabs were generated by a computer and displayed on a video screen. The court had no difficulty in finding that the game was a Class III facsimile:

Because class II gaming does not include “electronic or electromechanical facsimiles of any game of chance,” (25 U.S.C. § 2703(7)(B)(ii)), this ... alone demonstrates that the video game is not in the class II category. “By definition, a device that preserves the fundamental characteristics of a game is a facsimile of the game.” *Sycuan Band of Mission Indians v. Roach*, (S.D. Cal. 1992). As commonly understood, facsimiles are exact copies or duplicates. Although there may be room for a broader interpretation of “facsimile,” the video version of pull-tabs falls within the core meaning of electronic facsimile. It exactly replicates the paper version of the game, and if that is not sufficient to make it a facsimile, we doubt, as did Judge Lamberth, that anything could qualify.

Cabazon II, 14 F.3d, at 636. In short, the court concluded that IGRA’s “exclusion of electronic facsimiles removes games from the class II category when those games are wholly incorporated into an electronic or electromechanical version.” *Id. Accord, Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 542-43 (9th Cir. 1994); *See also, United States v. 103 Electronic Gambling Devices*, 223 F.3d 1091, 1102 (9th Cir. 2000) (“By deeming aids to bingo class II gaming in the text of IGRA, ... Congress specifically authorized the use of such aids

as long as the class II provisions of IGRA are complied with”(internal citations omitted).

By contrast, in *Diamond Game v. Reno*, 230 F.3d 365, 370 (D.C. Cir. 2000), the machine in question, the Lucky Tab II, sold and dispensed paper pull tabs from a roll. The machine also read and displayed the results of each tab, presenting those results in such a way as to resemble a three-reel slot machine. Nonetheless, the paper tabs could be played and redeemed manually. The D.C. Circuit held, therefore, that the Lucky Tab II dispenser was not an electronic facsimile containing all characteristics of pull tabs and thus was not a Class III device, no matter how many bells and whistles it might have. The “game is in the paper rolls,” the Court held, and the Lucky Tab II is “little more than a high-tech dealer.”

Here, the gaming equipment contemplated by the Tribe’s amended ordinance incorporates the entire game by definition. There is an “electronically linked bingo system” that covers, “without further action by the player, numbers or other designations on the player’s electronic bingo card(s) when the numbers or other designations are electronically determined and electronically displayed to the player.” *Amended Metlakatla Gaming Ordinance*, § 4.2. Nothing, as it were, is left outside of the electronics. The game is fully electronic and automatic in its play. The player merely has to press a button, and the game then proceeds automatically to its end from there. The game contemplated is thus a Class III facsimile and not a Class II technologic aid.

One could argue that this conclusion is incorrect given the applicable NIGC definition of “Electronic or electromechanical facsimile:”

a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, *except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.*

25 C.F.R. § 502.8 (emphasis added). In short, this argument goes, a Class III facsimile only exists when a player plays alone against a machine and not when there are multiple players in a game. In other words, if there are multiple players in a game that meets the elements in IGRA’s definition of bingo, there cannot be a facsimile. But I disagree with this argument.

Given the discussion above, I find that reading § 502.8 in this way would be inconsistent with the meaning of “facsimile” in IGRA. It would allow as Class II the use of gaming equipment that wholly incorporates and replicates all of the elements and features of a game of chance. I do not, and the full Commission does not, have the authority to shoehorn into Class II a facsimile that IGRA establishes as Class III. Therefore, as it is applied to bingo, I interpret the “except when” language of § 502.8 to require some – even minimal – participation in the game by the players above and beyond the mere pressing of a button to begin the game.¹

¹ I note that the Indian canon of construction does not require a different result here or elsewhere in this decision. It is well settled, of course, that statutes are to be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit. *See, e.g., County of Yakima v. Confederated Tribes and Bands of*

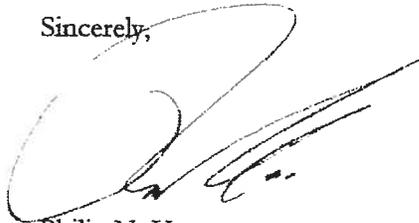
Accordingly, I must disapprove the proposed amendment.

Conclusion

For all of the reasons detailed above, I find that the proposed amendment to § 4.2 of the Tribe's gaming ordinance is inconsistent with IGRA and NIGC regulations and I therefore disapprove it.

The Tribe may appeal this disapproval under 25 C.F.R. Part 524 within 30 days after service of this letter by filing an appeal to the NIGC. Please note that failure to file an appeal within the 30-day period shall result in a waiver of the opportunity to appeal.

Sincerely,



Philip N. Hogen
Chairman

cc: Joseph H. Webster, Esq.

Yakima Nation, 502 U.S. 251, 269 (1992). Assuming for the sake of argument that "bingo" and "facsimile" as used in IGRA are ambiguous, the Indian canon of construction cannot itself, in light of IGRA's multiple purposes, be determinative of what does and does not fall within Class II or Class III gaming. *Shakopee Mdewakanton Sioux Community v. Hope*, 16 F.3d 261, 264-65 (8th Cir. 1994) (upholding NIGC classification of Keno as Class III game, notwithstanding tribal argument that a different classification would be more consistent with IGRA's purpose of fostering tribal economic development and self-sufficiency).

IN RE: Amendment to Metlakatla
 Indian Community's
 Gaming Ordinance

APPEAL OF THE CHAIRMAN'S DISAPPROVAL
OF THE METLAKATLA INDIAN COMMUNITY'S
PROPOSED AMENDMENT TO ITS CLASS II
GAMING ORDINANCE

DECLARATION OF MAYOR KARL S. COOK, Jr.

1. My name is Karl S. Cook, Jr. I am the Mayor of the Metlakatla Indian Community of the Annette Islands Reserve. I have served on the Metlakatla Tribal Council for many years and was Assistant Mayor until recently.

2. The Metlakatla Indian Community (the Tribe) is a Tsimpshian Community which was founded in its modern form in 1887. In 1891, the United States Congress recognized the Tribe by creating the Annette Islands Reserve, a Federal Indian Reservation. The Reserve is approximately 17 miles long and 9 nine miles wide, and covers approximately 86,000 acres. In 1916, a Presidential Proclamation defined the maritime boundary of the Reserve to include the water surrounding the Annette Islands for 3000 feet. The Reserve is located approximately midway between Seattle, Washington, 600 miles to the South and Skagway, Alaska, 600 miles to the North. The Tribe was exempted from the Alaska Native Claims Settlement Act, and tribal members are barred from the financial benefits of the Act. The Reserve is the only Federal Indian Reservation remaining in Alaska today.

3. The Tribe is a federally recognized Indian tribe organized under the Indian Reorganization Act, with a Constitution and Bylaws approved by the Secretary of the Interior on August 23, 1944. The Tribe is governed by a twelve person Council, and a Mayor, Secretary and Treasurer who are elected by the general voting membership of the Tribe. The Council is responsible for providing for the general health, safety, and public welfare of the Tribe, and operates a number of governmental programs including fire and police protection, water, sewer and garbage service, electric power, streets and roads, and health care. It also owns and operates its own power company. The Tribe regulates commercial fishing in its waters, and also operates its own court system. Tribally-owned enterprises make an important contribution to the provision of these basic governmental services.

4. The total tribal enrollment is approximately 2,430, of which approximately 1,673 live on the Reserve.

5. The Tribe has a mixed economy which includes a subsistence lifestyle. Salmon, halibut, cod, seaweed, clams and waterfowl are all important subsistence food sources.

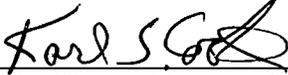
6. The Tribe has traditionally relied on timber and fishing to be self-sufficient. These markets have seen a rapid downturn in recent years, and the cannery and two sawmills which provided an important part of the economy have been closed. In the wake of the mill closure, the unemployment rate jumped from 5 percent to 80 percent. Before the closure, median income was approximately \$37,000 with 10 percent of residents living below the poverty level, but that number rose following the closure. Unemployment today stands at approximately 51 percent. Our unemployment rate is approximately 50 to 80 percent higher than most of the surrounding communities.

7. Our Tribe has a strong sense of mutual commitment, and we are pursuing a multi-faceted approach to economic development that will improve the quality of life of all of our members while maintaining our cultural values. In 1999, the Tribe was selected as an Empowerment Zone under the USDA's Rural Community Empowerment Program, which provides much needed tax incentives and grants for economic self-development. Tribally-owned enterprises currently include a fish hatchery, a water bottling plant, a quarry, a packing company, and a Class II bingo hall. The Community is continuing to pursue economic development initiatives in a number of areas, including tourism and natural resources.

8. The Tribe has recently been designated a Brownfields Showcase Community by the Brownfields National Partnership, and will use that status to assess, cleanup and redevelop brownfields sites on its Reserve, many of which result from the use of the Reserve by federal military agencies dating back to World War II. In addition, the Tribe continues to directly administer an outpatient health facility and a number of federal programs for the benefit of the Tribe.

9. The hundreds of thousands of dollars generated each year by our bingo hall are critically important to our economy. Those revenues have provided critically important jobs for our people both at the bingo hall and elsewhere, and they allow us to continue to fund essential governmental programs in a number of areas. Its continued vitality will continue to be critical as we move forward to diversify our economy.

I declare under penalty of perjury that the foregoing is true and correct.


The Honorable Karl S. Cook, Jr.
Mayor
Metlakatla Indian Community

Dated: 6/23/08

IN RE: Amendment to Metlakatla)
 Indian Community's))
 Gaming Ordinance))

APPEAL OF THE CHAIRMAN'S DISAPPROVAL
OF THE METLAKATLA INDIAN COMMUNITY'S
PROPOSED AMENDMENT TO ITS CLASS II
GAMING ORDINANCE

DECLARATION OF PAUL T. BRENDIBLE, Jr.

1. My name is Paul T. Brendible, Jr. I have served as a Council Member on the Metlakatla Indian Community Tribal Council for many years. I am a member of the Council's Planning Committee, and have been involved in a variety of economic development projects for the Tribe over the years, including the development of Class II gaming.

2. The Community has faced very difficult economic conditions for many years because of severe difficulties in the fishing and timber industries. These industries have traditionally formed the bulk of the economic activity that the Tribe and its tribal members have been engaged in for generations. Our forest product manufacturing facilities were forced to close due to the absence of timber from the Tongass National Forest and fishing is now almost entirely limited to our Reserve waters due to the high cost of Alaska limited entry permits.

3. As part of its economic development strategy, the Tribe has operated a small bingo hall on its Reservation in the town of Metlakatla for many years. In 2005, the Tribe added electronically-aided linked Class II bingo devices to supplement its 120 seat bingo hall and bring in much needed income and jobs. The facility currently operates 80 electronically-aided linked Class II bingo devices. Although relatively small compared to other operations, the facility is a very important part of the Tribe's economy. The electronically-aided linked Class II bingo devices have generated hundreds of thousands of dollars in general revenue funds for the Tribe, which have helped fund a range of critically needed programs, and provided much needed jobs for Tribal members.

4. Class II gaming is the only form of commercial gaming available to the Tribe, since the State of Alaska has refused to compact with the Tribe, even though the State permits Class III gaming activities.

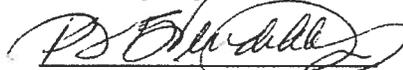
5. The revenue generated by the Tribe's gaming facility is responsible for supporting a portion of all of the Tribe's Departments that fall under its general fund, which include: (1) 35% of the salaries for the Mayor, Secretary, Treasurer, City Clerk and Receptionist; (2) the Community's Bottled Water program; (3) the Transportation Department; (4) the Town Hall; (5) Duncan Cottage (former home and memorial to Father William Duncan who led the Metlakatla in founding the Community in the 19th Century); (6) the Senior Citizen Program; (7) Port Maintenance; (8) the Maintenance Department (water, garbage & sewer); (9) Emergency Medical and Funeral Expenses for Community members; and (10) Higher Education Scholarships for our membership.

6. In addition to generating much needed revenue, the Tribe's gaming facility has also created over 20 steady good paying jobs. While this may not seem like many in a community of our size, every one of these jobs is critically important to the continued success of our Tribe. The Tribe's unemployment rate is presently at 51%, and any new job we can create is critical to tribal employment. Employment is difficult to find in the present economic landscape, and any job lost is very difficult to replace.

7. The Tribe's modest bingo facility already faces competition for tourist dollars with cruise ships, which offer Class III slot machine gaming. While the Tribe will not be able to compete at the same level with that kind of Las Vegas style slot machine gaming, it should at the very least not be subject to artificial limitations on the type of technology Congress authorized it to use as Class II. Artificial limitations like banning the use of auto-daub technology that is routinely used in non-Indian bingo halls across the country will have a significant impact on tribal revenues and put the Tribe on an even more uneven playing field than it is today.

8. Auto daub will allow linked bingo games offered by the Tribe to be played faster and to be less intimidating to players. Auto daub also will allow players who have difficulties playing bingo due to age or physical impairments (and there are many such people in our Tribe and the neighboring communities) to play in the games. All of these factors will help to make the Tribe's Class II bingo games more profitable for the Tribe.

I declare under penalty of perjury that the foregoing is true and correct.



Paul T. Brendible, Jr.
Council Member
Metlakatla Indian Community

Dated: 6/30/08











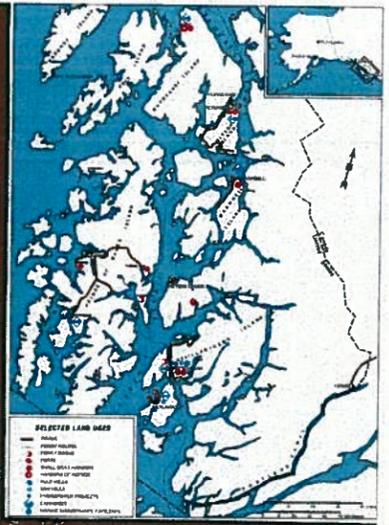


Community Map METLAKATLA

32°07'45"N 131°54'30"W Elevation 0'
 The preparation of this document was financed by a local planning application for the Department of Community and Regional Affairs, administered by the Director of Municipal and Regional Affairs.



Land Use Designations	Water
Residential	Water line (solid)
Multi-Family Residential	Hydrant
Commercial	Utility - Electric
Community Facilities	Power pole
Public Use Area	Transmission line (above ground)
Industrial	Steam pipe
Water Treatment	Transformer
Mar. Small Boat Basin	Transformer/Overhead
	Wind generator
	Other Utilities
	Oil Fuel Storage
	Earth Station (House)
Land Status	
Survey Line	
Lot Status	
Lot Line	
Sewer	
Sewer line (solid)	
Treatment plant	
Ditch	



The Community Map shows the results of a planning study conducted by the Metlakatla Planning Commission. The study was conducted in 1982 by Walter and Associates, Inc. The map shows the results of the study and is intended to be used as a guide for future planning and development. The map is based on aerial photography and other data available at the time of the study. The map is not intended to be used as a legal document and should not be relied upon for legal purposes.