NATIONAL
INDIAN
GAMING
COMMISSION

JUL 24 1997

Jeffrey D. Parker, President
Bay Mills Indian Community Executive Council
Rural Route No. 1
Brimley, Michigan 49715

Dear President Parker:

This letter is in response to Kathryn Tierney's request to review and approve the amendment to the tribal gaming commission rules 2 and 6 of the Bay Mills Indian Community (Tribe). The amendments to the rules were adopted by the Tribe on June 19, 1997. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the NIGC Chairman is directed to review amendments to ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the NIGC Chairman's review and approval is limited to the requirements of the IGRA and NIGC regulations. Pursuant to the authority delegated to me in Part II Chapter 1 Section 2 of the NIGC Policies and Procedures Manual (1997), I hereby approve the Tribe's ordinance amendment.

Thank you for submitting the amendments to the tribal gaming ordinance of the Bay Mills Indian Community. The NIGC staff and I continue to look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Tom Foley
Vice-Chairman

cc: Kathryn L. Tierney
Tribal Attorney
Bay Mills Indian Community
Box 313 Lake Shore Drive
Brimley, Michigan 49715

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BAY MILLS INDIAN COMMUNITY

GAMING COMMISSION RULES

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RULE 2: ***BACKGROUND INVESTIGATIONS***

(a) **Criminal History Checks.** The Bay Mills Indian Community Tribal Law Enforcement Department shall take fingerprints of all persons seeking employment from an Operator as a key employee (as such is defined in Sec. 2.30 of the Tribe's Gaming Ordinance) and any person who desires to serve as a primary management official (defined in Sec. 2.40 of the Ordinance). The fingerprints shall be immediately transmitted to the National Indian Gaming Commission (NIGC) for the purpose of obtaining the person's criminal history record information (CHRI). Dissemination of information resulting from the CHRI shall be subject to the Memorandum of Understanding with NIGC and the Bay Mills Indian Community.

(b) **Criminal History Prohibiting License Issuance.** No license shall be issued by the Commission for any person who:

(1) Has been convicted of or entered a plea of guilty to a gambling-related offense, fraud, or misrepresentation; or

(2) Has been convicted of or entered a plea of guilty or no contest to any other offense (not specified in subsec. (1), above) within the immediately preceding five (5) years, unless such person:

(i) has been pardoned by the Governor of the State in which the conviction occurred, or

(ii) is a member of the Bay Mills Indian Community and has been determined by the Commission to be a person who is not likely to again engage in any offensive or criminal course of conduct and that the public good does not require that the license be denied.

(3) As used in subsec. (1), "fraud or misrepresentation" means a criminal offense committed in Michigan or any other jurisdiction which involves theft, fraud or misrepresentation, which is a felony, or would be a felony if committed in Michigan, and which was committed by an adult or prosecute as an adult offense, and which has not been effectively

removed from the person's criminal record by executive pardon, state court order, or operation of law.

(4) As used in subsec. (2), above, "offense" means a crime under the provisions of the Michigan Penal Code, Act. No. 328 of the Public Acts of 1931, as amended, being MCL 750.1 to 750.568, or the controlled substance provisions of the Public Health Code, Act No. 368 of the Public Acts of 1978, as amended, being MCL 333.7101 to 333.7545, or, if committed in another jurisdiction, would be a violation of any of the above provisions of Michigan law, and which was committed by an adult or prosecuted as an adult offense, and which has not been effectively removed from the person's criminal record by executive pardon, state court order, or operation of law.

(c) **Background Investigation.** Upon receipt of an application for employment by a licensed Operator as a key employee or primary management official, the Operator shall immediately transmit the completed application to the Commission for its review. The employment application form shall be the basis for conducting the background investigation required by federal regulation and tribal law, and shall include all information specified in Sec. 6.2 of the Tribe's Gaming Ordinance. Utilization of the employment form(s) approved by the Commission is presumed to comply with this Rule and the Tribal Ordinance.

The Commission shall review the prospective employee's employment history and personal background to determine if the person is eligible for a license. In making such determination, the Commission shall:

(1) verify the accuracy and completeness of the person's employment history and personal background, through the contact by appropriate means of present and former employers, business partners, customers, and such other persons or entities as are appropriate;

(2) ascertain the existence of any adverse action by any gaming licensing authority on a license previously or currently issued to the person;

(3) prepare a written report concerning the results of the background investigation, which includes:

(i) steps taken in conducting the background investigation;

(ii) results obtained;

(iii) conclusions reached; and

(iv) basis for those conclusions.

(d) **Status of Person Pending Results of Background and CHRI Investigation; Temporary License.** The Commission may, but is not required, to issue a temporary license under Sec. 6 of the Tribe's Gaming Ordinance, subject to the completion of the Criminal History Record Information and the background investigations. No temporary license shall be issued for a period of more than 90 days.

(e) **Transmittal of Background Report to NIGC.** Prior to issuing a license to any prospective key employee or primary management official, the Commission shall transmit to NIGC its background investigation report. A license under sec. 6.4 shall be issued by the Commission to such person 14 days after receipt by NIGC of the report, unless the Commission is advised by NIGC that said person should not be licensed. In such event, the Commission shall review the status of the license and determine whether the best interests of the Tribe and the public will be served and protected if such person is licensed.

(f) **Investigation of Persons Doing Gaming-Related Business with the Bay Mills Indian Community.** The procedures of this Rule shall apply to any person, partnership, association, and stock and non-stock corporation with whom the Tribe is, or is contemplating, engaging in:

(1) purchasing gaming equipment or supplies;

(2) management of gaming activities for the Tribe or an Operator licensed by the Commission; or

(3) provision of funds to the Tribe for its conduct of gaming-related activities.

The applicant for a vendor's license is responsible for payment of any cost incurred by the Commission in carrying out the investigation required by this Rule. All such costs shall be payable, in addition to the license fee established by Game Rule 5, prior to the issuance of a vendor license.

(g) **Background Procedures and Costs for Canadian License Applicants.** In addition to the criminal history check procedures of this Rule, any person who has resided in Canada within the last 10 years and seeking a gaming license shall have fingerprints taken by the Royal Canadian Mounted Police and a criminal history check

conducted by that agency. The costs of such background check will be assessed against the applicant, payable upon such terms as the Commission shall direct.

CERTIFICATION

This is to certify that the above Gaming Commission Rule No. 2, as amended, has been passed and approved at a meeting of the Bay Mills Executive Council held at Bay Mills, Michigan on the 19th day of June, 1997, with a vote of 4 for, 0 opposed, 1 abstaining, and 0 absent. The Tribal President must abstain except in the event of a tie.

Andrew A. LeBlanc, Sr., Secretary

BAY MILLS INDIAN COMMUNITY

GAMING COMMISSION RULES

***RULE 6*: WAIVER BY TRIBE OF EMPLOYMENT REQUIREMENT**

(a) **Authority of Executive Council.** The Executive Council of the Bay Mills Indian Community shall have the sole authority to determine, upon request by a member of the Bay Mills Indian Community, that:

(1) the existence of a criminal record within five (5) years of application for employment by said member for an offense subject to section 4(D)(3) of the Compact with the State of Michigan should not preclude employment; and

(2) said member is not likely again to engage in any offensive or criminal course of conduct; and

(3) the public good does not require that the applicant member be denied employment as a "primary management official", "key employee", or staff of the Gaming Commission.

(b) **Notification of Waiver.** The Executive Council shall advise the Gaming Commission in writing of its determination that a member applicant has, or has not, received waiver of the specific, known criminal offense, required for employment. Such notice shall be placed in the applicant's license file.

(c) **Effect of Waiver.** No member applicant for a gaming license as a "primary management official" or "key employee" shall be refused a license by the Gaming Commission, nor shall a member applicant for employment as staff of the Gaming Commission be refused such employment, due to a criminal record for an offense listed in section 4(D)(3) of the Compact with the State of Michigan if a waiver has been issued by the Executive Council and is filed with the Gaming Commission for licenses and the Personnel Department for Commission staff positions.

CERTIFICATION

This is to certify that the above Gaming Commission Rule No. 6, as amended, has been passed and approved at a meeting of the Bay Mills Executive Council held at Bay Mills, Michigan on the 19th day of June, 1997, with a vote of 4 for, 0 opposed, 1 abstaining, and 0 absent. The Tribal President must abstain except in the event of a tie.

Andrew A. LeBlanc, Sr., Secretary