MAR 14 2001

Honorable Jeffrey D. Parker
President Bay Mills Indian Community Executive Council
12140 West Lakeshore Drive
Brimely, Michigan 49715

Dear Mr. Parker:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for the review and approval of the amendment to the Bay Mills Indian Community's (Community) Gaming Ordinance submitted on January 12, 2001. The Community by Resolution No. 01-1-8-C on January 8, 2001 adopted the amendments to the ordinance. The Chairman of the NIGC approved the original Ordinance on August 31, 1993. This letter constitutes approval of your submission under the Indian Gaming Regulatory Act (IGRA). Such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Community exercises jurisdiction.

Thank you for submitting the amendment to the tribal gaming ordinance of the Bay Mills Indian Community for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA. If you have questions or require further assistance, please contact Ms. Frances Fragua at 202/632-7003.

Sincerely yours,

Montie R. Deer
Chairman

cc: Kathryn L. Tierney, Tribal Attorney

NATIONAL HEADQUARTERS 1441 L St. NW, Suite 9100, Washington, DC 20005 Tel: 202.632.7003 Fax: 202.632.7066 WWW.NIGC.GOV
REGIONAL OFFICES Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa, OK

Bay Mills Indian Community
12140 West Lakeshore Drive
Brimley, Michigan 49715
(906) 248-3241 Fax – (906) 248-3283

JAN 12 2001

RESOLUTION

Resolution No. 01-1-8-C
Amendment to Gaming Ordinance

WHEREAS: The Bay Mills Indian Community is a federally recognized Indian tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. sec. 461, *et seq.*, and

WHEREAS: The Tribe regulates gaming on its Reservation under a compact with the State of Michigan and under its Gaming Ordinance, and

WHEREAS: An amendment to the Gaming Ordinance is determined appropriate to establish the minimum age to play separately from the minimum age to be served alcoholic beverages.

NOW, THEREFORE BE IT RESOLVED, that the Executive Council of the Bay Mills Indian Community hereby adopts the following amendments to the Gaming Ordinance, with deletions struck out and additions in italics:

7.8 **Minimum Age to Play.** ~~No person under the age of 21 years shall be permitted to play any gaming activity being conducted within a facility which has a retail alcoholic beverage license.~~ *In any gaming facility which has a retail alcoholic beverage license, the minimum age to play any Class III game is 21 years of age. In any gaming facility which does not have a retail alcoholic beverage license, the minimum age to play is 19 years of age.*

7.9 **Minimum Age to Enter Facility.** No person, other than a Class III enterprise employee, shall be permitted to ~~enter the area of any building in which a Class III gaming activity is being conducted, who is under the age of 21.~~

(A) Enter the area of any building which has a retail alcoholic beverage license and in which Class III gaming is conducted, if under 21 years of age;

(B) Enter the area of any building which does not have a retail alcoholic beverage license and in which Class III gaming is conducted, if under 19 years of age.

Resolution No. 01-1-8-C

APPROVED:

Jeffrey D. Parker, President
Bay Mills Indian Community
Executive Council

ATTEST:

Terry E. Carrick, Secretary
Bay Mills Indian Community
Executive Council

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above resolution was adopted and approved at a meeting of the Bay Mills Indian Community Executive Council held at Bay Mills, Michigan, on the 8th day of January, 2001, with a vote of 4 for, 0 opposed, 0 absent, and 1 abstaining. As per provisions of the Bay Mills Constitution, the Tribal President must abstain except in the event of a tie.

Terry E. Carrick, Secretary
Bay Mills Indian Community
Executive Council

GAMING ORDINANCE
BAY MILLS INDIAN COMMUNITY

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be conducted only by an operator who possesses a current and valid tribal gaming license.

7.2 **Site and Operator Specified.** Each tribal gaming license shall be applicable only to one gaming site and the operator named on such license.

7.3 **License Not Assignable.** No tribal gaming license shall be sold, lent, assigned or otherwise transferred.

7.4 **Employee Licenses Required.** Each management and key employee of a licensed gaming operation shall possess a current and valid tribal gaming employee license.

7.5 **Eligible Licensees.** A tribal gaming license shall be issued only to a person who qualifies therefor under the Ordinance, or to the Tribe or a tribal subdivision.

7.6 **Employee Drug Tests.** Any person employed in a Commission-licensed gaming enterprise may be randomly selected for testing for utilization of marijuana, cocaine, amphetamines, opiates and phencyclidine (PCP). Random drug testing of employees is a mandatory operating procedure for all operators.

7.7 **Regulations Posted or Available.** Each operator shall have a copy of this Ordinance and regulations readily available for inspection by any person at each authorized gaming site.

7.8 **Minimum Age to Play.** In any gaming facility which has a retail alcoholic beverage license, the minimum age to play any Class III game is 21 years of age. In any gaming facility which does not have a retail alcoholic beverage license, the minimum age to play is 19 years of age.

7.9 **Minimum Age to Enter Facility.** No person, other than a Class III enterprise employee, shall be permitted to:

(A) Enter the area of any building which has a retail alcoholic beverage license and in which Class III gaming is conducted, if under 21 years of age;

(B) Enter the area of any building which does not have a retail alcoholic beverage license and in which Class III gaming is conducted, if under 19 years of age.

7.10 **Posting of Rules of Play.** Each operator shall post in a conspicuous location near where any gaming activity is being played, or shall otherwise provide the public

with an explanation of the rules of play of every specific game s/he operates.

7.11 **Equipment Rental Restrictions.** Each operator of a gaming activity is prohibited from renting or lending gaming equipment to any person.

7.12 **Restrictions on Gaming Apparatus Exchange.** Each operator is prohibited from exchanging pull-tabs, punch-boards, sports pools, and twenty-one boxes (shoes). All other gaming equipment may be exchanged without prior approval. Any request for approval shall be made to the Tribal Commission at least 5 days prior to the exchange.

7.13 **Approval of Gaming Materials Required.** Any operator who anticipates the printing, manufacture, or construction of any equipment for gaming activity shall first notify the Tribal Commission of his intention and shall have the finished product approved by the Tribal Commission before it is placed in service.

7.14 **Requisite Sale and Redemption Value.** Gaming chips and other tokens of value shall only be sold and redeemed by the operator and only for full value.

7.15 **Record Maintenance Requirements.** Each licensed gaming operation shall maintain and keep for not less than five (5) years permanent books of accounts and records, including inventory records of gaming supplies, sufficient to establish the gross and net income, deductions, expenses, receipts and disbursements of the enterprise.

7.16 **Liquor Sale Restrictions.** There shall be no sale of liquor at any gaming site without the requisite license for such sale issued under the Tribe's liquor control ordinance.

7.17 **Form of Payment for Chance to Play.** Consideration for the chance to play in any gaming activity shall only be cash, house token or chip, and shall be presented at the time the game is played. No other form of consideration shall be allowed unless the Tribal Commission gives prior written approval.

7.18 **Documentation of Winnings and Losses for Tax Purposes.** Evidence of any win or loss incurred by a player must, upon request, be provided to such player in such form as will be acceptable to the IRS.

7.19 **Taxes, Fees and Reports Timely Transmitted.** Each operator shall pay all applicable taxes and fees, including those assessed by the National Indian Gaming Commission, and file all applicable reports on time.

7.20 **Response to Regulatory Inquiries.** Each operator shall respond immediately to and obey all inquiries, subpoenas or orders of the Tribal Commission, the Tribal Council, the Tribal Court, or the National Indian Gaming Commission.

7.21 **Display of Gaming License.** Each operator shall prominently display at each gaming site a current, valid tribal gaming licence.

7.22 **Maintenance of Premises.** Each operator shall, at all times, maintain an orderly, clean, and neat gaming establishment, both inside and out.

7.23 **Facility Security.** Each operator shall provide adequate security to protect the public before, during and after any gaming activity.

7.24 **Cooperation with Law Enforcement.** Each operator shall cooperate at all times with law enforcement personnel.

7.25 **Record Inspection.** Each operator shall make its premises and books and records available for inspection during normal business hours by the Tribal Commission or their designee, and by authorized representatives of the National Indian Gaming Commission.

7.26 **Gaming Occasion Restrictions.** No gaming shall be conducted on special days of observance designated by the Tribal Council.

7.27 **Discrimination Prohibited.** No operator may discriminate on the basis of sex, race, color, or creed in the conduct of any licensed gaming activity. Employment preference for tribal members and other Native Americans shall not constitute discrimination by the operator.

7.28 **Financial Record Review.** Each operator shall keep accurate books and records of all moneys received and paid out and provide authorized representatives of the National Indian Gaming Commission and the Tribal Commission or its designee with copies of or access to the same upon request.

7.29 **Use of Net Proceeds.** All net proceeds of any gaming activity shall be used only in a manner prescribed by this Ordinance.

7.30 **Reporting Requirement Compliance.** Every operator shall comply with all applicable tribal and federal revenue reporting laws.

7.31 **Tribal Law Violation**. It shall be a violation of the Tribe's Criminal Code to violate any provision of this Ordinance, any regulation of the Tribal Commission, or any order of the Tribal Court.

7.32 **Employee Misconduct**. Each operator shall immediately suspend without pay any employee who is charged with an offense described in subsection 10.2(BB) or any offense related to the sale, possession, manufacture and/or transport of illegal drugs. The operator shall also immediately notify the Tribal Commission in writing of the name of the person and the pending charge and advise the Tribal Commission of the outcome of the case. If the employee is convicted or pleads nolo contendere to the charge, his or her employment shall be terminated. An employee terminated under this section for a drug-related conviction may be rehired, provided that such person is eligible for a gaming license, and provided further that such person passes a pre-employment drug screen test, and furnishes a substance abuse assessment by a licensed substance abuse program, and demonstrates compliance with that program's rehabilitation/ counseling plan.

Section 8. Gross Proceeds Tax.

8.1 **Rate**. There is hereby levied upon and there shall be collected from all enterprises an annual tax for the purpose of funding the Tribal Gaming Commission equal to one (1) per cent of the adjusted gross proceeds thereof, as that term is defined in subsection 2.1 of this Ordinance. The tax levied by this section shall be a personal obligation of the taxpayer.

8.2 **Separate Accounting Practices**. Any enterprise which obtains revenue from sources other than activities directly related to gaming, such as the sale of food and beverages, shall keep books to show separately the transactions used to determine the tax levied in this section.

8.3 **Tax Due Date; Accrual, Return and Signature**.

(A) Duty of Enterprise. The enterprise shall, on or before the fifteenth (15th) day of each month, make out a return for the preceding month on a form prescribed by the Tribe, showing the entire amount of adjusted gross proceeds of his gaming activities, and the amount of tax for which it is liable, and shall transmit the return signed by the Primary Management Official, together with payment of the amount of tax owed, on or before the fifteenth day of the month. If the return is prepared by other than said Manager, the

return shall so state, and shall give the name and address of the person preparing the return, together with his signature and the name of his employer, if any.

(B) Accrual of Tax. The tax imposed by this section shall accrue to the Tribe on the last day of the month in which the gaming activity occurred.

8.4 **Annual Periodic Reconciliations.** In the event that the annual financial report provided by each enterprise indicates that the amount of adjusted gross proceeds for the year differs from the total of the adjusted gross proceeds reported monthly under sec. 8.3, the enterprise shall file with the Commission a reconciliation return, which indicates the proper amount of the adjusted gross proceeds, and if, additional tax is due, provide the correct amount together with one per cent (1%) penalty interest, compounded monthly, on the amount unreported or underreported, commencing with the month in which the report required by sec. 8.3 was due.

8.5 **Tax Revenue Distribution.** All sums of money received and collected under this section shall be deposited by the Tribe to the credit of an Internal Service Fund to be used solely for the purpose of funding the operations of the Tribal Gaming Commission, in carrying out its responsibilities pursuant to this ordinance, the Indian Gaming Regulatory Act, and the Tribe's Compact with the State of Michigan, published at 58 *Fed. Reg.* 63262 (Nov. 29, 1993).

8.6 **Internal Service Fund.** The Fund is used to account for the financing of goods and services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost reimbursement basis.

8.7 **Excess of Receipts over Expenses.** In the event that receipts exceed expenses, as determined by the annual audit, the Internal Service Fund will rebate such excess to enterprises proportionately.

8.8 **Annual Budget.** The Tribal Gaming Commission will prepare and submit for approval by the Executive Council an annual budget.

Section 9. Operation of Tribally-Owned or Tribally- Operated Games.

9.1 <u>Management by a Primary Management Official</u>.

(A) The Tribal Council shall appoint one person who shall serve as Primary Management Official at each of its tribally-operated gaming establishments. The person appointed shall undergo a background check by the Tribal Commission and shall obtain an employee gaming license before commencing work. The Tribal Council shall be the direct supervisor of the Primary Management Official.

(B) The Primary Management Official shall be responsible for managing and overseeing the day-to-day operations of the gaming operation. S/he shall have such authority as the Tribal Council may delegate.

(C) The Primary Management Official shall present a written monthly report to the Tribal Commission and the Tribal Council which details the number of patrons served, the amount of income generated, the numbers of employees working at the establishment, a detailed description of any patron complaints and other problems experienced at the establishment, also a written statement of any changes in key employees or primary management officials and all bills which are 30 days or more past due.

(D) Any patron's cash winnings shall be paid in cash or check and shall be paid within 72 hours after it is won.

(E) The Primary Management Official shall propose and the Tribal Commission shall approve a patron's complaint process. Each tribally-owned and tribally-managed gaming establishment shall post at least one sign in each gaming room informing patrons that they may file any complaints that they have directly with the Tribal Commission, and advising them of the Tribal Commission's address and phone number.

(F) Each tribally-owned or tribally-operated gaming establishment shall carry sufficient liability insurance to protect the public in the event of an accident. The Tribal Council shall determine the amount of liability insurance required for each gaming establishment.

(G) Each tribally-owned or tribally-operated gaming establishment shall post the rules of play of each game in a conspicuous place in the establishment, and shall make written copies of them available to any member of the general public upon request.

(H) The Primary Management Official shall be personally responsible for seeing that gaming activity is managed in accordance with tribal and federal law and that such gaming activity complies with all IRS reporting requirements.

9.2 **Use of Net Revenues of Tribally-Owned or Tribally-Operated Gaming Enterprises.**

(A) All net proceeds of a tribally-owned or tribally-operated gaming enterprise shall be held in the name of the Tribe. Such net proceeds may only be expended by the Tribal Council by resolution and only for the following purposes:

(1) To fund tribal government operations or programs.

(2) To provide for the general welfare of the Tribe and its members.

(3) To promote tribal economic development.

(4) To donate to charitable organizations.

(5) To help to fund operations of local government agencies.

9.3 **Audit Requirements.**

(A) The Tribal Commission and the Primary Management Official of each tribally-owned or tribally-operated gaming establishment shall obtain an annual outside audit of such gaming establishment. A copy of such audit shall be provided to the Tribal Commission, the Tribal Council and the National Indian Gaming Commission.

(B) Each contract for supplies, services (other than legal and accounting services) or concessions for a contract amount in excess of $25,000.00 annually shall be subject to an independent audit. A copy of such audit will be provided to the Tribal Commission, the Tribal Council and the National Indian Gaming Commission.

9.4 **Management Contracts.**

(A) Each management contract is subject to the prior approval of the National Indian Gaming Commission.

(B) Each management contract shall be approved by the Council with the advice and comment of the Tribal Commission. Before giving final consideration to any

proposed management contract, the Council shall direct the Tribal Commission to obtain the following information and submit it to the Council for review:

(1) Background information on the proposed management contractor including its name, its address, the names and addresses of each person or entity having a direct financial interest or management responsibility for the proposed management contractor, and in the case of a corporation, the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly 10 percent or more of its issued or outstanding stock.

(2) A description of any previous experience that each person listed in subsection 9.1 above has had with other gaming contracts with Indian tribes or with the gaming industry generally, including the name and address of any tribal government or licensing agency with which such person has had a contract relating to gaming.

(3) A complete financial statement of each person listed in subsection 9.4(B)(1) above.

(4) The Tribal Commission shall contact each of the tribal governments and licensing agencies in Subsection 9.4(B)(2) above to determine the performance history of the proposed management contractor.

(5) The Tribal Commission shall arrange to have each proposed management contractor investigated to learn of his personal attributes and to determine whether s/he has a prior criminal record or any pending criminal charges.

(6) The Tribal Commission shall obtain an independent verification of the completed financial statements of each proposed management contractor.

(7) The Commission shall undertake any additional steps it can to determine the character and reputation of each proposed management contractor.

(8) If the Tribal Council, after reviewing the above described information still desires to enter into a management contract with the proposed management contractor, such management contract shall be placed in writing and submitted to legal counsel for review before the Council approves it.

(C) Any management contract approved by the Council must contain at a minimum the following with respect to the gaming enterprise to which the contract is applicable:

(1) A provision requiring a monthly financial accounting of the gaming enterprise's income and expenses, with an annual financial accounting to be prepared by an independent auditor who is acceptable to the Tribe.

(2) A provision providing the Tribe absolute access to the daily operation of the gaming enterprise and to its books, and the Tribe's absolute right to verify the daily gross revenues of the gaming enterprise at any time.

(3) A provision guaranteeing the Tribe a minimum guaranteed payment which shall always take precedence over the management contractor's right to recoup development and construction costs.

(4) An agreed upon ceiling for the management contractor's development and construction costs.

(5) A provision that the contract shall not exceed the term limit established by federal law.

(6) A provision for termination of the contract and the grounds for termination.

(D) If the Council is satisfied with the information it receives it shall submit its proposed contract along with all of the above described information to the Chairman of the National Indian Gaming Commission for approval.

Section 10. Enforcement.

10.1 **Jurisdiction**. Except as provided in this Ordinance and in any IGRA compact, the Tribal Court shall have jurisdiction over all violations of this Ordinance.

10.2 **Prohibited Acts**. In addition to other civil and criminal offenses provided for in this Ordinance, the following acts are prohibited and subject any violator to the civil or criminal penalties specified herein:

(A) Participating in any on-reservation gaming activity which is not authorized by this Ordinance.

(B) Knowingly making a false statement in an application for employment with any operator or with the Tribal Commission.

(C) Knowingly making a false statement in connection with any contract to participate in any gaming activity.

(D) Attempting to bribe any person participating in any gaming activity.

(E) Offering or accepting a loan, financing or other thing of value between a Tribal Commission member or employee and any person participating in any gaming activity.

(F) Promoting or participating in any illegal gaming activity.

(G) Failing to keep sufficient books and records to substantiate receipts, disbursements and expenses incurred or paid from any gaming activity authorized pursuant to this Ordinance.

(H) Falsifying any books or records which relate to any transaction connected with any gaming activity pursuant to this Ordinance.

(I) Conducting or participating in any gaming activity which in any manner results in cheating or misrepresentation, and which allows any other disreputable tactics which detract from the fair nature and equal chance of participation between gaming players, or which otherwise creates an advantage over and above the chance of such gaming activity which affects its outcome.

(J) To conduct gaming activity with or to allow participation in gaming activity by or with an intoxicated or disorderly player.

(K) To allow or participate in the sale of liquor at gaming sites when such sale is prohibited by tribal law.

(L) To accept consideration other than money, personal checks or other approved consideration for the chance to play or participate in any gaming activity.

(M) To use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any cards, charitable gaming tickets or gaming equipment that has been marked or tampered with.

(N) To employ or possess any cheating device or to facilitate cheating in any gaming activity.

(O) To willfully use any fraudulent scheme or technique to change the odds of any game of chance.

(P) To solicit, directly or indirectly, or use inside information on the nature or status of any gaming activity for the benefit of an individual.

(Q) To tamper with a gaming device, attempt to conspire to manipulate the outcome or the payoff of a gaming device, or otherwise unlawfully tamper with or interfere with the proper functioning of the machine.

(R) To alter or counterfeit a gaming license.

(S) To aid, abet, or conspire with another person knowingly or knowingly to cause any person to violate any provision of this Ordinance or any rules and regulations adopted thereunder.

(T) To operate, use or make available to the public any illegal gaming device, apparatus, material, or equipment.

(U) To sell, hold out for sale or transport into or out of the jurisdiction of the Tribe any illegal gaming device, apparatus, material, or equipment.

(V) To assist or allow a person who is under age to participate in a game of chance.

(W) To possess any illegal narcotics or controlled substances on any licensed gaming site.

(X) To steal or attempt to steal funds or other items of value from any gaming establishment or from the Tribal Commission.

(Y) To employ any person at a licensed gaming establishment whom the operator knows has been convicted of a gaming crime or a crime of fraud.

(Z) To conspire with or induce any person to violate any of the provisions of this Ordinance or any tribal or federal law.

(AA) No operator or any of his employees or agents shall engage in any act, practice, or course of operation which could result in a fraud or deceit upon any person.

(BB) No operator shall employ any person who has been convicted of or entered a plea of nolo contendere to a criminal offense committed in Michigan or any other jurisdiction, involving theft, fraud, or misrepresentation, which would be a felony if committed in Michigan, and which was committed as 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; or to a gaming crime.

10.3 **Criminal Violation.** Any Indian who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order or decision of the Tribal Commission, shall be guilty of a crime and may be required to pay a fine not to exceed $5,000 or be incarcerated for a period not to exceed 2 years. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance.

10.4 **Civil Violation.** Any non-tribal member who violates or fails to comply with any provision of this Ordinance, or who fails or neglects to comply with any order of the Tribal Commission, shall be liable for a civil fine not to exceed $5,000 for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a civil action in the Tribal Court.

10.5 **Cumulative Fines.** All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any operator, or any other person.

10.6 **Purpose of Civil Penalties.** The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and Tribal Commission regulations and not to punish such people for violation of such laws and regulations.

10.7 **Civil Action for Penalties.** In enforcing the civil infraction provisions of this Ordinance, the Tribal

Commission shall proceed, in the name of the Tribe, against a person for violation of such provision by civil complaint pursuant to the provisions of this Ordinance. The Tribal Commission in such action shall have the burden of showing, by the preponderance of the evidence, that such person violated the applicable provision of this Ordinance.

10.8 **Seizure of Property**. All property utilized in violation of this Ordinance shall be subject to seizure by order of the Tribal Court.

10.9 **Reporting of Offenders**. The Clerk of the Tribal Court shall, upon final conviction of any person under this subsection, report the name of the person convicted to the Tribal Commission.

Section 11. Authorized Games.

11.1 **Games Playable**. All games of chance which are valid under the law of the State of Michigan are authorized for licensing.

11.2 **License Required**. A separate tribal gaming license shall be obtained for the operation of each of the gaming establishments authorized by this Section.