



Navajo Nation Gaming Enterprise

Ph: 505.905.7100 Fax: 505.905.7240

Post Office Box 1700 Church Rock, NM 87311 • Shipping Address: 249 E. NM 118 St. Hwy • Church Rock, NM 87311

June 22, 2015

Jonodev Chaudhuri, Chairman
National Indian Gaming Commission
1849 C Street, NW, MS-1621
Washington, D.C. 20240
ATTN: Vannice McCoy

Re: Comments on National Indian Gaming Commission ("NIGC") Proposals Outlined in NIGC's February 26, 2015, Tribal Leader Letter (the "NIGC Letter")

Dear Chairman Chaudhuri:

On behalf of the Navajo Nation Gaming Enterprise ("NNGE"), we offer the following comments in response to the NIGC proposals set forth in the NIGC Letter: (1) issuing guidance for Class III minimum internal control standards ("MICS"); (2) updating the NIGC's proposed National Environmental Policy Act ("NEPA") manual to include a categorical exclusion for the approval of management contracts; (3) updating the NIGC's Privacy Act regulations; and (4) a proposed regulation through which the NIGC will give preference in NIGC purchasing to Indian-owned businesses. The NNGE appreciates the opportunity to comment on the NIGC's proposals.

Background

We have been very successful in our gaming industry. We have four casinos, three in New Mexico (Flowing Water, Northern Edge and Fire Rock) and one in Arizona (Twin Arrows). The NNGE is the wholly-owned business entity created by the Nation to develop and operate the Nation's casinos. Our casinos have provided over one thousand jobs for our Navajo people as well as jobs for our non-Indian neighbors. Our casinos have also provided much needed governmental revenue which we use to provide for our members.

We have invested our own funds into the development of these casinos, providing financing to NNGE for development of all four casinos. During construction of the facilities, the NNGE employed Navajo member owned companies for services where possible. Additionally, the operation of the facilities provides opportunities for purchasing goods and services from Nation entities.

Through our gaming facilities, we continue to strive for and implement the goals of the Indian Gaming Regulatory Act: tribal economic development, self-sufficiency and a strong tribal government. We hope that the NIGC will continue to develop gaming regulations that will further promote growth and success for our gaming industry.

Comments on NIGC's Proposals

In response to the NIGC's notice of consultation, we offer the following comments on the NIGC's proposals:

1. Issuing a Guidance for Class III MICS

In 2006, the United States Court of Appeals for the District of Columbia Circuit ruled in *Colorado River Indian Tribes (CRIT) v. NIGC* that the NIGC lacks authority to enforce the Class III MICS published at 25 C.F.R. Part 542. Since that decision, the NIGC has been considering a variety of options with regard to Class III MICS. The NIGC announcement states that it is going to update its Class III MICS and publish the new standards as a non-binding guidance document as opposed to a regulation. The NIGC would then withdraw the outdated Part 542 Class III MICS regulations.

We support the NIGC's intent to create a non-binding Class III MICS guidance. The current standards are outdated, and a new version of the MICS will be useful for tribes as they seek to update their systems of internal controls. Further, a guidance for Class III MICS that provides standards similar to Class II MICS will be helpful for tribes, such as the Nation, that operate both Class II and Class III gaming. We recommend that the NIGC form a tribal advisory or coordinating committee to develop the guidance, as was done for the drafting of the Class II MICS (25 C.F.R. Part 543).

The NIGC proposal to withdraw Part 542 would have an unintended negative effect on tribal-state compacts and tribal gaming ordinances that cite to and incorporate the Part 542 Class III MICS. We believe the NIGC should not simply withdraw the currently published Class III MICS. Rather, the NIGC should amend Part 542 to reference the non-binding guidance as the NIGC's recommended Class III MICS. This approach would both enable tribes and states to track the standards through Part 542 and also facilitate the NIGC's efforts to maintain up-to-date standards that reflect best practices with respect to rapidly changing technology. Any subsequent guidance updates, however, should be undertaken in consultation with the tribes. An amended Part 542 could provide procedures for the Secretary to establish a Class III MICS Coordinating Committee that would provide input to the NIGC in developing new guidance standards and supplement government-to-government consultation by coordinating with and obtaining input from other stakeholders. This coordinating committee could be modeled after the Indian Reservation Road Program Coordinating Committee described in the regulations at 25 C.F.R. Part 170.155.

2. Updating the NIGC's Proposed NEPA Manual

The NIGC proposes to adopt a policies and procedures manual that includes a Categorical Exclusion ("CATEX") for approvals of management contracts, collateral agreements and management contract amendments. In addition, the NIGC's manual proposes two other categorical exclusions: (1) administrative and routine office activities; and (2) regulation, monitoring and oversight of Indian gaming activities. If these CATEX are adopted, tribes would not be required to prepare an Environmental Assessment or an Environmental Impact Statement except under extraordinary circumstances.

We support the NIGC's CATEX proposal for approval of management contracts and collateral agreements. Review and approval of these contracts is not equivalent to approval of a gaming facility. The relevant criteria to approve a management contract largely relate to financial and personal qualifications of a prospective manager, and not one of the criteria relates to environmental issues or concerns. In short, review and approval of a management contract has no effect on the environment. The NIGC's proposal is a positive step to remove artificial barriers to gaming development.

3. Updating the NIGC's Privacy Act Regulations

The NIGC proposes to revise its Privacy Act regulations (25 C.F.R. Part 515). These regulations govern the procedures the NIGC uses to implement the Privacy Act of 1974 and requests made under the Freedom of Information Act for information about individuals and records maintained by the NIGC. The NIGC's proposal appears to be intended to streamline the NIGC's existing processes and procedures, to implement a system of records with regard to management contract reviews and to install timelines for specific actions, including appealing adverse decisions and the NIGC responding to a request.

We support the NIGC's proposal to revise its Privacy Act regulations. We support any efforts to make governmental processes more efficient.

4. NIGC Buy Indian Goods and Services Regulations

The NIGC has proposed a new set of Buy Indian regulations, which supplement the NIGC's responsibilities under the Federal Acquisition Regulations. The draft regulations require the NIGC to procure commercial acquisitions and simplified acquisitions from both small business economic enterprises and Indian economic enterprises, depending on the threshold amount of the contract.

The values set forth in the Buy Indian regulations are aligned with the Navajo Business Opportunity Act, which gives preference to Navajo-owned businesses. We support the NIGC's Buy Indian regulations and any effort by the NIGC to promote Native businesses and small businesses.

Conclusion

We appreciate the opportunity to submit written comment on the NIGC's proposals. We look forward to continuing to work with the NIGC on these proposals and other efforts that will promote growth and success for our gaming industry.

Sincerely,

A handwritten signature in dark ink, reading "Derrick Watchman" followed by a stylized flourish and the letters "IVEK".

Derrick Watchman
Chief Executive Officer