

Quapaw Tribal Gaming Agency
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Quapaw, Oklahoma 74363
918-919-6020



May 31, 2011

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street N.W., Suite 9100
Washington, D.C. 20005

Re: Comments on Draft NIGC Consultation Policy

Dear Chairwoman Stevens:

The Quapaw Tribal Gaming Agency ("QTGA") would like to commend the National Indian Gaming Commission ("NIGC") for its efforts to develop a more comprehensive approach to consultation and improve the process by which tribal officials are consulted on matters affecting the regulation of tribal gaming. We are pleased by the new direction the NIGC is taking with respect to consultation. The QTGA has always advocated a strong, collaborative relationship with the NIGC based on clear principles, candid communication, and intergovernmental cooperation; the NIGC's draft Consultation Policy ("Policy") brings that goal one step closer.

We strongly support the NIGC's commitment to a meaningful government-to-government relationship and the inclusion of foundational principles of tribal sovereignty and self-governance. We believe that the NIGC's commitment to such principles is vital to the efficacy and legitimacy of this Policy and that the consultation process as outlined in this Policy will foster a more open and mutually beneficial consultation policy.

Pursuant to the March 8, 2011, letter to Tribal Leaders, the QTGA would like to submit the following comments on the draft Consultation Policy using the same section numbers as the draft Policy for ease of reference:

Section II: Definitions

- **II.E Tribal Official:** We commend the NIGC for its inclusion of authorized intertribal organizations in its definition of the term "Tribal Official." Such organizations play a key role in fostering cooperative relationships among different groups involved in tribal gaming. For purposes of consultation, however, an authorized representative typically serves as the representative of the collective positions of the organization members. As such, the QTGA suggests that the definition be amended to clarify that a "*duly authorized representative* of an authorized intertribal organization" constitutes a "Tribal Official."

Section III: Consultation General Principles

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- III.F: The QTGA suggests amending this section’s language by adding that the NIGC, when possible, will “defer to Tribes to establish their own standards *to the fullest extent possible.*” Many tribal governments with gaming operations have already adopted a system of internal controls and standards which the NIGC should consider when developing a proposed action. We believe such deference to tribes in their operating and regulatory capacities would be consistent with the purpose of the IGRA and the principles contained in this Policy. Especially in the context of rulemaking, deference should be accorded to tribally established regulations and standards so long as they are within the parameters of IGRA and address policy concerns regarding Indian gaming. Such deference will help eliminate unnecessary or redundant federal regulation, conserve limited tribal resources, and promote strong tribal government and self-determination.

Section IV: Consultation Guidance

- IV.A Early Tribal Involvement: The QTGA strongly agrees with the NIGC’s view that tribal consultation must happen early and often. To that end, the QTGA recommends adding language clarifying that the NIGC will not only “include Tribes in the conversation before it takes an Action,” but will seek the tribes’ participation in the NIGC’s deliberative process when making decisions about the necessity of a proposed Action. We believe tribal input at this early stage is valuable because it can assist the NIGC in deciding whether the “conversation” about a proposed Action is even necessary in the first place and help identify and articulate a problem or issue and the need for action or decision. If tribal input is overwhelmingly in favor of abandoning a particular action or decision, the NIGC should consider alternative approaches.
- IV. C Adequate Notice: This Section sets forth the contents of a notice of consultation but does not include any language as to the recipients of such notices. We are aware that a tribe’s official representative of record is designated as the official point of contact with the NIGC; it is not, however, always clear whether other entities with direct involvement in tribal gaming will receive these notices. The QTGA recommends amending this section to include language indicating that, to the extent possible, the NIGC will make attempts to provide notice to tribal gaming commissions, business enterprises or boards in charge of operations, and intertribal organizations.
- IV.G Consultation Structure: The structure of consultation should not only reflect the government-to-government relationship between tribes and the NIGC, but also account for tribes’ differing priorities, which may vary depending on the nature, scope, and location of their gaming operations. Since certain actions will affect some tribes more than others, the NIGC should take into consideration such differences when preparing seating arrangements, the agenda, and opportunities for dialogue.

Section V: The Consultation Process

- V.A Identifying Consultation Issues: As indicated above, we encourage the NIGC to initiate the consultation process as soon as an issue is identified, and to solicit tribal input in assessing the underlying matters. We agree with the NIGC that the process should begin at this important stage of identifying consultation issues, as tribal involvement in the early deliberative stages may help reveal different alternatives and viewpoints that the NIGC would otherwise not be privy to. Along those lines, we recommend adding

language that will allow for stronger, more robust tribal involvement in this early stage of the process. This stage of the process should include the following steps: (1) identification of the problem that is to be addressed; (2) tribal involvement in evaluating the necessity of regulatory action; and (3) consideration of non-regulatory approaches if the NIGC concludes that action is necessary. These steps, particularly the consideration of non-regulatory approaches, are important and should be incorporated into this section.

- V.B Early Consultation on Possible NIGC Action: As previously discussed, we believe early consultation should begin with the first step involving the identification of consultation issues. The NIGC may want to consider combining the first two stages into one titled “Early Consultation on Identifying Consultation Issues and Planning NIGC Actions.” Such a change will make clear that tribes will be consulted during the initial planning stages and at all points leading up to the development of a proposed action.
- V.C Initiating Consultation: The second paragraph states that “a Tribe may request consultation with the NIGC” and that the NIGC will respond to requests for consultation “received from a Tribe or Tribal Official.” For consistency purposes, we recommend amending this section as follows: “a Tribe *or Tribal Official* may request consultation.” If requests can be made by Tribes *and* Tribal Officials, then Tribes *and* Tribal Officials should be allowed to request for consultation.
- V.D Pre-Consultation Event Planning: The timeline for consultation should consider input from not only tribes, but also experts and tribal advisory groups. If the Action involves an issue or matter that can benefit from outside expertise, the timeline should take that into account. This is especially important in the rulemaking context, where input from experienced and knowledgeable regulators, operators, auditors, and accountants with first-hand experience in the day-to-day operations and regulation of gaming can be beneficial in improving the content of the rule.

Section VII: Communication, Coordination and Collaboration

- We are encouraged by the NIGC’s commitment to increasing the level of collaboration between the NIGC and tribe and improving the communications process through which information and viewpoints are exchanged. We would, however, like to offer a minor suggestion for improving this Section. During the consultation process, time should be set aside by the NIGC to consider how well the process is working, whether the process and results to date adhere to the principles and guidance in the Policy, and how the process can be improved going forward. Reflection on the process, both during and after consultation, is critical to identifying the need for adjustments in the manner, timing, and scope of consultation. The current draft Policy provides that the NIGC will “routinely solicit Tribes’ evaluation of specific consultation events and consultation practices generally,” but does not provide sufficient guidance as to the timing of such solicitation. While the Policy does address consultation follow-up in Section V.F, the NIGC might consider specifying that tribal evaluations will be solicited both immediately after a consultation event and when the Action or decision has been finalized. Soliciting input after a final decision or action has been made would also be mutually beneficial in allowing tribes to communicate a retrospective analysis as to how well the process worked, whether the process comported with the principles and guidelines in the Policy, and how future consultations could be improved.

In conclusion, the QTGA would like to reiterate its appreciation for the opportunity to provide comments on the NIGC's draft Consultation Policy. The QTGA is encouraged by the NIGC's efforts to work with tribes in developing a mutually beneficial framework for tribal consultation and looks forward to working with the NIGC on a government-to-government basis in this important endeavor.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Collier". The signature is written in dark ink and is positioned above a horizontal line.

Barbara Collier
Executive Director, Quapaw Tribal Gaming Agency