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ACTING CHIEF GAMING
REGULATOR

MADONNA WILLIAMS

May 27, 2011

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Comments on Draft NIGC Consultation Policy

Dear Chairwoman Stevens:

The Seminole Nation Gaming Agency (SNGA) is pleased to submit the following comments on the draft NIGC Consultation Policy (Policy). In reviewing the Policy, we were encouraged by the NIGC's commitment to develop a more robust and meaningful consultation process consistent with the open, transparent, and collaborative process that the term consultation entails. We believe that engaging tribes on a government-to-government basis not only furthers the goals of the Indian Gaming Regulatory Act (IGRA), but also helps foster a cooperative climate in which honest dialogue and mutually beneficial resolutions can flourish.

Since the release of Executive Order 13175 in 2000, questions regarding the scope, depth, style, and results of government-to-government consultation have been among the most vexing issues between tribal governments and federal agencies. We appreciate the NIGC's efforts to address concerns over the NIGC's traditional approach to consultation and commend the new leadership's approach to an open and meaningful consultation process based on mutual trust and respect. By incorporating the fundamental principles of tribal sovereignty and self-governance into the consultation process, the Policy now more closely comports with the regulatory system established under IGRA, which places tribal governments in the principal position of regulating their own gaming activities and entrusts the NIGC with an important oversight function over such activities.

We are confident that the NIGC's approach to consultation with genuine regard for the sovereignty of tribes will go a long way towards facilitating an open and productive dialogue. We hope our specific comments below are helpful to the NIGC as it considers possible improvements to the Policy.

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II. A Definitions: Consultation.

We agree that tribal consultation should happen early before the NIGC commits to a decision or action with tribal implications. We would like to suggest for the NIGC's consideration, adding language that would clarify the actual starting point of consultation. We believe that consultation should begin at the point at which the NIGC is identifying the underlying issues and determining the need for agency action. The NIGC should reach out to tribal governments *before* it decides that a problem warranting agency action exists. Soliciting tribal input and engaging tribes in the discussion about the underlying issues or potential regulatory actions would minimize the risk of locking the NIGC into a particular proposed course of action before tribal consultation actually occurs. In the past, early development of an NIGC position had triggered defensive positions on the parts of tribal governments and reduced the opportunity for objective consideration of the problem and a search for alternative solutions if the problem was deemed to warrant action. For the foregoing reasons, we recommend amending the definition of consultation as follows: Consultation – A process which enables Tribes to participate in Federal decision making before an agency takes an action, or commits to a decision *to consider an Action* with Tribal Implications.

IV.A Consultation Guidance: Early Tribal Involvement.

As discussed above, we feel strongly that tribal involvement in consultation must occur as early as possible to ensure the most effective dialogue and best outcome. As such, we recommend that the language in this section clarify when such involvement will occur and emphasize that it will be *before* the NIGC develops a position on an issue and the need for a regulatory solution. Ideally, this Section would specify that tribal involvement is triggered when an issue is first identified and that the NIGC “will *seek tribal input before committing to a decision to consider whether to take an Action with Tribal Implications.*”

IV.G Consultation Guidance: Consultation Structure

Attention to the logistics of consultation can play a large role in the overall effectiveness of the process. We are pleased by the NIGC's recognition that the structure of consultation, including the seating arrangements, agenda, and opportunities for dialogue, must be based on a respect for the sovereignty of tribes and the government-to-government relationship. Nonetheless, we would like to suggest for the NIGC's consideration, an amendment that would take into account the differences amongst tribes with gaming operations. Depending on the location, size, nature, and scope of the tribe's gaming activities, the impact of a proposed NIGC action can vary across Indian Country. We believe such differences should be considered when developing the structure of consultation.

Section V.A The Consultation Process: Identifying Consultation Issues.

We agree with the NIGC that the consultation process should begin at this early stage of identifying the underlying matters which may justify a proposed NIGC action.

We would, however, like to express our concern that this Section does not call for more active tribal participation in analyzing the underlying matters. In addition to sharing information with tribes, the NIGC should also be seeking input from tribes on whether to move forward with a proposed action. For these reasons, we recommend adding language here that would facilitate a more robust dialogue on the underlying issues and justification for a proposed NIGC action.

Section VI.C Accountability and Transparency: External Accountability to Tribes.

We were pleased that the NIGC included measures to increase transparency in the consultation process. Such recordkeeping and accountability measures will have long-term benefits for both tribes and the NIGC. We would, however, like to suggest a minor alteration to the text of this section. While the text currently reads “Tribes’ suggested position,” a more preferable phrase might be “*commenter’s* suggested position,” given the unlikely circumstance where all tribes have developed the same position on an issue.

Conclusion

The SNGA appreciates the opportunity to comment on this draft Policy. We commend the NIGC’s recent efforts to meaningfully consult with tribes on a government-to-government basis with respect to both new and old policies and regulations. It is our hope that the comments we have provided in this letter are helpful to the NIGC as it works towards a final Policy that will better serve tribes and the NIGC.

Sincerely yours,



Madonna Williams, Acting Regulator
Seminole Nation Gaming Agency