

**THE SUQUAMISH TRIBE**  
OFFICE OF THE TRIBAL COUNCIL  
LEONARD FORSMAN, CHAIRMAN

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Post Office Box 498  
Suquamish, WA 98392-0498  
Phone (360) 598-3311  
lforsman@suquamish.nsn.us

September 16, 2011

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

**Via Electronic Mail**  
**reg.review@nigc.gov**

*Re: Group 5 Comments, Tribal Self Regulation Part 518*

Dear Chairwoman Stevens:

The Suquamish Tribe ("Tribe") thanks you for the opportunity to comment on the regulations promulgated by the National Indian Gaming Commission (NIGC) pursuant to the Indian Gaming Regulatory Act (IGRA). Our comments are made in the order the regulations appear, and we have noted in bold the priority we attach to each section. Before commenting specifically on the regulations at Part 518, the Tribe offers some general thoughts.

In February, 2011, the Tribe offered these comments on part 518:

C. Self-Regulation

25 C.F.R. Sections 518.3 and 518.4 set forth extensive requirements that a tribe must meet in order to obtain a certificate of self-regulation for its class II gaming operations. Many tribes would undoubtedly be able to meet these requirements, but very few have chosen to make the effort. Presumably, tribes do not attempt to meet these requirements both because the requirements are so extensive and because the benefits of achieving self-regulation are few. The Tribe believes that a number of the requirements are either duplicative in that they require a tribe to produce information that is already available to the NIGC, or not reasonably related to the limited factors set forth in IGRA. As for the benefits of self-

regulation, the fee reduction is clear, but the other benefits are limited and rather vague. Finally, there is not much benefit in achieving self-regulating status for class II gaming for tribes who also offer class III gaming. The Tribe would support the NIGC in streamlining the requirements and process for self-regulation. However, unless there is a corresponding increase in the benefits of self-regulation (such as clearly reduced NIGC oversight, self-regulation for class III as well, and other clear benefits), the Tribe suspects that streamlining Part 518 would have little impact. Therefore, the Tribe recommends that the NIGC explore the possibility of increasing the benefits of self-regulation first. The Tribe views this as a matter of **medium** importance. In the event the NIGC does decide to pursue revisions to Part 518 (or relevant amendments to IGRA), the Tribe believes a Tribal Advisory Committee and a subsequent opportunity for comment would be appropriate.

The regulations as they are now drafted are quite a bit different from those we reviewed in February. We find that the language has been simplified, and that the regulation is easier, as a general matter to read and understand.

**Part 518.1:** Good edits.

**Part 518.2:** This section is now quite clear on eligibility.

**Part 518.3:** This section is structured in a much clearer format. The changes at (iii) are good. The changes at (iv.) are good. The changes at (vi.) are good. The changes at (vii) are excellent. The changes at (viii) are good. The same applies to both (ix) and (x).

The commission is to be congratulated on streamlining the section, removing matters which do not concern the effective self-regulation of gaming, and focusing on critical tools each tribal gaming agency must have in order to perform the regulatory function. For many years after this section had been initially promulgated, it was apparent that the original drafters were uncertain what was required to effectively regulate class II gaming. These changes remove the chaff and get to the essentials.

**Part 518.4**

Part 518.4(a): Again, this section has been edited to produce a readable and appropriate list of necessary results a tribal gaming agency must have accomplished for the three past years to proceed with self-regulation. Section (a) (1) sets out the three most important historical factors.

Section (a)(2) Concerns us, simply because the regulatory function of both the NIGC and the average Tribal Gaming Agency does not include second guessing whether the Operations are being run on “an economically sound” basis. We suggest removing this test, as it is entirely

possible for a tribe's gaming operation to be "economically unsound" and yet to have highly effective regulation of the games. Some tribes, for example, run Bingo halls at break even or even at a small loss because tribal elders really enjoy the game. Neither NIGC nor a TGA should be in the business of second guessing these kinds of policy driven choices made by the Tribal gaming operation.

The remainder of 518.4(a) is good.

Section 518.4 (b) is generally excellent, with a few exceptions. We are concerned at Section 518.4(b) (4), for example that the inclusion of "employees" in a required dispute resolution mechanism, could be read to unnecessarily intrude upon the tribe's labor relations. We agree, however, that having a dispute resolution mechanism in place for patron complaints is necessary.

Section 518.4(b) (5) (ix) should be limited to class II vendors. Many tribes have agreements with their State counterparts regarding licensing of class III vendors.

Section 518.4(b) (8) again gives us pause, simply because "financially stable" is a subjective term, and may be outside the scope of effective regulation. We agree however, that a Tribe should demonstrate that the gaming agency's funding sources are stable in all events, as set out in ((6)).

We are concerned that Section 518.4(b) (10) while much improved still leaves too much room for subjective analysis. We would like to see language added here that says that a tribe may demonstrate compliance both through evidence of the building's design and construction, as well as evidence of the systems available and in place to address life safety, health and environmental issues.

Finally, we are concerned that Section 518.4(d) may require a state gaming regulatory agency's participation in the self-regulation process, because of this language: "and any other entity involved in the regulation or oversight of the gaming operation". We think adding the word "tribal" before "entity" would solve the problem.

The remaining components clearly separate class II and Class III (leaving Class III gaming to the tribal state compacts). We think while the list is long, it is an accurate rendering of those systems and procedures which are required to properly regulate class II gaming.

## **Part 518.5**

We think the changes to this section are generally effective. We are somewhat concerned that the delegation of one commissioner to oversee the Office of Self-Regulation may compromise the agency's day to day effectiveness given the burdens already on NIGC. In addition, we are concerned that "the Office of Self-Regulation" is not clearly described in terms of its makeup: how many staff is to be involved, and what is the Commissioner's role in the process? We would like to insure that the Office is neither too insulated from the remainder of the Commission, nor too understaffed.

The remainder of the process outlined clarifies the process and keeps the appeal structure intact by referencing Part 585.

**Part 518.6**

No comment.

**Part 518.7**

Section (b): We are unsure what “a complete resume” intends. The background investigative materials, the findings of the licensing department, and the outcome of the NCIC check should be more than adequate.

**Part 518.8**

We think that the word “immediately” does not account for the time a reasonable regulator might need to finish an independent investigation and report his or her findings to the tribal regulatory body. Depending on the circumstances, when a Tribe “knows” of a problem can vary. We would suggest “within 20 days of the date the Regulatory agency confirms that a disqualifying event under Part 518.8 and 518.4 has occurred.”

**Part 518.9**

These are sensible changes, and may encourage tribes to apply for self-regulation.

**Part 518.10**

No comment.

**Part 518.11**

No comment.

**Part 518.12**

No comment.

Thank you very much for the opportunity to comment.

Sincerely,



Leonard Forsman  
Chairman  
The Suquamish Tribe

