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VIA E-mail to reg.review@nigc.gov

Tracie L. Stevens, Chairwoman
Steffani A. Cochran, Vice-Chairwoman
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Attn: Lael Echo-Hawk

Re: Comments on Preliminary Drafts of 25 CFR Part 537, 25 CFR Part 556, 25 CFR Part 558, 25 CFR Part 571 and 25 CFR Part 573

Dear Chairwoman Stevens, Vice-Chairwoman Cochran and Commissioner Little:

On behalf of the Seminole Tribe of Florida (the "Tribe") we offer the following comments in response to the National Indian Gaming Commission's ("NIGC") preliminary drafts of changes to the regulations listed above.

1. Part 537 – Background Investigations for Persons or Entities with a Financial Interest In, or Having Management Responsibility For, a Management Contract

The Tribe does not object to the proposed changes to this Part. The first change would clarify that the Chair must approve any management contract "that provides for management of both class II and class III gaming." The Tribe believes that this change is consistent with the intent of the Indian Gaming Regulatory Act (IGRA). The second change would give the Chair the discretion to reduce the background investigations for certain tribal entities or financial entities subject to federal regulation, background checks and/or licensing under a tribal-state compact. The Tribe believes that this is a reasonable change that would eliminate unnecessary and/or duplicate investigations.

2. Part 556 – Background Investigations for Primary Management Officials and Key Employees

The Commission has proposed several changes to clarify the process to be used by a tribe when determining the eligibility for licensing of a key employee or primary management official. The Tribe does not object to these changes, which are generally non-substantive. The Tribe

notes that the Commission has added a provision to clarify that a tribe may use investigative materials obtained from that NIGC that were submitted by another tribe (section 556.4(b)). The Tribe believes that this is a useful clarification.

3. Part 558 – Gaming Licenses for Key Employees and Primary Management Officials

While the Tribe generally supports the changes to this Part concerning the issuance of gaming licenses by a tribe, it is concerned about the following proposed new provision: "If the tribe has issued the license before receiving the Commission's statement of objections, notice and hearing shall be provided to the licensee as provided by § 558.4." While the Tribe understands the Commission's desire to ensure that licensees are provided with due process, this provision fails to recognize that some tribes issue temporary or provisional licenses which can be revoked upon the receipt of objections by the Commission without the requirement for a hearing. For example, the Seminole Tribe's gaming code expressly provides for the issuance of temporary gaming licenses "pending the satisfactory completion of all background investigation and other applicable requirements ... [including] expiration of the 30-day NIGC review period provided for at 25 C.F.R. § 558." Thus, the Tribe believes that the draft regulation should be modified to clarify that the hearing requirement does not apply to provisional or temporary licenses.

The Tribe also supports the new provision proposed by the Commission concerning the Indian Gaming Individuals Record System. That provision (section 558.2(c)(2)) would allow a tribe that does not license an applicant to forward the eligibility determination and any investigative report "to the Commission for inclusion in the Indian Gaming Individuals Record System." Adding this material to the database would be a very useful resource for other tribes. We note that the Commission has asked for comments on whether this should be required or merely an option for tribes. The Tribe believes that submission should be discretionary, as a mandatory requirement would exceed the Commission's authority under the IGRA.

4. Part 571 – Monitoring and Investigations

The Tribe supports the concept of an "investigation closure letter." Such a letter would provide certainty by informing a tribe that has been the subject of an investigation that it has been completed. However, we believe that "investigation completion letter" would be a better designation than "investigation closure letter."

The Tribe also is concerned about proposed changes that would purport to allow the Commission to enter the premises of "any other person" to obtain records relating to a tribe's gaming operations (section 571.5(a)). While the Commission has the authority to require a tribe to produce records in appropriate circumstances, it simply does not have the authority to enter the private property of third party companies and individuals to obtain records concerning a tribe's gaming operations. Thus, the Tribe believes that the proposed changes to sections 571.5(a), 571.5(b) and 571.6(d) should be deleted.

5. Part 573 – Enforcement

While the Tribe supports the Commission's desire to achieve compliance through measures short of a Notice of Violation (NOV), the Tribe has serious concerns about the approach set forth in the draft rule. As drafted, the Chair would be authorized, though not required, to issue a "letter of concern" or "non-compliance notice" before issuing an NOV. The draft rule provides that neither the letter nor notice would "constitute agency action," so neither would be subject to appeal. While such an approach might be appropriate for a letter of concern, which we understand would not contain a finding that a violation has occurred, it would be wholly inappropriate in the case of a non-compliance notice.

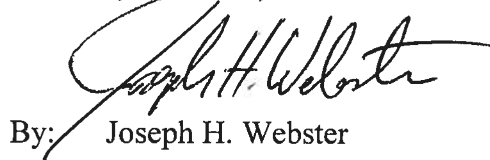
As drafted, it appears that a non-compliance notice would contain a finding by the Chair that a tribe is not in compliance with either the IGRA or that tribe's gaming ordinance and as a result "corrective action" is necessary for the tribe to come into compliance. This is essentially the same as an NOV, except that the tribe would not have the procedural rights associated with an NOV, including the right to appeal. This is of particular concern, since a non-compliance notice could have significant negative repercussions for a tribe that has publically traded debt or other notice obligations under its financing documents. It also could have negative licensing implications for the tribe and its employees.

If the intent is to alert a tribe to a potential violation without the need to resort to an enforcement action, then we believe that the "letter of concern" is sufficient. Under the draft rule, the letter would alert the tribe to a situation that "may be a violation." In most cases, such a letter would be sufficient to resolve the matter without the need for further action by the Commission. Thus, the Tribe believes that the "letter of concern" option should be included in the rule, but that the "non-compliance notice" should be deleted.

On behalf of the Seminole Tribe of Florida, we appreciate the opportunity to comment on the draft changes to the Commission's regulations. We look forward to continuing to work with you as this process moves forward.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP



By: Joseph H. Webster

cc: Jim Shore, Esq.