

NATIONAL
INDIAN
GAMING
COMMISSION

JAN 10 1995

Gerald Blue, Vice-Chairman
Upper Sioux Community Board of Trustees
P.O. Box 147
Granite Falls, Minnesota 56241

Dear Vice-Chairman Blue:

This letter responds to your request to review and approve the tribal gaming ordinance adopted on July 19, 1994, by the Upper Sioux Community (Community) by Resolution 36-93. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

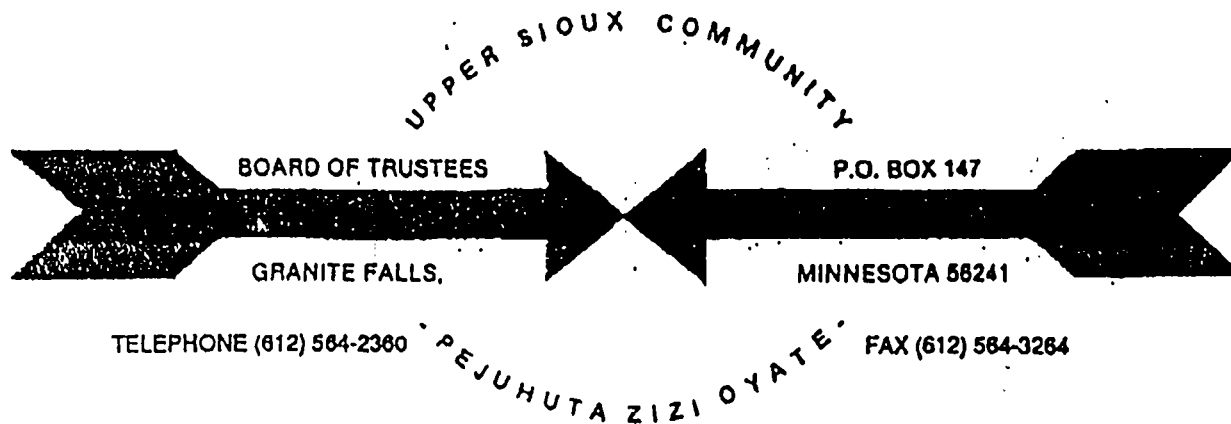
Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Community's gaming ordinance, the Community is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Upper Sioux Community for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA.

Sincerely yours,


Harold A. Monteau
Chairman



USC RESOLUTION NO. 36-93

WHEREAS, the Upper Sioux Community is a federally recognized tribe, and empowered under the Provisions for Governing the Upper Sioux Community to pass laws and ordinances through the Board Trusteed (governing body);

WHEREAS, the USC has a compact with the State of Minnesota under the Indian Gaming Regulatory Act, 25 USC Section 2701 et. seq. and operates the Firefly Creek Casino on the reservation near Granite Falls, MN;

WHEREAS, the National Indian Gaming Commission requires that a tribal Class II and III Gaming Ordinance with certain federal requirements be adopted by the USC;

THEREFORE BE IT RESOLVED that the USC Board of Trustee does hereby adopt the attached "Upper Sioux Community Gaming Ordinance (1993)" regulating Class II and III gaming; and that the gaming Ordinance (1993) be submitted to the National Indian Gaming Commission to comply with the NIGC federal requirements, by the August 10, 1993 deadline.

BE IT FURTHER RESOLVED that to the extent that all prior gaming laws/ordinances are inconsistent with the "Upper Sioux Community Gaming Ordinance (1993)" the prior laws are hereby repealed.

CERTIFICATION

We, the undersigned Board of Trustees, do certify that the foregoing Resolution No. 36-93 was duly adopted at a Board meeting held on Tuesday August 3, 1993 at Granite Falls, MN. Trustees did vote five (5) For, Zero (0) against, Zero (0) abstaining.

Lorraine Gouge

Lorraine Gouge, Chairperson
USC Board of Trustees

Marilyn Baltazar

Marilyn Baltazar, Secretary
USC Board of Trustees

UPPER SIOUX GAMING ORDINANCE (1993)

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UPPER SIOUX COMMUNITY

Gaming Ordinance

TITLE I GENERAL PROVISIONS

Section 100. Short Title

This Ordinance shall be known and may be cited as the Upper Sioux Community Gaming Ordinance. (1993).

Section 101. Findings and Intent.

The Upper Sioux Indian Community Board of Trustees finds that:

- (a) The Community was organized by the membership pursuant to federal law and enjoys a government to government relationship with the United States as a federally recognized Indian tribe.
- (b) The Upper Sioux Indian Community desires to be self-sufficient in its internal affairs, as reliance upon federal and other resources has been adverse to the quality of life within this Community in both the present and the past.
- (c) Completely regulated and control gaming on trust lands located within the Upper Sioux Indian Reservation, in compliance with applicable law;
- (d) Provide, through the revenue generated by taxes levied on Community licensed gaming operations, a source of funding for tribal government operations and programs, and programs for the general welfare of the Community;

Section 102, Gaming Authorized

Class II and Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2701 et-seq. and by Commissions at 25 C.F.R. 502.3 is hereby authorized.

Section 103. Ownership of Gaming

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

Section 104. Use of Gaming Revenue

A. Net revenues from class II and class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. 2710 (b) (3).

Section 105. Audit

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

Section 106. Protection of the Environment

Class II and Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

Section 107. Licenses for Key Employees and Primary Mgmt. Officials

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class II gaming enterprise operated on Indian lands:

A. Definitions

For the purpose of this section, the following definitions apply.

1. Key employee means:

(a) A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of Security;
- (4) Custodian of gaming supplies or cash;
- (5) Floor Manager;
- (6) Pit Boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; or
- (10) Custodian of gaming devices including persons with access to cash and accounting records within such devices;

- (b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000.00 per year; or
- (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

2. Primary management official means:

- (a) The person having management responsibility for a management contract;
- (b) Any person who has authority:
 - (1) To hire and fire employees; or
 - (2) To set up working policy for the gaming operation; or
- (c) The chief financial officer or other person who has financial management responsibility

B. Application Forms

1. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant

In compliance with the Privacy Act of 1974, the following information is preceded:

Solicitation of the information on them is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in the notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

- a. Complete a new application form that contains a Privacy Act Notice; or
 - b. Sign a statement that contains the Privacy Act notice and consent to the routine described in that notice.
3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:
 - a. Complete a new application form that contains a notice regarding false statements; or
 - b. Sign a statement that contains the notice regarding false statements.

C. Background Investigations

1. The Tribe shall request from each primary management official and from each key employee all of the following information.
 - a. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - b. Currently and for the previous 5 years: business and employment positions held, ownership interested on those businesses, business and residence addresses, and drivers license numbers;
 - c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1) (b) of this section;
 - d. Current business and residence telephone numbers;
 - e. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses
 - g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit was granted.
 - h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the names and address of the court involved, and the date and disposition;
 - i. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1) (h) or (1) (i) of this section, the criminal charge, the name and addresses of the court involved and the date and disposition.
 - j. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted.
 - k. A current photograph;
 - l. Any other information the tribe deems relevant; and

- m. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. 522.2 (h)

2. The Tribe shall conduct an investigation sufficient to make a determination under subsection D. below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

D. Eligibility Determination

The Tribe shall review a persons prior activities, criminal record, if any, and reputation, habits and association to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulations of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

E. Procedures for forwarding applications and report for Key Employees and Primary Management Officials to the National Indian Gaming Commission

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who doe not have a license after 90 days.

F. Report to the National Indian Gaming Commission

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigation report on each background investigation. An investigation report shall include all of the following:

- a. Steps taken in conducting a background investigation:

- b. Results obtained;
 - c. Conclusions reached; and
 - d. The bases for those conclusions.
2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.
 3. If a license is not issued to an applicant, the Tribe:
 - a. Shall notify the National Indian Gaming Commission; and
 - b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records Systems.
 4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

G. Granting a Gaming License

1. If, within a thirty (30) day period after the National Indian Gaming Commission received a report, the National Indian Gaming Commission notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or primary management official for whom the tribe has provided an application and investigation report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.
2. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph G. 1 of this section until the Chairman of the National Indian Gaming Commission received the additional information.
3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objectives to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application,

taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

H. License Suspension

1. If, after the issuance of a gaming license, the Tribe received from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection D above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

Section 108. License Locations

The Tribe shall issue a separate license to each place facility, or location on Indian lands where gaming is conducted under this ordinance.

Section 109. Definitions

The definitions stated in 25 CFR part 502 shall be utilized and are incorporated herein by reference.

The following words and phrases when used in this Ordinance shall have the meaning respectively ascribed to them in this section:

(a) "Board of Trustees" shall mean the governing body of the Community, duly elected in accordance with the terms of the Revisions of Provisions for Governing the Upper Sioux Community adopted October 24, 1974; the Board of Trustees shall act as the Community Gaming Commission.

(b) "Community" shall mean the Upper Sioux Indian Community, a federally recognized Indian tribe organized by the membership pursuant to federal authority and approval and located on the Upper Sioux Indian Reservation.

(c) "Compact on video games of chance" shall mean that agreement concerning the operation of video games of chance, entered into in 1989, pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, between the Community and the State of Minnesota.

(d) "Gaming enterprise" shall mean any commercial business owned by the community and operated, in part or in whole, for the conduct of bingo, the sale of pull tabs, gaming in general and the conduct of other games of chance, including video games of chance.

(e) "Gaming test laboratory" shall mean, as contemplated by Section 6.1 of the Tribal-State Compact regarding Video Games of Chance, a laboratory agreed to and designated in writing by the Minnesota State Commissioner of Public Safety and the Community Board of Trustees as competent and qualified to conduct scientific tests and evaluations or video games of chance and related equipment; a laboratory operated by or under contract with the states of Minnesota, or Nevada, or New Jersey, or South Dakota constitutes a designated gaming test laboratory.

(f) "Indian Gaming Regulatory Act of 1988" shall mean the Act of the United States Congress adopted on October 17, 1988, as Public Law 100-497, 102 Stat. 2467, codified at 25 U.S.C. 2701 et seq.

TITLE II REGULATION AND ENFORCEMENT

Section 200. Gaming Commission

The five (5) member Board of Trustees shall function as the Gaming Commission. The Board of Trustees may appoint qualified Upper Sioux Community members or other persons with gaming experience to the Gaming Commission in order to fairly regulate gaming, or if a Board of Trustee member is disqualified, absent or otherwise unable to function.

Section 201. Regulations

The Gaming Commissions shall develop regulations to enforce this ordinance, subject to approval by the Board of Trustees.

Section 202. Hiring and Training

Due to the high unemployment of the Upper Sioux Community members, preference in hiring will be given to Indian Community members and then to other American Indian persons as permitted by federal law. This rule shall be enforced in hiring, training and promotion.

Section 203. Hearing Officer

The Gaming Commissions may appoint a hearing officer with legal training to hear

a dispute that may come before the gaming commission concerning this ordinance and regulations and enforcement. The hearing officer will make recommended findings and reasons for the Gaming Commission.

Section 204. Hearings

The Gaming Commission shall provide a hearing prior to final action concerning suspending or revoking a license, if requested, and as allowed or set by regulation or law.

Section 205. Sanctions

Violations of this ordinance will subject a person to sanctions that may include fine and suspension as appropriate. Unlawful trespass will prompt immediate response and appropriate sanction. The Gaming Commission set up a schedule of fines and sanctions as deemed necessary.

TITLE III.

Section 300. License Required

Any person, organization or entity (including management officials and key employees), on behalf of the community, conducting a public gaming enterprise pursuant to the provisions of this Ordinance or any person, organization or entity selling, leasing or otherwise distributing gambling equipment or video games of chance to the Community, shall be required to have a Community public gaming operations being conducted within the jurisdiction of the Community without the lawful written approval of the Board of Trustees are prohibited.

Section 310. Application for Distributors of Gambling Equipment.

The application for an person, organization, or entity wishing to sell, lease, or otherwise distribute gambling equipment and/or video games of chance to the Community shall contain the following information:

- (a) the name(s) and mailing address of the person or entity making the application;
- (b) the name(s) and addresses of all interested parties (including those with direct or indirect financial interest and their interest and connection to the applicant);
- (c) the nature of the license applied for; the type of activity to be engaged in under the license;
- (d) explicit and detailed disclosure of any criminal record, including and delinquent taxes owed to the State of Minnesota, of the applicant, any person involved in the organization, and any party of interest whose name appears on the application.
- (e) any additional information necessary to allow the Community or the State of Minnesota to investigate the applicant or any person included on the application;
- (f) whether the applicant has been properly licensed by the State of Minnesota pursuant to Minnesota Statute section 349.151; and proof of being the holder of a current and valid distributor or manufacturer license from the State of Minnesota; or properly licensed and holding a current and valid license from either the State of New Jersey, Nevada or South Dakota;
- (g) whether the applicant has ever had a distributor or manufacturer license revoked or suspended by the state that issued the license and, if so, the circumstances surrounding the state's action;

- (h) a statement of waiver allowing the Community and the State of Minnesota to conduct a background investigation of the applicant and any person whose name is required to appear on the application;
- (i) whether the applicant or any person whose name is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages.

Section 302. Machine Leases

In addition to a distributor license provided for in Section 303, the person or entity with whom the Community enters into a lease or sales agreement regarding video games of chance must obtain from the Board of Trustees an annual non-transferable license for each video game of chance to be placed in a gaming enterprise operating under the provision of this Ordinance.

- (a) An application for a license for a video game of chance shall contain the following information:
 - (1) the name and address of the applicant with proof of a current and valid distributors or manufacturer license issued by a state and the Community.
 - (2) identification numbers or codes for each video game of chance placed in a Community gaming enterprise, including the manufacturer, the serial number and the model number.
 - (3) proof of approval and certification of the machine by an approved gaming test laboratory or proof that the video game of chance conforms precisely to the exact specifications of the video game of chance prototype tested and approved by the gaming test laboratory.
 - (4) all other information as required by the Compact on Video Games of Chance;
 - (5) proof of a current and valid video game of chance license issued by the State of Minnesota pursuant to Minnesota Statute section 349.52.
- (b) Upon issuance, the Board of Trustees shall have attached to each video game of chance licensed under the provisions of this Ordinance, an unremovable identification plate on the exterior cabinet which contains the information as required by the Compact on Video Games of Chance.

Section 303. Classes of Licenses.

Upon proper application and approval, the following classes of licenses may be issued by the Commission:

- (a) Class A license for a gaming enterprise in which a gaming operator wishes to conduct Class II gaming at a Community gaming enterprise; the license shall be site specific;
- (b) Class B license for a gaming enterprise in which a gaming operator wishes to conduct Class III at a Community gaming enterprise; the license shall be site specific;
- (c) Class C license to any management official or key employee of either a gaming operator or the Community; the license shall be valid for a period of one year and a Class C-1 license to any other employee, not licensed as a management official or key employee, of a gaming operator or the Community employed in a gaming enterprise licensed under the provisions of this Ordinance; the license shall be valid for a period of one year.
- (d) Class D license to any distributor or manufacturer of gambling equipment and/or video games of chance to be used in a Community gaming enterprise; the license shall be valid for a period of one year.
- (e) Class E license for each video game of chance to be used in Community gaming enterprise; the license shall be valid for a period of one year.

Section 304. License Fees

Annual license fees shall be set by the Gaming Commission for gaming distributors, management officials and employees.

TITLE IV. RULES OF GENERAL APPLICABILITY

Section 400. Rules of Gaming Operations.

Each licensee operating a gaming enterprise under a license issued pursuant the provisions of this Ordinance shall prominently display in writing all rules and regulations pertaining to all gaming activity, including but not limited to traditional bingo, other games of chance and video games of chance, near the specific locations where such gaming activity is chance, near the specific location where such gaming activity is conducted; or shall make a written copy of all such rules and regulations to any person making a request for such.

Section 401. Dispute Resolution

The gaming enterprise shall develop and use a dispute resolution system or method that fairly and promptly settles any customer or patron complain or dispute with the

casino/employee. The system will be periodically reviewed as necessary to insure fairness to the customer, and to prevent recurring problems.

Section 402. Restriction for Gaming Enterprise

The Upper Sioux gaming enterprise must at all times observe the following restrictions on gaming activities:

- (a) No credit extended: all gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by any gaming enterprise. This restriction shall not apply to credits won by players who activate plays on video games of chance after inserting coins or currency into the game, and shall not restrict the right of a gaming enterprise to offer check cashing or to install or accept bank card or credit card transactions in the same manner as would normally be permitted at any retail business within the State of Minnesota.
- (b) Minimum age for players: no person below the age of nineteen(19) shall be permitted to participate in the gaming in any gaming enterprise licensed under the provisions of this Ordinance. If any persons below the age of nineteen (19) years plays and otherwise qualifies to win any prize, the prize shall not be paid. The estimated amount wagered during the course of the game may be returned to the player at the discretion of the casino.
- (c) Regulation of alcohol: no gaming enterprise shall allow to be sold or otherwise make available any beverage containing alcohol except in strict compliance with the Upper Sioux Community Liquor Control Ordinance.
- (d) Prohibition on firearms: no firearms or air guns which are capable of discharging dangerous projectiles or gases including, but not limited to, "bb's or Co2 guns, rifles, shotguns, pistols or revolvers", shall be allowed in the premises except as permitted for security by an employed security force or other city, state, or federal law enforcement officers in the course of their official duties.
- (e) Other rules of conduct and regulations will be developed by the Gaming Commission as needs arise.

TITLE V RESERVED FOR FUTURE USE