

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

MAR 6 2000

Honorable Mary E. Belardo  
Chairwoman, Torres Martinez Desert Cahuilla  
66-725 Martinez Road  
P.O. Box 1160  
Thermal, California 92274

Dear Ms. Belardo:

This letter responds to your request for the National Indian Gaming Commission's (NIGC) review and approval of the tribal gaming ordinance, Ordinance No. TM-002-99, adopted on April 10, 1999, by the Torres Martinez Desert Cahuilla Tribe (Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA). 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.

Although the NIGC has approved this ordinance, we note, with some concern, Section VIII on the composition of the Tribal Gaming Commission. Under this section the Tribal Chairman serves as a member of the Gaming Commission. Since the date the Tribe passed its ordinance, the NIGC has issued Bulletin, No. 99-3 on the importance of the independence of tribal gaming commissions (October 12, 1999).

This Bulletin, "encourages tribes to review their responsibilities and procedures in respect to gaming regulation and consider whether their tribal gaming commission operates in a sufficiently independent manner." The Bulletin suggests that members of a tribal council should not serve on the tribal gaming commission. In Ordinance #TM-002-99, the Tribal Gaming Commission includes the Tribal Chairman. As indicated in the Bulletin, allowing tribal council members to serve on the gaming commission does not promote gaming commission independence. We would ask that the Tribe reconsider this to take into consideration the advantages of having a Gaming Commission that is fully independent from the Tribal Council. I enclose a copy of NIGC Bulletin No. 99-3.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe 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 Torres Martinez Desert Cahuilla Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely,

*Montie R. Deer*

Montie R. Deer  
Chairman

*by WFG*

Enclosure

**TORRES-MARTINEZ DESERT CAHUILLA INDIANS**

**CLASS III GAMING ORDINANCE**

DEC - 7 1999

#TM-002-99

**I. PURPOSE**

The Torres-Martinez Desert Cahuilla Indians (the "Tribe") empowered by the Tribe's Constitution to enact ordinances, hereby enacts this Gaming Ordinance in order to set the terms for Class III gaming operations on tribal lands.

**II. DEFINITIONS**

The terms used in this Gaming Ordinance shall have the same meaning as identical terms defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (the "IGRA"), regulations of the National Indian Gaming Commission and the Tribal-State Gaming Compact between the Tribe and the State of California. As used in the Gaming Ordinance, the term "Gaming Employee" shall have the meaning contained in Section 27 of the Tribal-State Compact, which includes "key employee" and "primary management official" as those terms are defined in 25 C.F.R. §§ 502.14 and 502.19 respectively.

**III. GAMING AUTHORIZED**

The Tribe may license and operate Class III gaming activities that are conducted in conformance with a valid Tribal-State Compact entered into by the Tribe and the State of California or with the terms and conditions of valid procedures prescribed by the Secretary of the Interior for the regulation of Class III gaming.

**IV. 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 (unless the Tribe elects to allow individually owned gaming).

**V. USE OF GAMING REVENUE**

- A. Net revenues from Class III gaming shall be used only for the following purposes: to fund tribal government operations; 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).

**VI. AUDIT**

- A. ~~The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.~~
- B. All gaming related contracts that result in the purchase of supplies, service, 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.

**VII. PROTECTION OF THE ENVIRONMENTAL AND PUBLIC HEALTH SAFETY**

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

**VIII. TRIBAL GAMING COMMISSION**

- A. **Establishment.** There is hereby established the Torres-Martinez Tribal Gaming Commission (the "Commission"), an agency of the Tribe, consisting of a Chairman and four (4) other members appointed by a majority vote of the Tribal Council.
- B. **Powers.** The Commission shall have the following powers and duties:
  - 1. Promulgate rules and regulations for the operation of any gaming facility under the jurisdiction of the Tribe;
  - 2. Grant, deny, renew, limit, condition, suspend, restrict or revoke gaming licenses of any key employee, primary management official, Gaming Employee, Gaming Resource Supplier or person or entity extending financing to a gaming facility upon completion of a background investigation and after following the procedures contained in 25 C.F.R. Parts 556 and 558;
  - 3. Develop licensing procedures and standards for all Gaming Employees, Gaming Resource Suppliers and persons or entities extending financing to any gaming facility under the jurisdiction of the Tribe;
  - 4. Conduct background investigations and suitability determinations on any key employee, primary management official Gaming Employee, Gaming Resource-supplier or any person or entity extending financing to a gaming facility required to be licensed according to requirements at least as stringent as those in 25 C.F.R. Parts 556 and 558;

5. Forward completed employment applications for key employees or primary management officials to the National Indian Gaming Commission pursuant to 25 C.F.R. § 558.3;
6. Issue separate licenses to each place or location on Indian lands where the Tribe elects to allow gaming;
7. Monitor gaming activities to insure compliance with all legal requirements;
8. Conduct investigations of possible violations and take appropriate enforcement actions, including the imposition of fines;
9. Take testimony and conduct hearings on regulatory matters;
10. Establish by regulation internal controls which are at least as stringent as the Minimum Internal Control Standards contained in 25 C.F.R. Part 542 and monitor compliance with such internal controls; and
11. Propose an annual operating budget which shall be subject to review and approval by the Tribal Council. The Commission shall, in accordance with the budget approved by the Tribal Council, employ staff and retain professional services necessary to carry out the Commission's responsibilities under this Ordinance; and
12. Exercise such other powers as authorized by the Tribal Council.

C. Terms. The initial members of the Commission shall serve as follows:

1. Two members shall serve a one-year term.
2. Two members shall serve a two-year term.
3. The chairman shall serve a three-year term.

Thereafter, all terms shall be for three (3) years and until a successor is appointed by the Tribal Council. If a vacancy occurs during a term, the Tribal Council may appoint a successor for the unexpired portion of the term.

D. Qualifications: To be eligible to serve as a member of the Commission, a person must submit to a background investigation and meet the suitability standards of a primary management official or key employee and must:

1. Be of high moral character and reputation to promote public confidence in gaming by the Tribe;
2. Have sufficient education and work experience to be able to fulfill the functions of the Commission;

3. Not have been convicted of a tribal, federal, or state felony, or any crime involving fraud, theft, moral turpitude or gambling; and
  4. Not be a member of the Tribal Council or employed in any gaming facility under the jurisdiction of the Tribe.
- E. Restrictions. Members of the Commission are prohibited from (i) gambling in any gaming facility under the jurisdiction of the Tribe or (ii) having any financial interest in any gaming conducted under the jurisdiction of the Tribe.
- F. Removal and Vacancies. After notice and a hearing, a member of the Commission may be removed by a two-thirds vote of the Tribal Council for cause, including malfeasance, neglect of duty, unexcused failure to attend two successive Commission meetings, conviction of a felony or failure to comply with the Constitution or laws of the Tribe. Any member of the Commission being considered for removal shall be provided notice stating the grounds for removal and specifying the date, time and place for a hearing to be held by the Tribal Council within twenty (20) days of receipt of such notice. At the hearing, the member of the Commission being considered for removal shall be entitled to present testimony and other evidence and be represented by an attorney. Vacancies shall be filled within ninety (90) days by a majority vote of the Tribal Council.
- G. Meetings. The Commission shall meet as scheduled to fulfill its duties and obligations under this Ordinance, but in no event less frequently than once per month. Meetings may be called by the Chairman, or by any two other members of the Commission, upon at least three (3) days written notice to all members. Three members or two members and the chairman shall constitute a quorum for the transaction of business. Decisions of the Commission shall require the vote of a majority of the members present at meeting in which a quorum is present.
- H. Compensation. Members of the Commission shall be compensated at a rate to be established by the Tribal Council. Members of the Commission shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses.
- I. Reports to the Tribal Council. The Commission shall make monthly reports to the Tribal Council. The reports shall include a summary of all licensing and enforcement actions and a full and complete statement of expenses and financial transactions of the Commission. The report shall include any additional information requested by the Tribal Council.

**IX. LICENSES FOR GAMING EMPLOYEES, GAMING RESOURCE SUPPLIERS AND PERSONS EXTENDING FINANCING**

The Commission shall ensure that the policies and procedures set out in this section are implemented with respect to all persons or entities subject to a background investigation and requiring a license pursuant to the IGRA or the Tribal-State Compact.

**A. Application Forms**

1. The following notice shall be placed on the application form for a gaming license before that form is filled out by an applicant.

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form 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 or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with 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 this 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 uses 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. (U.S. Code, title 18, section 1001).

4. The Commission 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.

**B. Background Investigations**

- 1. The Commission shall request from all applicants for a gaming license all of the following information:
  - a. Full name, other name-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 five years: business and employment positions held, ownership interests in 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 relationship with Indian tribes, including ownership interests in those business.
  - 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 related to gaming, whether or not such license or permit was granted;
  - h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
  - i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
  - j. 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 address of the court involved and the date and disposition;

- k. 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 was granted;
  - l. A current photograph;
  - m. Any other information the Commission deems relevant; and
  - n. Fingerprints consistent with procedures adopted by the Tribe according to 25-C.F.R. § 522.2(h).
2. The Commission shall conduct an investigation sufficient to make a determination under subsection D below. The Commission shall perform background investigations and issue licenses for all applicants for a gaming license according to requirements that are at least as stringent as those in 25 C.F.R. Parts 556 and 558. In conducting a background investigation, the Commission or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
3. The Commission shall employ qualified tribal investigators who shall be responsible for reviewing and verifying background information and criminal history record information (CHRI) reports. Access to CHRI reports shall be limited to tribal investigators and members of the Commission.

C. Procedures for Conducting Background Investigations.

- 1. **Information Verification**. Tribal investigators shall review the required information provided by an applicant for a gaming license and shall:
  - a. Verify the applicant's name, place of birth, date of birth and citizenship by requiring the applicant to provide items such as a birth certificate, social security card or passport;
  - b. Confirm the applicant's business and employment positions held and ownership interests in those businesses currently and for the past five (5) years by attempting to contact through written letter, telephone calls or personal visits to past employers listed in the application and through ownership documentation such as copies of tax returns;

- c. Obtain the applicant's driving record by using the applicant's driving license number to contact the Department of Motor Vehicle in the state where the license was issued;
  - d. Ascertain character information about the applicant by contacting personal references identified in the application;
  - e. Inquire into any existing or previous business relationships the applicant has had with Indian tribes or the gaming industry, including the scope of those relationships, by contacting respectively the tribes or entities identified in the application;
  - f. Verify the applicant's history and status with any licensing agency by contacting those agencies listed in the application and the National Indian Gaming Commission;
  - g. Obtain information regarding any past felonies, misdemeanor convictions or criminal charges within the last ten (10) years by contacting state, city, county and tribal courts, and state, local and tribal police departments in the applicant's area of residence;
  - h. Obtain and verify any other information the Commission deems relevant to complete a thorough background investigation.
2. **Analysis of Information.** Once the tribal investigator has verified the accuracy of the information contained in the application, the tribal investigator shall analyze the information and determine whether further investigation is warranted. If an analysis of the information reveals problem areas such as an applicant's criminal activities, finances or character, the tribal investigator shall broaden the scope of the investigation on such problem areas.
3. **Investigative Report.** The tribal investigator shall prepare an investigative report which shall contain the following:
- a. A description of the steps taken in conducting the background investigation by a checklist of procedures completed;
  - b. An explanation of the results obtained including describing any exceptions or negative information and additional steps taken to examine any exceptions or negative information;
  - c. A statement as to the conclusions reached, whether positive or negative, and the basis or justification for such conclusion. Where exceptions, areas of concern or negative information were obtained, the conclusions and the justifications for the conclusions shall be included in the investigative report;

**D. Suitability Determination**

The Commission shall review the investigative report prepared by the tribal investigator as the basis for reviewing a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation paying particular attention to (i) the truthfulness of the applicant's answers to questions asked; (ii) the applicant's criminal record, if any; (iii) any conflicting or additional information; and (iv) mitigating circumstances cited by the tribal investigator. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or the tribal gaming operation shall not employ that person.

**E. Procedures for Forwarding Applications and Reports to the National Indian Gaming Commission**

1. When a person required to be licensed begins work at a gaming operation authorized by this ordinance, the Commission 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 Commission 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 a person who does 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 Commission shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include 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 Commission 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 Commission:
  - 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 System.
4. With respect to key employees and primary management officials, the Commission 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 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 receives a report, the National Indian Gaming Commission notifies the Commission that it has no objection to the issuance of a license pursuant to the license application filed by a key employee or a primary management official for whom the Commission has provided an application and investigative report to the National Indian Gaming Commission, the Commission may issue a license to such applicant.
2. The Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a 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 receives the additional information.
3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Commission with a statement itemizing objections to the issuance of a license to a key employee or a primary management official for whom the Commission has provided an application and investigative report to the National Indian Gaming Commission, the Commission shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Commission 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 receives 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 Gaming Commission of its decision.

**X. LICENSE LOCATIONS**

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

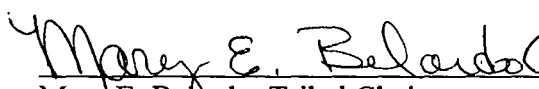

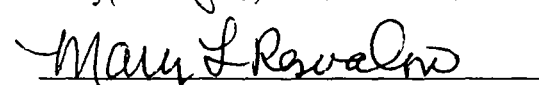
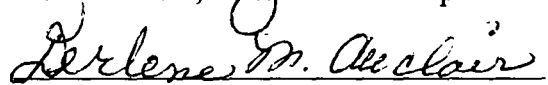
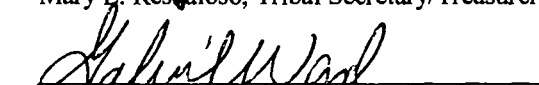
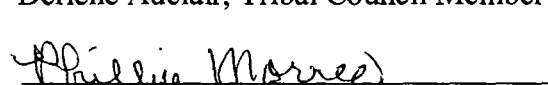
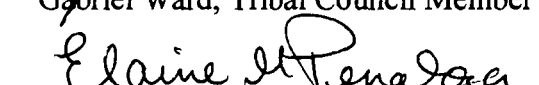
**XI. REPEAL**

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

Gaming Ordinance  
TM-002-99

CERTIFICATION

We, the undersigned, as duly elected officials of the Torres Martinez Desert Cahuilla Indians Tribe, we do hereby certify that at a General Council Meeting held on April 10, 1999, this ordinance was reviewed and approved, by a vote of 25 in favor, 7 opposed and 1 abstaining. We the members of the Tribal Council do hereby certify that this foregoing resolution has not been amended or rescinded in any way.

 Mary E. Belardo, Tribal Chairwoman	 Pauline Duro, Tribal Vice-Chairperson
 Mary L. Rescaloso, Tribal Secretary/Treasurer	 Derlene Auclair, Tribal Council Member
 Gabriel Ward, Tribal Council Member	 Phillip Morreo, Tribal Council Member
 Elaine M. Penaloza, Tribal Council Member	