

CALIFORNIA GAMBLING CONTROL COMMISSION**Public Staff Report**

Date: September 14, 2009

To: Chairman Dean Shelton
Commissioner Stephanie Shimazu
Commissioner Alexandra Vuksich

Via: Terresa A. Ciau, Executive Director

From: Jason Pope, Staff Counsel Legal Division
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Subject: Explanatory Summary of Process and Proposed Changes to Uniform Tribal Gaming Regulation CGCC-8 Internal Control Standards (Amended Form Dated September 10, 2009) to be Considered at the September 24, 2009 California Gambling Control Commission Meeting

Summary:

CGCC-8 is a regulation put forward by the California Gambling Control Commission (Commission) intended to provide protocols for interaction over SGA Compact inspections related to internal control standards covering Class III Gaming Activity as well as to provide transparency as to what the Commission considers to be Compact compliant Tribal regulations (Tribal MICS). This regulation has gone through several versions and alterations over the more than two year course of the Compact regulatory process in regards to scope and detail.

A draft of CGCC-8 was first submitted to the Association of Tribal and State Gaming Regulators (Association) in 2007, which created a Task Force pursuant to the Association's protocol for review of regulations proposed pursuant to the Compact. The Commission participated in these initial Task Force meetings and was given alternative language for the regulation, though only from individuals and not the Task Force itself. The Task Force drafted a Report on February 13, 2008¹ and submitted it to the Association which essentially rejected CGCC-8 in whole. The Commission conducted an open session hearing on February 21, 2008 where it took oral comments on CGCC-8 including possible modifications. Commission staff subsequently modified CGCC-8 in response to these comments. In a draft of CGCC-8 put before the Commission on March 27, 2008 with a Public Staff Report, CGCC-8 was adopted by the

¹The complete title of the Task Force Report is "Association Regulatory Standards Taskforce Final Report Statement of Need re: CGCC-8 February 13, 2008." This report is attached here as Exhibit A.

Commission as a proposed regulation under Compact section(s) 8.4 and 8.4.1.² Soon thereafter, the Commission prepared a detailed written response on April 23, 2008 to the Task Force's Report, otherwise referred to as a "Statement of Need," to CGCC-8.³ The Commission presented CGCC-8 (as it had been adopted on March 27, 2008) before the Association at the May 7, 2008 meeting, though no vote was held.⁴ The March 27, 2008 version of CGCC-8 was then placed before the Association at its meeting on September 4, 2008 where it was subsequently disapproved. The Association motion stated that the disapproval was based on the Association Task Force Report dated February 13, 2008.

Commission Staff then amended CGCC-8 in response to the objections of the Task Force and the Associations. These changes were incorporated into an October 1, 2008 version which was submitted before the Commission on October 14, 2008 with an explanation of the proposed changes.⁵ At the October 14, 2008 hearing, the Commission "re-adopted" CGCC-8 according to Compact section 8.4.1(b) with a detailed written response to the objections and comments of the Association and the Task Force. Also please note, these changes, consistent with advice received from the Attorney General's office, need not be sent back to the Association for another round of comment and review. Compact section 8.4.1(b) authorized the Commission to "re-adopt" CGCC-8 following Association's disapproval in "its original or amended form, with a detailed, written response to the Association's objections."⁶

On October 20, 2008, the Commission sent out the "re-adopted" version of CGCC-8, the response to the Association and Task Force's objections and comments, and a supplemental response which included comments received after the adoption.⁷ The Commission tentatively scheduled a hearing after the expiration of 30 days, in December 2008 for the purpose of considering whether to adopt CGCC-8 as a "final regulation" under Compact section 8.4.1(c).

However, in response to the numerous comments received and in recognition of its government-to-government relationship with the Tribes and in the interests of cooperation, the Commission took the final regulation adoption hearing off calendar. Since Compact section 8.4.1(c) provides no outside date for when the SGA must adopt a regulation as "final," the Commission sought the expertise of a number of Tribal representatives and attorneys for informal discussions on CGCC-8. These discussions occurred over the course of several months via telephone, email, and in

² This March 27, 2008 version of CGCC-8 is attached here as Exhibit B. The Public Staff Report recommending approval of CGCC-8 is attached here as Exhibit C.

³ This response is attached to the accompanying Response as Exhibit D.

⁴ This meeting also satisfied the "Initial Meeting" requirement of the Association Protocols (C)(2) for SGA submission of proposed regulatory standards.

⁵ The October 1, 2008 version adopted by the Commission has been attached here as Exhibit D. A version recognizing the changes from the March 27, 2008 version to the October 1, 2008 version has been attached as Exhibit E. The response to Task Force and Association objections has been attached to accompanying Response as Exhibit E1.

⁶ Section 8.4.1, subsection (b), provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association. Counsel from the Attorney General's office concurs in this assessment. This readoption and response procedure constitutes a clear exception to the general requirement that the Association approve a regulation before it may be effective. Any other interpretation would render subdivision (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495.)

⁷ This supplemental is attached to the accompanying Response as Exhibit E2.

person at the Commission offices from November 2008 to April 2009. The result of these discussions was an April 15, 2009 Staff Draft of CGCC-8 which was sent out to the Tribes for further Comment.⁸ The April 15, 2009 version attempted to incorporate comments and objections received up to the date of mailing. These comments and objections are discussed below in section I. The responses the Commission received in response to the April 16, 2009 letter are discussed below in section II.

Prior to the June 4, 2009 Association meeting, the April 15, 2009 Staff Draft of CCGC-8 was agendized for an informal vote. However, at the meeting, the Association unexpectedly voted to abandon the informal vote plan, instead voting to adopt a new resolution which took the view that the revised CGCC-8 was an entirely new regulation under Compact sections 8.4 and 8.4.1⁹ and that the June 4, 2009 meeting was the “initial meeting” under the protocols. Commission Staff abstained from the vote and did not and does not agree that Staff Draft of CGCC-8 was a new regulation discussed more fully below. The resolution created another Task Force to consider the April 15, 2009 Staff Draft and to provide another report no later than August 7, 2009. The resolution also stated that the Association would hold a meeting on September 17, 2009 and that the Association would have a vote at that time on “CGCC-8 as then drafted to the extent the Association protocols require it.”

Commission Staff participated in these Task Force meetings, including receiving numerous comments and modification requests for CGCC-8. The Task Force submitted a report on August 6, 2009 which included a revised version of CGCC-8.¹⁰ This new report largely incorporated previous comments and objections contained in the 2008 Task Force Report. On August 20, 2009, because the Task Force did not include all the Association delegates, the Commission sent out a letter advising all Compacted Tribes that the Commission still desired comments related to CGCC-8, including comments from Tribes that had not participated in this second Task Force. These comments and responses are addressed in section IV. below.

Staff has now reviewed all letters, comments, and regulation proposals received by the September 4th, 2009 requested deadline and undertaken another comprehensive review of the text of CGCC-8, giving special attention to the Task Force’s revisions, subsequent comments and alternatives presented by various Tribes. To that end, the April 15, 2009 Staff Draft of CGCC-8 has been amended with Staff’s recommendations below. The discussion under section III below explains the revisions and corrections which seek to clarify, improve, and update CGCC-8. CGCC staff is recommending these changes to the Commissioners for consideration at the September 24, 2009 meeting prior to their adoption.

Please note at the outset that many Tribes made similar objections to the adoption of CGCC-8. These objections were made at the initial adoption as a proposed regulation, at the re-adoption, and presently prior to final adoption. These objections were largely addressed at a previous stage

⁸ The April 15, 2009 Staff Draft of CGCC is attached here as Exhibit F.

⁹ The Commission Staff members present “abstained” from this vote.

¹⁰ This report has been attached as Exhibit G. The Task Force version of CGCC-8 from August 6, 2009 has been attached as Exhibit H.

of the Compact regulatory process.¹¹ However, these objections are largely addressed in detail in an accompanying amended response which also updates the Commission's response to those objections in light of the changes to CGCC-8 as discussed below, based on discussions and comments. These responses are located in the accompanying "Amended Detailed Response to Tribal-State Association Objections to Internal Control Standards (CGCC-8) September 10, 2009" ("Response" for short).¹²

Discussion:

I. Staff Response to Objections, Comments, and Modifications; October 14, 2008 "Re-Adopted" Version to April 15, 2009 Staff Version

In response to the "Re-Adopted" Version of CGCC-8, the Commission received several comments, objections, and modification requests from the following Tribes: 1) Steve Wilson, Chairman, Mooretown Gaming Commission; 2) David Hawkins, Chairman, Pit River Gaming Commission; 3) Glenn M. Feldman, Esq., Representing Cabazon Band of Mission Indians, Santa Ynez Band of Chumash Indians, and San Pasqual Band of Mission Indians; 4) Melvin Jackson, Vice Chairman, Mooretown Gaming Commission; 5) Marshall McKay, Chairman, Rumsey Band of Wintun Indians; 6) Jessica Tavares, Chairperson, United Auburn Indian Community; 7) Leanne Walker-Grant, Tribal Chairperson, Table Mountain Rancheria; 8) Robert Smith, Chairman, Pala Band of Luiseno Mission Indians of the Pala Reservation; 9) Garth Sundberg, Chairman, Cher-Ae Heights Indian Community of the Trinidad Rancheria; 10) Armando T. Ramos, Gaming Commission Chair, San Manuel Band of Mission Indians Tribal Gaming Commission; 11) Everett Freeman, Chairman, Paskenta Band of Nomlaki Indians; 12) Irwin "Bo" Marks, Vice Chairman, Jackson Rancheria Band of Miwuk Indians of the Jackson Rancheria; 13) Mark Macarro, Chairman, Pechanga Band of Luiseno Mission Indians; 14) Neil Peyron, Chairman, Tule River Tribal Council; 15) Kevin A. Day, Chairman, Tuolumne Band of Me-Wuk Indians; 16) Gwendolyn Parada, Chairperson, La Posta Band of Mission Indians; 17) Dale A. Miller, Chairman, Elk Valley Rancheria; 18) Valentino Jack, Chairman, Big Valley Band of Pomo Indians; 19) Michael Lombardi, Chairman, Augustine Gaming Commission; 20) Mr. Stacy Dixon, Tribal Chairman, Susanville Indian Rancheria; 21) Darrell Mike, Chairman, Twenty-Nine Palms Band of Mission Indians; 22) Morris Reid, Chairman, Picayune Rancheria of the Chukchansi Indians; 23) George Forman, Attorney, Representing Robinson Rancheria of Pomo Indians; 24) Lenora "Dee" Cline, President, Pauma Gaming Commission; 25) Elizabeth Kipp, Chairperson, Big Sandy Rancheria; 26) Larry Sisco, Chairman, and Fabian Barrios, Commissioner, Santa Rosa Rancheria; 27) Bo Mazzetti, Vice-Chairman, Rincon Band of Luiseño Indians; 28) Robert Martin, Chairman, Morongo Band of Mission Indians; 29) George Forman, Attorney, Representing Cachil Dehe Band of Wintun Indians of the Colusa Indian Community; 30) Michael Castello, Chairman, Soboba Tribal Gaming Commission; 31) Monty

¹¹ See Exhibit E1 attached to the accompanying Response, "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)."

¹² Compact section 8.4.1(c) appears not to require a further response to Association objection's prior to final adoption. However, in an effort to respect Tribal sovereignty and in the spirit of government to government relations, these objections are again addressed.

Bengochia, Chairman, Bishop Tribal Council; 32) Kara Brundin Miller, Tribal Chair, Smith River Rancheria; 33) Chris Devers, Chairman, Pauma Band of Mission Indians; 34) Richard M. Milanovich, Chairman, Agua Caliente Band of Cahuilla Indians; 35) George Foreman, Attorney, Representing Sycuan Band of the Kumeyaay Nation; 36) Harvey Hopkins, Chairman, Dry Creek Rancheria Band of Pomo Indians; 37) Rick Dowd, Chairman, Coast Indian Community of the Resighini Rancheria. (These comment letters are attached to the accompanying Response as Exhibits “A1-A37” respectively.)

Commission Staff carefully reviewed each of these comments and objections to CGCC-8. In many respects each comment had its own nuances. However, in general, most comments or objections could be divided into several categories.

- a. CGCC-8 purports to usurp the Tribe’s rights and duties under the Compact to promulgate the regulations that control the casino operational standards addressed in the MICS. (Comment by Mooretown Gaming Commission, Mooretown Rancheria, Pit River Gaming Commission, Pechanga Indian Reservation, and Tule River Tribal Council)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 4-5, and Sections II. 2, and 5-7) and the following.

In short, Commission Staff reiterates its respect for the TGA and Tribe’s duties under the Compact. To the extent CGCC-8 did not reflect that belief; Staff has made recommendations it to make this clearer. Furthermore, with the adoption of the “Safe Harbor” provision, CGCC-8 no longer mandates the adoption of NIGC MICS. Rather, it encourages adoption by stating it is the “Standard of Compliance” for Compact compliant Tribal MICS. Finally, the SGA is also vested with rights and duties under the Compacts, including the right to adopt uniform regulations under Compact section 8.4 and 8.4.1 and the right to inspect the Tribal Gaming Operation for Compact compliance under Compact section 7.4. Commission Staff adamantly believes that there are two sovereigns represented under the Compact and both have rights and duties.

- b. CGCC-8 exceeds the authority granted to the SGA in the Tribes’ Compacts and is an attempt to amend the Compact. (Comment by Mooretown, Pit River, Cabazon, Santa Ynez, San Pasqual, Rumsey, United Auburn, Table Mountain, San Manuel, Paskenta, Jackson Rancheria, Tuolumne, La Posta, Rumsey, Elk Valley, Big Valley, Augustine, Susanville Rancheria, Twenty-Nine Palms, Picayune Rancheria, Rincon, Bishop, and Smith River)

Staff recommends rejecting this objection/comment for the reasons contained in the accompanying Response (Sections I. 4-5, and 7, and Section II. 1 and 3), and the following.

Furthermore, Commission Staff has endeavored to be responsive to expressed Tribal concerns about this issue. As a result, Commission Staff has included the concept of a “Safe Harbor” and not required the outright adoption of NIGC MICS. Furthermore, substantial modifications have been made throughout CGCC-8 to resolve any ambiguity which could be interpreted to exceed the State’s authority under the Compact or be construed as a Compact amendment.

- c. CGCC-8 requires association approval to become effective. (Comment by Mooretown, Pit River, Cabazon, Santa Ynez, San Pasqual, Rumsey, United Auburn, Table Mountain, San Manuel, Paskenta, Jackson Rancheria, Pechanga, Tuolumne, La Posta, Elk Valley, Big Valley, Susanville Rancheria, Twenty-Nine Palms, Robinson Rancheria, Pauma Band, Morongo, Colusa, Soboba, Agua Caliente, Sycuan, and Resighini Rancheria)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response. (Sections I. 4 and 7, and Sections II. 1-2)

- d. Section 8.4.1(a) clearly states that the only exception to Association approval of a proposed regulation is an assertion of “exigent circumstances” under subsection (d), which has not be asserted here. (Comment by Cabazon Band of Mission Indians, Santa Ynez Band of Chumash Indians, San Pasqual Band of Mission Indians, Pechanga Indian Reservation, Robinson Rancheria, Morongo Band of Mission Indians, Cachil Dehe Band of Wintun Indians, Soboba Tribal Gaming Commission, Bishop Tribal Council, and Sycuan Band of the Kumeyaay Nation)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 4 and 7, and Sections II. 1-2) and the following.

In short, Commission Staff believes the SGA does have “override” authority under Compact section 8.4.1(c). However, despite having this authority to adopt a regulation under the Compact as final regulation without Association approval, Commission Staff has endeavored to be responsive to Association objections and concerns, and modify CGCC-8 according to Tribal comments over the course of *more than two years*. The result is a regulation that has changed substantially since March 27, 2008 when CGCC-8 was first adopted as a “proposed regulation.”

- e. CGCC-8 is unnecessary, duplicative, and unduly burdensome. (Comment by Morongo, Robinson Rancheria, Cabazon, Santa Ynez, San Pasqual, Rumsey, United Auburn, Table Mountain, Paskenta, Jackson Rancheria, Tule River, Elk Valley, Augustine, Big Sandy Rancheria, Santa Rosa, Rincon, Colusa, Soboba , Smith River, and Sycuan.)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response. (Sections I. 6. (vii), and Sections II. 5-7) and the following

Commission Staff strongly believes that in a post-*CRIT* decision environment, strong independent oversight of Tribal gaming is essential. There is no doubt that the TGAs of California Tribes are the primary regulatory authorities and thus tasked with ensuring Compact compliance. However, the State also is tasked with Compact compliance obligations based on Compact section 7.4 and implicit in other areas of the Compact including its role as trustee. CGCC-8 merely explains how the right to inspect the Tribal Gaming Operations for Compliance will proceed. While the SGA does not agree that previous versions of CGCC-8 were in anyway unnecessary, duplicative, or unduly burdensome, it has nonetheless listened to Tribal representatives' and Tribal attorneys' comments about CGCC-8. As a result, even though we disagree with the premise, Staff has attempted to alleviate any perception of CGCC-8 being unnecessary, duplicative, or unduly burdensome with several recommended modifications. These include the adoption of the "Safe Harbor" provision, the Alternative Compliance section, as well as other modifications to clarify the process of Compact compliance inspections. In the absence of CGCC-8, many safeguards and assurances placed in this regulation for the Tribe's benefit would no longer be required including reports, conferences, appeal to the Commission, etc.

- f. The SGA already verifies Compact Compliance. (Comment by Rumsey Indian Rancheria)

Staff recommends accepting this objection/comment in part. Please also see the accompanying Response. (Section II. 2)

Certain areas of the Tribal Gaming Operation related to Tribal MICS have been inspected by both the Commission and the Bureau of Gambling Control, collectively referred to as the SGA. However, these inspections were somewhat limited in scope, and the inspection process was not entirely transparent or explained. Furthermore, TGA and Tribes were not specifically told what the SGA considered to be Compact compliant Tribal MICS. Therefore, while certain areas of the Compact were and continue to be reviewed for Compact compliance, the areas of Tribal MICS and Internal Control Standards were not comprehensively or consistently inspected.

- g. The Tribe has submitted to NIGC oversight – CGCC-8 is redundant. (Comment by Rumsey Indian Rancheria)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 2 and 6. (iii), (iv), (vi), (vii) and Sections II. 2, 7, and 9) and the following.

In short, Commission Staff is aware that several Tribes have already adopted gaming ordinances that allow for NIGC monitoring and enforcement of Tribal MICS, which are adopted forms of the NIGC MICS. However, CGCC-8 is not redundant in regards to NIGC inspection and enforcement. The NIGC has no defined role under the Compact, is not a party to the Compact, and is not accountable to the People of California. In no way does the NIGC verify Compact compliance; that is the sole province of the TGA and the SGA. With that said, Commission Staff has adopted an Alternative Compliance section which endeavors to respect this relationship while protecting the State's interest and Compact compliance obligations with the qualifies contained in the Alternative Compliance section.

- h. The CGCC has failed to consider in good faith alternative proposals. (Comment by Rumsey Indian Rancheria)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 6. (iv) and Sections II. 6-7) and the following.

While the Commission did not adopt previous proposals, it did consider any and all proposals put before it in good faith at the time the October 14, 2008 version was adopted. In the intervening April 15, 2009 Staff draft version, and the September 10, 2009 Staff proposed version, the Commission Staff in their Draft has adopted two sweeping alternative proposals including the concepts of the "Safe Harbor" and the "NIGC Alternative Compliance" section in the spirit of government to government relations and respecting Tribal sovereignty. Other options simply did not protect the People of California, verify Compact compliance, or respect the SGA's role under the Compacts. Indeed many implicitly or overtly required a Compact amendment.

- i. CGCC-8 should include a Safe-Harbor Approach to Regulatory Compliance. (Comment by San Manuel Band of Mission Indians, Pechanga Band of Luiseno Mission Indians, and Dry Creek Rancheria)

Staff recommends accepting this comment in part and placing the "Safe Harbor" under the new section (b) "Internal Control Standards." This concept was modified from the form that was suggested and modified to better ensure Compact compliance. (See Response section II. 10) Under this section, Tribes that have adopted the NIGC MICS will have met the Compacts' obligations for adopting Compact compliant Tribal MICS. Tribes that have Tribal MICS that meet or exceed the NIGC MICS under section (b)(3)(A) will be materially compliant with the Compact. Tribes that have adopted other Tribal MICS may also still be Compact compliant, though further SGA inspection would be required.

- j. CGCC cannot/or fails to justify the need for CGCC-8. (Comment by La Posta Band of Mission Indians, Tuolumne Me-Wuk Tribal Council, Big Valley Rancheria, Susanville Rancheria, Twenty-Nine Palms Band of Mission Indians, and Resighini Rancheria)

Staff recommends rejecting this comment/objection. Please see further Response generally and section II. 2. specifically.

- k. CGCC-8 is premature and a regulation should be proposed that identifies and outlines how the CGCC intends to conduct its inspections. (Comment by Big Sandy Rancheria and Santa Rosa Tachi Tribe)

Staff recommends accepting this comment in part to the extent that CGCC-8 could be made clearer and more responsive to Tribal comments and the Associations objections. Staff has endeavored for nearly a year since the October 14, 2008 re-adoption to better outline how the SGA will conduct Compact compliance inspections related to internal control standards akin to NIGC MICS. The April 15, 2009 version endeavored to explain the SGA inspection process more clearly as well as what the SGA would consider to be Compact compliant Tribal MICS.

- l. The TGA is the primary regulator of all aspect of gaming, gaming operation and management. (Comment by Rincon Band of Luiseño Indians)

Staff recommends accepting this comment. Please see accompanying Response generally. Commission Staff is aware of the fact that some Tribes in California have award-winning Tribal MICS and enforcement. This indeed is also an obligation under the Compacts specifically section 7.2. It does not, however, alter the SGA's role and rights under the Compacts to ensure Compact compliance with Tribal MICS and their corresponding importance to other aspects of Compact compliance including fund contributions. To the extent CGCC-8 made any representation otherwise, it has been removed.

II. Staff Response to Tribal Objections, Comments, and Modifications to the April 15, 2009 Staff Draft of CGCC-8

In response to the April 15, 2009 Staff Draft version of CGCC-8, the Commission received several comments, objections and modifications from the following Tribes: 1) United Auburn Indian Community, Jessica Tavares, Chairperson; 2) Pala Band of Mission Indians, Robert Smith, Chairman; 3) Rincon Band, Bo Mazzetti, Chairman; 4) Rumsey Indian Rancheria, Marshall McKay, Chairman; 5) Bishop Paiute Tribe, Monty Bengochia, Chairman; 6) Soboba Band of Luiseno Indians, Jay Shapiro, Forman & Associates; 7) Tule River Gaming Commission, Teri Carothers, Vice Chairperson, Amy McDarment, Secretary/Treasurer; 8) San Manuel Band of Mission Indians, Armando Ramos, Gaming Commission Chair, Julian Abarca, Gaming Commissioner, Robert Balderama, Gaming Commissioner; 9) Big Sandy Rancheria, Elizabeth Kipp, Chairperson; 10) Pauma Band of Mission Indians, Chris Devers, Chairman,

Lenora “Dee” Cline, President; 11) Cabazon Band of Mission Indians, Santa Ynez Band, and San Pasqual Band of Mission Indians, Glenn Feldman; 12) Alturas Rancheria, Philip Del Rosa, Chairman; 13) Paskenta Band of Nomlaki Indians, Everett Freeman, Chairman; 14) Chukchansi Indians, Morris Reid, Sr., Chairman, Mark Emerick, Secretary; 15) Susanville Indian Rancheria, Ginny Morales, Chairperson; 16) Tuolumne Me-Wuk Tribal Council, Kevin Day, Chairman; 17) Mooretown Rancheria, Steve Wilson, Chairman; 18) Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, George Forman, Attorney. (These comment letters are attached to the accompanying Response as Exhibits “B1-B18” respectively.)

Commission Staff carefully reviewed each of these comments and objections to CGCC-8. In some respects each comment was different. However, in general, most comments or objections could be divided into similar categories.

- a. CGCC-8 is a Compact amendment. (Comment by Rincon Band, Rumsey Indian Rancheria, Chukchansi Indians, Susanville Indian Rancheria, Tuolumne Me-Wuk Tribal Council, and Pauma Band of Mission Indians)

Staff recommends rejecting this comment/objection. Please see response to I. b. above as well as the accompanying Response. (Sections I. 4-5, and 7, and Section II. 1 and 3)

- b. The new proposed CGCC-8 has not been submitted to the Association for approval as required by Compact section 8.4.1. (Comment by United Auburn Indian Community, Rincon Band, Bishop Paiute Tribe, Soboba Band of Luiseno Indians, Tule River Gaming Commission, San Manuel Band of Mission Indians, Big Sandy Rancheria, Pauma Band of Mission Indians, Paskenta Band of Nomlaki Indians, Comment by Cabazon Band of Mission Indians, Santa Ynez Band, San Pasqual Band of Mission Indians, Rumsey Indian Rancheria, Cachil Dehe Band of Wintun Indians of the Colusa Indian Community and Alturas Rancheria)

Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 4 and 7, and Sections II. 1-2) and in sections I. c. and d. above.

CGCC-8 is not a new regulation and has been developed since 2007 where it was discussed with the Association Task Force. These alterations and modifications which gave rise to a new version of CGCC-8 were at the behest of Tribes and the Association, not efforts to create a new regulation. CGCC-8 has always been directed at Compact internal control standards and SGA inspection of them. There is nothing in the Compact that mandates a certain number of changes, even if substantial, to a regulation requires it to be a new regulation that has to go back through the section 8.4 process. Finally, and most importantly the full Commission did not adopt the April 15, 2009 Staff Draft version by vote in open session which means it could not be a new “proposed regulation” under Compact section 8.4.1.

- c. CGCC-8 is unnecessary, duplicative, unduly burdensome, and unfairly discriminatory. (Comment by Rincon Band, United Auburn Indian Community, Alturas Rancheria, Paskenta Band of Nomlaki Indians, Chukchansi Indians, Susanville Indian Rancheria, Soboba Band of Luiseno Indians, Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, and Tuolumne Me-Wuk Tribal Council.)

Staff recommends rejecting this objection/comment for the reasons spelled out in section I. e. above and the accompanying Response. (Sections I. 6. (vii), and Sections II. 4-7)

- d. The NIGC Alternative Compliance procedure set forth in Section (o) does not represent a reasonable exemption procedure and is a “Poison Pill.” (Comment by United Auburn Indian Community, Paskenta Band of Nomlaki Indians Alturas Rancheria, and Pala Band of Mission Indians)

Staff disagrees with the connotation attached to this comment/objection, but recommends rejecting it in part and accepting it in part. The Alternative Compliance section provides reasonable procedures and requirements for the SGA to allow the NIGC to perform the on the ground inspection and review of NIGC MICS and the Gaming Operation in lieu of an SGA on site inspection of the Tribal MICS. It does this by ensuring that the NIGC performs a “comprehensive” review of the 10 areas covered by the NIGC MICS and not some lesser version of review “designed” to ensure NIGC MICS compliance. Mandating a “comprehensive” review ensures Compact compliance by allowing the SGA to review the NIGC’s workpapers and to investigate further should it be necessary. The information on Tribal MICS is interrelated with other mandated functions of the SGA and the Commission specifically under the Compact. This way the SGA can verify that the Tribe has Compact compliant Tribal MICS and that those Tribal MICS are being properly enforced while still respecting the NIGC’s relationship with the Tribe to inspect NIGC MICS. These modifications are being made in an effort to respect Tribal sovereignty while at the same time, respecting the State’s sovereignty and the SGA’s obligations under the Compacts to the People of California.

However, in response to some of the concerns about it being a “poison pill” Commission Staff recommends removing the “waiver of the confidentiality” as an initial requirement and an ongoing one for the Alternative Compliance section to be valid. This section was only included initially as it was believed to be the only way the NIGC would provide workpapers, to anyone, including the SGA. However, as long as the workpapers and supporting reports are provided to the SGA, by the Tribe, are complete, and the SGA can investigate, the SGA can perform its Compact compliance function without deferring or delegating to the NIGC.

- e. Section (o) should be amended as follows: “*Sections (c), (d), (e), (f), (g), (h), (i), (j), and (l) shall not apply to any Tribe’s Class III gaming operation while the Tribe has a gaming ordinance or regulation in effect that provides for NIGC monitoring and enforcement of the MICS...*” (Comment by Pauma Band of Mission Indians.)

Staff recommends rejecting this comment.

Commission Staff does not make any determinations about the basis for the relationship between the NIGC and the TGA/Tribes post *CRIT*. While some Tribes have adopted ordinances under the Indian Gaming Regulatory Act section 2710(d) attempting to allow for NIGC monitoring and enforcement of NIGC MICS, some TGAs have adopted regulations affirming the same. Pauma, for instance, has adopted a regulation allowing for the NIGC relationship. It has also adopted an ordinance which considers these regulations to have the full weight of an “ordinance” under the Compact and allows them to control where not inconsistent with another Tribal ordinance. While Commission Staff does not make any determinations about whether a Tribal ordinance can provide the NIGC authority to monitor and enforce NIGC MICS, Staff does not believe this option is viable. First, and most importantly, regulation is not stated or contemplated under IGRA section 2710(d). Only the term “ordinance” is listed. Second, such a regulation does not require approval by the NIGC. To the extent the NIGC approval process has been used as a bar to easy elimination of the NIGC oversight, this hurdle would be eliminated for a regulation. In addition, as the NIGC would not have to approve it, the NIGC would potentially have no notice that they had such an obligation to inspect NIGC MICS.

- f. Subparts (o)(1)(A) & (B) and the corresponding provision of (o)(2)(b) & (c) are unnecessary and should be deleted as they require Tribes to waive confidentiality via ordinance. (Comment by Cabazon Band of Mission Indians, Santa Ynez Band, and San Pasqual Band of Mission Indians.)

Staff recommends accepting this comment. Please see section d. above.

Staff included this section under the belief that the NIGC would not provide the workpapers and support reports and records to the SGA unless the Tribe waived confidentiality. However, under the belief and expectation that the NIGC would provide them to the Tribe and the Tribe would provide them to the SGA, the Staff believes this would accomplish the goals of CGCC-8 and the Alternative Compliance section as long as the documents were complete and the SGA can investigate as necessary.

- g. The language of the Alternative Compliance section (o)(1)(D) should be changed to “the Tribal Gaming Agency shall make appropriate personnel [rather than “itself”] available...” (Comment by Cabazon Band of Mission Indians, Santa Ynez Band, and San Pasqual Band of Mission Indians.)

Staff respects this comment but ultimately must recommend rejecting it. While Commission Staff believes that the appropriate personnel would be better able to speak to the SGA's concerns over the entirety of the TGA, Staff believes this later interpretation is implied by the way the Alternative Compliance section is currently worded. In addition, in much the same way that "CGCC staff" was changed to SGA throughout previous versions of CGCC-8 to the present Task Force version, Commission Staff believes that leaving the provision as "the TGA" strikes a better balance under principles of government to government relations. It also leaves it to the TGA to make the appropriate people available.

- h. Suggests changes to section (o)(2)(d) by either deleting the word "comprehensive" or that the phrase be revised to "a comprehensive on-site compliance review designed by the NIGC to monitor and ensure..." (Comment by Cabazon Band of Mission Indians, Santa Ynez Band, and San Pasqual Band of Mission Indians.)

Staff recommends rejecting this comment. Please see accompanying Response generally and the preceding discussions of the Alternative Compliance section.

The SGA cannot abdicate its responsibility to inspect the Tribal Gaming Operations under the Compact to the NIGC. The NIGC is an entity that has no role in Compact compliance. While the NIGC may review a Tribe's Tribal MICS, and pursuant to their ordinances these would be the NIGC MICS, they are not ensuring Compact compliance. Allowing the Tribes to circumvent the SGA's Compact compliance inspection obligations entirely would violate the Compact and IGRA. IGRA mandates under Section 2710 (d)(1)(A) that a Tribe adopt an ordinance which must be approved by the NIGC Chairman for their Class III gaming activities which is believed by some Tribes, that the NIGC can perform NIGC MICS compliance reviews post-*CRIT*.¹³ However, these Class III gaming activities must be done "in conformance with a Tribal-State Compact" under Section 2710(d)(1)(C). Furthermore, Section 2710(d)(3) places the Tribal-State Compact's requirements as *paramount*. While the SGA is willing to defer for the time being on the viability of the NIGC review of NIGC MICS, and therefore Tribal MICS, under an ordinance in the spirit of government to government relations and in the spirit of respecting Tribal sovereignty, the Compacts

¹³ Section 2710(d)(1) states: "Class III gaming activities; authorization; revocation; Tribal-State compact.

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect." (Emphasis Added.)

necessarily still control. Therefore, Staff has attempted to include the Alternative Compliance Section with necessary qualifiers, including the requirement of a comprehensive audit during any 3 year period. Anything less would risk not allowing the SGA to fulfill its role under the Compact and would not be “in conformance” with the Compact.

It should be noted that while the SGA, should it perform the inspection under CGCC-8 section (g), may not cover every aspect of the Gaming Operation, it does so based on its own independent judgment implied under the Compact. Under the Alternative Compliance section where the SGA effectively allows the NIGC to perform the onsite inspection, it must be a comprehensive review or else, the reports and workpapers the SGA receives would not allow the SGA to fully ensure Compact compliance and would hamstring the interrelated areas of Compact compliance dependent on Tribal MICS including fund contributions.

The Comment intimated that the NIGC should have the same flexibility that the SGA has given itself under CGCC-8 section (g). Commission Staff disagrees. While Staff respects the NIGC’s experience in NIGC MICS audits generally, they have never performed a Compact compliance inspection. Indeed, such a thing would exceed their IGRA authority, pre and post-*CRIT*. This is an important distinction, because while the NIGC does review the Tribe’s Tribal MICS, which must be the NIGC MICS under the Alternative Compliance section, they do not do so in an effort to provide guidance on other aspects of the Gaming Operation including fund contributions. If they make a determination that a certain area must not be covered, they are not doing so for a Compact basis, but rather solely based on the NIGC MICS. The SGA might not make that same determination.

Finally, Staff recommends including an additional section in the Alternative Compliance section to decrease the perception of harshness related to the requirement that a comprehensive review be performed every three years. This section confirms the SGA’s ability to review all workpapers and reports from the NIGC. The SGA can then determine *in its sole discretion* whether to continue the 3 year period for application of the Alternative compliance section. This is discussed below in Section III, w. 7).

- i. CGCC-8 continues to exceed the authority of the SGA under the Compacts. (Comment by Paskenta Band of Nomlaki Indians, United Auburn Indian Community, and implied by others.)

Staff recommends rejecting this objection/comment for the reasons explained above in section I. a. and b. and in the accompanying Response. (Sections I. 4-5, 7 and Sections II. 1-3, and 5-7)

- j. Tribes appreciated the inclusion of the NIGC Alternative Compliance section. (Comment by Tuolumne Mi-Wuk Tribal Council, Cabazon Band of Mission Indians, Santa Ynez Band, and San Pasqual Band of Mission Indians.)

Staff appreciates these sentiments. It was through meaningful dialog and discussions with some Tribal representatives and attorneys that this section was even considered viable. It was included at several Tribes' behest, for Tribes' benefit, and with considerable dialogue effort to make it viable without compromising the SGA's Compact authority and obligations.

- k. Tribes appreciate the inclusion of the "safe harbor" approach. (Comment by San Manuel Band of Mission Indians.

Staff appreciates these sentiments. It was through meaningful dialog and discussions with some Tribal representatives and attorneys that this section was even considered viable. It was included at several Tribes' behest, for Tribes' benefit, and with considerable back and forth effort to make it viable without compromising the SGA's Compact authority and obligations.

- l. CGCC-8 should include language to the effect that disputes must be submitted to a third-party neutral for preliminary resolution, and if the neutral rules in the States favor, the State cannot resort to a Compact section 9 dispute resolution or Compact section 11 termination proceedings unless the Tribe fails timely to comply with the neutral's decision. (Comment by Soboba Band of Luiseno Indians and Cachil Dehe Band of Wintun Indians of the Colusa Indian Community.)

Staff respects the concept and concern embodied in this comment, but ultimately it must recommend rejecting it. Staff respects the concern that under CGCC-8 there will be disagreements over issues related to Compact compliant Tribal MICS and their enforcement. In such an event, there is a potential risk, though remote, that Compact sections 9 or 11 or both may come into play. While this suggestion might ultimately alleviate some of these concerns, mandating SGA participation in alternative dispute resolution would require a Compact amendment and is beyond the scope of the SGA's authority. Furthermore, this process is ultimately unnecessary in light of the numerous requirements under the CGCC-8 Draft and Final Report process. During these steps, Staff will interact with the TGA and Tribe in good faith on the results of any inspection and any disagreements could be resolved there. Furthermore, if Staff and the TGA and Tribe cannot agree, the full Commission will hear the report and if the Tribe wishes, they can speak in closed session about their concerns. These steps will serve to resolve these potential disagreements without having to resort to neutral evaluators or an arbitrator. In addition, a Tribe that entirely wishes to forgo any discussions under CGCC-8 can immediately go to a Compact section 9.0 meet and confer session.

The processes included in CGCC-8 are merely an effort to resolve concerns about misunderstandings and miscommunications in the Compact inspection process. Commission Staff is very focused on industry standards and practices regarding

this regulation helping to alleviate these potential disagreements at the forefront. This was the genesis for the reference to the NIGC MICS as the “Standard of Compliance” which are widely adopted and followed within California (though not currently uniformly). This step alone would alleviate many of the concerns about Compact compliant Tribal MICS which might allay the fears necessitating the Alternative Dispute Resolution and Neutral process.

In addition, the process as envisioned by this suggestion would raise two very difficult concerns which are not addressed. First, is the cost for the neutral or arbitrator as the cost would have to be spread equally to both parties or in some other fashion. These costs could be quite substantial. From the Tribe’s individual perspective, they might be relatively minimal and considered a cost of doing business. However, the SGA would potentially, although unlikely, face these suits from all Tribe’s in California. These costs would be quite significant and potentially overwhelming to an already cash strapped State.

Second, and most significantly, based on the relative disparity in ultimate costs, these suits would encourage Tribes to request the neutral or arbitrator in lieu of discussing these issues with Commission Staff, the full Commission, and the Governor’s office through meet and confer. It should be noted that during these processes, the Tribe could still recruit the services of an expert on MICS who would testify or provide written documentation to the SGA and State. They can do this presently as well. Should the SGA not agree with the expert, the SGA would have to explain its position.

Finally, it should be noted, the Compact does not require that there be arbitration or the usage of a neutral evaluator. It also does not require the interaction over Reports, discussions with staff, and a full Commission appeal. There is nothing in the Compact that mandates anything more than immediately proceeding to meet and confer. Omitting this arbitration provision still leaves the Tribes in a better position than without CGCC-8 regarding disagreements over Compact compliant Tribal MICS and internal control standards.

- m. The SGA already verifies Compact Compliance. (Comment by Rumsey Indian Rancheria)

Commission Staff recommends accepting this objection/comment in part. Please see response in section I. f. above.

- n. The CGCC has failed to consider in good faith alternative proposals. (Comment by Rumsey Indian Rancheria)

Commission Staff respectfully disagrees and recommends rejecting this comment. Please see response in section I. h. above and as follows.

This comment is directly contradicted by Commission action, this Summary, and the accompanying Response. The Commission has interacted with Tribes on CGCC-8 for over two years and considered every proposal and participated in nearly every Task Force meeting. Commission Staff has even altered CGCC-8 in direct response to Tribal alternatives including the “Safe Harbor” concept, and the “Alternative Compliance Section.” Indeed, Commission Staff engaged in a two Task Force discussions regarding CGCC-8, and as discussed below will again recommend altering CGCC-8 in light of the Tribes’ comments. Many other suggestions were made and some accepted outside of the Task Force process. Please note that simply because some proposals were not accepted does not indicate they were not considered in good faith. Ultimately, the Commission cannot agree with every proposal and still encourage uniformity on Tribal MICS, and transparency for the Compact inspection process.

- o. The NIGC Alternative compliance provision is ineffective as per the *CRIT* decision; the NIGC does not have authority to regulate class III gaming operations. (Comment by Rincon Band of Luiseño Indians.)

Commission Staff remains neutral on this comment/objection. Please see the discussion of this above and the accompanying Response (Sections I. 6 (iv), (vi), (vii) and II. 2, 3, 7, and 9.) as well as the following.

Commission Staff has endeavored to craft an Alternative Compliance Section where Tribal sovereignty to allow the NIGC to perform NIGC MICS inspections is respected. However, at the same time, the SGA’s role in inspecting Tribal Gaming Operations for Compact compliant Tribal MICS and enforcement is similarly respected through SGA review of workpapers, reports, and if necessary conduct follow up investigation.

Staff as discussed above does not make any determinations as to the validity of the NIGC and Tribe’s gaming ordinance regarding NIGC MICS inspection. Rather Commission Staff has included the NIGC Alternative Compliance section with qualifiers so that it can receive the documents and the follow up necessary to ensure Compact compliance. Finally, even if this section were rendered invalid by a Court or the dispute resolution process, the severability section supports Commission Staff’s belief that this section Alternative Compliance section can be severed while leaving the balance of CGCC-8 valid.

III. Staff Discussion and Response to the Task Force’s August 6, 2009 version of CGCC-8

Staff has diligently attempted to incorporate all changes reflected in the Task Force Draft. However, some changes may be omitted due to them being only minor non-substantive changes. With this in mind Staff has gone through the Task Force draft line by line in an effort to review the changes and the comments received at the Task Force meetings. What follows is a comparison of the April 15th 2009 Commission Staff Draft of CGCC-8

contrasted with the Taskforce's August 6, 2009 Draft version in a red strike-out of deleted provisions and blue underline format of added sections. There is a section by section analysis of the Task Force Draft with changes to the Staff Draft version of CGCC-8 and a discussion of those changes based on Task Force input. Following this discussion, Staff provides its analysis and discussion of those changes and whether it recommends the Commission accept, reject, or modify them.

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a. Table of Contents

Draft of “Uniform Tribal Gaming Regulation” CGCC-8 (8-6-09)–April 15, 2009 Draft
Minimum Internal Control Standards

Table of Contents:

- (a) BACKGROUND AND PURPOSE.
- (b) INTERNAL CONTROL STANDARDS.
- (c) INTERNAL CONTROL SYSTEM.
- (d) CGCC VERIFICATION OF TRIBAL MICS.
- (e) NET WIN.
- (f) CGCC REVIEW OF AGREED- UPON- PROCEDURES REPORT.
- (g) COMPLIANCE INSPECTION REVIEW PROTOCOLS.
- (h) CGCC DRAFT REPORT COMPACT COMPLIANCE REPORTS.
- ~~(i) CGCC FINAL REPORT.~~
- ~~(j)(i) TRIBAL ACTION PLAN.~~
- ~~(k)(j) CONFIDENTIALITY.~~
- ~~(l) VARIANCE TO INTERNAL CONTROL STANDARDS.~~
- ~~(m)(k) PERIODIC REVIEW REGARDING UPDATING — INTERNAL CONTROLS AND THIS REGULATION.~~
- ~~(n)(l) DISPUTES.~~
- ~~(o)(m) NIGC ALTERNATIVE COMPLIANCE.~~
- ~~(p)(n) SEVERABILITY.~~

¹ This draft does not necessarily indicate final agreement among the Association Regulatory Standards Task Force members (or Association Delegates who did not participate in the Task Force).

Task Force Draft Changes:

- 1) The Taskforce Draft had a footnote that the Draft did not have the full support of either the Taskforce or the Tribal State Regulatory Association.
- 2) The Taskforce Draft deleted “Minimum Internal Control Standards” from the subtitle.
- 3) The Taskforce Draft modified the CGCC-8 section titles as discussed in more detail below. These changes include the removal of “CGCC” from sections (d) and (f), the removal of the (l) Variance section, merging former section (h) and (i) into one new section (h) “Compact Compliance Reports.” The Task Force also modified former section (m) to section (k) for Updating Internal Controls to Periodic Review.

CGCC Comment/Response:

- 1) Staff notes that the Task Force report that accompanied the Draft stated that “many” of those delegates but “not all” believed this draft struck a better balance between the SGA and the TGA/Tribe.
- 2) Staff recommends accepting this change in part because it has concerns with the removal of this subtitle in its entirety. While the removal of the term “Minimum” does not change the regulation, and Staff accepts that the phrase “Minimum Internal Control Standard” does not appear in the 1999 Compact, the removal of “Internal Control Standards” has two problems. First, this regulation was initially envisioned as a “fix” of sorts in a post-*CRIT* decision world which divested the NIGC of regulatory authority of NIGC MICS for Class III gaming.¹⁴ The Compacts give the State Gaming Agency (SGA) authority under several Compact sections (7.4 through 7.4.4) to inspect various aspects of the Tribe’s Gaming Operation. However, while the SGA has always believed it had the authority to do so, it was not specifically clear in the Compacts regarding SGA review of Internal Control Standards. The removal of this phrase hurts the intended goal of clearing up the ambiguity of the Compacts and helping to fix the gap in regulatory review post-*CRIT*. Second, past Tribal State Association regulations including CGCC-1, 2, and 7 have had subtitles akin to “Minimum Internal Control Standards.” Staff recommends accepting the removal of “Minimum,” but keeping “Internal Control Standards” which collectively are found in the Compacts.
- 3) Staff, based on the following discussions for each specific section, recommends accepting the removal of CGCC from the section titles, the removal of the variance section and the other minor revisions and changes.

¹⁴ *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

b. Section (a)(1)

(a) BACKGROUND AND PURPOSE.

(1) The 1999 Tribal-State ~~Indian~~ Gaming Compact (“~~Compact~~”) and comparable provisions of the New or Amended Compacts (“~~New or Amended Compacts~~”), (“collectively the “~~Compacts~~”),” ~~require each Tribe, provide~~ under sections ~~6.10, 7.0 and 8.0 of the Compact and comparable sections of the New or Amended Compacts, to adopt and maintain written Tribal minimum internal control standards, that apply to the Tribe’s Class III Gaming Operation (“Tribal MICS”) and to enforce those Tribal MICS, and also authorizes the State, through its State Gaming Agency (“SGA”), to review each Tribe’s Class III Gaming Operation for compliance with the Compacts including the Tribe’s promulgation and enforcement of its own Tribal MICS. The Compacts also authorize the SGA to review other various aspects of each Tribe’s Class III Gaming Operation for compliance with the Compacts which are not covered by this regulation.~~

(2) — ~~Specifically, section 6.0 of the Compact, and comparable sections of the New or Amended Compacts, provides~~ that each Tribe will conduct its Gaming Operation Activities in compliance with a Gaming Ordinance adopted by the Tribe and with rules, regulations, procedures, specifications and standards, ~~including minimum internal control standards,~~ adopted by the Tribal Gaming Agency (“TGA”). Section 7.1 of the Compacts and comparable sections of the New or Amended Compacts, places on requires the TGA the responsibility for the conduct of “on-site gaming regulation and control in order to enforce the terms” of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and practices which ensure that the Gaming Operation “meets the highest standards of regulation and internal controls.” Section 8.1 of the Compacts, ~~and comparable sections of the New or Amended Compacts,~~ charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain ~~Compact sections 8.1.1 through 8.1.14, and comparable subsections of section 8.1 of the New or Amended Compacts,~~ outline the matters which, at a minimum, these rules, regulations, and specifications must address (collectively, “Internal Control Standards” or “Tribal MICS”). Subject to the conditions stated therein, Sections, Compact sections 7.4 through 7.4.4, and comparable sections of the ~~New or Amended~~ Compacts, provide the State Gaming Agency (“SGA”) with rights ~~the authority~~ to inspect the Gaming Facility to ensure compliance with the Compacts.

Task Force Draft Changes:

- 1) The Task Force Draft reworked this section related to “Internal Control Standards” which was also covered in section (b) below in its definition of “Tribal MICS.” The Taskforce Draft also reworded section (a) as a “Background” *and purpose* section as well and removed some descriptive language.
- 2) The Taskforce Draft reworded references from section 6.0 to section 6.1. The Taskforce Draft is made a generalized reference to “certain” sections of 8.1. The Task Force Draft also separated the definition of Tribal MICS from Compact sections 6.0, 7.0 and 8.0 and defined it specifically with “certain sections” of 8.1.

- 3) The Task Force Draft eliminated the phrase “The Compacts also authorize the SGA to review other various aspects of each Tribe’s Class III Gaming Operation for compliance with the Compacts which is not covered by this regulation” highlighted above.
- 4) The Taskforce Draft modified the references to Compact sections 7.1, 8.1, and 7.4 through 7.4.4 to reference the specific language under the Compact sections. The Task Force Draft also removed the “authority” to inspect the Gaming Facility and replaced it with “rights.”

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications. Staff believes that the Purpose section (a) in some ways duplicated the purpose stated about Tribal MICS under the section (b) Internal Control Standards below. Staff recommends accepting the adoption of the “Background” section as it does not alter the informative nature of the initial section.
- 2) Staff recommends accepting these modifications. First, in regards to the change from section Compact 6.0 to 6.1, Staff notes that the succeeding Compact sections after 6.0 do not directly reference Tribal MICS, but rather primarily address licensing issues, unrelated to the intended “Internal Control Standards” purpose of CGCC-8. However, Compact section 6.1 does contain language mandating Tribal adoption of rules important to this regulation.

Staff, finally, believes that the reference to “certain subsections of section 8.1” in lieu of either the specific sections or the range of sections 8.1.1 through 8.1.14 is an acceptable way to refer to Tribal MICS. Staff believes that defining “Tribal MICS,” after references to sections 6.1, 7.1 and 8.1, based on certain subsections under 8.1 is an acceptable compromise. Section 6.1 merely requires that Gaming Activities must be conducted pursuant to TGA rules, regulations and specifications. Section 7.1 requires the TGA to adopt regulations, procedures and practices but it does not reference what must be covered. Section 8.1 however delineates a number of areas where the TGA must adopt “Minimum Standards.” In addition, Compact sections 8.1.1 through 8.1.14 cover more than internal control standards akin to NIGC MICS, including things such as patron and employee safety which some Tribal-State Regulations have already covered, i.e. CGCC-7. CGCC-8 does not cover these other aspects of the Gaming Operation or require the application of CGCC-8 protocols. This is made clearer by the inclusion of the sentence in 3) below and highlighted above. Therefore, this definition of “Tribal MICS” appears acceptable.

- 3) Staff disagrees with the removal of the highlighted section above and recommends rejecting this change. In addition, Staff believes that in light of the changes in 2) above, this sentence should be modified and moved. This regulation merely addresses Internal Controls, Tribal MICS and internal control standards adopted by the TGA akin to NIGC MICS. In addition, it should be noted that the 10 areas that will be inspected are covered under section (g)(4) below. The Compacts, however, are broader than the NIGC MICS

in mandating aspects of the Gaming Operation be regulated. For instance, Compact section 8.1.2 which covers the physical safety of patrons is not covered by NIGC MICS, or even something that would be deemed an element of CGCC-8. In the absence of CGCC-8 protocols, SGA, TGA, and Tribal interaction over these elements would be controlled solely by the Compacts. Staff imagines SGA staff, including the BGC and the Commission, attempting to inspect these other aspects of the Gaming Operation without following CGCC-8, (including section (g)) and a Tribe objecting, stating that this is a “Tribal MICS” issue or something that has been covered by CGCC-8. Staff recommends this sentence remain in a modified form, though in light of the other acceptable changes in this section (a), Staff believes it could be moved to the end of section (a)(1). Staff recommends the following language:

The Compacts also authorize the SGA to ~~review~~inspect other various aspects of each Tribe’s Class III Gaming Operation for compliance with the Compacts which are not covered by this regulation-

- 4) Staff recommends accepting these modifications in part and altering them in part. Staff recommends accepting the specific references to Compact sections 7.1, 8.1, and 7.4 through 7.4.4 and the Task Force’s efforts to utilize more language of the Compacts throughout CGCC-8. This regulation flows from the authority in the Compacts divided between the TGA, Tribes, and the SGA and where actual language can be used which does not undermine the SGA efforts on internal control standards in the Compact. However, as to the alteration which changes authority to “rights,” Staff recommends changing “rights” to “right” or in the alternative keeping authority as a broader undefined Compact concept. Authority as a term of the Compacts is not referenced to the SGA, but only to the TGA under Compact section 8.1. The SGA, however, is specifically given “the right to inspect the Tribe’s Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto.”

c. Section (a)(2)

(23) The purpose of this regulation is to provide ~~an effective and uniform manner in which the public, the Tribe and the State can be protected through a government-to-government,~~ uniform and effective system for the SGA to verify ~~ensuring~~ that the Tribal MICS Compacts' ~~rules, regulations, and specifications, including the minimum internal control standards,~~ have been adopted and enforced by the TGA in accordance with the Compacts.

Task Force Draft Changes:

- 1) The Task Force Draft deleted language in the section (a)(2) which attempted to acknowledge the interests at play in this regulation. Of note, they deleted the reference to the public, the “government to government” language and exchanged “ensuring” with “verify.” The later modification is one that that the Task Force Draft made throughout the development of CGCC-8.

CGCC Comment/Response:

- 1) Staff believes the modifications are generally non-substantive and recommends accepting them with one modification. Staff notes that the removal of the public interest is troubling, but again does not affect the ability of the SGA to verify on the public’s behalf. That interest may not be enunciated, but it still will be pursued. The SGA does not act on Compact compliance out of personal desire or whim, but rather through Public mandates. However, to make it clear that Staff would be acting under the Compact on the public’s behalf, Staff recommends including “on behalf of the public” after “verify.” The balance of the changes are examples of the Tribes and TGAs seeking more deference to their role as the primary regulator. However, the modifications do not change the overall substance and purpose of CGCC-8

d. Section (a)(3)

(34) For purposes of this regulation ~~As referenced in Section 2.18 of the Compact, and in comparable sections of the New or Amended Compacts, the State Gaming Agency includes the California Gambling Control Commission (“CGCC”) and the Department of Justice, Bureau of Gambling Control (“Department”)~~ is designated as the SGA. Only the CGCC shall be permitted to conduct compliance inspections under this regulation until the State designates a different SGA by providing written notice to the Tribes pursuant to section 13.0 of the Compacts. At no time shall more than one State agency serve as the SGA under this regulation

Task Force Draft Changes:

- 1) The Task Force Draft deleted the reference to Compact section 2.18 which defined the SGA as the CGCC and the BGC. The Draft specifically left the CGCC as the only entity defined as the SGA and added a new requirement that only one State agency can serve as the SGA under this regulation.

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications as they benefit the CGCC and help clear up duplication issues. The elimination of the Compact section 2.18 definition for the SGA which includes the BGC does not alter the CGCC’s responsibility under the Compacts, Executive Orders, and legislative enactment to review Compact compliance related to MICS. The language allowing the State to provide notice to the Tribe that a different State entity will conduct compliance inspections gives the State leeway under this regulation should a transfer of resources occur in the future. The reference to Compact section 13.0 merely creates a requirement that this notification must be made via first class mail and is a non-substantive requirement. The requirement that only one SGA will work under the regulation is also a good modification as it eliminates issues of duplication of effort. Finally, this language does not prohibit the BGC from performing other Compact compliance functions unrelated to internal control standards akin to NIGC MICS.

e. Section (a)(4)

(45) Nothing in this regulation shall modify or otherwise affect the rights and obligations of the SGA under the Compacts, including but not limited to, the ability of the [CGCC](#) and the [Department of Justice, Bureau of Gambling Control](#), ~~SGA entities~~ to share documents ~~disclosed~~~~provided~~ pursuant to this regulation, subject to the Compacts' confidentiality provisions.

Task Force Draft Changes:

- 1) The Task Force Draft essentially left this section the same as in previous drafts with the minor modification related to redefining the SGA in section (a)(3) above which now required identification of the CGCC and the BGC.

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications as minor because they do not alter the goal of CGCC-8 or how the SGA fulfills its role.

f. Section (a)(5)

(5) Unless otherwise defined in this regulation, terms used in this regulation shall have the same meanings and definitions as set forth in the Compacts. Nothing in this regulation shall modify or amend the Compacts. To the extent there is any conflict between the provisions of this regulation and the Compacts, the provisions of the Compacts shall control.

Task Force Draft Changes:

- 1) The Task Force Draft added this new section.

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications in part, and remaining neutral on another part. First, Staff agrees with the Task Force Draft that where a provision is left undefined in CGCC-8, the Compact language for that term should control. A good example is the redefinition of SGA which omits the BGC. No other source of definitions would be appropriate.

Second, Staff remains neutral as to the provision discussing modification or amendment of the Compacts. See highlighted sentence, above. Staff does not believe that this regulation in any way violates the Compacts or seeks to amend or modify them. This regulation merely explains the process by which the SGA and the TGA/Tribes can interact for State inspection of internal control standards and Tribal MICS under the Compact. Staff has concerns about this language, but Staff can imagine that similar to other Task Force modifications this merely provides assurances to the Tribes and TGAs. As a result, Staff recommends accepting the reference to terms of the Compact controlling but remains neutral on the balance of this section.

g. Section (b)(1)&(b)(2)

(b) INTERNAL CONTROL STANDARDS.

(1) General Requirements. Pursuant to the Compacts, each ~~Each~~ Tribe shall promulgate rules, regulations, and specifications referred to above as “Tribal MICS” regarding the operation of Class III gaming, ~~in accordance with the Compacts. These Tribal MICS shall operate to regulate Class III Gaming Operations in a manner similar to the Minimum Internal Control Standards (“MICS”) promulgated by the National Indian Gaming Commission (“NIGC”) and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended).~~

(2) Standard of Compliance. The Minimum Internal Control Standards (“MICS”) promulgated by the National Indian Gaming Commission (“NIGC”) and set forth at 25 CFR Part 542 (as in effect on October 19, 2006 or as it may be amended), if adopted by a Tribe as its Tribal MICS, ~~meet the Compacts’ Tribal MICS~~ satisfy the requirements set forth in section (b)(1) above.

Task Force Draft Changes:

- 1) The Task Force Draft deleted a portion of (b)(1) somewhat similar to (b)(2). The definition of Tribal MICS under the section (a) Purpose was also re-referenced here.

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications as they serve to shorten the regulation overall, reduce definition and purpose confusion, and make CGCC-8 more internally consistent. Staff is concerned about the deletion of the Tribal MICS regulating the Gaming Operation similar to the “MICS” in (b)(1), but this intent is made clear by the next section, “Standard of Compliance” in (b)(2).

h. Section (b)(3)

(3) Material Compliance.

(A) Tribal MICS that Meet or Exceed MICS. Notwithstanding the fact that a Tribe has not adopted the MICS pursuant to section (b)(2), a Tribe’s Tribal MICS that meet or exceed the standards set forth in the MICS will ~~meet~~ satisfy the requirements of section (b)(1).

(B) Alternative Tribal MICS. A Tribe that has not ~~met~~ satisfied the standards set forth in sections (b)(2) or (b)(3)(A) shall ~~be required to demonstrate to the CGCC that~~ promulgate rules, regulations and specifications as its Tribal MICS that comply with the Compacts’ requirements addressed within this regulation.

Task Force Draft Changes:

- 1) The Task Force Draft made a few minor modifications including changing “meet” to “satisfy.” This was a change that was made throughout CGCC-8.
- 2) The Task Force Draft removed the “required to demonstrate to the CGCC” for the (b)(3)(B) Alternative Tribal MICS section.

CGCC Comment/Response:

- 1) Staff recommends accepting the minor modifications and believes the “met” versus “satisfied” distinctions are not consequential.
- 2) Staff recommends accepting this modification. Staff is concerned, though, regarding the removal of the requirement that a Tribe would be “required to demonstrate” to the CGCC that its Tribal MICS comply with the Compacts, and substitution of a generalized reiteration of (b)(1). The goal of the “Standard of Compliance” was to encourage NIGC MICS adoption towards uniform adoption. However, where a Tribe does not adopt the NIGC MICS they would still be subject to further inspection under section (d) below which Staff will recommend be modified accordingly.

i. Section (c)

(c) INTERNAL CONTROL SYSTEM. Each Tribe shall ensure that its ~~g~~ Gaming ~~o~~ Operation implements and maintains ~~an~~ internal control systems that, at a minimum, ensures compliance with the Tribal MICS that apply to its ~~Class III~~ Gaming Operation.

Task Force Draft Changes:

- 1) The Task Force Draft merely made minor modifications to this section.

CGCC Comment/Response:

- 1) Staff believes these changes were non-substantive and recommends accepting them.

j. Section (d)

(d) ~~CGCC VERIFICATION OF TRIBAL MICS. The CGCC SGA may review verify a Tribe's Tribal MICS to ensure that they are in accordance compliance with sections (b)(2) or (b)(3). CGCC SGA verification may be accomplished by on or off-site inspection of a document that sets forth the Tribal MICS, pursuant to section 7.4 of the Compact, and comparable sections of the New or Amended Compacts, including, if material compliance under section (b)(3) is claimed by a Tribe, the materials specified in section (g) below.~~

Task Force Draft Changes:

- 1) The Task Force Draft made several modifications to this section by removing the reference to SGA verifying a Tribe's Tribal MICS and merely referenced back to (b)(2) or (b)(3) discussed above.
- 2) The Task Force Draft also eliminated the reference to authority to review under Compact section 7.4.
- 3) The Task Force Draft also included a reference "a document that sets forth the Tribal MICS" in lieu of inspection of the Tribal MICS, and deleted the reference to material compliance. It was believed this was duplicative and unnecessary.

CGCC Comment/Response:

- 1) Staff believes the changes merely shorten the (d) section and do not affect the purpose of CGCC-8 or the ability of the SGA to review Compact compliance for Tribal MICS via section (b). Staff recommends accepting the changes.
- 2) Staff recommends accepting the removal of the Compact authority from this section. Staff believes the elimination of the reference to authority is merely an attempt to shorten this section. The section (a) "Background and Purpose" section clearly states the SGA has "rights" under 7.4 (though staff recommends changing to "right" or keeping "authority") to inspect the Gaming Facility. The original version of CGCC-8 cited the Compact authority to make it clear under which Compact provision we were requesting the documents. However, in light of the sections under the (a) Background and Purpose section for SGA authority and the (a)(5) section that the Compacts control if there is conflict, the exclusion of it from this provision does not affect the goal or function of CGCC-8.
- 3) Staff recommends accepting this modification in part and rejecting the other part. Insofar as a tribe has followed the "Standard of Compliance" under section (b)(2) or is following (b)(3)(A) with the adoption of more stringent MICS, the mere inspection of a document that sets forth the Tribal MICS would be sufficient. However, whether a Tribe is following (b)(3)(B) with "Alternative Tribal MICS," with the adopting of Compact compliant Tribal MICS depends not just on the document itself, but the inspection of the

Tribe's Gaming Facility to verify these are appropriate. The previous (b)(3)(B) made clear the Tribe and TGA's obligation to prove to the SGA that these were Compact compliant Tribal MICS. This requirement has been subsequently omitted with Staff's recommend acceptance of the change above. However, in the present section, "inspection of a document that sets forth" which allows the SGA to verify the "Tribal MICS" would not be sufficient to alleviate the gap this deletion creates. Staff recommends the alteration of the final sentence to read:

~~EGGC~~SGA verification may be accomplished by on or off-site inspection of a document that sets forth the Tribal MICS for Tribes that follow (b)(2) and (b)(3)(A), but for Tribes that have "Alternative Tribal MICS" under (b)(3)(B), further verification is authorized including, but not limited to, ~~pursuant to section 7.4 of the Compact, and comparable sections of the New or Amended Compacts, including, if material compliance under section (b)(3) is claimed by a Tribe,~~ the materials specified in section (g) below."

k. Section (e)

(e) NET WIN. The Compacts' definition of "net win" shall apply to matters covered by this regulation, rather than the definition of "net win" provided at 25 CFR 542.19(d).

CGCC Comment/Response:

- 1) No changes were made to this section.

l. Section (f)

(f) CGCC REVIEW OF AGREED-UPON-PROCEDURES REPORT. ~~The CGCC shall have the right to review-~~ A Tribe may elect to provide the SGA any Agreed-Upon-Procedures report prepared in accordance with 25 CFR 542.3(f), and where applicable, all information supplied by the Tribe and the TGA- for the purpose of allowing the SGA to perform a risk assessment to determine priorities in its compliance inspections under this regulation.

Task Force Draft Changes:

- 1) The Task Force Draft added a section at the end stating that the SGA would use this document to perform a risk assessment.
- 2) The Task Force Draft altered this section from requiring SGA access to the AUP to allowing the Tribe to "elect to provide the SGA" with the AUP.

CGCC Comment/Response:

- 1) Staff recommends accepting the language added to the end of this section that is related to SGA performing a risk assessment in determining priorities of inspections.
- 2) Commission Staff recommends rejecting the permissive language. There are several key issues that are involved in this decision.

First, Staff at understands that the AUP as listed is a construction of 25 CFR 542.3(f), an NIGC MICS regulation. If this were the sole basis as to why the SGA wanted the document, then there would a tenuous basis for providing it. However, Staff believes that if a TGA adopts 25 CFR 542.3(f), as part of the NIGC MICS, as its regulation per its authority under the Compact as discussed under section (a)(1), and clearly delineated under Compact section 8.1 and the following subsections, the AUP is a document that the Gaming Operation must have created by a CPA. The fact that it is also in the NIGC MICS is irrelevant as post-*CRIT*, the NIGC's authority to mandate any Tribal activity even with a Tribe's voluntary consent in regards to Class III Gaming Activities is not clear. If a Tribe or TGA has adopted the NIGC MICS as its Tribal MICS, it has voluntarily adopted this requirement on its own Gaming Operation.

Second, to the extent this comment focuses on the AUP being the property of the TGA or the Tribe, but not the Gaming Operation, and not subject to SGA inspection under Compact section 7.4, Staff disagrees for two reasons: 1) the plain language of 25 CFR 542.3(f) indicates that the CPA who performs the AUP of the Gaming Operation must give the report of the AUP to the Tribe, TGA, and Gaming Operation management¹⁵ which means it would be a Gaming Operation record subject to SGA access and inspection; and 2) the SGA would also have access to this document anyway under Compact section 7.4.4.

Third, it is possible for a Tribe or TGA to require an AUP of the Gaming Operation based entirely on its own Tribal MICS separate and apart from the NIGC MICS. In such an event, the TGA would be required under Compact section 8.1 to ensure the AUP was done. If the Gaming Operation does not follow the TGA regulation mandating the AUP, it would be an example of a specific Compact compliance exception. If the Tribal MICS mandated the report be provided to the Gaming Operation, just as 25 CFR 542.3(f) above, it would be part of the Gaming Operation's records and available to the SGA. If the report were merely directed to the Tribe and/or TGA, the failure of Gaming Operation to have the report created would have to be discussed and resolved with the Gaming Operation and again the SGA would have the right to access that record under Compact section 7.4. Finally, even if neither of these events transpires, the SGA would still have access under Compact section 7.4.4 as reasonably necessary to ensure Compact Compliance.

Fourth, Gaming Operations routinely perform AUPs at their own behest to ensure compliance with applicable regulations even though they are not required to do so under any particular regulation. These would also be available to the SGA under Compact section 7.4 through 7.4.4 of the Compact.

Finally, Staff believes that this section being changed to "permissive" is to the Tribe and TGA's detriment. This allows a risk assessment of the Gaming Operation based on the AUP, in lieu of an SGA inspection under section (g) below in complete or a shortened form.

Staff recommends the following language in lieu of the permissive "may" language, and clear explanation of the above discussion:

¹⁵ 25 CFR 542.3(f)(1) states in pertinent part:

"An independent certified public accountant (CPA) shall be engaged to perform 'Agreed-Upon Procedures' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a Tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or Tribally approved variance that has received Commission concurrence. The 'Agreed-Upon Procedures' may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management." (Emphasis Added.)

While the term "management" is not specifically defined as the Gaming Operation, it is nonetheless clear from the context of the regulation and from other sections in 25 CFR 542 that term includes/means the Gaming Operation.

~~The CGCC shall have the right to review~~ A Tribe shall provide the SGA any Agreed-Upon-Procedures report prepared in accordance with the Tribal MICS, including those prepared in accordance with 25 CFR 542.3(f) where the NIGC MICS are adopted, and any Agreed-Upon Procedures report performed at the behest of the Gaming Operation, and where applicable, all information supplied by the Tribe, ~~and~~ the TGA ~~and the Gaming Operation,~~ for the purpose of allowing the SGA to perform a risk assessment to determine priorities in its compliance inspections under this regulation.

m. Section (g)(1)

(g) COMPLIANCE ~~REVIEW~~ INSPECTION PROTOCOLS.

(1) Preface. Except where ~~a comprehensive on-site compliance review has been conducted by the NIGC as provided for in section (o), the CGCC~~ section (m) “NIGC ALTERNATIVE COMPLIANCE” applies, the SGA shall follow the protocols in this section (g) with respect to compliance ~~reviews~~ inspections conducted by the ~~State.~~ SGA pursuant to this regulation. In conducting such ~~reviews-inspections~~, the Tribe and the ~~State~~ SGA acknowledge that the Tribe’s role under the Compacts is to serve as the primary regulator of its Gaming ~~Activities~~ Operation and the ~~State’s~~ SGA’s role is to assure that the Tribe’s regulatory obligations are being ~~met~~ satisfied based on (b)(2), (b)(3)(A) or (b)(3)(B) above. ~~These protocols are designed to provide a means by which such assurances can be provided.~~

Task Force Draft Changes:

- 1) The Task Force Draft reworded the reference to the NIGC alternative compliance section, including removing the “comprehensive on site compliance review” requirement and instead merely providing the title.
- 2) The Task Force Draft changed the term “review” to “inspection.” This change was throughout the Draft.
- 3) Task Force Draft replaced “State” with the defined term SGA. The Draft also replaced Gaming Activities with “Operation.” The Draft again reiterated the “met” versus “satisfied” change discussed above.
- 4) The Task Force Draft eliminated the final sentence.

CGCC Comment/Response:

- 1) Staff recommends accepting this change to the alternative Compliance section including the omission of “comprehensive on site compliance review” as a minor revision with no alteration of CGCC-8 as long the NIGC alternative compliance section is modified to again require comprehensive reviews below.
- 2) Staff does not believe that “inspection” is substantially different then “review”; they are synonyms. Furthermore, the Compacts do in fact reference SGA “inspections” and not reviews. Staff recommends accepting this change globally.
- 3) Staff recommends accepting these alterations. Staff believes that removing references to the State and replacing them with SGA clears up ambiguity about operations under this regulation. Staff, however, is somewhat concerned with the “Activities” to “Operation” transition. The terms “Activities,” “Operation,” and “Facility” are used almost interchangeably in the Compacts at various places. Staff believes that to the extent one

term is placed in lieu of another; it may be perceived that there would be a shrinking of SGA inspection authority. However, Staff does not believe that is the case in this particular instance, as it is describing the *TGA's responsibility*, Staff would accept this revision.

- 4) Commission Staff has no objection to removing this last sentence and recommends accepting it. The goal of including this language was merely to provide qualifying language so that both parties could feel comfortable with CGCC-8. However, Staff has no objection to streamlining the regulation and leaving the intent of the sentence to be implied by the regulation as a whole.

n. Section (g)(2)

(2) General Approach. The ~~CGCC~~ compliance ~~review~~ inspection process ~~is shall be~~ accomplished by verifying ~~(i) determining~~ that the Tribe has adopted Tribal MICS as ~~appropriate rules, regulations and procedures in accordance with the Compacts and~~ set forth ~~generally in~~ section (b) above, and verifying that the TGA is ensuring the enforcement of the Tribal MICS. ~~(ii) to review the methods and means by which the Tribe determines that its regulatory efforts are being properly enforced, including whether any alternative Tribal MICS are adequate as specified under subsection (c).~~

Task Force Draft Changes:

- 1) The Task Force Draft eliminated “CGCC” and the section for “appropriate rules, regulations, and procedures in accordance with the Compacts” covered by the definition of Tribal MICS above. It also replaced “determining” with “verifying.”
- 2) The Task Force Draft eliminated the (i) and (ii) sections subsections.
- 3) The Task Force Draft also eliminated the “Alternative Tribal MICS” reference to section (c) above.

CGCC Comment/Response:

- 1) Staff believes the modification to include “verifying” and “Tribal MICS” in lieu of other terminology does shorten this section and should be accepted. The revisions also make it clear what precisely the Tribe must adopt, i.e., Tribal MICS instead of some separate enactment and new rules, regulations, and procedures. It does not change the function of this section.
- 2) Staff believes that this section makes only minor changes to CGCC-8 and recommends accepting them. In general, referring to the TGA is better than referring to the Tribe, as the TGA is tasked with regulatory and enforcement authority under the Compacts. In addition, the language about ensuring enforcement of the Tribal MICS is better as it fits more with the balance of CGCC-8.
- 3) Staff believes the elimination of the reference to “Alternative Tribal MICS” reference to section (c) is acceptable as long as the revisions recommend to be accepted in section (c) are accepted.

o. Section (g)(3)

(3) Initiation of State Compliance Process. The ~~CGCC will~~ SGA shall notify the Tribal Chairperson and the TGA ~~Chairperson or Executive Director~~ in writing at least 30 days in advance of the scheduled compliance ~~review~~ inspection. This letter ~~will~~ shall include a request for documents to be made available ~~for CGCC staff to the SGA~~ during the on-site compliance ~~review as well as~~ inspection and may include a request for a dedicated work area. At the start of the compliance ~~review~~ inspection, an ~~E~~ entrance ~~C~~ conference ~~will~~ shall be held to discuss with Tribal and TGA representatives the scope of the compliance ~~review~~ inspection, timelines and schedule.

Task Force Draft Changes:

- 1) The Task Force Draft again replaced “CGCC” with “SGA,” and eliminated the specific titles of the TGA representatives.
- 2) The Task Force Draft also changed “will” to “shall.” It reiterated the “review” to “inspection” change and allowed a permissive request for space instead of mandating the SGA request a space.

CGCC Comment/Response:

- 1) Staff believes these modifications should be accepted as the elimination of TGA titles clears up any ambiguity inadvertently caused by the usage of specific terminology.
- 2) Staff believes these are minor modifications and should be accepted. The change to “shall” is not a major change and allowing the SGA to include a request for space in lieu of a requirement is preferable to requiring a request.

p. Section (g)(4)

(4) On-Site ~~Review~~ Inspection Process. The SGA shall consult with the TGA regarding the methods and means by which the Tribe determines that its regulatory efforts are being properly enforced. ~~The compliance review shall take place~~ The SGA may conduct an on-site compliance inspection at the Tribe's gaming facility- that the SGA reasonably determines is necessary to ensure compliance with the Compacts. ~~The compliance review shall~~ inspection may encompass the areas of accounting, cage, complimentary services, credit, drop and count, gaming machines, information technology, internal audit, surveillance and table games. ~~Should CGCC staff determine that one or more of these areas need not be reviewed, it shall notify the Tribe and TGA in writing.~~ ~~The review process will include interviews with TGA and Tribal casino staff, observation of daily operations and document review related to tribal casino daily operations.~~ ~~CGCC staff will not be denied access to papers, books, records and equipment deemed necessary to ensure compliance, and shall~~ be limited to, the subject areas listed in the Tribal MICS. ~~The CGCC-~~ SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. At the conclusion of the on-site compliance ~~Review~~ inspection, an ~~Exit C~~ onference will be ~~scheduled~~ held to provide the Tribal and TGA representatives an oral summary of SGA findings ~~of from~~ the compliance ~~review~~ inspection.

Task Force Draft Changes:

- 1) The Task Force Draft made substantial modifications to this section including several minor revisions which were also made in previous and subsequent sections (“review” to “inspection,” “CGCC” to “SGA”, etc.).
- 2) The Task Force Draft placed a phrase requiring SGA “consultation” with the TGA over the “method and means” the Tribe determines its regulatory efforts are being properly enforced.
- 3) The Task Force Draft eliminated the inspection areas of “accounting, cage, complimentary services, credit, drop and count, gaming machines, information technology, internal audit, surveillance and table games.”
- 4) The Task Force Draft also eliminated parts of the review/inspection process including interviews with staff, observations of the daily operations, and document review as well as not denying access to the CGCC. It was replaced with simply inspecting the subject areas listed in Tribal MICS.
- 5) The Task Force Draft also added a requirement that the inspection would be limited to areas listed in the “Tribal MICS.”
- 6) The Task Force Draft added a section that the SGA may conduct an onsite compliance inspection at the Tribe’s Gaming Facility when the SGA “reasonably determines” it is necessary.

- 7) The Task Force Draft also mandated that the exit conference be held at the conclusion of the onsite inspection instead of scheduled.

CGCC Comment/Response:

- 1) Staff believes these changes should be accepted as they are minor revisions.
- 2) Staff recommends rejecting this change as written. The actual phrase is not problematic; Staff believes “consulting” with the TGA and Tribes is important. Staff would not be able to conduct its inspections/reviews/audits without this consultation. However, the placement of the phrase in advance of the onsite nature of the inspections is troubling. To the extent this phrase is meant to place a precondition on SGA access, Staff recommends rejecting this change.

Staff recommends moving this requirement to the entrance conference required under section (g)(3). Staff believes, in the alternative, however, that this phrase could be moved to immediately following the second sentence.

- 3) Staff recommends rejecting these deletions. Staff believes this section of (g) is the critical area needed to explain SGA policy and procedure on Compact inspections. The Staff when conducting inspections will review these ten areas as it is industry practice to divide the operation up this way. Indeed, most Tribes have already adopted NIGC MICS which include these ten areas. Staff understands that the Compacts do not specifically state these 10 areas, though they are covered. However, CGCC-8 is a regulation explaining what the SGA will do during its compliance inspection process. Taking these 10 areas out of the regulation does a disservice to the TGA, Tribe, and the SGA. Moreover, this section also allowed the SGA to not review one of these areas if it provided notice to the TGA.

As a compromise alternative, Staff recommends adding the phrase after the ten areas are listed: “which are widely recognized under industry practice as critical elements of the Gaming Operation.” This language mimics language under the Compact.

- 4) Staff recommends rejecting these deletions. Staff believes that the elimination of these inspection options, including interviews, is a significant and undesirable change to CGCC-8 similar to the removal of the 10 areas above. SGA interviews reflect the desire to foster “consultation” on the grounds communication is important. Furthermore, observations and document review are specifically delineated as part of SGA inspection authority directly out of the Compacts. Ultimately, one of the goals of CGCC-8 is transparency and it allows the SGA and the Tribe/TGA to feel comfortable with the process. These documents and inspection options are important to the section (g) process. Finally, not allowing SGA access to view daily operations and documents would be a violation of the Compact and require a Compact Amendment.
- 5) Staff believes this alteration should be rejected or modified as follows. Limiting the inspection areas to “Tribal MICS” precludes access to areas of the Gaming Operation which the Tribe has not properly covered. If a tribe follows the “Standard of Compliance” under sections (b)(2) or (b)(2)(A), then limiting the review to the Tribal

MICS would be sufficient to cover the industry standard ten areas delineated above. However, where a Tribe falls under section (b)(2)(B), this limitation would be insufficient as those Tribal MICS could be incomplete, inadequate and not Compact compliant, and under this language the SGA would not be able to inspect the omitted areas.

Staff recommends modifying the included language to state “the subject areas that *must be covered* in the Tribal MICS.” This would allow the SGA to inspect the Compact areas of the Gaming Operation even when they were improperly omitted from the “Tribal MICS.”

- 6) Staff recommends accepting this language. The SGA could only undertake inspections were it believed them reasonable anyway as it would only inspect where there was some need. The SGA does not function on whim. Allowing the section to be worded this way also places the burden on the Tribe and TGA to show that the SGA was not reasonable, which is a difficult burden.
- 7) Staff recommends accepting this alteration as modified below. To the extent there is a distinction between having an exit conference scheduled and then held, versus simply holding one; Staff believes the former is preferable. This allows the SGA to analyze their “findings” and then report on them. Staff recommends merely stating “scheduled” to allow for the exit conference to be conducted at a later date.

q. Section (h)

(h) CGCC DRAFT COMPLIANCE INSPECTION REPORT.

(1) ~~If an on-site compliance review is conducted, CGCC staff~~ No later than 60 days following the SGA's completion of a section (g) on-site compliance inspection, or such other time period as is mutually agreeable, the SGA shall provide deliver a draft ~~C~~compliance ~~Review~~ inspection Rreport (“Draft Report”) to the Tribe and to the TGA, including ~~findings of deficiencies or~~ specific compliance exceptions, if any.

(2) Following receipt of the Draft Report, ~~t~~The Tribe shall have 60 days, or such other time period as is mutually agreeable, to respond to the ~~CGCC d~~Draft Report. If the Tribe accepts the ~~d~~Draft Report, ~~CGCC staff~~the SGA shall finalize the ~~d~~Draft Report and, within 30 days of acceptance, ~~submit the~~deliver a final Compliance ~~Review~~Inspection Report (“Final Report”) to the Tribe and the TGA. If no response to the ~~d~~Draft Report is received from the Tribe by the 60th day, or ~~within~~ such other time ~~period~~ as ~~may be~~is mutually agreed ~~upon~~able, the ~~CGCC staff~~SGA shall consider the draft Report final. Within 20 days of the date on which the ~~d~~Draft Report is considered final, ~~CGCC~~the SGA ~~staff~~ shall submit the ~~f~~Final Report to the Tribe and the TGA.

(3) ~~The CGCC staff and the Tribe shall make good faith efforts to resolve any differences~~ Wwithin 30 days of receipt of the Tribes’ response to the Draft Report, or such other time period as ~~may be~~is mutually ~~agreed upon~~agreeable, the SGA and the Tribe shall make good faith efforts to resolve any differences concerning the content of the Draft Report. If differences cannot be resolved within 30 days of receipt of the Tribal response or within such other time period as may be mutually agreed upon, the CGCC staff will finalize the draft Report and deliver it as a final Report to the Tribe.

(4) If differences remain after the SGA and the Tribe have made good faith efforts to resolve them, at the option of the Tribe, the Tribe's objections to the Draft Report may be referred to the appointed/elected officials of the SGA for further consideration as provided in section (1)(2) below.

(5) The SGA shall not issue a Final Report until:

(A) The Tribe accepts the Draft Report;

(B) A dispute remains and the Tribe elects not to refer any objections to the appointed/elected officials of the SGA for further consideration; or

(C) The parties resolve, or are unable to resolve, their differences with respect to the Draft Report through referral to the appointed/elected officials of the SGA for further consideration.

(6) Any written response from the Tribe with respect to the Draft Report shall be included in and made part of the Final Report.

~~(i) CGCC FINAL REPORT.~~

~~(1) If the Tribe accepts the final Report without objection, the Tribe shall notify CGCC staff within 45 days of receipt.~~

~~(2) In the event that the Tribe objects to the final Report or any findings of deficiencies or specific compliance exceptions, CGCC staff and the Tribe shall, within 45 days of the receipt of the objection or such other time period as is mutually agreeable, make good faith efforts to address and resolve the differences contained in the final Report.~~

~~(3) In the event the Tribe does not respond within 45 days of receipt of the final Report, CGCC staff and the Tribe shall, within 45 days or such other time period as is mutually agreeable, make good faith efforts to address and resolve their differences contained in the final Report, if any.~~

~~(4) If differences remain after the CGCC staff and the Tribe have made good faith efforts to resolve them under sections (2) and (3) above, at the option of the Tribe, the final Report and the Tribe's explanation of the matter may be referred for consideration by the full CGCC. In the event that the Tribe opts to pursue review by the full CGCC, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented shall be subject to the confidentiality provisions of the Compact. If, after consideration and decision by the full CGCC, where applicable, a dispute remains, it may be resolved pursuant to the dispute resolution process outlined in Compact Section 9.0 and comparable sections of the New or Amended Compacts. If the Tribe does not opt for review by the full CGCC, the dispute may be resolved pursuant to the dispute resolution process outlined in Compact Section 9.0 and comparable sections of the New or Amended Compacts.~~

Task Force Draft Changes:

- 1) The Task Force Draft made substantial changes to the Draft Report and Final Report sections. There were also several minor changes such as changing “provide” and “submit” to “deliver,” as well as again changing “CGCC” to “SGA.”
- 2) The Task Force Draft deleted the entire Final Report section and moved pertinent requirements into one process related to “Compliance Inspection Reports.” The general attitude was this was necessary to shorten CGCC-8 and clean up the process. The BGC also commented on the length of the process, intimating it was too long.
- 3) The Task Force Draft removed the SGA staff from “finalizing” the report.
- 4) The Task Force Draft specifically delineated who would review the Report after they interacted with Staff on the review. The Draft stated at the option of the Tribe, they could request a review by the “Appointed/Elected Official.” This apparently means the

Commissioners or the Attorney General would control the appeal depending on who the State designates to perform these duties under their section (a)(3) above.

- 5) The Task Force Draft delineated when the SGA could issue a Final Report including three possibilities:
 - (a) If the Tribe accepts the Report;
 - (b) There is a dispute that remains after good faith discussions with staff and the Tribe does not refer the Report to “Appointed/Elected Official”; and
 - (c) There is no resolution after referral to the “Appointed/Elected Official.”
- 6) The Task Force Draft included any written response from the Tribe in the Final Report.
- 7) The Task Force Draft eliminated the final section of the Final Report review and covered it in the dispute resolution provision covered under section (I).

CGCC Comment/Response:

- 1) Staff believes that many of these changes are an improvement over the previous versions of CGCC-8 and should be accepted with one modification. The original separation of a Draft Report and Final Report was an attempt to provide further safeguards and firewalls for the Tribe in the review process. However, the elimination of the extended Draft and Final Report back and forth discussion is preferable and a good revision of CGCC-8.

Finally, section (h)(2) discusses a process where the Tribe can either agree or disagree with the Draft report. Staff recommends this section be modified to two bullet pointed sections, A) and B) for the sake of clarity.

- 2) Staff believes the new “Compliance Inspection Report” section is an improvement over the previous version and does make the process clearer and shorter and should be accepted.
- 3) Staff believes that the “Draft” report and “Final” report distinctions are semantic and non-substantive. Staff understands the process involved in an NIGC audit report with the extensive process of “finalizing” a report. However, the Compact process is different in that the SGA cannot mandate compliance in the same way the NIGC can. The idea in the original CGCC-8 draft was that the Commission Staff would work on the Draft report, and then forward a Final report to the Commission only after it was unable to work with the Tribe or the Tribe agreed to the report. Staff made it clear in the recommended changes that it would have to forward the draft report to the Commission for approval and discussion before sending it to the Governor’s office as a final report. On this point, it must be clear that the term “draft” does not mean incomplete. It would be a finalized document, but would lack Commission approval and the Tribe’s comments, if any. Staff recommends accepting these alterations or in the alternative, eliminating the “draft” language altogether from this section.

In addition, it should be noted that the current modifications do not preclude Staff working informally with the TGA to resolve issues before they must be addressed in a Draft Report.

- 4) Staff does not believe this section as to “appointed/elected official” highlighted above is viable and recommends rejecting this in part. There are two constitutional officers at play; the Governor and the Attorney General. The former appoints the Commission while the later oversees the Department of Justice including the BGC. The Compacts are the province of the Governor’s office, not the Attorney General. Staff understands that the SGA does include the Bureau of Gambling Control and that there are areas under the Compact that the Bureau takes the lead on. However, the Governor through executive order, and the Legislature through the California budget has vested “MICS” compliance activities with the Commission. The Attorney General therefore has no appeal or oversight authority and Staff does not believe a review by him/her is tenable. Therefore, Staff recommends the removal of the “elected” official provision.

As an alternative, Staff recommends making either specific references to “the full Commission,” or stating “appointed official, including the full Commission, or whoever the State designates as under section (a)(5).”

- 5) Staff does not have a problem with these options save for the “appointed/elected official” issues discussed above. Staff recommends accepting these modifications and the inclusion of language in a fourth section for Commission Staff to refer it to the Commission. The language of the section does not currently expressly provide for it. Staff recommends a corresponding modification under (h)(4) allowing SGA staff to refer with no obligation for participation on the Tribe unless they so desire. The new fourth section, section (D), could read as follows:

(D) SGA staff has referred this matter to the appointed officials of the SGA for further consideration, with the Tribe’s participation only if the Tribe wishes, and a dispute remains.

- 6) Staff agrees that the Tribe’s response should be included in the Final Report and recommends accepting these changes.
- 7) Staff believes the removal of the separate dispute resolution provision and a simple referral to the broader section is ideal and recommends accepting these changes. This is a modification throughout CGGC-8 which shortens the regulation and makes it clearer.

r. Section (i)

~~(i)~~ TRIBAL ACTION PLAN.

(1) If the ~~f~~Final Report requests further action on the part of the Tribe, the Tribe will provide a written ~~T~~ribal ~~A~~ction ~~P~~lan addressing any ~~deficiencies or~~ specific compliance exceptions (“Tribal Action Plan”) within 45 days of receipt of the ~~f~~Final Report or such other time period as is mutually agreeable. Recognizing that the Tribe is the primary regulator of its gaming operation, the Tribe will within a three-month period after submitting the Tribal Action Plan, develop and implement remedial procedures identified in the Tribal Action Plan. The CGCC staff will notify the Tribe if it agrees with the Tribal Action Plan within 30 days of receipt. If the ~~CGCC staff~~SGA does not agree with the Tribal Action Plan, the Tribe and ~~CGCC staff~~SGA will make good faith efforts to address and resolve the ~~deficiencies or~~ specific compliance exceptions identified.

(2) In the event that the ~~CGCC staff~~SGA has requested further action in the ~~f~~Final Report and the Tribe has not submitted a Tribal Action Plan, ~~CGCC staff~~the SGA and the Tribe shall, within ~~45~~60 days of the Tribe’s receipt of the ~~f~~Final Report or such other time period as is mutually agreeable, make good faith efforts to address and resolve the ~~deficiencies or~~ specific compliance exceptions contained in the ~~f~~Final Report and to create a mutually agreeable Tribal Action Plan.

~~(3) — In the event that the Tribe objects to the request for further action in the final Report, CGCC staff and the Tribe shall, within 45 days of the receipt of objection or such other time period as is mutually agreeable, make good faith efforts to address and resolve their differences on the deficiencies or specific compliance exceptions contained in the final Report.~~

~~(4)~~(3) If differences remain after the ~~CGCC staff~~SGA and the Tribe have made good faith efforts to resolve them under sections (1), and (2), ~~and (3)~~ above, at the option of the Tribe, the matter may be referred to the appointed/elected officials of the SGA for further consideration as provided in section (1)(2) below. ~~for consideration by the full CGCC. In the event that the Tribe opts to pursue review by the full CGCC, the Tribe may further request that the matter be set for closed session consideration at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented shall be subject to the confidentiality provisions of the Compact. If, after consideration and decision by the full CGCC, where applicable, a dispute remains, the dispute may be resolved pursuant to the dispute resolution process outlined in Compact section 9.0 and comparable sections of the New or Amended Compacts. If the Tribe does not opt for review by the full CGCC, the dispute may be resolved pursuant to the dispute resolution process outlined in Compact Section 9.0 and comparable sections of the New or Amended Compacts.~~

Task Force Draft Changes:

- 1) The Task Force Draft continued with revisions that took out CGCC staff and kept it as SGA amongst other minor revisions.
- 2) The Task Force Draft eliminated the term “deficiencies” leaving it as specific compliance exceptions.
- 3) The Task Force Draft deleted the third option, section (i)(3), for good faith discussions where the Tribe objects to the request for further action.
- 4) The Task Force Draft deleted the dispute resolution provision and simply referred to the catch-all dispute resolution provision contained in (1)(2) below. This is similar to what was done above in regards to the “inspection reports.”
- 5) The Task Force Draft again utilized the “appointed/elected official” language.

CGCC Comment/Response:

- 1) Staff recommends accepting these minor changes.
- 2) Staff recommends accepting these changes. Staff agrees that the term “deficiencies” was unnecessary and potentially inflammatory. The “specific compliance exception” term is sufficient to communicate potential issues between the parties.
- 3) Staff recommends accepting these changes. This provision merely provided an avenue where if the Tribe had objections to the request for further action they could discuss them with Staff. However, removing it does not alter the process of preparing and reviewing the Tribal Action Plan or either party’s ability to engage in good faith discussions about problems.
- 4) Staff recommends accepting the removal of the dispute resolution provision in this paragraph and its replacement with the general reference to the (1)(2) paragraph mentioned below, similar to the inspection reports referenced above.
- 5) Staff recommends rejecting this language in part. Staff reiterates that “elected” official language is not a viable option as it is a violation of the exclusive executive authority of the Governor under the Compacts and for the previous reasons listed above. Staff reiterates its alternative suggestions discussed above.

s. Section (j)

~~(k)~~(j) CONFIDENTIALITY. Pursuant to Compact section 7.4.3(b), ~~or comparable sections of the New or Amended of the~~ Compacts, the ~~CGCC~~SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation, ~~including but not limited to Tribal MICS, third party audits, Tribal audits, and state compliance reviews,~~ and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

Task Force Draft Changes:

- 1) The Task Force draft continued with similar minor revisions addressed above. It also added the terms “documents” and “information” in two places to provide further uniformity.
- 2) The Task Force draft eliminated the specific references to types of documents and information including the “Tribal MICS, third party audits, Tribal audits, and the state compliance reviews.”

CGCC Comment/Response:

- 1) Staff again recommends accepting these minor changes and the inclusion of the terms “documents” and “information.” This is not a substantive change.
- 2) Staff recommends accepting the elimination of the specific types of “documents and information” to be kept confidential. The Commission has always maintained Tribal documents and information as confidential pursuant to the Compacts. The elimination of specific references will not change that. The inclusion of these references in this section was meant to provide assurances that these documents would be kept confidential, not to waive confidentiality of non-delineated documents.

t. Former Section (l)

~~(l) — VARIANCE TO INTERNAL CONTROL STANDARDS:~~

~~(1) — A TGA may approve a variance from the control standards set out at 25 CFR Part 542, provided that the TGA determines that the variance will achieve a level of control sufficient to accomplish the purpose of the standard it is to replace. The variance shall take effect on the date of approval by the TGA or such later date as may be specified by the TGA.~~

~~(2) — The TGA shall, within 30 days of approval, provide to the CGCC staff a copy or a detailed description of the variance, the rationale for the variance, and evidence of approval by the TGA. The CGCC staff shall review the variance approval within 60 days of its receipt by the CGCC or such other time period as is mutually agreeable. The CGCC staff shall bring any concerns to the attention of the TGA within 30 days or such other time period as is mutually agreeable. If differences remain after the CGCC staff and the TGA have made good faith efforts to resolve them, the dispute may, at the option of the Tribe, be referred for consideration by the full CGCC. In the event that the Tribe opts to pursue review by the full CGCC, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented shall be subject to the confidentiality provisions of the Compact. If, after consideration and decision by the full CGCC, where applicable, a dispute remains, the dispute may be resolved pursuant to the dispute resolution process outlined in Compact Section 9.0 and comparable sections of the New or Amended Compacts. If the Tribe does not opt for review by the full CGCC, the dispute may be resolved pursuant to the dispute resolution process outlined in Compact Section 9.0 and comparable sections of the New or Amended Compacts.~~

~~(3) — The TGA shall not be required to submit to the CGCC staff pursuant to this subsection (l) any variance that was submitted to the NIGC prior to October 19, 2006, and considered “concurring with” under the terms of 25 CFR 542.18.~~

Task Force Draft Changes:

- 1) The Task Force draft eliminated the entirety of the previous (l) variance section.

CGCC Comment/Response:

- 1) Staff recommends accepting the elimination of the (l) variance section. Staff believes it was a relic of the October 1, 2008 adopted version and earlier versions of CGCC-8. This section in essence is covered by sections (b)(2) “Standard of Compliance” and (b)(3) “Material Compliance.” Where a Tribe has not adopted the entirety of NIGC MICS, has modified them in some fashion to suit their Gaming Operation, or has adopted more stringent versions of them, they fall in the “Material Compliance” section which may or may not be Compact compliant. Essentially, this section duplicates that process.

Eliminating it does not alter the policies and practices under CGCC-8 or what will take place in the inspection process.

u. Section (k) and Former Section (m)

~~(m) — UPDATING INTERNAL CONTROLS AND THIS REGULATION.~~

~~(1) — Nothing in this regulation shall be construed to preclude individual Tribes and the CGCC from meeting, from time to time, to discuss Tribal MICS and MICS compliance matters in light of changing technology or industry best practices.~~

~~(2) — In addition, the Tribal State Regulatory Association may meet from time to time, but not less often than once every two years, to discuss possible modifications of this regulation in light of changing technology or industry best practices.~~

(k) PERIODIC REVIEW REGARDING THIS REGULATION.

(1) Nothing in this regulation shall be construed to preclude individual Tribes and the SGA from meeting, from time-to-time, to discuss Tribal MICS and compliance matters.

(2) The Association, as defined in section 2.2 of the Compacts and commonly known as the Tribal-State Regulatory Association, shall meet from time-to-time upon the request of any delegate to discuss possible modifications of the regulation.

Task Force Draft Changes:

- 1) The Task Force Draft altered the title and the objective somewhat of subsection (m) “Updating Internal Controls.”

CGCC Comment/Response:

- 1) Staff recommends accepting these modifications. Staff reiterates this section was never intended to mandate any Tribe to participate in a regulatory process or to force upon Tribe’s the requirement to meet over modifications of CGCC-8. Rather the intent was to encourage discussion and dialog on CGCC-8 and compliance matters generally in order to keep both sides, the Tribe and TGA, as well as the SGA up to speed. In addition, regulations do from time to time need to be amended in light of changing industry practice and standards. The gaming industry is rapidly changing all the time. This regulation was meant to give the Tribes the assurance that the SGA and CGCC-8 would attempt to be responsive to these changes. The new revisions continue in that spirit.

v. Section (l)

~~(n)~~(l) DISPUTES.

(1) If a dispute ~~not previously addressed by this regulation~~ arises between ~~CGCC staff~~ SGA and a Tribe involving the application or interpretation of this regulation, the parties shall make good faith efforts to resolve their differences.

~~(2) If these good faith discussions do not resolve the matter, then the Tribe may request that the matter be considered by the full CGCC in closed session pursuant to Government Code section 11126.4(a) for the purposes of reaching settlement of the disputed issue. The matter shall not be considered as a matter for public discussion at a CGCC hearing subject to Government Code section 11126.4(b). If the matter cannot be resolved in such instance, either party shall be entitled to invoke the dispute resolution process outlined in Compact section 9.0 and comparable sections of the New or Amended Compacts. If these good faith discussions do not resolve the matter, at the option of the Tribe, the matter may be referred to the~~ appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts.

(3) If, after further consideration by the appointed/elected officials of the SGA, a dispute remains, it may be referred for resolution pursuant to the dispute resolution process outlined in Compact section 9.0. If the Tribe does not opt for further consideration by the appointed/elected officials of the SGA, the dispute may be referred for resolution pursuant to the dispute resolution process outline in Compact section 9.0.

Task Force Draft Changes:

- 1) The Task Force Draft altered this dispute resolution provision to make it the catchall dispute provision referenced in foregoing sections. It also made similar minor changes, including changing “CGCC” to “SGA.”
- 2) The Task Force Draft allowed for referral to the SGA again at the option of the Tribe. This again also included the appointed/elected official language. The regulation revision also eliminated the specific references to the confidential section numbers and merely left a general reference to Government Code 11126.4 which governs closed sessions. It reiterated the requirement of confidentiality.
- 3) The Task Force Draft also reworded the sections related to dispute resolution processes under section 9.0

CGCC Comment/Response:

- 1) Staff recommends accepting the catchall dispute resolution concept in lieu of reiterating this language in multiple prior sections. It shortens CGCC-8 and makes it clearer throughout. These processes were previously identical or substantially similar.
- 2) Staff recommends accepting some of these changes with modifications and rejecting others. First, this section again does not allow for Staff to refer issues to the appointed officials. Staff believes it should be amended similar to what was recommended for section (h)(4) above allowing SGA staff to refer to the Commission with no obligation for participation on the Tribe unless they so desire. Second, the reference to “elected official” is again not viable and Staff recommends rejecting that portion. Third, the confidentiality issues Staff agrees with and recommends accepting them.
- 3) Staff recommends accepting the modifications over referral to section 9.0 under (1)(3) as long as the modifications above allowing self-referral are adopted.

w. Section (m)

~~(e)~~(m) NIGC ALTERNATIVE COMPLIANCE.

(1) Sections (c), (d), ~~(e)~~, (f), (g), (h), and (i), ~~(j), and (l)~~ shall not apply to any Tribe's ~~Class III g~~Gaming ~~o~~Operation while the Tribe has a gaming ordinance in effect that provides for NIGC monitoring and enforcement of the MICS set forth at 25 CFR Part 542 (as in effect on October 19, 2006, or as it may be amended). In addition, upon the written request of the SGA, the following shall occur:

(A) ~~The TGA Tribe shall waive confidentiality in writing as to any supporting reports or documents the NIGC has prepared except for financial audits of verified gross revenue for NIGC payments and licensing background files and provides proof of such waiver in writing to the CGCC and the NIGC; B) the CGCC shall receive the supporting reports and documents the NIGC has prepared, from the NIGC, except for financial audits of verified gross revenue for NIGC payments and licensing background files; C) the Tribal Gaming Agency or Tribe shall~~ provide a copy of the following documents to the SGA within 30 days of their receipt from or submission to the NIGC:

(i) ~~Each to the CGCC of each~~ final written report or document issued to the Tribe by the NIGC ~~as a resulting from~~ of a MICS compliance site inspection/visit, or on-site compliance review/ ~~or~~ audit ("NIGC Report"):

(ii) The NIGC's supporting reports or documents (the "Supporting Papers"), if any, pertaining to the MICS review within 30 days of its receipt and preparation of the NIGC Report which the Tribe or the TGA shall request from the NIGC following the conclusion of the NIGC review and reporting process, provided however that the Supporting Papers shall not include documentation related to any financial review/audit of gaming revenue; and

(iii) ~~any~~Any documents the Tribe, TGA or Gaming Operation has delivered to the NIGC ~~has prepared~~ in response to any such ~~within 30 days of when they were provided to the NIGC Report.~~

(B) ~~The TGA ; D) the Tribal Gaming Agency shall~~ shall make itself available upon at least 30 days written notice from the SGA CGCC, to address questions the ~~CGCC SGA staff~~ may have regarding any NIGC Report, which may include the SGA's CGCC access to papers, books, records, equipment, or places of the gaming operation that are reasonably necessary to address such questions and, where possible, such documents are identified in the written notice from the ~~CGCC SGA~~;

(C) ~~The TGA provides E) the Tribal Gaming Agency also shall provide~~ the SGA CGCC with a copy of the independent CPA agreed upon procedures report conducted pursuant to 25 CFR Part 542.3(f) pertaining to Class III gaming within 30 days of its receipt and, where applicable, all information supplied by the Tribe, ~~and~~ the TGA, or Gaming Operation to the

NIGC in response thereto within 30 days of when it was supplied; and ~~F) The CGCC shall maintain any documents received from the NIGC in the strictest confidence applicable under state and federal law and any documents received from the Tribe or TGA shall be confidential pursuant to section (k).~~

(D) Any documents received from the Tribe or TGA shall be confidential pursuant to section (j).

(2) This alternative compliance section shall no longer apply to a Tribe's gaming operation in the event that any of the following occur:

~~(A)(a) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement; (b) the Tribe no longer waives confidentiality as to any supporting reports or documents the NIGC has prepared except for financial audits of verified gross revenue for NIGC payments and licensing background files; (c) the CGCC does not receive the supporting reports and documents the NIGC has prepared, from the NIGC, except for financial audits of verified gross revenue for NIGC payments and licensing background files; (d) The NIGC does not perform, for any three (3) year period, a comprehensive on-site compliance review to monitor and ensure MICS compliance that encompasses the areas of accounting, cage, complimentary services, credit, drop and count, gaming machines, information technology, internal audit, surveillance and table games, memorialized by one or more written Reports. The three (3) year period shall commence upon the final adoption of this regulation by the CGCC.~~

(B) The SGA does not receive from the TGA or Tribe the NIGC Report within the required time period:

(C) The NIGC does not commence, for any three (3) year period following the effective date of this regulation, a MICS compliance site inspection/visit, or on-site compliance review/audit designed by the NIGC, after a regulatory review of relevant information, to effectively monitor and ensure MICS compliance, memorialized by an NIGC Report.

(3) Nothing in this section (~~om~~) is intended to amend, supersede, or negate any provision of ~~athe Compact or the New or Amended~~ Compacts. However, satisfaction of this section (~~om~~) shall demonstrate compliance with Tribal MICS as provided for in section (b)(2) and/or (b)(3)(A) for purposes of this regulation and for purposes of ~~a Compact or the New or Amended~~ Compacts.

Task Force Draft Changes:

- 1) The Task Force Draft made substantial changes throughout the Alternative Compliance section including many minor revisions (CGCC to SGA) as well as re-working timing issues. The first modification was that the requirements under (m)(1) would occur only upon written request from the SGA.

- 2) The first big modification in the Draft was the elimination of the requirement that the Tribe waive confidentiality as to the NIGC report under (m)(1) and (m)(2).
- 3) The Task Force Draft modified the (m)(1)(A) section to allow for the Tribe to provide the SGA with the documents that the NIGC prepared in their audit, including the workpapers. It specifically stated “if any” instead of all.
- 4) The Task Force Draft modified (m)(1)(C) and created (m)(1)(D) to allow for confidentiality and a direct reference to the aforementioned confidentiality provision, section (j).
- 5) The Task Force Draft eliminated the requirement under (m)(2)(A) that this section will not apply if the CGCC does not receive the workpapers. Rather it merely mandated the SGA receive the NIGC Report under (2)(B).
- 6) The Draft (m)(2)(C) section eliminated the 10 areas of the gaming operation as similar to the (g)(4) section for state inspection reviews discussed above. The Task Force Draft also eliminated the Comprehensive audit requirement and instead allowed for audits/reviews to be “designed” by the NIGC to monitor and ensure NIGC MICS compliance. This envisions a type of audit or “slim fast audit” whereby the NIGC refers to the Tribes Internal Auditors and other documentation without performing one themselves.
- 7) The Task Force Draft deleted the start date for this regulation as the commencement point of the three year period.

CGCC Comment/Response:

- 1) Staff agrees with the minor changes, but does not agree with the requirement that the SGA must request these documents in writing. This is not a viable option; Staff recommends rejecting it. The SGA is not aware of every visit or inspection the NIGC performs or even when they occur. Therefore, the burden should be on the TGA and Tribe to provide this information within 30 days of it occurring. Staff recommends rejecting this provisions language in (m)(1) highlighted above.
- 2) Staff recommends accepting the elimination of the waiver of confidentiality under both (m)(1) and (m)(2). This section was only added to allow for the SGA to obtain the documents from the NIGC directly as it was believed that was the basis for the NIGC’s reticence to comply. However, if the documents are forwarded to the Tribe and then the SGA automatically, this would likely be an acceptable compromise, as long as SGA can follow up with investigation and have access to the Gaming Operation under (m)(1)(B). Staff recommends also the addition of “any” in place of “a” in front of “MICS compliance site inspection/visit” in section (m)(1)(A)(i).
- 3) Staff recommends accepting this compromise if the phrase “if any” is removed and the Tribe provides the papers automatically without a written request by the SGA. The key is

that the CGCC receives these work papers, not simply that the CGCC receives whatever if *anything* the NIGC produces. The distinction is the CGCC cannot be comfortable with an audit where no workpapers were received which it can review for Compact compliance and compliance with CGCC-8. The interests of the people of California require review of these documents by the SGA, as opposed to abdicating this responsibility to the Federal government which has no interest in Compact compliance, and whose authority in this area was seriously undermined by the *CRIT* decision. Staff, however, finds the redaction of financial audit information is acceptable in principal. Staff recommends however not precluding access entirely, but only information unrelated to MICS. Staff recommends the last sentence in (m)(1)(A)(ii) highlighted above be modified to “shall not include any financial information not related to MICS verification.”

- 4) Staff believes this modification should be accepted as it is a general improvement over the original version. Confidentiality is paramount.
- 5) Staff does not agree with this modification and recommends rejecting it as written. The SGA must receive the workpapers for this section (m) to be valid as stated above under (3), in addition to the NIGC Reports. Furthermore, all aspects of the (m)(1)(A)-(D) must be complied with for the entirety of (m) to apply. This was clear in the original text of the Alternative Compliance section. If the Tribe does not obtain the workpapers and does not forward them to the SGA, this provision has no value to the SGA. If the SGA cannot investigate or receive the AUP, again this section has no value and risks being a Compact amendment. It is the Tribe’s burden to ensure these things occur for this section to apply. Therefore, Staff recommends replacing (m)(2)(B) highlighted above with the following.

“Sections (m)(1)(A) through (m)(1)(C) do not occur.”

- 6) Staff does not believe this is an acceptable solution and recommends rejecting it. In order for the CGCC to be comfortable with the NIGC and their workpapers in lieu of SGA Compact compliance inspections, the NIGC’s efforts must be comprehensive. The SGA cannot fulfill its Compact compliance inspection obligations by reviewing the reports and workpapers of an audit or review merely “designed” to ensure MICS compliance. The SGA has no say in how this process is designed, the decisions to perform it in lieu of some other form of audit, or whether it was merely performed in the place of a comprehensive audit due to budget and staffing concerns. The NIGC has no interest or desire in ensuring Compact compliance and its relation to calculations of net win, SDF contributions, and RSTF contributions. The SGA, however, takes these responsibilities very seriously. In order for these functions to be accurate and complete, and for the SGA to provide appropriate assurances to the public that the CGCC is fulfilling its obligations, it must have complete workpapers based on the comprehensive audit of the 10 areas of the gaming operation. Anything less risks omitting important aspects of the Gaming Operation from Compact inspection and correspondingly affects the SGA’s responsibility under the Compact for other compliance issues. Staff recommends accepting section (C) only if, first, it is revised to include the language previously used (including the ten areas)

and, second, is comprehensive. Staff understands the comprehensive audit to be a thorough inspection of all ten areas of the Tribes Gaming Operation which can take anywhere from 4 to 6 weeks based on direct representations from the NIGC. This comprehensive definition does not encompass an audit which could later be “designed to be” comprehensive based on an internal audit report of the Gaming Operation, or some other method to “stream line” the process, including a risk assessment review. Staff recommends the highlighted language under (m)(2)(C) after “regulation” be modified to read:

“comprehensive on-site compliance review to monitor and ensure MICS compliance that encompasses the areas of accounting, cage, complimentary services, credit, drop and count, gaming machines, information technology, internal audit, surveillance and table games, memorialized by one or more written NIGC Reports.”

- 7) Staff recommends rejecting the deletion of the starting point for the three year period. It should still commence from the adoption of this regulation. However, Staff does have a recommendation to alleviate some Tribal concerns about the failure of the NIGC to perform a comprehensive audit, as referenced under 6) above, during the three years which could be added to (m)(2)(C). Section (m)(2)(c) would now be broken into two sections, (i) and (ii). It could state:

(ii) Notwithstanding section (m)(2)(C)(i), at its sole discretion, the SGA may determine that NIGC alternative compliance subsection (m) will continue to apply to a Tribe’s gaming operation. In making this determination, the SGA may consider without limitation:

(a) Whether the Tribe has substantially complied with Class III internal control standards, after having reviewed all information and documents in its possession;

(b) Whether the Tribe has complied with all other applicable provisions of CGCC-8; and,

(c) Any other factors the SGA deems relevant or significant.

x. Section (n)

~~(p)~~ SEVERABILITY. ~~The provisions of this regulation are severable.~~ If any provision of this regulation or its application is held invalid, the validity of the remaining provisions that ~~invalidity shall not affect other provisions or applications that can~~ be determined pursuant to applicable rules of statutory and regulatory construction. ~~given effect without the invalid provision or application.~~

Task Force Draft Changes:

- 1) The Task Force Draft altered this section to merely reference applicable rules of statutory and regulatory construction in lieu of a statement of severability.

CGCC Comment/Response:

- 1) Staff recommends accepting these changes. Staff does however have some concerns about this modification and the section (n) generally. Staff believes that the provision that is most likely to be rendered invalid, if any, is the CGCC-8 section (m) “NIGC Alternative Compliance,” based on a challenge to NIGC authority to conduct compliance reviews after the *CRIT* decision based solely on the Tribe’s adoption of an ordinance. Under the doctrine of severability of contracts and severability of statutes, the intent of the parties is paramount. The previous severability provision, section (p), clearly evinced intent to allow CGCC-8 to remain if one particular provision of CGCC-8 were found invalid. Staff has endeavored to craft CGGC-8 to foster this purpose.

This section was first added to the draft that was adopted by the Commission on October 14th, 2008. However, with the addition of the NIGC Alternative Compliance section in the April 15th draft, the severability provision takes a new level of importance. Several Tribes in comments have already stated that the NIGC has no authority post-*CRIT*. Whether they would seek to invalidate this provision or litigate the NIGC’s authority is unclear. In the event that the NIGC Alternative Compliance Section is invalidated, it is necessary that this severability provision remain strong and valid. Staff believes the severability provision as modified would still allow the balance of the regulation to remain valid.

IV. Staff Response to Tribal Comments Received on or before September 4, 2009 related to the Task Force’s version of CGCC-8, April 15, 2009 Version, October 14, 2008 “Re-adopted” Version, or other Comments as the Tribe may deem important.

In response to the request for further Comments mailed on August 20, 2009, and the Task Force draft of CGCC-8, the Commission received several comments, objections and modifications from the following Tribes: 1) Picayune Rancheria of the Chukchansi Indians, Morris Reid, Chairman, Two Letters; 2) La Posta Band of Mission Indians, Gwendolyn Parada, Chairperson; 3) Rincon Band of Luiseño Indians, Stephanie Spencer, Vice Chairwoman, Gilbert Parada, Council Member, Charlie Kolb, Council Member, Steve Stallings, Council Member; 4) Santa Rosa Rancheria, Ruben Barrios Sr., Tribal Chairman; 5) Cahuilla Band of Indians, George Forman, Attorney; 6) Robinson Rancheria Band, George Forman, Attorney; 7) Tuolumne Band of Me-Wuk Indians, Kevin A. Day, Chairman; 8) Big Sandy Rancheria, Elizabeth D. Kipp, Tribal Chairperson; 9) United Auburn Indian Community, Jessica Tavares, Chairperson; 10) Morongo Band of Indians, George Forman, Attorney; 11) Tule River Tribal Council, Ryan Garfield, Chairman; 12) Paskenta Band of Nomlaki Indians, Everett Freeman; 13) Pauma Band of Mission Indians, Chris Devers, Chairman, Lenora “Dee” Cline, President, Pauma Gaming Commission; 14) Elk Valley Rancheria, Dale A. Miller, Chairman; 15) Mooretown Rancheria, Gary W. Archuleta; 16) Dry Creek Rancheria, Vicki Wattles, Chairperson; 17) Susanville Indian Rancheria Gaming Commission, Ginny Morales, Chairperson; and 18) Rumsey Indian Rancheria, Tribal Gaming Agency, Leland Kinter, Chairman. (These comment letters are attached to the accompanying Response as Exhibits “C1-C18” respectively.)

- a. Section 8.4.1(a) requires Association approval of a proposed regulation before it is valid. (Comment by Picayune Rancheria of the Chukchansi Indians, La Posta Band of Mission Indians, Tuolumne Band of Me-Wuk Indians, Rincon Band of Luiseño Indians, Cahuilla Band of Indians, Morongo Band of Indians, Robinson Rancheria Band, Big Sandy Rancheria, Tule River Tribal Council, United Auburn, Paskenta Band of Nomlaki Indians, Elk Valley Rancheria, Mooretown Rancheria, Dry Creek Gaming Commission, and Rumsey Indian Rancheria.)

Commission Staff recommends rejecting this objection/comment for the reasons spelled out in the accompanying Response (Sections I. 4 and 7, and Sections II. 1-2) and in sections I. c. and d., as well as section II. b. above.

- b. The Commission has failed to engage the Tribes in the Task Force Process and because of that La Posta, Chukchansi, and Susanville cannot endorse the proposed regulation put forth by the Task Force. (Comment by La Posta Band of Mission Indians, Picayune Rancheria of the Chukchansi Indians, and Susanville Indian Rancheria Gaming Commission.)

Commission Staff recommends rejecting this comment. Please see the accompanying Response section II. 12.

Commission Staff participated in a Task Force review of CGCC-8 in 2007 where several changes were made to CGCC-8. In addition, the Commission staff participated in nearly all scheduled meetings of the Task Force review of the April 15, 2009 draft of CGCC-8.¹⁶ Staff has reviewed these Task Force modifications. In addition, during these sessions meaningful dialogue was exchanged to explain the Staff's position on various issues as well as to understand Tribal concerns related to all aspects of CGCC-8.

Staff has now endeavored to incorporate many of these changes and alterations to be responsive to the Task Force process. However, Commission Staff cannot "endorse" anything, including a Task Force Draft and Report. The Commission's head of agency and decision making authority are the Commissioners. There can be no "endorsement" before they make the decision to endorse or disprove. The Commissioners have now set September 24, 2009 as the date for an open meeting where any and all further action on behalf of the Commission can take place including considering final adoption of CGCC-8.

- c. The Commission has ignored the Task Force Draft and the Task Force. (Comment by La Posta Band of Mission Indians, Picayune Rancheria of the Chukchansi Indians, Santa Rosa Rancheria, Big Sandy Rancheria, and Tule River Tribal Council)

Staff recommends rejecting this comment. Please see section III generally, IV. b. immediately above and the accompanying Response section II. 12.

- d. CGCC-8, even as modified by the Task Force, is a Compact amendment and expands the CGCC's regulatory role. (Comment by La Posta Band of Mission Indians, Picayune Rancheria of the Chukchansi Indians, Tuolumne Band of Me-Wuk Indians, Rincon Band of Luiseño Mission Indians, Pauma Band of Mission Indians, Mooretown Rancheria, Dry Creek Gaming Commission, Rumsey Indian Rancheria.)

Staff disagrees with this comment/objection and recommends rejecting it. Please see response to section I. a. and i. above as well as the accompanying Response. (Sections I. 4-5, and 7, and Section II. 1 and 3)

Furthermore, to the extent the Task Force's version negates the SGA's Compact compliance inspection authority; Commission Staff believes the Task Force version would be a Compact amendment. Such concerns were addressed above.

- e. Proposed Draft of CGCC-8 from La Posta and Chukchansi which it believed accomplishes the intent of the CGCC without expanding the States' role with respect to "on-site" regulation of gaming activities. (Comment by La Posta Band of Mission Indians and Picayune Rancheria of Chukchansi Indians.)

¹⁶ There was one meeting, which was called with short notice that the Commission was unable to attend due to previously schedule Commission meetings and the press of business due to Governor ordered furloughs.

Staff appreciates these drafts of CGCC-8 and the effort they reflect. These drafts appear to be identical. However Staff disagrees with La Posta and Chukchansi's draft, attached to the Exhibit C1 and C2 of the accompanying Response, in several ways and recommends rejecting them. CGCC-8 as currently written and recommended by Staff does not usurp the TGA's role under the Compact as the primary regulator. Rather as discussed above it seeks to encourage uniformity of Tribal MICS standards throughout the State. There is no mandate that the TGA adopt any regulation other than what they are already required to adopt under the Compact. CGCC-8 rather merely makes it clear what the CGCC and the SGA would consider Compact compliant. It also establishes protocols which serve to protect the TGA and Tribe in the application of the State inspection protocols. In addition, there are problems with this draft which exceed the scope of this summary and cannot be fully addressed.

There is one key problem with the draft that does deserve further discussion, however. The La Posta and Chukchansi NIGC Alternative Compliance section completely negates the SGA's inspection rights under the Compact. This quite clearly is a Compact amendment. This proposal lacks the ability for the SGA to review NIGC workpapers, reports, or investigate. As discussed above the NIGC does not perform Compact compliance and is not beholden to the People of California. Furthermore, Tribal MICS are vital to the Tribal Gaming Operation, and must be reviewed by the SGA for assurances related to other aspects of the Gaming Operation including contributions to the Special Distribution Fund, the General Fund, and the Revenue Sharing Trust Fund.

It should also be noted that this was also a proposal put forward at the very start of the regulatory Task Force, but rejected for these same reasons. While Commission Staff respects the NIGC, Staff does not believe the Commission can abandon its rights under the Compacts.

- f. The Task Force version of CGCC-8 is more respectful to the Tribes and TGA's role under the Compact. (Comment by Rincon Band of Luiseño Indians, Cahuilla Band of Indians, Santa Rosa Rancheria, Robinson Rancheria Band, Tule River Tribal Council, Big Sandy Rancheria, United Auburn Indian Community, Morongo Band of Indians, Paskenta Band of Nomlaki Indians, and Elk Valley Rancheria.)

Commission Staff respects this comment and has endeavored to incorporate these changes as discussed under section III above and recommends the Commission accept them.

- g. The NIGC Alternative Compliance Section is an "opt out" provision of CGCC-8, and illegal post-CRIT. (Comment by Rincon Band of Luiseño Indians.)

Commission staff remains neutral on this comment/objection. Please see the discussion of this above in section II. o. and the accompanying Response. (Sections I. 6 (iv), (vi), (vii) and II. 2, 3, 7, and 9.)

- h. The Task Force version of CGCC-8 should be reconsidered. (Comment by Cahuilla Band of Indians, Morongo Band of Indians, Tule River Tribal Council, Big Sandy Rancheria, and Robinson Rancheria Band.)

Commission Staff recommends rejecting this comment. Please see section III generally, IV. b above and the accompanying Response section II. 12.

In short, the full Commission is now “considering” the Task Force version and no prior consideration would have been appropriate and would potentially been illegal.

- i. CGCC-8 is unnecessary as the TGA already oversees the Gaming Operation. (Comment by Cahuilla Band of Indians, Morongo Band of Indians, Robinson Rancheria Band, Paskenta Band of Nomlaki Indians, Picayune Rancheria of the Chukchansi Indians and Rumsey Indian Rancheria.)

Staff recommends rejecting this objection/comment for the reasons spelled out in section I. e., and the accompanying Response (Sections I. 6. (vii), and Sections II. 4-7).

- j. The CGCC should not review an NIGC review as the NIGC has more experience than the CGCC. Rather the CGCC should presume that the NIGC has sufficiently reviewed the Tribe’s compliance with its internal controls. (Comment by Cahuilla Band of Indians, Morongo Band of Indians, and Robinson Rancheria Band.)

Commission Staff recommends rejecting this comment. Please see section I. g. and section II. h. and d. above and the accompanying Response (Sections I. 2 and 6. (iii), (iv), (vi), (vii) and Sections II. 2, 7, and 9) as well as the following.

Staff agrees that the NIGC has more experience with the NIGC MICS than the Commission. However, the Commission has more experience than the NIGC in regards to Compact compliance which is the entire point of CGCC-8. NIGC has no experience with and no interest in Compact compliance under IGRA. IGRA specifically defines this as between the Tribe and the State. Furthermore, the importance of adequate Tribal MICS and their enforcement is highly interrelated with other important Compact obligations including contributions to funds. Again, the NIGC has no interest or role in these. Finally, the NIGC’s experience with MICS is only marginally greater than the Commission’s since they adopted the MICS in 1999 and each year that passes this disparity proportionally decreases.

- k. CGCC-8 should include language to the effect that disputes must be submitted to a third-party neutral for preliminary resolution, and that violations of CGCC-8 would not be deemed material breaches until the Tribe fails to remedy the situation. (Comment by Cahuilla Band of Indians, Morongo Band of Indians, and Robinson Rancheria Band.)

Staff recommends rejecting this comment. Please see section II. l. above.

Staff has considered this option and discussed it in the course of the Task Force meetings about CGCC-8. However, this option was not even included in the Task Force's version of CGCC-8. While the concept of having a third-party neutral provide assistance is an interesting idea, the binding nature, the disparate costs involved, and the lack of clear guidelines to limit abuse preclude viability. The material breach concept also while interesting is too far reaching. Finally, as discussed above, the Tribe can still provide the Commission the testimony of an expert on the disputed issue which would serve nearly the same role.

- l. The Commission should adopt the Task Force version as a "Proposed Regulation" under the Compact. (Comment by Cahuilla Band of Indians, Morongo Band of Indians, and Robinson Rancheria Band, United Auburn Indian Community, and Paskenta Band of Nomlaki Indians.)

Staff recommends rejecting this comment. Please see section III. generally.

- m. The Commission should bring Comments on the Task Force version to the Next Association Meeting. (Comment by Santa Rosa Rancheria.)

Staff recommends rejecting this comment. Please see section III generally, IV. b immediately above and the accompanying Response section II. 12.

All comments are available in this document and accompanying documents. However, Staff does not determine Commission policy or make final representations on behalf of the Commission. As a result, any information that could be provided on the Task Force version would be limited to the opinion of the individual Staff members present, and not the Commission as a whole.

- n. The Bureau of Gambling Control already verifies Compact Compliance. Comment by Paskenta band of Nomlaki Indians.)

Commission Staff disagrees and recommends rejecting this comment.

The Commission as discussed in the accompanying Response has been mandated by the legislative and executive branches to verify Compact compliance including MICS. The Commission is also specifically named under the Compacts as the RSTF Trustee. Staff does admit that in the past the Bureau of Gambling Control has inspected limited areas of the Gaming Operation, but in general it never

performed a complete Compact compliance inspection related to Tribal MICS and authorized under the Compact and this regulation.

- o. CGCC-8 seeks to place the Tribe between the Bureau and the Commission in a jurisdictional dispute. (Comment by Picayune Rancheria of the Chukchansi Indians.)

Commission Staff disagrees and recommends rejecting this comment. Please see the response immediately above in section IV. n.

- p. CGCC-8 seeks to end the respectful relationships between the TGA and the Bureau. (Comment by the Picayune Rancheria of the Chukchansi Indians.)

Commission Staff disagrees and recommends rejecting this comment. Please see the response immediately above in sections n. and o..

- q. The Commission should enter into MOUs with Tribes over protocols similar to CGCC-8. (Comment by Pauma Band of Mission Indians.)

Staff appreciates this comment but ultimately must recommend it be rejected.

The Commission cannot enter into MOUs with a Tribe as that is something that must come from the Governor's office. Furthermore, the Compacts authorize a regulatory process for adopting regulations such as CGCC-8 and this process has been actively pursued for over two years.

- r. CGCC-8 should be an "opt in" regulation. (Comment by Pauma Band of Mission Indians.)

Staff appreciates this comment but ultimately must recommend it be rejected.

Making this regulation be an "opt in" would negate the definite benefits of uniformity, transparency, and efficiency. It also negates the principals under Compact section 8.4 for "statewide uniformity of regulation of Class III gaming operations."

- s. CGCC-8 usurps the TGA's role under the Compact. (Comment by Mooretown Rancheria and Picayune Rancheria of the Chukchansi Indians.)

Staff recommends this comment be rejected. Please see section I. e. and l, and IV. e. Please also see the accompanying Response. (See Section II. 2.)

CGCC-8 recognizes that the TGA is the primary regulator and enforcer of Compact compliance. This role is specified under Compact section 7.2. However, this does not negate the SGA's role under the Compact and its regulatory authority and inspection authority. If the Tribe takes the position that

the SGA cannot inspect the Gaming Operation for Compact compliance, it would be a violation of the Compact and require a Compact amendment.

- t. IGRA only allows regulation pursuant to a Compact under section 2710(d)(3)(c) and the Compact precludes unilateral Regulation. (Comment by Mooretown Rancheria.)

Staff recommends rejecting this comment for the reasons spelled out in the accompanying Response (Sections I. 4 and 7, and Sections II. 1-2) and in sections I. c. and d., II. b. above and IV. a.

- u. CGCC-8 unilaterally seeks to impose minimum internal control standards. (Comment by Picayune Rancheria of the Chukchansi Indians)

Staff recommends rejecting this comment. Please see section III and the Response generally.

Staff's recommended version of CGCC-8 does not impose minimum internal controls. Rather it recognizes the Compacts requirement that has existed all along, that the Tribe must have Compact compliant Tribal MICS, which the Staff's version will consider Compact compliant if they are the NIGC MICS or exceed the NIGC MICS in the "Safe Harbor." However, Tribes may adopt some other Tribal MICS, but the SGA under its Compact inspection authority may verify whether these Tribal MICS are Compact compliant.

- v. The NIGC Alternative Compliance section is ambiguous, arbitrary, and impractical. (Comment by Picayune Rancheria of the Chukchansi Indians)

Staff respectfully disagrees. This comment was also not clear on which part was ambiguous, arbitrary and impractical. Staff has also endeavored to include clarifying provisions and structure from the Task Force to the extent possible. Please see section III. generally for this additional language.

- w. CGCC-8 ambiguously and arbitrarily interchanges the terms "Tribe" and "Tribal Gaming Agency" as to compliance requirements. (Comment by Picayune Rancheria of the Chukchansi Indians)

Staff recommends accepting this in part. Staff has also endeavored to include clarifying modifications from the Task Force draft and other revisions to clean up any unintended ambiguity. Please see section III. generally for this additional language.

- x. The characterization of CGCC-8 in the April 15, 2009 version as "amended" is improper as the Commission has not taken formal action to adopt it. (Comment by Dry Creek Gaming Commission.)

Staff recommends accepting this comment/objection to the extent the full Commission has not heard CGCC-8 and adopted it in open session as the “final regulation” under section 8.4.1(c). The April 15, 2009 Staff Draft was merely a Staff proposal meant to determine if the inclusion of responsive modifications to CGCC-8 would be fruitful.

- y. The Commission improperly considered the Task Force report as a “compilation of comments” and that Commission implies the Task Force was “not in accordance with the Association process.” (Comment by Dry Creek Gaming Commission.)

Staff recommends rejecting this comment/objection.

First, the Task Force draft was not created by Commission Staff, nor has it been approved by the full Commission in open session. Furthermore, the Task Force did modify the April 15, 2009 Staff Draft, with input from all delegates present. However, the Commission Staff delegates had no authority at any time to adopt such a version or to bind the full Commission to any modification.

Second, not all Tribal-State Association members were present for this process Task Force process. While the Tribal-State Association under the protocols may create a Task Force to review an SGA regulation, this option does not alleviate the Compacts’ requirements to ask all Tribe’s for comments under section 8.4.1.

Third, and most importantly, a Task Force report does not and should not prohibit the Commission, in the spirit of government to government relations and out of respect for Tribal sovereignty, from asking for comments from all Tribes potentially affected by CGCC-8 and not merely those that could afford to be present at Task Force meetings.

Finally, the Task Force is a creation of the Tribal-State Association protocols, not the Compact. It cannot overturn the Compact process and would require a Compact amendment.

- z. The CGCC has failed to consider in good faith alternative proposals. (Comment by Rumsey Indian Rancheria.)

Commission Staff respectfully disagrees and recommends rejecting this comment. Please see response in section I. h. and section II. n. above.