

CALIFORNIA GAMBLING CONTROL COMMISSION
2399 GATEWAY OAKS DRIVE, SUITE 100
SACRAMENTO, CA 95833
(916) 263-0700 FAX (916) 263-0499
www.cgcc.ca.gov

Department of Consumer Affairs
Hearing Room
1625 North Market Blvd.
Sacramento, CA 95834

**MINUTES OF MARCH 27, 2008
COMMISSION MEETING**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Shelton called the meeting to order at 10:03 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich present.

3. Approval of Commission Meeting Minutes for:
 - A. February 21, 2008

Upon motion of Commissioner Schmidt, seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the February 21, 2008 Commission meeting minutes.

4. Application for Initial State Gambling License Including All Associated Applicants and Endorsees (Pursuant to Business and Professions Code section 19851):
 - A. The Bicycle Casino: The Maureen Therese O'Dea Trust
Maureen Therese O'Dea: Trustee, Trustor, Beneficiary

Deputy Director Ciau indicated that staff recommended the Commission approve the endorsement of the Maureen Therese O'Dea Trust on the Bicycle Casino's state gambling license through April 30, 2009. Upon motion of Commissioner Vuksich, seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

5. Applications for Renewal of State Gambling License Including All Associated Applicants and Endorsees (Pursuant to Business and Professions Code section 19876):

A. Cameo Club: Lewis and Lewis, Inc.: David Lewis Estate Natalie Lewis

Deputy Director Ciau indicated that staff recommended the Commission approve the renewal license for the period February 1, 2008 through January 31, 2010 for Cameo Club, Item 5.A., including shareholders: David Lewis Estate (50% shareholder) and Natalie Lewis (50% shareholder), and key employees: David Lewis and Jason Brisby.

Deputy Director Ciau further indicated that staff recommended that the following condition previously placed on the license be removed: *This license is conditioned upon the local gambling ordinance coming into compliance with the Gambling Control Act (Business and Professions Code section 19860(a)(4)) within 12 months of issuance/renewal.* Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

B. Deuces Wild Casino: Robert Brown, Sole Proprietor

Deputy Director Ciau indicated that staff recommended the Commission approve the renewal license for the period April 1, 2008 through November 30, 2009 for Deuces Wild Casino, Item 5.B. Additionally staff recommended that the existing condition: *The gambling establishment shall make available to either the Bureau or the Commission, upon request, copies of any employee records or financial records that are required to be submitted to the Employment Development Department and/or the Internal Revenue Service,* remain on the license. Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

C. Golden West Casino: Kern County Associates, Limited Partnership

Deputy Director Ciau indicated that staff recommended that staff recommended that the Commission approve the renewal license for the period April 1, 2008 through January 31, 2010 for Golden West Casino, Item 5.C., including the following shareholders and key employees:

Shareholders of Kern County Associates:

Golden West Partners, Inc.
JLJ2D, Inc.
Franklyn Elfend
Carmen Morinello

Shareholders of Golden West Partners, Inc:

Franklyn Elfend (Chief Executive Officer/Chief Financial Officer)
Carmen Morinello (President/Secretary)

Shareholders of JLJ2D, Inc.:

John Antonino (Vice President/Secretary/Treasurer)
Katherine Carson
Jimmie Icardo & Marjorie Icardo 1988 Revocable Trust
Gary Icardo (Trustee)
Dennis Thomas (Trustee of John and Shirley Family Trust)
Steven Thomas (Trustee of John and Shirley Family Trust)
Joanne Thomas (Trustee of John and Shirley Family Trust)

Key Employees:

Wood Hicks	Wayne Perry	Robert Pipkin
Nader Taft	Becky Tam	Randy Watkins

Deputy Director Ciau further indicated that the license contain the following conditions:

If the application for state gambling license for the John and Shirley Thomas Family Trust is denied, then JLJ2D shall comply with the requirements of Business and Professions Code section 19882.

Shirley Thomas, Trustor & Trustee of the John and Shirley Thomas Family Trust, may not take part in the management or control of Golden West Casino operations, unless and until she is approved for a state gambling license.

Upon motion of Chairman Shelton, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

6. Applications for Key Employee License (Pursuant to Business and Professions Code section 19854):
 - A. Casino Club: Shane Brown
 - B. Diamond Jim's Casino: James Dent
 - C. Garden City Casino: Harold Furtado
 - D. Hawaiian Gardens Casino: Frank Phillips
 - E. Lucky Chances Casino: Gary Monk Bryce Hatch
 - F. Silver Fox Casino: Stefanie Saechao
 - G. The 101 Casino: David Samaris

Deputy Director Ciau indicated that staff recommended that the Commission approve the applications for a key employee license for Items 6.A. through 6.G., with the following condition applied to 6.C.: *Mr. Furtado may not work in a key employee position as the Director of Security, for Garden City Casino, until the San Jose Police Department has issued his key employee license.*

Deputy Director Ciau explained to the Commission that the San Jose Police Department has not completed its background investigation of Mr. Furtado, but they have communicated with staff and have indicated that they will issue a temporary monthly license until the background investigation is completed.

Chairman Shelton moved to approve a temporary key employee license pending the outcome of the San Jose Police Department's background investigation for Harold Furtado, Item 6.C., and also approve the staff recommendation for Items 6.A., 6.B. and 6.D. through 6.G. Commissioner Schmidt seconded the motion, which unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes.

7. Applications for Work Permit (Pursuant to Business and Professions Code section 19912):

- A. Gold Rush Gaming Parlor: Scott Bartosh Charles Spranza
- B. Napa Valley Casino: Kimly Chhoung Timothy Hunter Anthony Hutchins
- C. River Cardroom: Michael McKeay

Deputy Director Ciau indicated that staff recommended that the Commission approve the applications for a work permit for Item 7.A. through 7.C. Upon motion of Commissioner Vuksich, seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

8. Applications for Work Permit (Pursuant to Business and Professions Code section 19857 and 19859):

- A. Central Coast Casino - Grover Beach: Shawn Kahanu

Deputy Director Ciau indicated that staff recommended that the Commission deny the application for a work permit for Shawn Kahanu. Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

9. Applications to Convert Third Party Proposition Player Services Registration to a License (Pursuant to Business and Professions Code section 19984 and California Code of Regulations, Title 4, section 12218):

A. Gaming Management, LLC:

John Bower	Gary Denekamp
Daniel Gutof	Heather Hall
Jennifer King	Cynthia Kingsley
Miguel Librero	Heidi Pepper

B. Pacific Gaming Services, LLC:

Pacific Gaming Services, Limited Liability Company	
Lori Suson	Enrique Lopez

Deputy Director Ciau indicated that staff recommended that the Commission approve the applications to Convert Third Party Proposition Player Services Registration to a License for the period March 27, 2008 through March 31, 2010 for Items 9A and 9B. Upon motion of Commissioner Vuksich, seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

10. Applications for Renewal of Tribal-State Compact Gaming Resource Supplier Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.5):

A. Gemaco, Inc.: Missouri Corporation:

Diana Summers Jason Fitzhugh Danny Carpenter

Deputy Director Ciau indicated that staff recommended that the Commission approve the finding of suitability renewal for the period of May 1, 2008 through December 31, 2009 for Gemaco, Inc., Item 10A. Upon motion of Commissioner Shimazu, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

B. Sealaska Properties, Limited Liability Corporation

Deputy Director Ciau indicated that staff recommended that the Commission approve the finding of suitability renewal for the period of April 1, 2008 through March 31, 2010 for Sealaska Properties, Item 10.B., including the following shareholders and principals: Sealaska Corporation, Parent Company, Richard P. Harris, Executive Vice-President, Nicole D. Hallingstad, Vice-President/Corporate Secretary, Patrick M. Anderson, Director, Sidney Edenshaw, Director, Clarence Jackson, Director, Jacqueline Johnson, Director, Albert M. Kookesh, Chairman/Director, J. Tate London, Director, Ethel Lund, Director, Byron I. Mallott, Director and Co-Manager of SPL, Johanna M. Mitchell, Director, Joseph G. Nelson, Director, Edward K. Thomas, Director, Rosita Worl, Vice-Chairman/Director, Marjorie V. Young, Director, Chris McNeil, Jr., President/Chief Executive Officer. Upon motion of Commissioner Vuksich, seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

11. Applications for Tribal-State Compact Gaming Resource Supplier - Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.5):

A. Gemaco, Inc.: Missouri Corporation: Leesa Nichols

Deputy Director Ciau indicated that staff recommended that the Commission approve the initial finding of suitability for Leesa Nichols, Item 11.A., for the period March 27, 2008 through December 31, 2009. Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

B. JCM American Corporation: Nevada Corporation:
Kaoru Doi Koichiro Kamihigashi Hisashi Maki

Deputy Director Ciau indicated that staff recommended that the Commission approve the initial finding of suitability for JCM American Corporation, Item 11.B. for the period of March 27, 2008 through July 31, 2009. Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

12. Application for Tribal-State Compact Gaming Resource Supplier Financial Sources Finding of Suitability – Request to Withdraw (Pursuant to Business and Professions Code section 19869):

A. International Game Technology: George Baker Maureen Mullarkey

Deputy Director Ciau indicated that staff recommended that the Commission approve, without prejudice, the request for withdrawal of the application for gaming resource supplier finding of suitability for International Game Technology. Upon motion of Commissioner Vuksich, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

13. Consideration of Regulatory Language (CGCC-8) to be submitted to the Tribal-State Gaming Regulators Association (Compact Section 8.4.1)

Commission Chief Counsel Cyrus Rickards presented proposed Tribal Regulation CGCC-8 for Commission consideration. Mr. Rickards indicated that the Tribal-State Gaming Compact empowers the State, through its State Gaming Agency to conduct compliance review of various aspects of each Tribes Class III gaming operation. Proposed regulation CGCC-8 is designed to establish a process for the exercise of the State Gaming Agency responsibility of ensuring compliance with the Compact's requirements that the Tribal Gaming Agency assume the primary role in establishing and enforcing rules, regulations, procedures and specifications regarding the Class III gaming operation. The proposed draft integrates many of the ideas, criticisms, and suggested language expressed during the lengthy Task Forces process. Mr. Rickards further indicated that staff recommended that the Commission approve Tribal Regulation CGCC-8 to be forwarded to the Tribal-State Regulatory Association for consideration at the May 7, 2008 Association meeting.

Chairman Shelton opened the meeting for comments from the public concerning Item 13.

Jason Andrews, Picayune Rancheria, presented written comments that he read into the record. These comments are incorporated into the minutes as Attachment A.

Richard Armstrong, Rosette & Associates, representing Big Valley, La Posta Band, Tuolumne Band, Resighini Band, and Susanville Rancheria, indicated that his clients stand behind the Association Task Force report and they urge the Commission to forego adoption of CGCC-8. Mr. Armstrong also requested that the Commission make public the report on CGCC-8 from the Association Task Force.

Kani Nevis, Sherwood Valley Gaming Commission, presented comments indicating that smaller tribes are frustrated that the proposed regulation does not contain any protocol for how the audits will be conducted.

Ronald Jaeger, United Auburn Indian Community, presented written comments that he read into the record. These comments are incorporated into the minutes as Attachment B.

John Roberts, San Pasqual Gaming Commission, presented comments concerning the proposed regulation indicating that it was an unnecessarily overbroad blanket approach.

Anthony Roberts, Rumsey Gaming Commission, indicated that Rumsey strongly opposes the proposed regulation, the Commission is not entitled to the powers to enforce CGCC-8, and they urge the Commission not to adopt the proposed regulation.

Theodore Pata, Paskenta Band of Nomlaki Indians Tribal Gaming Commission, presented written comments that he read into the record. These comments are incorporated into the minutes as Attachment C.

Scott Crowell, Rincon Band, presented comments indicating that CGCC-8 gives the Commission authority beyond what is in the Compacts, and this should be renegotiated in Compact negotiations.

Glenn Feldman, representing Cabazon, San Pasqual, and Santa Ynez, indicated that his clients believe that the Compacts do not give the Commission authority to dictate to tribes conditions to adopt specific operational requirements. His clients do not support adoption of CGCC-8, and if adopted, ask that an exemption is provided for those tribes under the "sunset provision." Mr. Feldman presented proposed language for inclusion of a "sunset provision" exemption into CGCC-8, which is incorporated into the minutes as Attachment D.

Jane Zerbi, representing Pala Band, indicated that the exemption under the "sunset provision" fulfills the Commission's Statement of Reasons as published on April 7, 2007.

Sharon House, Santa Rosa Rancheria, presented written comments that she read into the record. These comments are incorporated into the minutes as Attachment E.

Commissioner Shimazu responded to comments made by tribes concerning the Commission's authority to impose CGCC-8, and that the regulation lacks any protocol. Commissioner Shimazu stated that the Compacts clearly give the Commission authority to implement CGCC-8 and included in the proposed regulation is an outlined procedure for conducting a compliance review.

Commissioner Vuksich stated that the Commission has a responsibility to citizens in the State to ensure that terms in Compacts are met.

Commissioner Schmidt remarked that the State should not abdicate its authority to ensure compliance of Compacts.

Chairman Shelton moved to adopt the staff recommendation to approve Tribal Regulation CGCC-8 to be forwarded to the Tribal-State Regulatory Association for consideration at the May 7, 2008 Association meeting. Commissioner Shimazu seconded the motion.

Kani Nevis commented further on the proposed regulation requesting that the Commission restart the negotiation process with the Association Task Force.

Jane Zerbi commented further on the proposed regulation.

Richard Armstrong commented further on the proposed regulation indicating that the proposed regulation incorporates very little change from the original draft.

The motion made by Chairman Shelton and seconded by Commissioner Shimazu to adopt the staff recommendation to approve Tribal Regulation CGCC-8 to be forwarded to the Tribal-State Regulatory Association for consideration at the May 7, 2008 Association meeting unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes. A copy of the staff report regarding Tribal Regulation CGCC-8 and the regulation text approved by the Commission is incorporated into the minutes as Attachment F. A copy of the Association Regulatory Standards Task Force Final Report Statement of Need Re. CGCC-8 is incorporated into the minutes as Attachment G.

CONSENT CALENDAR

14. Applications for Renewal Work Permit (Authority Pursuant to Business and Professions Code section 19870):

- A. Club San Rafael: Maryann Pozenkoff
- B. Napa Valley Casino: Arnel Dionislo
- C. Sundowners Cardroom: Alanis Lee-Bowley
- D. The 101 Casino: Nina Chen

15. Applications for Tribal-State Compact Key Employee Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.4):

- A. Bear River Band of Rohnerville Rancheria – Bear River Casino: Craig Reed
- B. Big Sandy Rancheria Band of Western Mono Indians – Mono Wind Casino:
Ricky Boothby Jason Harrison
- C. Cabazon Band of Mission Indians – Fantasy Springs Casino:
Eric Adossa **Kathleen Le Vasseur**
- D. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria – Colusa Casino and Bingo: Lee Ann Hennessy

- E. Coyote Valley Band of Pomo Indians – Coyote Valley Shodakai Casino: Tyrone Mitchell
- F. Morongo Band of Cahuilla Indians of the Morongo Reservation – Morongo Casino Resort & Spa:
Matthew Anderson
- G. Pala Band of Mission Indians – Pala Casino:
Hussien Alfhaili Michael Hines
- H. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Resort and Casino:
Joel Askvig Maher Bashary Susan Bonfiglio
Christopher Gile Robert Homeyer Michael Tall
- I. Picayune Rancheria of the Chukchansi Indians – Chukchansi Gold Resort and Casino:
Rebecca Stewart
- J. Rincon Band of Luiseno Indians – Harrah's Rincon:
Jerry Kimmey Roland Manuel
- K. Rumsey Indian Rancheria of Wintun Indians – Cache Creek Casino Resort :
Doug Kelly Cary Lee
- L. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation – Chumash Casino: Rubilisa Mondejar
- M. Sycuan Band of Diegueno Mission Indians – Sycuan Casino:
Lilia Mangosing James Wu
- N. Torres-Martinez Band of Cahuilla Indians – Red Earth Casino: Miguel Alvarez
- O. Twenty-Nine Palms Band of Mission Indians – Spotlight 29 Casino: Catherine Lumanog
- P. United Auburn Indian Community of the Auburn Rancheria – Thunder Valley Casino:
Dan Goul

16. Applications for Tribal-State Key Employee License Renewal (Authority Pursuant to Business and Professions Code section 19869):

- A. Agua Caliente Band of Cahuilla Indians – Agua Caliente Casino:
Patricia Baker Jesita Eaton Jon Eskelin
Sulema Garcia Joanne Glaser Victoria Gomez
Jared Grant Christopher Jacobs Noreen Marchese
Renee Sevigny Constance Thurmon Joseph Varney
Cesar Vizcarra Tom Voght
- B. Bear River Band of Rohnerville Rancheria – Bear River Casino:
Alicia Dominguez Phillip Salazar
- C. Big Sandy Rancheria Band of Western Mono Indians – Mono Wind Casino:
Carolyn Silva
- D. Cabazon Band of Mission Indians – Fantasy Springs Casino:
Bernard Bandy Angelica Espinoza Dennis Gadbois
Clarence Niezgoda
- E. Chemehuevi Indian Tribe of the Chemehuevi Reservation – Havasu Landing Resort and Casino:
James Cole Wayne Fauerbach Gerald Tratt

- F. Chicken Ranch Rancheria of Me-Wuk Indians – Chicken Ranch Bingo and Casino:
Joseph Thomas
- G. Dry Creek Rancheria Band of Pomo Indians – River Rock Casino:
Barbara Mason Rene Vaucresson
- H. Jackson Rancheria Band of Miwok Indians – Jackson Rancheria Casino and Hotel:
Patricia Baker Glenn Bruno Leonard Burns
Daniel Carson Robert Coats Jacqueline Dabbs
Bonnie Day-Longman James Delap Vernon Edwards
Steven Farr Chyanna Federer Annette Finch
Joseph Garcia Derek Hall Richard Hay
Carlota Lucas Sarah Maisenbach Colleen McCarthy
Audrey McCoy Erin McKinney William Mehrer
Leeanna Orcutt George Pate Timothy Pater
Glenn Pitts Rachelle Rasmusson Cody Rice
Christina Rullhausen Catherine Sarno Elizabeth Seidl
Judith Stephens Amanda Stone Darylin Summers
Jeremiah Truelock Rick Tschimperle Timothy Walker
Kenneth Weingart
- I. Middletown Rancheria Band of Pomo Indians – Twin Pine Casino: Shaun Sims
- J. Morongo Band of Cahuilla Indians of the Morongo Reservation – Morongo Casino Resort & Spa:
Kimberly Boeckholt Christopher Cicle Janie Shutz
James Thiros Tou Yang
- K. Paskenta Band of Nomlaki Indians – Rolling Hills Casino: Bruce Thomas
- L. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Resort and Casino:
Burton Batey Sandra Burdette Arthur De La Cruz
Charles Holden Supat Kanoknata Jeremy Murphy
Teang Sok Rosetta Williams Dany Wright
- M. Picayune Rancheria of the Chukchansi Indians – Chukchansi Gold Resort and Casino:
Stephanie Banuelos Michael Bechard Jose Hernandez
Edmund Unlayao
- N. Redding Rancheria – Win-River Casino:
Kevin Cawker Michael Martinez
- O. Rincon Band of Luiseno Indians – Harrah's Rincon:
Terry Adams Jr. Sandra Britton Christin Hodous
Glenn Rowley Christopher Sikora Robin Zetts
- P. Tule River Indian Tribe of the Tule River Reservation – Eagle Mountain Casino:
William Garfield
- Q. United Auburn Indian Community of the Auburn Rancheria – Thunder Valley Casino:
Samuel Evans Michael Harper Jr.

Deputy Director Ciau indicated that staff recommended that the Commission approve Consent Calendar Items 14 through 16. Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

PUBLIC COMMENT

There were no comments from the public during this portion of the meeting.

ADJOURNMENT

Upon motion to adjourn the meeting by Commissioner Vuksich, seconded by Commissioner Schmidt, and unanimously carried in a roll call vote, with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the meeting adjourned at 11:55 a.m.



**Picayune Rancheria of the
Chukchansi Indians
Tribal Gaming Commission**

Phone: (559) 683-6505 • Fax: (559) 642-4683
46575 Road 417 #B • Coarsegold, CA 93614

Good Morning Commissioners and respected members of the audience, my name is Jason Andrews and I am the Chairman of the Picayune Rancheria Tribal Gaming Commission, regulatory authority of Chukchansi Gold Resort & Casino. With your permission, I would like to take a few minutes to read a prepared statement for the record.

On September 10th, 1999, California Governor, Gray Davis & and Chairperson of the Chukchansi Indians Roger Davis signed the Tribal State Compact between the state of California and the Chukchansi Indians. 57 federally recognized tribes in the State of California also entered into a government-to-government relationship with the State of California under the terms of the 1999 State Compact. Since that time, various Tribes have elected to renegotiate their compacts allowing more gaming devices, additional revenue disbursements for those devices, and State regulatory oversight, as those sovereign Tribes and the State of California were entitled to do.

The 1999 Compact established a government to government relationship between the Chukchansi Indians and the State of California. According to the preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation or regulatory jurisdiction among the 3 sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. No where in the preamble does it state subdivisions of these sovereigns have the authority to unilaterally expand or change the terms of the system to expand its own regulatory authority in the area of Indian gaming.

Section 12.0 of the 1999 Compact establishes specific procedures and authority for any amendments and renegotiations of the terms of the compact.

On or about March 26, 2007, the California Gambling Control Commission notified the Tribes that they intended to submit to the State Association a uniform Tribal Gaming Regulation, CGCC #8, establishing further regulatory oversight, interpretation and changes to certain sections of the Compact. According to the purpose in this draft regulation: A basic premise of the Tribal-State Indian Gaming Compact ("Compact") was that pursuant to the Indian Gaming Regulatory Act, regulatory jurisdiction would like with three sovereigns, the federal government, the state, and the Tribe. The decision of the District of Columbia Circuit Court of Appeals in *Colorado Indian Tribes v. NIGC*, changed that basic premise and altered the regulatory landscape for tribal gaming by concluding that the NIGC was not authorized to promulgate regulations establishing minimum internal control standards ("MICS") for Class III gaming, or to enforce compliance with those regulations. The purpose of CGCC-8 is to preserve the benefits of the MICS system that has been in place since 1999.

On April 11, 2007, in good faith, the CA Tribal Regulators Network held a meeting where representatives from the CGCC were also present, including Mr. Cy Rickards, Chief Counsel of the Commission, Mr. Herb Bolz, commission attorney for many years and author of the draft regulation-008, as well as Ms. Heather Hoganson, to begin a dialogue on CGCC #8. In Mr. Rickards introductory remarks he informed the group that, "As a result of the CRIT decision a vacuum has been created regarding regulatory oversight responsibilities. This has created pressure on the commission to develop an emergency MICS Regulation."

Since this meeting, further discussion regarding the proposed regulations CGCC-8 continued, and the topic of the Colorado River Indian Tribes Court decision impact became such a concern that the Assembly Governmental Organization Committee held an information hearing on May 14, 2007. Again, according to the Compact preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation or regulatory jurisdiction among the 3 sovereigns

involved: the federal government, the state in which a tribe has land, and the tribe itself. Testimony provided at this informational hearing was provided by: Mr. Phil Hogen, Chairman of the NIGC, Mr. Dean Shelton, Chairman, CGCC, Mr. Paul Bullis, Director, Arizona Department of Gaming, and Ms. Sylvia Cates, Deputy Legal Affairs Secretary, Office of the Governor. Although regulatory jurisdiction includes the Tribes, not one member or representative from any Tribe were allowed to provide Testimony? However, the Director of the Arizona Department of Gaming was allowed to provide testimony. Mr. Bullis testified that AZ Tribes employ over 460 regulators and spend \$25 million on oversight. The Department of Gaming has a regulatory budget of \$10 million and employs 110 people. \$8 million of the \$10 million is provided by Tribes.

On September 10, 2007 the Rose Institute of State and Local Government at Claremont McKenna College for the Tribal Alliance of Sovereign Indian Nations provided a study of Gaming Regulatory Agency Expenditures of Tribes in California. The 64 tribes that are covered in the report projected Gaming Commission budgets totaling \$90,282,837. The CA Tribal Gaming Regulatory Agencies surveyed employ approximately 1,833 employees.

Continuing, on July 11, 2007, prior to its adoption by the CGCC, the State Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association, created an Association Regulatory Standards Taskforce to review CGCC-8. The first meeting being held on August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, January 9, 2008, and February 13, 2008. These meetings were attended by a majority of the Tribal Regulators and representatives from the State. Throughout all of these meetings, most, if not all, of the Tribes have adamantly concluded that the CRIT Decision did not change anything within the regulatory "landscape" in California because overall California Tribes have adopted the equivalent of the federal MICS in their Tribal Gaming Ordinances (Tribal Law), which are approved by the NIGC. Furthermore, on January 15, 2008, PRTGC Public Comment

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5 Tribes, Picayune Rancheria included, adopted a Gaming Ordinance that requires compliance with the NIGC MICS and authorizes continued NIGC oversight. Again, California tribes continue to ensure that the exact concern that led to the draft proposed CGCC #8 is dealt with on a government to government basis with all three governments with regulatory roles. It is my understanding that many other Tribes are working with the NIGC to also re-adopt the MICS and maintain NIGC oversight in lieu of CRIT or working on MOU's with the NIGC confirming Class III Gaming Oversight.

The last meeting on February 13, 2008 produced a Final Report, which was provided to every member of the Task Force in attendance, including, the State representatives that would be delivered to the State Association on May 7, 2008 per State Association protocol. The Taskforce recommendation to the State Association found that the draft CGCC-8(September 7, 2007), is unnecessary, unduly burdensome, and unfairly discriminatory.

Since February 13, 2008, the CGCC has released two new versions of CGCC#8. The first on March 11, 2008 and after a "closed" session meeting of the CGCC a second version on March 13, 2008. The new version which we are discussing today completely changes the purpose of CGCC-8 and doing away with the belief that the decision of the District of Columbia Circuit Court of Appeals in *Colorado Indian Tribes v. NIGC*, changed that basic premise and altered the regulatory landscape for tribal gaming by concluding that the NIGC was not authorized to promulgate regulations establishing minimum internal control standards ("MICS") for Class III gaming, or to enforce compliance with those regulations. The purpose of CGCC-8 is to preserve the benefits of the MICS system that has been in place since 1999, but now interprets, establishes specific procedures and authority of specific sections of the 1999 and comparable Compacts. The new version specifically states, "Nothing in this regulation shall modify or affect the rights and obligations of the SGA under the Compact, including but not limited to, the SGA entities' ability to share documents provided pursuant to this regulation, subject to the Compact's confidentiality provisions." The Regulation itself is saturated with

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Compact citations implicating an interpretation that the CGCC already has these authorities. Therefore, the Picayune Rancheria Tribal Gaming Commission asks why is this regulation necessary?

Furthermore this Regulation and the recent actions/versions of the CGCC and CGCC 8 since February 13, 2008 have been unduly burdensome, unfairly discriminatory, are creating economic hardships on Tribes, including smaller operations, do not foster uniformity, and are duplicative.

Pushing two separate versions, (four versions all together) within two days that completely changed the purpose and language of CGCC-8 without any consultation or consideration with the Tribes or Taskforce has wasted nearly a year of ground work and foundation. Traveling to all of these meetings, utilizing attorneys and auditors to provide recommendations and language for the proposed draft of March, 2007 and September, 2007 versions has been unduly burdensome and costs tens if not hundreds of thousands of dollars.

On April 10, 2008 you will be holding an informal public hearing on draft regulations regarding minimum internal control standards for gambling establishments, specifically Security and Surveillance. This hearing further proves CGCC 8 to be discriminatory to the Tribes, because the Card Rooms do not have MICS in place regarding major functions of a gaming operation. These MICS are in place and have been in place for several years with the NIGC and each Tribe's Tribal Internal Control Standards. NIGC MICS and Tribal Internal Control Standards, by my evaluation, are far more stringent than those proposed. With all do respect, the CGCC now wants to regulate us on NIGC MICS and our Tribal Internal Control Standards, but has not even created or held the card rooms to the same standards, seems to be quite discriminatory! Not to mention that race tracks are not even included in these proposed MICS!

Therefore, the Picayune Rancheria Tribal Gaming Commission hopes that the CGCC does not continue to move forward with CGCC 8, as the provisions of this
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regulation, regardless of the version, violate the provisions of the State Compact between the Chukchansi Indians and the State of California. Any provisions, interpretations, establishment of specific procedures and authority belong in Compact negotiations between the State of California and the Tribe, as pursued in 2004 and 2007.

Prepared Respectfully by,

A handwritten signature in black ink, appearing to read "Jason M. Andrews", with a long horizontal flourish extending to the right.

Jason M. Andrews, Chairman

Picayune Rancheria Tribal Gaming Commission



TRIBAL GAMING AGENCY

March 27, 2008

Via Hand Delivery

Dean Shelton, Chairman
Alexandra Vuksich, Commissioner
Stephanie Shimazu, Commissioner
Sheryl Schmidt, Commissioner
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

Re: Consideration of Regulatory Language for CGCC-8

Dear Chairman Shelton and Commissioners Vuksich, Shimazu and Schmidt:

The United Auburn Indian Community Tribal Gaming Agency submits this letter for the record of your March 26, 2008, meeting regarding agenda item number 13, the consideration of regulatory language CGCC-8 to be submitted to the Tribal-State Gaming Association.

The UAIC TGA urges you to examine the legal authority section of the Tribal-State Gaming Association Task Force Report (Task Force Report), as we believe that there is no authority under the Tribal-State Gaming Compacts for the promulgation of a state gaming agency regulation like CGCC-8, which attempts to provide for CGCC compliance reviews/audits of federal minimum internal control standards (MICS) and financials of tribal gaming operations. It is an authorized extension of the state's authority under our Compact and would require instead a negotiated change in terms through a compact amendment, as was done recently with new compacts and memorandum of agreements specifically including these provisions.

You have identified your objectives as being to confirm tribal gaming integrity, protect citizens, and secure the state's interest in revenue share from Compacts in your April 6, 2007, Statement of Need for this potential regulation. We believe that these objectives are being met already and that the potential regulation CGCC-8 is unnecessary, duplicative, and unduly burdensome. In addition to the factors set out in the Task Force Report, we want to specify here that the United Auburn Tribal Gaming Agency (TGA) provides on-site tribal gaming regulation at Thunder Valley Casino, which includes MICS compliance monitoring and enforcement, with oversight by the National Indian Gaming Commission (NIGC). The NIGC oversight includes enforceable MICS compliance monitoring, and the NIGC has conducted a MICS audit at Thunder Valley

1200 Athens Avenue • Lincoln, CA 95648-9328 • 916/408.8200 • fax 916/408 8380

Casino after the CRIT appellate decision, *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006). Under our Compact, patrons have the right to independently arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audits completed by certified public accountants are provided to the CGCC. Our Compact provides for flat fee payments to the State rather than payments by percentages based upon net win, so the State has no interest in securing its revenue share at United Auburn's Thunder Valley Casino through the compliance reviews proposed in CGCC-8.

Additionally, however, if the CGCC intends to adopt regulatory language CGCC-8, then UAIC TGA urges you to include in any proposed regulatory language an exemption for tribal gaming operations over which the National Indian Gaming Commission exercises jurisdiction to monitor and enforce MICS. This exemption makes sense and would accomplish the core purpose the CGCC identified in its Statement of Need -- oversight of MICS compliance.

While we cannot support the regulatory language CGCC-8, we do look forward to working with the CGCC in implementing regulatory provisions of the Compact and to ensuring the integrity of Indian gaming.

Sincerely,



Ronald M. Jaeger, Chairman
United Auburn Indian Community Tribal Gaming Agency

cc: Cy Rickards, CGCC Chief Counsel (via fax)
Richard Ross, CGCC Deputy Director Compliance (via fax)

STATEMENT OF THEODORE PATA

Commission Chairman - Paskenta Band of Nomlaki Indians
Tribal Gaming Commission

California Gambling Control Commission Meeting

March 27, 2008

Good morning Chairman Shelton and members of the California Gambling Control Commission. My name is Theodore Pata and I am the Commission Chairman of the Paskenta Band of Nomlaki Indians Tribal Gaming Commission. The Paskenta Band operates the Rolling Hills Casino pursuant to its 1999 Tribal-State Gaming Compact. I am here today representing the Paskenta Band and the Paskenta Tribal Gaming Commission. The Paskenta Band strongly opposes the implementation of CGCC-8 for the following reasons:

1. The regulatory provisions of CGCC-8 represent an amendment of the Paskenta Band's Compact. The CGCC and the State do not have authority to amend our Compact without the Paskenta Band's approval.

We are in the ninth year of our Compact and the Paskenta Band has not been invited by the State to negotiate an amendment to its Compact. The Paskenta Band does not agree to amend its Compact through CGCC-8.

If the State seeks to amend the Paskenta Band's Compact, it should formally request the Tribe to enter into Compact amendment negotiations.

2. The Paskenta Band's Compact does not authorize the CGCC to perform an On-site Compliance Review of the Tribe's Gaming Operation. The only mention of the term "on-site" in the Paskenta Band's Compact is for the Paskenta Tribal Gaming Commission to serve as the primary on-site regulatory agency of the Tribe's Gaming Operation.

We are concerned that the On-Site Compliance Review is simply another name for an Agreed Upon Procedures Audit or a Financial Audit. The Paskenta Band's Compact does not authorize the CGCC to perform an On-Site Agreed Upon Procedures Audit or a Financial Audit of the Tribe's Gaming Operation.

3. Previously, the Paskenta Band adopted the Minimum Internal Control Standards of the National Indian Gaming Commission. These standards apply to the Tribe's Gaming Operation. As such, the Tribe is in compliance with its Compact.
4. The CGCC has offered no proof or evidence that California tribes are conducting gaming without Minimum Internal Control Standards. We are unaware of any California tribe conducting gaming without Minimum Internal Control Standards.
5. There is no void in regulatory oversight of the Paskenta Band's Gaming Operation. Despite the decision in *Colorado River Indian Tribes v. NIGC*, the Paskenta Band continues to send its annual Class III Financial and Agreed Upon Procedures audits to the NIGC.

It is also worth mentioning that, even though it is not required to, the Paskenta Band has decided to amend its Tribal Gaming Ordinance to voluntarily grant NIGC regulatory oversight of its Class III gaming operation.

In conclusion, CGCC-8 is unnecessary because California tribes have already adopted Minimum Internal Control Standards and no MICS compliance issues have been identified to justify its implementation.

CGCC-8 is duplicative of the audit functions already performed by the Paskenta Band in compliance with federal law. The Paskenta Band annually performs a Financial Audit and

Agreed-Upon Procedures Audit. The results of these audits are sent to the NIGC.

Finally, the Paskenta Band is greatly troubled by the CGCC's attempt to use CGCC-8 to amend the Paskenta Band's Compact. Our Compact does not authorize the State to unilaterally amend the Compact. The procedure for Compact amendment requires true government-to-government negotiations and mutual agreement. CGCC-8 does not represent government-to-government negotiations.

On behalf of the Paskenta Band, thank you for the opportunity to present our statement in opposition to CGCC-8.

- (t) Sunset. This Regulation shall not apply to any gaming operation over which the NIGC (or a successor federal agency) exercises jurisdiction with respect to Class III gaming to monitor and enforce the requirements of the MICS set forth at 25 CFR Part 542 (as in effect on October 1, 2006 or as may be amended from time to time) that are made applicable to that gaming operation by any lawful means; provided, however, that the Tribal Gaming Agency shall, within 30 days of issuance, provide the CGCC with a copy of the report, if any, issued by the NIGC or any independent CPA, pursuant to 25 CFR 542.3(f) or any successor regulation.

TESTIMONY BEFORE CALIFORNIA GAMBLING CONTROL COMMISSION
IN RE CGCC 8

SANTA ROSA TACHI GAMING COMMISSION

March 27, 2008

The Santa Rosa Tachi Gaming Commission would like to express its concerns in regard to the proposed regulation to be submitted to the Tribal/State Compact Association in May. The Gaming Commission is in full agreement with the report that was submitted from the Task Force and the following are additional and specific issues that our Commission would like to share with the CGCC:

CGCC 8, appears to be a Compact amendment as presently written and not a Regulation, and is premature.

On numerous occasions in the past, the Tribal Regulators have requested at Tribal/State Compact Association meetings, what are the procedures that the CGCC follows when accessing information from the Tribe's and is there certain protocols that are uniform and there has been no detailed response;

The following issues and concerns have also been identified that require some type of resolution and mutual understanding prior to what appears to be a "MICS" audit:

- Is there a written process in place to identify how on-site inspections are to be handled?
- How did the number of '75' machines to be tested been determined and by whom and is there to be spot checks on regular basis in regard to said testing?
- Has there been a standard procedure and/or protocol developed that is in writing that addresses how an SDF audit is to be performed that includes the testing of eproms and who is responsible for handling the eproms?
- The Compliance Division indicated in the past that it would be on site to perform its intended audits for six (6) to seven (7) weeks. This appears to be an extremely lengthy time period for any type of audit. This interferes with the day to day operations of the Casino. This places a strain on resources of the Casino and the Agency that had not been anticipated.
- Was there input from any Tribe's in regard to the EGD Compliance check list introduced by the Compliance Division? Was there input or a request for comment in regard to the Checklist from the Gaming Commissions and/or their Regulatory Agency's and or their Gaming Operations?

- Information concerning this six (6) to seven (7) week audit was provided verbally. It would seem that this information should be standard and in some type of written form.
- Statements were made by the Compliance Division that there were "weak internal controls" in various areas, but no back up information was provided to the Gaming Commission as to the Compliance Divisions concerns. Ordinarily the Tribal Gaming Commission would be notified and it would address the concerns to the State in writing, once the concerns about the internal controls were identified specifically.
- Due to the fact that it appears that this audit is possibly turning into a MICS and/or financial audit, the authority for this type of audit by the Compliance Division is questionable.
- Section 7.1 and Section 7.2 of the Compact are quite clear:

"Section 7.1. On-Site Regulation

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of the Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility Compliance..."

"Section 7.2 Investigation and Sanction

The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary..."

It is apparent from the above concerns that more discussion must take place prior to moving forward with the proposed audit. Pursuant to Section 7.1 of the Compact it is apparent that if the State believes that the Tribe is in non-compliance with Compact terms it must notify the Tribal Gaming Agency first and allow the Tribal Gaming Agency to investigate the allegations of non-compliance. The Compact does not require the State to investigate first, if it has a concern. It is not unreasonable to expect that if the Compliance Division has an allegation of a non-compliance with weak internal controls, that it would place the potential violations in writing and then the Tribal Gaming Agency would perform the investigation.

CGCC 8 is premature and if any type of Regulation needs to be proposed it would be one that identifies the protocol and procedures associated with Compact sections 7.1 and 7.2.



DENA BAREA - TREASURER
SANTA ROSA RANCHERIA
TACHI-YOKUT TRIBE



Santa Rosa Rancheria
Gaming Commission
Tachi-Yokut

CALIFORNIA GAMBLING CONTROL COMMISSION
LEGAL DIVISION MEMORANDUM



Public Staff Report for March 27, 2008 Commission Meeting

Date: March 21, 2008
To: Commissioners
Copy: Steven V. Giorgi, Executive Director
From: Heather Cline Hoganson, Staff Counsel
Cyrus J. Rickards, Chief Counsel
Subject: Proposed Tribal Regulation (Compact Sections 8.4, 8.4.1) - CGCC-8

Recommendation:

APPROVE the attached regulatory text (dated March 13, 2008) to be forwarded to the Tribal-State Regulatory Association (Association) for consideration at the May 7, 2008 Association meeting.

Summary:

The Tribal-State Gaming Compact (Compact) empowers the State, through its State Gaming Agency (SGA), to conduct compliance reviews of various aspects of each Tribe's Class III gaming operation.¹ Compact Sections 8.4 and 8.4.1 provide a process for the establishment and adoption of regulations by the SGA. This proposed regulation (CGCC-8) is designed to establish a process for the exercise of the SGA responsibility of ensuring compliance with the Compact's requirements that the Tribal Gaming Agency assume the primary role in establishing and enforcing rules, regulations, procedures, and specifications regarding the Class III gaming operation. In order to meet the goal of statewide uniformity of regulation of Class III gaming expressed in Compact Section 8.4, this regulation (CGCC-8) incorporates the National Indian Gaming Commission's Minimum Internal Control Standards (NIGC MICS) as baseline minimum standards for California Class III gaming.

Background:

1. Regulatory Process

In the Spring of 2007, California Gambling Control Commission (Commission) staff presented the concept of CGCC-8 to the Association. A draft was presented to the Association in July 2007, and a Task Force was appointed to review the proposal, in accordance with the Protocol for Submission of Proposed State Regulatory Standards to the Association (Protocol).

¹ Under the Compact, Tribes are authorized to conduct the following Class III gaming activities: gaming devices, banking or percentage card games, and devices that are authorized under state law to the California State Lottery. (See Compact Section 4.0.)

The Task Force met August 8, 2007, September 11, 2007, November 7, 2007, January 9, 2008, and February 13, 2008. The Commission was given alternative language by members of the Task Force, but not by the Task Force itself. The Task Force (minus State Gaming Agency representatives) issued a Final Report on February 13, 2008.

At the noticed meeting of the Commission on February 21, 2008, the Commissioners received oral comments on draft CGCC-8. Staff has incorporated many of the language suggestions received and is presenting a final draft proposal for adoption by the Commission. If adopted, the text will then be forwarded for consideration by the Association at its May 7, 2008, meeting, pursuant to Section 8.4.1 of the Compact. That meeting will constitute the "initial" reading of the text under the Protocol.

Pursuant to the Protocol, at the initial meeting at which a proposed regulation is presented for consideration, no vote may be taken². At least one additional meeting shall be conducted no less than 30 days nor more than 90 days after the initial meeting, at which time the proposed regulation shall be voted upon³. One 30-day extension may be granted beyond the 90 days, upon a majority vote of the Delegates present at an Association meeting.⁴ Unless the SGA withdraws the proposed regulation, or notice is not properly provided, a vote shall be taken by the Association.⁵

If the proposed regulation is approved by the Association, it must then be submitted to the Tribes for comment. The Commission must consider any comments before final adoption.⁶ If the proposed regulation is disapproved, it shall not be submitted to the Tribes for comment unless it is re-adopted by the SGA, with a detailed, written response to the Association's objections.⁶

2. Tribal Regulation and State Compliance Oversight

Gaming is the quintessential cash business and internal controls are the primary procedures used to protect the integrity of casino funds and games. Internal controls are therefore a vitally important part of properly regulated gambling.

In California, the Compact places primary responsibility for the establishment and enforcement of internal controls regarding Class III gaming with the Tribal Gaming Associations (TGAs). The Compact requires Tribes to adopt gaming ordinances. It further requires TGAs to adopt internal rules, regulations, and specifications (control standards) regarding specific aspects of the gaming operation and to ensure that the gaming operation is conducted according to those standards.⁷ Nevertheless, the Compact also makes clear that the SGA has the right to inspect the Gaming Facility and all Gaming Operation or Facility records with respect to Class III gaming to ensure Compact Compliance.⁸

² Protocol, section C 2(a). See also, Section 8.4.1(c) of the compacts.

³ Protocol, section C 2(b).

⁴ Protocol, section C 2(e)(3).

⁵ Protocol, section C 3.

⁶ Section 8.4.1(b) of the compacts.

⁷ See Compact Sections 6.1, 7.1, 8.1 and following.

⁸ See Compact Sections 7.4, and following.

CGCC-8 is designed to facilitate the State's exercise of its compliance responsibilities under the Compact. It provides a process for accomplishing compliance oversight, including a process for dispute resolution between the Tribe and the SGA prior to either the State or the Tribe moving to the Compact's dispute resolution process. CGCC-8 also includes the NIGC MICS as a baseline for tribal internal controls.

The NIGC MICS were designed to establish a baseline, that is MINIMUM internal control standards, to be required of tribal gaming operations. Initially adopted in January 1999 (before the original Tribal-State Gaming Compacts were negotiated in California), and designed with substantial input from gaming tribes, the NIGC MICS have been amended over the years to take into account advances in technology, and to clarify certain requirements. Amendments were based on input by NIGC auditors and field staff, tribal gaming representatives, and the public at large.⁹

The NIGC MICS are structured by size of gaming operations rather than by type of game (Class II or Class III). This recognizes that the requirements placed upon Tribal gaming operations should differ based upon their annual gross gaming revenue. CGCC-8 establishes the NIGC MICS solely as a baseline. The regulation does not require that any Tribe adopt the NIGC MICS, but only that the Tribe's own internal control standards equal or exceed the NIGC MICS. This standard was chosen because most, if not all, gaming Tribes, already use the NIGC MICS as a baseline and, as such, it is the industry standard for Tribal gaming in California.

Conclusion:

CGCC-8 is an attempt to cooperatively establish uniform protocols and standards for State compliance review of Class III gaming operations. It attempts this by establishing the NIGC MICS as a baseline for Tribal gaming operations and by establishing procedural rules for State oversight of compact compliance. Using the NIGC MICS as a baseline standard ensures consistency and uniformity while taking into account the size of gaming operations. Further, since the Tribes have been using this standard for years, this approach eliminates duplication or unnecessary promulgation of new rules, regulations, or specifications. Since the State already has significant oversight authority expressed in the compacts, CGCC-8 would not constitute an expansion of that authority, but would be a method of facilitating the exercise of that authority.

This final proposed draft integrates many of the ideas, criticisms, and suggested language expressed during the lengthy Task Force process outlined above. Staff believes it clearly preserves the primary role of Tribal Gaming Agencies in the regulation of Class III gaming under the Compact, while establishing a rational process for the State to exercise its clear authority to ensure compact compliance. This regulation respects Tribal sovereignty while at the same time ensuring that the State, in its sovereign role as a Compact signatory and pursuant to specific Compact language, may assure its citizens that it is exercising its role to ensure Compact compliance in the regulation of Class III gaming.

Document Attached:

- Proposed Uniform Tribal Gaming Regulation CGCC-8 (MICS) (dated March 13, 2008).

⁹ According to the NIGC, they have conducted 6 to 8 full, on-site compliance audits in California from 2000 to 2006.

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Uniform Tribal Gaming Regulation CGCC- 8

Minimum Internal Control Standards

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- (a) Purpose. The Tribal-State Indian Gaming Compact (Compact) empowers the State, through its State Gaming Agency (SGA), to conduct compliance reviews of various aspects of each Tribe's Class III Gaming Operations. Specifically, Section 6.0 of the 1999 Compact, and comparable sections of new or amended Compacts, provide that each Tribe will conduct its Gaming Operation in compliance with a Gaming Ordinance adopted by the Tribe, and rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency (TGA). Section 8.1 of the 1999 Compact, and comparable sections of new or amended Compacts, charge the TGA with responsibility to promulgate such rules, regulations and specifications and to ensure their enforcement. Compact sections 8.1.1 through 8.1.14 outline the matters which, at a minimum, these rules, regulations, and specifications must address. Compact sections 7.4 through 7.4.4 provide the State Gaming Agency the authority to inspect the Gaming Facility, as defined in the Compact, as reasonably necessary to ensure compliance with the Compact. The purpose of this regulation is to

1 provide an effective uniform manner in which the SGA can conduct compliance
2 reviews of the adoption and enforcement of these rules, regulations, and
3 specifications by the TGA, and to protect the public as well as each Tribe. As
4 defined in Section 2.18 of the Compact, the State Gaming Agency includes the
5 California Gambling Control Commission (CGCC) and the Department of
6 Justice, Bureau of Gambling Control (Department). Nothing in this regulation
7 shall modify or otherwise affect the rights and obligations of the SGA under the
8 Compact, including but not limited to, the SGA entities' ability to share
9 documents provided pursuant to this regulation, subject to the Compact's
10 confidentiality provisions.

11
12 (b) Internal Control Standards. Each Tribal Gaming Agency (TGA) shall maintain
13 written internal control standards applying to its operation and support of Class III
14 gaming that equal or exceed the Minimum Internal Control Standards (MICS) set
15 forth at 25 CFR Part 542 (as in effect on October 1, 2006, as may be amended
16 from time-to-time), and shall provide a copy of these standards to the CGCC staff
17 within 30 days of the effective date of this regulation. Copies of any amendments
18 to these standards shall be provided to the CGCC staff within 30 days of adoption
19 by the TGA.

20
21 (c) Internal Control System. Each Tribe shall implement and maintain an internal
22 control system that, at a minimum, ensures compliance with the tribal internal
23 control standards that apply to its operation and support of Class III gaming.

24
25 (d) Net Win. The definition of "net win" contained in the applicable Tribal-State
26 Compact shall apply to matters covered by this regulation, rather than the
27 definition of "net win" provided at 25 CFR 542.19(d).
28

1 (e) Financial Statements Audit. Section 8.1.8 of the 1999 Compact, and comparable
2 sections of new or amended compacts, provide that each Tribe shall engage an
3 independent Certified Public Accountant (CPA) to provide an annual audit of the
4 financial statements of each Gaming Operation. Such financial statements shall
5 be prepared in accordance with generally accepted accounting principles and
6 financial statements audits shall be conducted in accordance with generally
7 accepted auditing standards, as supplemented by the standards for audit of casinos
8 of the American Institute of Certified Public Accountants. Each Tribe shall
9 submit to the CGCC staff all audit report information, including management
10 letters and responses to management letters, pertaining to the operation and
11 support of Class III gaming, within 120 days after the completion of the audit.
12 The Tribe may elect to provide the entire audit report to the CGCC staff for
13 review and CGCC staff will only utilize or record those aspects affecting the
14 operations and support of Class III gaming.

15
16 (f) Agreed-Upon Procedures Audit. Each Tribe shall engage an independent CPA to
17 perform an annual "Agreed-Upon Procedures" audit in accordance with 25 CFR
18 542.3(f) to verify that the gaming operation is in compliance with the Tribe's
19 written internal control standards. Either the firm or all independent certified
20 accountants engaged to perform an "Agreed-Upon-Procedures" audit must be
21 licensed by the California Board of Accountancy. The CPA shall prepare a report
22 of the findings for the Tribe. The Tribe shall submit a copy of the report to the
23 CGCC staff no later than 120 days after the completion of the audit.

24
25 (g) State Gaming Agency Access to Records. Pursuant to Section 7.4 and following
26 of the 1999 Compact, or comparable sections of new or amended Compacts, SGA
27 staff shall be given prompt access to all gaming operation facilities, equipment,
28 personnel, and records reasonably necessary to ensure compliance with the
29 Compact. Tribal officials shall not unreasonably withhold or deny access to

1 records deemed necessary for compliance review by SGA staff. Upon request
2 and notice to the Tribe and the TGA, the SGA staff shall be granted access during
3 normal hours of the Gaming Facility's business office for inspection and copying
4 records of the operation and support of all Class III gaming, including, but not
5 limited to: internal control standards; work-papers of the independent CPA
6 generated in performing the Agreed-Upon-Procedures audit; reports and work
7 papers of the internal audit staff; observation checklists; CPA MICS compliance
8 checklists or other comparable testing procedures; findings by the independent
9 CPA or the internal audit staff; and exceptions and gaming operation response to
10 the exceptions. The TGA and the Tribe shall permit the SGA staff to interview
11 and consult with the independent CPA before and after the performance of the
12 Agreed-Upon-Procedures audit.

13
14 (h) CGCC Review of Independent Audits. CGCC staff shall review both the audit of
15 the financial statements pertaining to the operation and support of Class III
16 gaming, the Agreed-Upon-Procedures report, and all information supplied by the
17 Tribe and the TGA and may choose to conduct on-site compliance reviews of the
18 operation and support of all Class III gaming. The compliance reviews
19 authorized by this regulation shall not be construed to authorize the State to
20 conduct a full financial audit as is required of the Tribe by Section 8.1.8 of the
21 1999 Compact or authorized pursuant to 25 CFR 571.12.

22
23 (i) CGCC Report Acceptance and Tribal Action Plan. If an on-site compliance
24 review is conducted, CGCC staff shall provide a draft Compliance Review Report
25 (Report) to the Tribe and to the TGA, including findings of non-compliance, if
26 any. The Tribe shall have 60 days, or such other time period as is mutually
27 agreeable, to respond to the CGCC draft Report. If the Tribe accepts the draft
28 Report, CGCC staff shall finalize its Report and, within 20 days of acceptance,
29 submit the final Report to the Tribe and the TGA. Within 45 days of receipt of

1 the final Report, the Tribe shall acknowledge the Report and, if findings require,
2 provide a written action plan including proposed time line addressing the
3 findings. CGCC staff may review the impact or implementation of any action
4 plan undertaken by the Tribe pursuant to this regulation and may issue an Action
5 Plan Assessment to the Tribe.
6

7 (j) CGCC Compliance Review Report Dispute. If, after a 60-day review, the Tribe
8 contests the draft Report, CGCC staff and the Tribe shall make good faith efforts
9 to resolve any differences. Upon notice by the Tribe of a disagreement and
10 failure to resolve differences, the CGCC staff will finalize and deliver the Report.
11 Within 30 days of receipt, the Tribe shall provide a written explanation of its
12 reasons for disputing the findings. The Report and the Tribe's explanation of the
13 dispute shall be referred for consideration by the full CGCC. At the request of the
14 Tribe, the matter may be set for closed session consideration at which time the
15 Tribe may offer any evidence to support its position and/or offer a compromise
16 reconciliation. All information presented shall be subject to the confidentiality
17 provisions of the Compact. If, after consideration and decision by the full CGCC,
18 a dispute remains, it may be resolved pursuant to the dispute resolution process
19 outlined in Compact Section 9.0.
20

21 (k) Confidentiality. Pursuant to Compact section 7.4.3(b), or comparable sections of
22 new or amended Compacts, the SGA shall exercise utmost care in the
23 preservation of the confidentiality of any and all information received from the
24 Tribe in compliance with this regulation, including but not limited to tribal
25 internal control standards, third-party audits, tribal audits, and state compliance
26 reviews, and shall apply the highest standards of confidentiality expected under
27 state law to preserve such documents from disclosure.
28

1 (l) Variance to Internal Control Standards. A TGA may approve a variance from the
2 control standards set out at 25 CFR Part 542, following the procedure outlined in
3 25 CFR 542.18(a). The other procedures found at 25 CFR 542.18(a) through (e)
4 shall also apply to variances sought under this regulation, except that the review
5 of the TGA approval shall be conducted by the Chairperson of the CGCC and the
6 TGA shall be entitled to an appeal to the full CGCC in the event that the
7 Chairperson files objections to a re-submission of a variance as provided in 25
8 CFR 542.18(d).

9
10 (m) Updating Internal Controls and this Regulation.

- 11 (1) Nothing in this regulation shall be construed to preclude individual tribes
12 and the SGA from meeting, from time-to-time, to discuss MICS
13 compliance matters in light of changing technology or industry best
14 practices.
- 15 (2) The Tribal-State Regulatory Association may meet from time-to time, but
16 not less often than once every two years, to discuss possible modifications
17 of this regulation in light of changing technology or industry best practices.

18
19 (n) Disputes. If a dispute not previously addressed by this regulation arises between
20 CGCC staff and a Tribe involving the application or interpretation of this
21 regulation, the following procedure shall be followed:

- 22 (1) The parties shall make good faith efforts to resolve their differences.
- 23 (2) If these good faith discussions do not resolve the matter, then the matter
24 shall be referred to the full CGCC for review and decision. At the request
25 of the Tribe, the matter may be set for closed session consideration.
- 26 (3) After the full CGCC reviews the matter and makes a decision, or if the full
27 CGCC for any reason does not make a decision, the Tribe shall be entitled
28 to invoke the dispute resolution process outlined in Compact section 9.0.
- 29 (4) If the Tribe declines to follow the decision of the full CGCC, the State
30 shall be entitled to invoke the dispute resolution process outlined in
31 Compact section 9.0.

**ASSOCIATION REGULATORY STANDARDS TASKFORCE
FINAL REPORT STATEMENT OF NEED RE. CGCC-8
FEBRUARY 13, 2008**

I. INTRODUCTION

The California Gambling Control Commission (the "CGCC") submitted a draft proposed regulatory standard, CGCC-8, to the Tribal-State Association (the "Association") on July 11, 2007, prior to its adoption by the CGCC. The Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association (the "Protocol"), created an Association Regulatory Standards Taskforce (the "Taskforce") to review CGCC-8. The Taskforce held its first meeting on Wednesday, August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, and January 9, 2008. These meetings were attended by a majority of the tribal regulators and representatives from the State of California (the "State").

The purpose of the Taskforce meetings was to discuss proposed criteria and information necessary to analyze and review the proposed regulation. Pursuant to the Protocol, the Taskforce is charged with providing a Statement of Need for the proposed regulation, including the rationale for the need based upon fact or policy. The Taskforce in developing this Statement of Need may consider the following: (i) economic impact on gaming operations, including whether the proposed regulatory standards impact small operations differently than large operations; (ii) whether the standard or policy embodied by these proposed regulatory standards is or will be applied to gaming facilities other than Indian casinos, such as card rooms and race tracks; if not whether there is any disparate impact or discriminatory effect created by the proposed regulatory standards; (iii) whether the proposed regulatory standards fosters uniformity; and (iv) alternatives to the proposed regulatory standards; (v) provide a statement of legal authority; (vi) if basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative. See Protocol for Submission of Proposed State Regulatory Standards to the Association, Amended January 21, 2004, Section (B)(2)(b).

In accordance with these duties, the Taskforce Chairman respectfully submits this final report and Statement of Need to the Association.

II. STATEMENT OF NEED

The CGCC has cited different rationales for CGCC-8. One rationale cited in the regulation is that the *CRIT* decision¹ "changed the contours" of a basic Tribal-State Compact premise that regulatory jurisdiction lies with federal, state and tribal governments when it held that the National Indian Gaming Commission (the "NIGC") does not have the authority to promulgate or enforce Minimum Internal Control Standards ("MICS") for Class III gaming. (Section (a) of CGCC-8.)

¹ *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

However, the *CRIT* decision does not and cannot change the terms of the Compact. The State could have expressly addressed the inclusion of MICS in the original 1999 Compacts, but did not do so.² Nor was this done in subsequent amendments, as the State of Arizona did when it negotiated new Compacts with Arizona tribes in 2003. The 2003 Arizona Compacts expressly require gaming tribes in that state to implement MICS, as amended from time to time. The CGCC's attempt to adopt and enforce the NIGC MICS as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

The CGCC also contends that its proposed regulation is needed "to preserve the benefits of independent oversight of Tribal MICS compliance" and "serve to increase public confidence that Tribal gaming meets the highest regulatory standards." CGCC-8, subdivision (a). However, the results of the Tribal Regulator Networking Group's survey demonstrate that the NIGC MICS remain the applicable standards for tribal gaming operations in California, notwithstanding the *CRIT* decision. Thus, the rationale that CGCC-8 is needed to maintain uniform MICS for tribal gaming operations in California is also invalid. (See also Section VI(A), (B) below, addressing the necessity of CGCC-8).

The rationale that the regulation is needed to address the *CRIT* decision also does not explain why CGCC-8 contains provisions requiring financial audits. The *CRIT* decision did not affect the role the NIGC plays with respect to financial audits or alter the existing requirements for annual external financial audits found in both section 8.1.8 of the Tribal-State Compact and Indian Gaming Regulatory Act of 1988 (the "IGRA")³ at 25 U.S.C. § 2710(b)(2)(C). Since the regulatory scheme relating to annual financial audits remains untouched by the *CRIT* decision, there is no legitimate basis for including the financial audit provisions in CGCC-8.

A. Economic Impact on Gaming Operations

The provisions of CGCC-8 requiring adoption of the NIGC MICS and an annual "Agreed-Upon Procedures" audit would not pose a significant economic impact because, as stated above, these requirements are already enforced by Tribal Gaming Agencies. The requirement in CGCC-8 for an annual audit of the gaming operation's financial statements also does not pose a significant economic impact because this requirement is already found in the IGRA, gaming ordinances and the Tribal-State Compact.

However, the provisions of CGCC-8 authorizing the CGCC to conduct undefined "on-site compliance reviews" and requiring tribes to work with the CGCC to resolve any disputed findings of the CGCC's compliance review may pose a significant economic impact on tribal gaming operations, particularly for smaller tribal gaming operations. Costs include the staff time dedicated to producing records and escorting CGCC staff in conducting comprehensive reviews/audits in addition to the cost of audits already being performed. The unrestricted

² The absence of the MICS was a product of negotiations among the parties during the compacting process. See footnote 7.

³ 25 U.S.C. § 2701 et seq.

compliance reviews contemplated by CGCC-8 could require a tribe to devote a great deal of staff time to responding to the state auditors and their findings.⁴

B. Application to Card Rooms

The CGCC acknowledges that there are no MICS in place for non-tribal gaming facilities in California. Beginning in 2003, the State spent the better part of a year drafting MICS for the card rooms, eventually presenting them to representatives of the card rooms during a meeting in 2004. The reaction was decidedly negative as the State had not consulted with the advisory group of card room executives and attorneys, established for this very type of endeavor, during the year long drafting period and the final product revealed a concerning lack of understanding of MICS in general and how they should be applied to the card rooms. The State's MICS were a conglomeration of the NIGC' MICS and various statutes from Nevada and New Jersey. As of this report in 2008, *five years later*, no further MICS applicable to card rooms have been adopted.

CGCC-8's very existence thus represents a discriminatory approach to gaming regulation by the CGCC, which is all the more troubling because the CGCC has plenary jurisdiction to regulate non-tribal gaming facilities in California. Although the card rooms and tribal gaming facilities have in common some internal operations that inarguably require oversight – such as table games operations, currency drop and count and surveillance – the State does not require card rooms to implement MICS. Indeed, the State puts precious few requirements upon the card rooms such as a gambling license requirement, additional tables' requests and rules regarding third-party providers of proposition player services. This is *not* the case for tribal gaming operations, which have both federal and tribal oversight in addition to state oversight. The failure of the CGCC to impose MICS on non-tribal gaming facilities creates a true regulatory void and one that truly demands the State's immediate attention.

The fact that the CGCC has permitted non-tribal gaming facilities to operate without MICS for years but imposed such standards on tribal gaming operations almost immediately after the *CRIT* decision is telling. It suggests that the CGCC either ignores the fact that California tribes follow the NIGC MICS or does not respect the ability of tribal gaming agencies to enforce such standards, or both. It is disturbing that the State feels no urgency to exercise its unquestioned authority over the billion dollar a year card room industry and apparently feels compelled to impose an ill-advised and unnecessary regulation upon the tribal gaming facilities.

C. Fostering Uniformity

CGCC-8 is not needed to foster uniformity because uniformity already exists. As noted above, a Tribal Regulator Networking Group survey shows that the NIGC MICS remain the minimum standards for California tribes despite the *CRIT* decision.

It may be a little known fact that it was primarily Indian Tribes, including California Tribes, not the States that first supported the adoption of MICS to protect the integrity of Indian

⁴ In addition, the lack of experience of a newly formed agency conducting these comprehensive reviews/audits may increase the economic impacts.

Gaming as well as the assets of the Indian Tribes in a uniform manner. Those Tribes who were members of the National Indian Gaming Association (NIGA) in the 1990s initiated what was termed a "MICS Work Group," and Tribes voluntarily offered the services of their professionals including internal auditors, accountants, gaming commissioners, gaming managers, attorneys, etc. to develop a model MICS to be used by any gaming Tribes, especially those Tribes who did not have the expertise and/or resources to develop their own MICS, so that those Tribes which were just starting out would have the ability to protect the integrity of their gaming operations. This NIGA MICS were used voluntarily by Tribes for many years, until the NIGC decided that they wanted to promulgate a Federal MICS. It is a well established fact that a large portion of the first MICS promulgated as a regulation by the NIGC was based primarily upon the product of that MICS Work Group.

In any event, the goal of fostering uniformity is not necessarily one that can or should be expected given the numerous varied Tribal-State Compacts that have been negotiated since the original 1999 Compacts. With respect to the issue of MICS in particular, the four most recently negotiated Compacts include Memoranda of Agreement ("MOA") under which those tribes have agreed to implement the NIGC MICS and to submit to enforcement and auditing by the State Gaming Agency. These concessions were arrived at through Tribal-State Compact negotiations. It is improper for the same requirements to be imposed in blanket fashion on all California gaming tribes under the auspices of a statewide gaming regulation when the MOAs stand as proof that such requirements are in the nature of Compact amendments.

D. Alternatives to CGCC-8

Since circulating its first draft of CGCC-8 in late March 2007, the CGCC has met with strong opposition from tribal gaming regulators on a number of fronts. Most, if not all, Taskforce members questioned the need for the regulation because the State had (and still has) failed to show any deficiency with the status quo. Many Taskforce members also viewed the regulation as a wholesale amendment of the 1999 Compact – and thus the proper subject of renegotiations with the State – rather than an elaboration or clarification of what the Compact already permitted. Nonetheless, in the spirit of good faith, and in response to repeated requests by the CGCC, tribal gaming regulators and tribal attorneys proposed alternative language to the objectionable portions of CGCC-8 as well as viable alternatives to the regulation itself. The proponents of these alternatives did not purport to speak on behalf of all or even most of the other members of the Taskforce, but hoped to spur discussions that would result in a compromise approach that most of the parties could live with.

The CGCC rejected not only the alternatives to CGCC-8 but also the proposed language that would have left the CGCC's version of CGCC-8 largely intact. A brief description of the proposed alternatives follows.

1. No CGCC-8: maintain the status quo

The CGCC proposed CGCC-8 to address the supposed regulatory void created by the *CRIT* decision. Yet, despite repeated requests from Taskforce members, the CGCC failed to show – indeed, made no effort to show – that the State needed greater oversight. This is unsurprising because the existing practices of Tribal Gaming Agencies, coupled with the

regulatory regime established by the existing Compacts, ensure that tribal gaming in California meets or exceeds the highest regulatory standards.

California Tribes have adopted the NIGC MICS as their own internal control standards, and submit to annual compliance and financial audits by independent licensed CPAs. These financial audits are submitted to the NIGC pursuant to federal regulations. In addition, Section 8.1.8 of the Compact requires Tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants." Moreover, the Compact at Section 7.4 gives the State the right to ensure the independent audit has been conducted by inspecting Class III tribal gaming papers and records.

Tribes in California direct significant funds to fulfilling their role as the primary regulators under the Compact. The Rose Institute of State and Local Government projects tribal gaming commission annual budgets totaling \$90,282,837, an average of more than \$1.5 million per Tribe. *See Study of Gaming Regulatory Agency Expenditures of California Tribes*, September 2007 at page 5. *Id.* Surveyed Tribes employ 1,833 employees in their gaming agencies, with an average size of 32 employees per regulatory agency. *Id.* Comparing the regulatory budgets of California gaming Tribes and Nevada casinos, the Rose study determined that the Tribes spend more than six times what the Nevada operations spend per machine. *Id.* at page 6 (\$1560.85 vs. \$241.34).

The CGCC also stated that CGCC-8 would fulfill the objective of securing the State's share of the revenue under the Compacts. (See CGCC 4/6/07 Statement of Need). However, Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify accurate payments. Other Compacts provide for flat fee payments to the State rather than payments by percentages based upon net win. CGCC-8 is not necessary for this stated purpose.

2. Individual Compact Amendments & MOAs

From the start, the CGCC's position has been that CGCC-8 does not create any new rights or obligations, but only fleshes out what the State is entitled to under the existing Compacts. Many Tribes disagree, viewing the CGCC's claimed authority to audit class III gaming operations, and to demand the adoption of MICS that equal or exceed those promulgated by the NIGC (to name just two), as the assertion of authority beyond what the Compact allows. Indeed, the State's recent renegotiation of some 1999 Compacts to expressly provide for such authority demonstrates that the State lacks such authority in the absence of Compact amendments. (See Discussion of Legal Authority below.)⁵ Accordingly, the most obvious

⁵ The State also has negotiated Compact amendments as a means to further its stated interests to confirm tribal gaming integrity and protect citizens. Under these amendments, patrons have the right to independently arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audit are provided to the CGCC.

alternative to CGCC-8 is for the State to initiate negotiations with each Tribe on a government-to-government basis and seek the new rights and obligations it desires through the Compact's amendment process.

In addition, some tribes have entered into Memorandum of Agreements (MOAs) with the State to provide for MICS adoption and audits by the CGCC. This is another alternative to CGCC-8.

3. Legislative Fix

Another alternative is waiting for the federal government to implement its own *CRIT* fix, which it has been pursuing since shortly after the *CRIT* decision. A federal fix would address the perceived lack of oversight necessitating CGCC-8, and once in place would render any claimed State authority redundant and burdensome. Since all Tribes are continuing to enforce minimum internal control standards that meet or exceed the NIGC MICS, there is no lack of regulation that warrants immediate action by the State.

4. NIGC Oversight Pursuant to Amended Gaming Ordinances

A number of California gaming tribes have amended their gaming ordinances to expressly incorporate the NIGC MICS and to vest the NIGC with authority to enforce tribal compliance with those standards. Other Tribes have indicated their intention to do the same. (Because the *CRIT* decision did not affect the NIGC's authority with respect to financial audits, or alter the existing independent financial audit requirements in Section 8.1.8 of the Compact and 25 U.S.C. §2710(b)(2)(C), and because gaming ordinances already provide for submission of these audits to the NIGC, the amendments would not need to address such audits.) These amendments to gaming ordinances remove the regulatory gap that the State perceives to exist as a result of the *CRIT* decision and the resulting NIGC oversight renders any claimed State authority unnecessary, redundant and burdensome.

5. Agreements between Individual Tribes and the State Gaming Agency

Many Tribes also have indicated a willingness to explore entering into MOAs with the State Gaming Agency, under which an individual Tribe would reaffirm its adherence to internal controls at least as stringent as those established by the NIGC and its willingness to enforce compliance with such standards (whether through its tribal gaming agency or an independent auditor) and to provide the CGCC with certification of that compliance on an annual (or other mutually agreed upon) basis.

6. Alternative Language to CGCC-8 Provisions

a. Rumsey Proposal

The Rumsey Tribal Gaming Agency submitted an alternative to the CGCC's proposed CGCC-8. Under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SICs") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure the Tribe's compliance with the SICs by conducting compliance

reviews of the Tribe's gaming operation, including its table games (if applicable). The CGCC would then provide a written DRAFT report of its findings to the Tribe, which could either accept or dispute. Disputes that could not be resolved informally or by the full CGCC would then be subject to the dispute resolution process outlined in Compact Section 9.0.

b. Attorney Work Group Proposal

Circulated by a group of attorneys for a handful of Taskforce members, the attorney work group ("AWG") draft would have accepted many of CGCC-8's provisions, including the requirement that each TGA adopt MICS standards applicable to Class III gaming equal to or more stringent than those established by the NIGC. The AWG draft also would have acceded to the CGCC's desire for greater State oversight by agreeing to provide the State Gaming Agency with copies of the financial audits and MICS Agreed-upon Procedures Reports of the Tribes' Class III gaming operations performed by independent, California-licensed CPAs, as required under IGRA. Pursuant to this draft, the CGCC would also have access to the CPA's Agreed-upon Procedures work papers, the reports and work papers of the internal audit staff, CPA observation checklists, findings by the CPA and internal audit, any exceptions and responses to those exceptions.

Pursuant to this AWG draft, if the Agreed-upon Procedures Report failed to conclude that the gaming operation was in compliance with required written internal control standards, then audited corrective action plans were mandated with CGCC input into those plans. If the plans were not complied with, then the CGCC could conduct its own compliance audit.

The AWG also proposed a more detailed dispute resolution provision than the one suggested by the CGCC, which proposed that any disputes concerning the regulation would be "referred to the full CGCC for review and decision" and then, if necessary, resolved pursuant to the Compact's dispute resolution provisions. The AWG's proposed alternative regulation maintained the State's authority to decide a dispute initially, but would have allowed a Tribe to submit an adverse ruling to binding arbitration, followed by, if necessary, an action to enforce the arbitrator's award in a court of competent jurisdiction. If a Tribe refused to comply with an arbitrator's decision, the State could invoke the Compact's dispute resolution provisions.

Finally, the AWG proposed a Sunset Provision providing that CGCC-8 would not apply to any gaming operation over which the NIGC exercises jurisdiction to monitor and enforce Class III MICS, and that the Tribe would provide to the CGCC a copy of the report issued by the NIGC.

E. Legal Authority

California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction.⁶ The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA. The Compact,

⁶ See Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360).

at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

The CGCC cites to Compact Sections 8.4.1, 8.1.8, and 7.4 as the legal authority for CGCC-8. (See CGCC "Statement of Need for adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Compact Sections provide legal authority for the requirements the CGCC seeks to impose on Tribes and Tribal Gaming Agencies through CGCC-8, which would require adoption of internal control standards at least as stringent as the federal MICS, submission of the financial audit to the CGCC, and submission to financial and MICS compliance reviews/audits by the CGCC.

The Compact at Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1. Further, neither the State Gaming Agency nor the Association may adopt regulations that materially alter express provisions of the Compact or render any such provisions void or a nullity.

Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. There is no Compact provision that refers to the MICS.⁷ Simply put, Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

Moreover, even *if* the MICS had been included in Section 8.1, there is no legal authority to include in CGCC-8 a compliance review/audit of a casino's compliance with the MICS. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Section 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce the Tribal Gaming Agency rules pertaining to the gaming operation.* Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact."

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Section 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compacts recognize the primacy of the Tribal Gaming Agency and in Section 8.1 expressly reserves to the Tribal Gaming Agency the

⁷ The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing. Also, while some tribes took the position that NIGC lacked jurisdiction under IGRA, California tribes adopted MICS and the NIGC actively enforced the MICS. Tribes continue to enforce tribally adopted MICS. The State does not have, and has never had, regulatory authority over these tribal MICS. Therefore, any State regulatory authority in this area must come about through Tribal-State Compact negotiations.

authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Nor does Section 7.4 confer this jurisdiction. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Section 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the state has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."⁸

In short, Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated under CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

Finally, Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, the Compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

In sum, CGCC-8 cannot confer civil regulatory jurisdiction to the state that was not conveyed by the Compact. As such, CGCC-8 is an unauthorized extension of the state's authority under the Compact. In the absence of legal authority, the provisions of CGCC-8 amount to material amendments of the Tribal-State Compacts. As such, they must be negotiated between the State and the Tribe pursuant to section 12.1 of the Compact. Indeed, the fact that the 1999 and 2004 Compacts do *not* authorize the state to require MICS adoption, submission of financial audits, or to conduct MICS and financial compliance reviews/audits is evidenced by new compacts and new memorandum of agreements specifically including these provisions.

⁸ State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

Duplicative

In his letter of March 30, 2007 to the U.S. Senate Committee on Indian Affairs (“Committee”), Governor Schwarzenegger told the Committee that “[California’s] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC’s activities.” CGCC-8 is entirely inconsistent with the Governor’s unequivocal message to the Committee.

CGCC-8 is needlessly duplicative in several respects. As stated above, the *CRIT* decision did not alter the existing federal requirements for annual external financial audits found at 25 U.S.C. § 2710(b)(2)(C) or affect in any way the NIGC’s regulatory authority over the conduct and results of such audits. Section 8.1.8 of the 1999 Compact (and comparable sections of the new or amended Compacts) place the responsibility for conducting the annual outside audit on the Tribal Gaming Agency⁹, an approach consistent with the federal requirement. Thus, the financial audit requirements contemplated by CGCC-8 are already in place, with NIGC oversight, and would be entirely duplicative of existing tribal and federal activities.

Additionally, the initial “Statement of Need” for CGCC-8 stated that the proposed regulation would “guarantee that [the State’s] interest in the revenue sharing that is a part of each compact is secure.” However, all Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify that such tribal payments are accurate. (See, for example, sections 5.3(c) and (d) of the 1999 Compacts.) Thus, these provisions of CGCC-8 needlessly duplicate existing Compact requirements.

With respect to its MICS-related provisions, CGCC-8 is duplicative in that tribes already have in place standards at least as stringent as the NIGC MICS, and these standards are enforced by Tribal Gaming Agencies. In addition, in recent weeks a number of California gaming tribes have amended their Tribal Gaming Ordinances¹⁰ to expressly incorporate the NIGC MICS. By so doing, those tribes have granted the NIGC authority to monitor and enforce tribal compliance with those standards, up to and including the authority to close non-conforming facilities, under 25 U.S.C. § 2713 and 25 CFR pt. 542.3(g). The first of these ordinance amendments were approved by the Chairman of the NIGC, and went into effect, in January, 2008. A number of additional tribes have announced their intention to similarly amend their Gaming Ordinances in the near future.

With respect to these tribes in particular, and with respect to all tribes if and when Congress adopts “CRIT-fix” legislation, the MICS-related provisions of CGCC-8 needlessly duplicate tribal and federal regulatory activities with no offsetting benefit.

⁹ Section 2.20 of the 1999 Compacts, and similar sections of the new or amended compacts, define “Tribal Gaming Agency” as the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe’s regulatory responsibilities under IGRA and the Tribal Gaming Ordinance.

¹⁰ Section 2.10 of the 1999 Compacts, and similar sections of the new or amended compacts, define “Gaming Ordinance” as a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe’s Indian lands and approved under IGRA.

III. Recommendation

For the foregoing reasons, the Association Regulatory Standards Taskforce recommends that the Association find that draft CGCC-8, as presented to the Taskforce for consideration, is unnecessary, unduly burdensome, and unfairly discriminatory. Accordingly, CGCC-8, as drafted, should not be adopted as a proposed regulation for presentation to the Association. Furthermore, if the draft proposed regulation is adopted and presented to the Association, the Taskforce recommends that the Association disapprove CGCC-8.