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

MINUTES OF SEPTEMBER 24, 2009
COMMISSION MEETING

OPEN SESSION

The meeting was called to order at 10:00 a.m.

2. Roll Call of Commissioners.

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

3. Consideration of Final Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) in Amended Form after consideration of Tribes' comments to CGCC-8 as previously adopted by the Commission and transmitted to Compacted Tribes on October 20, 2008, for comments pursuant to Compact Section 8.4.1(b) and (c).

Staff Counsel Jason Pope gave an oral presentation regarding the purpose and necessity of Uniform Tribal Gaming Regulation CGCC-8. Mr. Pope also provided a chronological history highlighting various stages in the process of formulating this proposed regulation.

Commissioner Shimazu inquired about the term "elected" official contained in the Task Force version and what it meant. Staff Counsel Jason Pope indicated that in the current version the Commission was designated as the State Gaming Agency, and "elected" had no meaning but representatives from the Task Force could better respond. Jacob Appelsmith agreed that it was not important and could be stricken. Attorney Jerry Levine spoke up to say that the phrase "appointed/elected" official was essentially an "or" statement, and didn't apply unless the State designated under CGCC-8 someone other than the Commission. He further intimated any issue could be cleared up in the designation.

Chairman Shelton indicated that the Commission was ready to accept the Task Force Version of CGCC-8 and to send it back to the Tribal-State Association for its consideration and finally to bring it back to the Commission for final adoption.

Chairman Shelton moved to approve the Task Force Report version of CGCC-8 adopted by the Association. Commissioner Shimazu seconded the motion.

PUBLIC COMMENT

Chairman Shelton opened the meeting for public comment.

Joann Willis Newton, Pauma Band of Mission Indians, Pauma Gaming Commission, indicated that Tribe recommends against adoption of CGCC-8 in any version.

Anthony Barnes, Chairman, Pala Gaming Commission, Pala Band of Mission Indians, indicated that the Tribe supports the collaborative Task Force version of CGCC-8.

Morris Reid, Picayune Rancheria of the Chukchansi Indians, thanked the Commission for showing their respect of the Compact, the Association Protocol, and for their motion to approve the Task Force Version of CGCC-8.

Scott Crowell, Attorney for Rincon Band of Mission Indians, indicated that the Tribe believes that there is no need for CGCC-8; the proposed regulation is a Compact amendment; and they do not support CGCC-8 in any form. Rincon also called into question the viability of the NIGC alternative compliance section, post-*CRIT.*

Richard Armstrong, Legal Counsel representing the Tuolumne Band of Me-Wuk Indians, Big Valley Rancheria, Susanville Rancheria, La Posta Band of Mission Indians, and Resighini Rancheria, indicated that the Tribes that he represents are extremely appreciative of all the participants' efforts in the Task Force and that they are delighted that the Commission is respecting the Association Protocol process for adopting regulations by sending CGCC-8 back to the Association for consideration.

Jane Zerbi, Attorney, representing the United Auburn Indian Community, Pala Band of Mission Indians, Jackson Rancheria, and the Cher-Ae Heights Indian Community of the Trinidad Rancheria, indicated that they appreciate the Commission's inclusion of the alternative compliance section in CGCC-8 and the Commission's pending motion.

Glenn Feldman, Attorney, representing the Cabazon Band of Mission Indians, commented that the Cabazon governing body and the Cabazon Business Committee fully supports the earlier vote of the Cabazon delegate in favor of the motion approved by the Association at the September 17, 2009 meeting. Mr. Feldman also presented written comments of David Roosevelt, Chairman of the Cabazon Band of Mission Indians. These comments are incorporated into the minutes as Attachment A.

Richard Armstrong asked for clarification that the pending motion involved the Task Force version of CGCC-8. Chairman Shelton confirmed that the motion was to approve the Task Force version of CGCC-8 and then to send the regulation back to the Association for consideration.

Chairman Shelton, in response to Mr. Jerry Levine's inquiry, confirmed that the motion on the floor was to adopt the Task Force version of CGCC-8 in its entirety without any changes to the regulation text.

COMMISSION ACTION

Chairman Shelton called for the vote.

The motion made by Chairman Shelton and seconded by Commissioner Shimazu to approve the Task Force Report version of CGCC-8 adopted by the Association unanimously carried in a vote by roll call, with Chairman Shelton and Commissioners Shimazu and Vuksich voting yes. A copy of the Task Force version of CGCC-8 is incorporated into the minutes as Attachment B.

Staff Counsel Pope commented on the regulatory procedure under the Association Protocols and asked the Tribes present if the Protocol could be waived to expedite the regulatory procedure or an interim meeting could be held.

Richard Armstrong indicated in response that the next regular Association meeting was scheduled for December 17, 2009.

Joann Willis Newton responded to Mr. Pope. indicating that she suggest that there be no attempt to do an interim meeting because of problems with noticing all the Association delegates.

Jerry Levine assured the Commission that the Tribes he represents and many other Tribes will do what they can to make sure that moving forward with the regulation process does not get caught up in a procedural morass.

Sherry Rodriguez, La Jolla Gaming Commission, thanked the Commission for its decision.

Written comments that were submitted to the Commission by Mr. William Vega, Tribal Chairman, Bishop Tribal Council, are incorporated into the minutes as Attachment C.

Written comments that were submitted to the Commission by Everett Freeman, Chairman, Paskenta Band of Nomlaki Indians, are incorporated into the minutes as Attachment D.

Written comments that were submitted to the Commission by Dale A. Miller, Chairman, Elk Valley Rancheria California, are incorporated into the minutes as Attachment E.

Written comments that were submitted to the Commission by Andrew Hofstetter, Chairman, and Joseph Salgodo, Commissioner, Cahuilla Tribal Coming Agency, Cahuilla Band of Indians, are incorporated into the minutes as Attachment F.

Written comments that were submitted to the Commission by Robert Smith, Chairman, Pala Band of Mission Indians, are incorporated into the minutes as Attachment G.

Written comments that were submitted to the Commission by Bo Mazzetti, Chairman, Rincon Band of Luiseno Indians, are incorporated into the minutes as Attachment H.

Written comments that were submitted to the Commission by Irvin "Bo" Marks, Chairperson, Jackson Rancheria Band of Miwok Indians, are incorporated into the minutes as Attachment I.

Written comments that were submitted to the Commission by Garth Sundberg, Chairman Cher-Ae Heights Indian Community of the Trinidad Rancheria, are incorporated into the minutes as Attachment J.

Written comments that were submitted to the Commission by Jessica Tavares, Chairperson, United Auburn Indian Community of the Auburn Rancheria, are incorporated into the minutes as Attachment K.

ADJOURNMENT

Chairman Shelton adjourned the meeting at 10:45 a.m.

ATTACHMENT A

September 22, 2009

Chairman Dean Shelton
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Dear Chairman Shelton:

At the meeting of the California Tribal-State Association last Thursday, the delegate of the Cabazon Band of Mission Indians voted in favor of the motion to approve the August 7, 2009 report of the Association Task Force and to recommend to the California Gambling Control Commission that it adopt the alternative version of CGCC-8 attached to that Task Force report and submit that alternative version to the Association for its approval, as required under the Compact.

I am writing to let you and the other Commissioners know that this issue had been fully discussed with the Cabazon Band's governing body, the Cabazon Business Committee, before the meeting last Thursday, and that the Cabazon tribal government fully supports the vote of the Cabazon delegate in favor of the motion that was overwhelmingly approved by the Association.

We hope that the California Gambling Control Commission will be guided by this strong recommendation from the regulators' Association.

Sincerely,

David Roosevelt

David Roosevelt
Chairman

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Draft of "Uniform Tribal Gaming Regulation" CGCC-8 (8-6-09)[1]

Table of Contents:

(a) BACKGROUND AND PURPOSE.

(1) The 1999 Tribal-State Gaming Compact and comparable provisions of the New or Amended Compacts(collectively the "Compacts") provide under section 6.1 that each Tribe will conduct its Gaming Activities in compliance with a Gaming Ordinance adopted by the Tribe and with rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency ("TGA"). Section 7.1 of the Compacts places on the TGA the responsibility for the conduct of "on-site gaming regulation and control in order to enforce the terms" of the Compacts. To that end, the TGA is required to adopt and enforce regulations, procedures and practices which ensure that the Gaming Operation "meets the highest standards of regulation and internal controls." Section 8.1 of the Compacts charges the TGA with responsibility to promulgate rules, regulations and specifications and to ensure their enforcement. Certain subsections of section 8.1 of the Compacts outline matters which, at a minimum, these rules, regulations, and specifications must address (collectively, "Internal Control Standards" or "Tribal MICS"). Subject to the conditions stated therein, Sections 7.4 through 7.4.4 of the Compacts provide the State Gaming Agency ("SGA") with rights to inspect the Gaming Facility to ensure compliance with the Compacts.

(2) The purpose of this regulation is to provide a uniform and effective system for the SGA to verify that the Tribal MICS have been adopted and enforced by the TGA in accordance with the Compacts.

(3) For purposes of this regulation, the California Gambling Control Commission ("CGCC") is designated as the SGA. Only the CGCC shall be permitted to conduct compliance

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

inspections under this regulation until the State designates a different SGA by providing written notice to the Tribes pursuant to section 13.0 of the Compacts. At no time shall more than one State agency serve as the SGA under this regulation.

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

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

(b) INTERNAL CONTROL STANDARDS.

(1) General Requirements. Pursuant to the Compacts, each Tribe shall promulgate rules, regulations, and specifications referred to above as "Tribal MICS" regarding the operation of Class III gaming.

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

(3) Material Compliance.

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

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

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

(d) VERIFICATION OF TRIBAL MICS. The SGA may verify a Tribe's compliance with sections (b)(2) or (b)(3). SGA verification may be accomplished by on or off-site inspection of a document that sets forth the Tribal MICS.

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

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

(g) COMPLIANCE INSPECTION PROTOCOLS.

(1) Preface. Except where section (m) "NIGC ALTERNATIVE COMPLIANCE" applies, the SGA shall follow the protocols in this section (g) with respect to compliance inspections conducted by the SGA pursuant to this regulation. In conducting such inspections, the Tribe and the SGA acknowledge that the Tribe's role under the Compacts is to serve as the primary regulator of its Gaming Operation and the SGA's role is to assure that the Tribe's regulatory obligations are being satisfied based on sections (b)(2), (b)(3)(A) or (b)(3)(B) above.

(2) General Approach. The compliance inspection process shall be accomplished by verifying that the Tribe has adopted Tribal MICS as set forth in section (b) above and verifying that the TGA is ensuring the enforcement of the Tribal MICS.

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

(4) On-Site Inspection Process. The SGA shall consult with the TGA regarding the methods and means by which the Tribe determines that its regulatory efforts are being properly enforced. The SGA may conduct an on-site compliance inspection at the Tribe's gaming facility that the SGA reasonably determines is necessary to ensure compliance with the Compacts. The compliance inspection may encompass, and shall be limited to, the subject areas listed in the Tribal MICS. The SGA will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and TGA and will apply the highest standards of confidentiality expected under state law to preserve such information and documents from disclosure. At the conclusion of the on-site compliance inspection, an exit conference will be held to provide the Tribal and TGA representatives an oral summary of SGA findings from the compliance inspection.

(h) COMPLIANCE INSPECTION REPORTS.

(1) No later than 60 days following the SGA's completion of a section (g) on-site compliance inspection, or such other time period as is mutually agreeable, the SGA shall deliver a draft compliance inspection report ("Draft Report") to the Tribe and to the TGA, including specific compliance exceptions, if any.

(2) Following receipt of the Draft Report, the Tribe shall have 60 days, or such other time period as is mutually agreeable, to respond to the Draft Report. If the Tribe accepts the Draft Report, the SGA shall finalize the Draft Report and, within 30 days of acceptance, deliver

a final Compliance Inspection Report ("Final Report") to the Tribe and the TGA. If no response to the Draft Report is received from the Tribe by the 60th day, or such other time period as is mutually agreeable, the SGA shall consider the Draft Report final. Within 20 days of the date on which the Draft Report is considered final, the SGA shall submit the Final Report to the Tribe and the TGA.

(3) Within 30 days of receipt of the Tribe' response to the Draft Report, or such other time period as is mutually agreeable, the SGA and the Tribe shall make good faith efforts to resolve any differences concerning the content of the Draft Report.

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

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

(A) The Tribe accepts the Draft Report;

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

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

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

(i) TRIBAL ACTION PLAN.

(1) If the Final Report requests further action on the part of the Tribe, the Tribe will provide a written tribal action plan addressing any specific compliance exceptions ("Tribal Action Plan") within 45 days of receipt of the Final Report or such other time period as is mutually agreeable. Recognizing that the Tribe is the primary regulator of its gaming operation, the Tribe will, within a three-month period after submitting the Tribal Action Plan, develop and implement remedial procedures identified in the Tribal Action Plan. If the SGA does not agree with the Tribal Action Plan, the Tribe and SGA will make good faith efforts to address and resolve the specific compliance exceptions identified.

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

(3) If differences remain after the SGA and the Tribe have made good faith efforts to resolve them under sections (1) and (2) above, at the option of the Tribe, the matter may be

referred to the appointed/elected officials of the SGA for further consideration as provided in section (l)(2) below.

(j) CONFIDENTIALITY. Pursuant to section 7.4.3(b) of the Compacts, the SGA shall exercise utmost care in the preservation of the confidentiality of any and all documents and information received from the Tribe in compliance with this regulation and shall apply the highest standards of confidentiality expected under state law to preserve such documents and information from disclosure.

(k) PERIODIC REVIEW REGARDING THIS REGULATION.

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

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

(l) DISPUTES.

(1) If a dispute arises between the SGA and a Tribe involving the application or interpretation of this regulation, the parties shall make good faith efforts to resolve their differences.

(2) If these good faith discussions do not resolve the matter, at the option of the Tribe, the matter may be referred to the appointed/elected officials of the SGA for further consideration. Provided that the CGCC is serving as the SGA, the Tribe may further request that the matter be set for closed session consideration pursuant to Government Code section 11126.4 at which time the Tribe may offer any evidence to support its position and/or offer a compromise reconciliation. All information presented to the appointed/elected officials of the SGA for consideration shall be subject to the confidentiality provisions of the Compacts.

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

(m) NIGC ALTERNATIVE COMPLIANCE.

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

(A) The TGA or Tribe shall provide a copy of the following documents to the SGA within 30 days of their receipt from or submission to the NIGC:

(i) Each final written report or document issued to the Tribe by the NIGC resulting from a MICS compliance site inspection/visit, or compliance review/audit ("NIGC Report");

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

(iii) Any documents the Tribe, TGA or Gaming Operation has delivered to the NIGC in response to any such NIGC Report.

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

(C) The TGA provides the SGA with a copy of the independent CPA agreed upon procedures report conducted pursuant to 25 CFR Part 542.3(f) pertaining to Class III gaming within 30 days of its receipt and, where applicable, all information supplied by the Tribe, the TGA, or Gaming Operation to the NIGC in response thereto within 30 days of when it was supplied; and

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

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

(A) The Tribal gaming ordinance that provides for NIGC monitoring and enforcement of the MICS is amended to eliminate such monitoring and enforcement;

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

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

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

(n) SEVERABILITY. If any provision of this regulation or its application is held invalid, the validity of the remaining provisions shall be determined pursuant to applicable rules of statutory and regulatory construction.

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ATTACHMENT C

BISHOP TRIBAL COUNCIL

September 21, 2009

Honorable Mr. Dean Shelton, Chairman
& Commission Members
Attention: Mr. Jason Pope, Staff Counsel
State of California
Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

Comments on Amended "Uniform Tribal Gaming Regulation" CGCC-8

Dear Honorable Mr. Dean Shelton, Chairman and Commission Members:

First, I would like to extend the Bishop Paiute Tribe's sincere gratitude to the Association Regulatory Standards Taskforce for intense and dedicated work over the past five (5) months and the submittal of the Revised "Uniform Tribal Gaming Regulation" CGCC-8. This "Revised Uniform Tribal Gaming Regulation" CGCC-8 is a much improved version of the April 15, 2009 version, although with the involvement of the Tribal and State representatives in jointly deciphering the April 15, 2009 CGCC-8 it is what it is a product of the California Gambling Control Commission regulation, not a Tribally endorsed regulation.

Enclosed for your review are the comments on the "Proposed Amended" "Uniform Tribal Gaming Regulation" CGCC-8 on behalf of the Bishop Indian Tribal Council (BITC).

The Tribal/State Gaming Compact (Compact) between the state of California and various tribal governments in 1999 provided that the Tribal Gaming Agency would be the primary regulator of Indian gaming.

However, the Compact also provided that the state through the State Gaming Agency (SGA) had various responsibilities, one of which was to *monitor* the tribal gaming operations in order to determine whether or not there was compliance with applicable internal minimum control standards, and other enumerated issues.

The proposed amended CGCC-8 uniform regulation is an attempt by the CGCC to put into place a uniform method that would be used throughout California in performing its *monitoring* obligations and duties.

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As reflected in:

Indian Gaming Regulatory Act Public Law 100-497-Oct. 17, 1998 100th Congress Sec. 2701- Sec. 2101 Findings

Sec. 2701 Findings

The Congress finds that -

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

Sec. 2702. Declaration of policy

The purpose of this chapter is -

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

And;

Sec. 2709. Tribal gaming ordinances – Tribal State Compacts:

(3) (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the

Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

Point being, Tribes have the exclusive federal fiduciary right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity. CGCC has accepted the that the majority of tribes will not consent to a general financial audit of their Class III Gaming operations. The reason being, that the audit authority is not granted to the state in the Compact. Other than California Tribal – State Gaming Compact Section 5.0 Revenue Distribution § 5.3 (d).

The most recent revised proposed amended CGCC-8 uniform regulation would provide that the tribes would have in place, internal control standards which would equal or exceed the minimum internal control standards set out previously by the National Indian Gaming Commission (NIGC). These standards are already adopted by the majority of California tribes, including the Bishop Paiute Tribe.

The Bishop Paiute Tribe believes it to be in the best interest of the CGCC to implement a *protocol or protocol policy guidelines*, which address and ensure "inspections" are being conducted on the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions, as set forth in the California Tribal – State Gaming Compact of 1999 Section 7.4. – 7.4.4.

The Bishop Paiute Tribe holds a favorable and non-favorable opinion of the proposed CGCC-8 regulation.

The Bishop Paiute Tribe favors:

1) protocol or protocol policy of guidelines to be proposed in order to conduct the compliance reviews in a adequately and organized structure.

2) Section 6.0 of the 1999 Compact 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).

3) Compact Section 8.1 of the 1999 Compact charges the TGA with responsibility to promulgate such rule, regulations and specifications and ensure their enforcement.

The Bishop Paiute Tribe has a non-favorable opinion of the following:

1) The CGCC must have the adequate and experienced staffing in order to ensure the proper and correct findings if any in their regulatory role. How will the CGCC staff conduct the compliance review if warranted and by which check lists would the CGCC staff use to monitor? Should this be the Tribal Internal Control Standards the CGCC staff would have to adhere to approximately forty (40) or so different Tribal Internal Control Standards.

2) The CGCC must have the adequate budget to ensure their regulatory role in monitoring Class III gaming of the California Tribes.

3) The statement of need must include the economic impact on gaming operations; including weather the proposed regulatory standards impact small operations differently than the large operations.

4) 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.

5) Whether the proposed regulatory standards fosters uniformity.

6) Provide a statement of legal authority.

7) If the basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative.

In closing, the Bishop Paiute Tribe would suggest the CGCC develop a similar consultation policy in accordance with Presidential Executive Order 13175 of November 6, 2000 (attached) in order to foster a true government to government respectful relationship.

The pace of state-tribal activity is expected to increase due to the devolution of the federal government's historical responsibilities to state and tribal governments. There are several ways to address the current situation and prepare for the future consequences of this trend. The compilation and dissemination of information, dialogue among state and tribal leaders who have common interests, and an increased capacity of tribes and states to address mutual issues will result in more open and productive long – term relationships.

It is important that all stakeholders work toward institutionalization of the positive relationships that exist and continue to be formed. The Changing social and economic conditions and political turnover threaten any political relationship, but permanent forums and communication channels can help state and tribal leaders face challenges of mutual interest. No government can operate effectively unless it coordinates with neighboring governments. By collaborating on issues of mutual concern, states and tribes have the opportunity to improve governance and better serve their respective constituents.

We look forward to a government-to-government good faith response to these comments and concerns.

Thank you for the opportunity to present these comments and concerns on behalf of the Bishop Paiute Tribe. Should you require additional information or require additional detail of the stated comments and concerns, please do not hesitate to call the Mr. Mervin E. Hess, Executive Director Bishop Paiute Gaming Commission office at 760.872.6005.

Sincerely submitted,

Mr. William Vega
Tribal Chairman

Enclosures: (1)

Cc: Bishop Indian Tribal Council
Bishop Paiute Gaming Commission
Ms. Gloriana Bailey, General Manger PPC

/meh

Federal Register
Vol. 65, No. 218
Thursday, November 9, 2000

Presidential Documents

Title 3—

The President

Executive Order 13175 of November 6, 2000

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00–29003
Filed 11–8–00; 8:45 am]
Billing code 3195–01–P

ATTACHMENT D

Paskenta Band of Nomlaki Indians
P.O. Box 398
Orland, CA 95963
Phone: (530) 865-2010 Fax: (530) 865-1870

September 22, 2009

VIA FACSIMILE AND POSTAL SERVICE

Dean Shelton
Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: CGCC-8; Request for the California Gambling Control Commission to Adopt the Task Force's Revised Draft of CGCC-8

Dear Chairman Shelton:

At the September 17, 2009 California Tribal-State Association ("Association") meeting, the Paskenta Band of Nomlaki Indians (the "Tribe") voted with the majority of Association delegates to approve: (i) the Association's Regulatory Standards Task Force ("Task Force") Report including the attached revised draft of CGCC-8 ("Task Force Revised Draft"), and (ii) for the Association to recommend to the California Gambling Control Commission ("CGCC") to adopt the Task Force Revised Draft for submission to the Association in accordance with Compact requirements and Association protocols.

We write separately to strongly encourage the CGCC to adopt the Task Force Revised Draft unaltered without the modifications recommended by CGCC Staff.

On September 10, 2009, the CGCC released to the public "Staff's Recommended Amended Form of CGCC-8" ("September 10, 2009 Draft"). In essence, CGCC Staff modified the Task Force Revised Draft and recommended that the CGCC adopt such modified draft as the final version of CGCC-8. We note that the September 10, 2009 Draft represents an improvement to the CGCC's April 15, 2009 draft of CGCC-8. However, the September 10, 2009 Draft contains fundamental changes to the Task Force Revised Draft, including an alternative compliance section, that are unreasonable and unworkable. As such, the Tribe cannot support the September 10, 2009 Draft.[1]

The September 10, 2009 Draft again requires the National Indian Gaming Commission ("NIGC") to perform comprehensive on-site compliance reviews for each three (3) year period covering ten (10) MICS subject areas. If the NIGC fails to perform such on-site compliance

[1] For purposes of this letter, we address only the changes to the Alternative Compliance section set forth in the September 10, 2009 Draft. These comments are summary in nature and are not exclusive. Any point or argument not made herein is not waived.

M-365
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reviews, the Tribe would not be eligible to participate in the CGCC-8 Alternative Compliance procedure. However, the CGCC in its sole discretion could determine that the Tribe has substantially complied with MICS internal control standards for purposes of allowing the Tribe to continue participating in the Alternative Compliance procedure.

As discussed by the NIGC at the June 8, 2009 Task Force meeting, the NIGC performs on-site inspections and sophisticated risked-based analysis regarding MICS compliance for those California tribes that have amended their gaming ordinances to authorize NIGC oversight and enforcement. If the risk based analysis indicates a comprehensive on-site compliance review is necessary, the NIGC performs an appropriate compliance review. Further, on an annual basis the NIGC randomly selects at least one California tribal gaming operation to conduct a full, comprehensive on-site compliance review whether or not the NIGC's risk-based analysis indicates such review is necessary.

We understand that the CGCC intends to utilize this same risked-based approach or substantially similar procedure for determining when it will conduct on-site compliance inspections. CGCC Staff informed the Task Force that the CGCC would not perform an annual or set periodic ten (10) point compliance review regarding each gaming tribe, but will instead perform such compliance reviews based upon a risk-based analysis similar to that employed by the NIGC. In addition, when the CGCC conducts an on-site compliance inspection, the September 10, 2009 Draft does not require such review to encompass all ten (10) MICS subject areas required of the NIGC.[2]

Given the positions taken by the CGCC with regard to how and when it intends to conduct its own on-site compliance inspections, it appears that no genuine reason exists to require the NIGC to conduct comprehensive on-site compliance reviews in excess of what the CGCC will itself require. The Task Force specifically tailored the Alternative Compliance section in the Task Force Revised Draft to encompass the NIGC's compliance review procedures. As such, it provides a workable framework for the Tribe to participate in the CGCC-8 Alternative Compliance procedure.

However, under the September 10, 2009 Draft, if the NIGC, pursuant to its compliance review procedure, determines that the Tribe is MICS compliant and does not randomly select the Tribe for a full, comprehensive on-site compliance review during an applicable three (3) year period, the Tribe would be deemed non-compliant with the Alternative Compliance requirements. Such a result is illogical and unreasonable. On other hand, if the Tribe operated its gaming operation in a reckless or negligent manner in derogation of the NIGC MICS requirements, such action would trigger a full, comprehensive on-site compliance review by the NIGC. The result of such practice would ensure that the NIGC performs a full, comprehensive on-site compliance review satisfying the Alternative Compliance comprehensive review requirement, but would endanger the integrity of the Tribe's gaming operation. This result does not promote the efficient and effective regulation of tribal gaming in California. In contrast, the Task Force's Alternative Compliance section does not lead to such absurd results.

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[2] Section (g)(4) of the September 10, 2009 Draft provides that the CGCC may conduct an on-site compliance inspection and such inspection may encompass the ten (10) MICS subject areas.

Finally, we appreciate CGCC Staff's intent to include a remedy in the September 10, 2009 Draft for instances when the NIGC does not perform a full, comprehensive on-site compliance review as required by the CGCC. However, the remedy is based upon the CGCC's sole discretion that the Tribe has substantially complied with Class III internal control standards and other factors deemed relevant by the CGCC. Because the remedy relies on a subjective rather than an objective standard, the Tribe, in effect, could not realistically appeal a decision by the CGCC rejecting its eligibility to participate in the Alternative Compliance procedure. Thus, based upon the above, the Tribe could, realistically, be disqualified from participation in the Alternative Compliance procedure by the actions or inactions of a third party over which the Tribe has no control. Such an outcome would result in at least three levels of active compliance review by the Tribe, state and federal agencies – much of which would be duplicative and overly burdensome.

For the reasons discussed above, we strongly recommend that the CGCC adopt the Task Force Revised Draft unaltered and submit it to the Association in accordance with applicable Compact requirements and Association protocols. This is a position supported by the twenty-eight (28) Association delegates including the Bureau of Gambling Control that voted in favor of the motion made by the Viejas Band of Kumeyaay Indians and the twelve (12) delegates including the CGCC that acquiesced to the motion.

Sincerely,

Everett Freeman

Everett Freeman
Chairman

cc: The Paskenta Tribal Council
The Paskenta Tribal Gaming Commission

PASKENTA BAND OF NOMLAKI INDIANS
Since 1994
PASKENTA BAND OF NOMLAKI INDIANS

ATTACHMENT E

Elk Valley Rancheria, California

2332 Howland Hill Road
Crescent City, CA 95531

Phone: 707.464.4680
Fax: 707.465.2638
rancheria@elk-valley.com

September 23, 2009

VIA FACSIMILE & POSTAL SERVICE
(916) 263-0452

California Gambling Control Commission
2399 Gateway Oaks, Suite 220
Sacramento, California 95833

Re: CGCC-8; September 24, 2009 Public Hearing

Dear Gambling Control Commission Members:

The Elk Valley Rancheria, California understands that the California Gambling Control Commission's staff released on September 10, 2009, a revised draft of CGCC-8, a draft regulation to address "Uniform Tribal Gaming Regulation."

As you are aware, the CGCC released the original draft of CGCC-8 approximately two years ago. During that time, California tribes, the California Gambling Control Commission ("CGCC") and the Bureau of Gambling Control ("BGC") have engaged in a process that could be considered much like "negotiated rulemaking." The latest version of CGCC-8 resulting from on-going discussion resulted from the June 4, 2009, Tribal-State Association ("Association") directive that a Task Force be formed to review, prepare a report, and make recommendations regarding potential revisions to the CGCC's staff's April 15, 2009 version of CGCC-8.

The ultimate work product of the Association Task Force was released to the Association on or about August 6, 2009, consistent with the directive of the Association that a report be issued by August 7, 2009. The Task Force Report included as Attachment B a revised version of CGCC-8. As you may or may not know, CGCC representatives participated in the Association meeting on June 4, 2009 and throughout the Task Force review process.

The Task Force met nine (9) times after the June 4, 2009 Association meeting and prior to the August 6, 2009 release of the Task Force Report. While not all parties agree with every concept in the Task Force version of CGCC-8, that version represents significant compromise and work product that attempts to balance the respective interests of all members of the Association.

The Tribe appreciates that CGCC staff has used the Task Force version of CGCC-8 as the basis for its September 10, 2009 draft that is the subject of the September 24, 2009 hearing. However, the September 10, 2009 staff recommendation does not appropriately address the legitimate interests and concerns that were discussed and upon which compromise was achieved during the Task Force process. Instead, the September 10, 2009 staff recommendation simply does not provide a viable option for many tribes – including the Elk Valley Rancheria, California, because it simply ignores the manner in which regulation and compact compliance are ensured and verified.

On September 17, 2009, the Association again met to discuss, among other things, CGCC-8. At that meeting, the Association adopted a motion that provided: "motion for the Tribal-State Association to approve the Task Force Report and to recommend to the CGCC to adopt the revised draft that is attached thereto as Attachment B for submission to the Association per Compact requirements and Association protocols."

Forty-seven (47) tribes were eligible to vote on the motion to approve the Task Force Report, including the revised version of CGCC-8 attached thereto. Twenty-seven (27) tribes and the BGC voted in favor of said motion.[1] Twelve (12) participants, including the CGCC representatives, acquiesced in the successful motion by virtue of their abstentions.[2] In essence, only seven tribes did not support the Task Force version of CGCC-8. The overwhelming support for the Task Force version indicates that a workable solution is available to the CGCC, individually, as well to the Tribal-State Association, in the form of the Task Force revised version of CGCC-8.

Please be aware that not only do our Tribal Gaming Commissioners support the Task Force version of CGCC-8, but so too does the Tribe.

In light of the solid inter-tribal and Intra-Association work that resulted in the Task Force's revised version of CGCC-8, we urge the CGCC to adopt the Task Force's revised version of CGCC-8 and to proceed to present it to the Association for review and approval in accordance with Section 8.4 of the 1999 tribal-state compact and the Association protocol.

Sincerely,

Dale A. Miller

Dale A. Miller
Chairman

[1] 59% of the eligible voters supported the motion.
[2] Through acquiescence and "yes" votes, over 85% of the participants supported the proposed action.

Cahuilla Tribal Gaming Agency
52702 Hwy. 371, [illegible]
Anza, CA 92539
Phone: 951.763.1200 ext. 138
Fax: 951.763.4938

ATTACHMENT F

September 23, 2009

Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Cahuilla Band of Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Mr. Shelton:

On August 25, 2009, Cahuilla received the CGCC's Notice of Amended Version of CGCC-8 and notice for further comments in writing and in person at the scheduled CGCC Hearing. The Cahuilla Tribal Gaming Agency would like to thank you for the invitation.

Like all gaming tribes in the State, Cahuilla supports effective regulation of tribal gaming, something our agency has made a priority since the opening of the Cahuilla Casino. Nevertheless, Cahuilla opposes adoption of the April 15, 2009 version and the Task Force revision of CGCC-8 for several reasons. As an initial matter, CGCC-8 is an unnecessary solution to a non-existent problem. The Cahuilla Tribal Gaming Agency closely oversees the Tribe's gaming operation and has adopted and ensures compliance with standards that meet or exceed those promulgated by the NIGC. The oversight provided for in CGCC-8 is simply unnecessary.

Moreover, the Tribe strongly disagrees with the CGCC's apparent position that it can impose this revised version of CGCC-8 on tribes without resubmitting it to the Association for the Association's approval. Section 8.4.1(a) of the 1999 Compact provides the relevant language:

> Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added.)

The Cahuilla Tribal Gaming Agency fails to see how 8.4.1(a) can be read other than to regard Association approval as a necessary precondition of any regulation (save for a situation involving exigent circumstances B the subd.(d) exception B but one argues that such circumstances exist here). And because the Compact is the sole source of the State's regulatory

authority over tribal gaming, "enactment" of any version of CGCC-8 without the Association's approval would be invalid *ab initio*.

Substantively, the April 15th draft and Task Force revision of CGCC-8 fall short in at least two significant respects. First, although the Tribe endorses the inclusion of the NIGC Alternative Compliance option, the CGCC's insistence on reviewing the NIGC's compliance reviews is ill-conceived. With its years of experience, the NIGC should be presumed to have properly and sufficiently reviewed a tribe's compliance with its internal controls. The CGCC's approach B reviewing the NIGC's work B is needlessly duplicative and diverts scarce Commission resources that would be better applied elsewhere.

Second, and more important, since the Commission first proposed CGCC-8 over two years ago, Cahuilla and many other tribes have urged the Commission to include language calling for the submission of disputes to a third-party neutral for preliminary resolution, and recognizing that alleged violations of CGCC-8 would not be deemed material breaches of the Compact itself unless and until a tribe fails to comply with the neutral's order to remedy the violation. Over time, the CGCC has offered various reasons for refusing such language, none of them persuasive.

Although the Task Force revision of CGCC-8 suffers from the same infirmities that afflict the April 15th version, Cahuilla favors the Task Force draft because it adheres more closely to the actual text of the 1999 Compact and conveys a greater recognition of tribal gaming commissions as the primary regulators of tribal gaming. If the CGCC insists on enacting one of these versions of CGCC-8, Cahuilla supports the Task Force's revised version.

Respectfully,

Andrew Hofstetter, Chairman

Joseph Salgado, Commissioner

ATTACHMENT G

PALA BAND OF MISSION INDIANS
35008 Pala Temecula Rd. PMB 50
Pala, CA 92059

Ph: (760) 891-3500
Fax: (760) 742-1411

September 21, 2009

Via Facsimile 916-263-0499

California Gambling Control Commission
ATTN: Jason Pope, Legal Division
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: CGCC Invitation for Comments
On Draft CGCC-8 of April 15 & Association Task Force Report

Dear California Gambling Control Commissioners:

The Pala Band of Mission Indians (the "Pala Tribe") submits these comments in response to your letter dated August 20, 2009, inviting comments on your revised draft regulation entitled CGCC-8 dated April 15, 2009, and the Tribal-State Gaming Association's Task Force Report and its revised draft CGCC-8.

The Pala Tribe supports and ensures strong, effective, and efficient regulation of our Pala Casino Resort & Spa. The Pala Gaming Commission is the primary regulator of our casino performing on-site monitoring of compliance with regulatory controls as well as ensuring the conduct of internal audits throughout the year and annual independent external audits. The National Indian Gaming Commission ("NIGC") monitors and enforces compliance with the federal minimum internal control standards ("MICS"), and the State Gaming Agency performs inspections of the Tribe's gaming operation, including its internal controls, under conditions set forth in the Tribe's Amended Compact.[1]

SUPPORT FOR ASSOCIATION TASK FORCE

We support the collaborative efforts of the Task Force formed by the Tribal-State Gaming Association ("Association") and composed of tribal and state delegates, including the California Bureau of Gambling Control and staff of the CGCC, to review and address the April 15, 2009, draft of CGCC-8.

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[1] For these reasons and those expressed and incorporated in our previous correspondence, we continue to be concerned that CGCC-8 is generally unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC. As a matter of preservation of rights, we note that such objections are not intended to be, and are not, waived by anything set forth herein.

OBJECTION TO APRIL 15 DRAFT OF CGCC-8

The Association Task Force, with the exception of the CGCC representatives, objects to CGCC's April 15 draft of CGCC-8 for a variety of reasons. The Pala Tribe joins in that objection to the April 15 draft for the reasons previously stated in the letters and testimony submitted to the CGCC by our Tribe, Pala Gaming Commission, Association delegates, and representatives regarding CGCC-8 as well as the Association Task Force Final Report dated February 13, 2008, all of which are incorporated herein by reference (and referred to herein collectively as "previous correspondence").

In summary, while the April 15 draft includes improvements over the prior proposed CGCC-8, it continues to: (1) exceed the authority granted to the State in the Pala Tribe's Amended Compact and constitutes a compact amendment installing the CGCC as the primary regulator of our casino displacing the Pala Gaming Commission; (2) has not been approved by the Association as required, and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC.

OBJECTION TO "RE-ADOPTION" OF ANY CGCC REGULATION AS "FINAL" WITHOUT ASSOCIATION APPROVAL

We also reiterate that, while the Compact at Section 8.4.1 enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was disapproved by the Association (such as CGCC-8), it cannot thereafter become effective unless and until it is approved by the Association. Such a proposed regulation, whether in its original or amended form, must be resubmitted to and approved by the Association in order to become effective at tribal casinos.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift in civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the state and our Tribe: "Except as provided in subdivision (d) [pertaining to regulations adopted under exigent circumstances, which are later subject to Association disapproval], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."[2]

[2] We further note that the CGCC's April and September draft versions are substantially different than the previous version CGCC submitted to the Association as a proposed regulation for approval. Section 8.4.1, the Association Protocol, and due process considerations each require the CGCC to submit the revised version to the Association as a new proposed regulation

SUPPORT FOR TASK FORCE'S COLLABORATIVE DEVELOPMENT OF REVISED DRAFT

We support the Task Force's cooperative development of a revised draft put forth by both state and tribal delegates, which strives to strike a more appropriate balance between the tribes' role as primary regulator under the Compacts and the state's authority to verify Compact compliance. The NIGC Alternative Compliance Section strives to recognize that federal oversight ensures MICS compliance while also addressing CGCC concerns.

On balance, we believe the Task Force's revised draft (at Attachment B of its Report) incorporates significant improvements and the process of collaborative development is a positive model for the development of uniform statewide regulations, which must be approved by the Association to become effective. For these reasons, to the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, we urge the CGCC's adoption of the Task Force's revised draft without modification for submission to the Association.

Additionally, for these reasons, our Association delegates voted in favor of, and we support, the Association's recent motion to approve the Task Force Report and to recommend to the CGCC to adopt the Task Force revised draft for submission to the Association per Compact requirements and Association protocols.

RECENT CGCC STAFF REPORT, RESPONSE, AND REVISED CGCC-8

On September 14, 2009, the CGCC staff posted a Public Staff Report ("CGCC Staff Report"), an Amended Detailed Response to Tribal-State Association Objections to Internal Control Standards (CGCC-8) dated September 10, 2009 ("CGCC Amended Response"), a recommended revised version of CGCC-8 dated September 10, 2009, and numerous related documents.[3]

We do not support unilateral modification of the Task Force revised draft, as recommended by CGCC staff in its revised version dated September 10, 2009, because such revisions upset the balance the Task Force attempted to achieve in its revised draft and for the reasons stated above and in our previous correspondence.

For instance, the Pala Tribe appreciates the inclusion of an NIGC alternative compliance section. While the Task Force revised draft is far from the exemption language we first advocated, its NIGC Alternative Compliance section on balance strives to create a workable and practical alternative. The NIGC performs an on-site MICS inspection designed to ensure MICS compliance, the SGA receives all Supporting Papers "pertaining to the [NIGC] MICS review" and final written reports issued by the NIGC, and the SGA has the ability to follow-up with questions and inspections to ensure the SGA interests are met, including on-site inspection. We respectfully request that you

[3] Note that various objections of the Pala Tribe submitted to CGCC in its previous correspondence are not noted in the Public Staff Report where other tribes' particular objections are listed, nor are all our objections referenced.

carefully read the language of the Task Force revised draft at section (m), which we believe adequately addresses and covers the CGCC interests and objectives expressed by CGCC staff.

In the Public Staff Report at page 58, the CGCC staff explain that the primary reason for recommending at Section (m)(2)(C) the word "comprehensive" and listing out the ten areas of the gaming operation is that "NIGC has no interest or desire in ensuring Compact compliance and its relation to calculations of net win, SDF contributions or RSTF contributions." This is true, but as stated below, the SGA has the ability through each respective compact to ensure this objective, and in any event, SGA can conduct follow up under section (m) where reasonably necessary to ensure compact compliance. Moreover, this explanation and objective simply does not apply to the Pala Tribe which pays by flat fee, as demonstrated by the fact that verification of *flat fee* payments is not mentioned in the foregoing staff explanation supporting the recommended revisions.[4]

The recommended deletion of "upon the written request of the SGA" would not serve the CGCC's interest. This phrase provides latitude for the CGCC staff in the future where they may find some of this material to be unnecessary. It alleviates CGCC staff from being compelled to receive and consider all such material. Instead, the CGCC staff could simply provide notice that materials required under section (m)(1)(A) will be posted on the CGCC website, which may or may not include in its sole discretion all the items listed in section (m)(1)(A).

The recommended deletion of "if any" in section (m)(1)(A)(ii) would be short-sighted and unnecessary to achieve CGCC's stated objectives. Section (m) as drafted in the Task Force's revised draft obligates the tribe to request the Supporting Papers from the NIGC and provide those to CGCC. The tribe cannot provide what the NIGC may not have to give. For instance, there may be instances where all documentation may be incorporated into the final written report. Moreover, even *assuming arguendo* that there may be instances where CGCC staff believe they do not have adequate information, section (m) enables the CGCC to follow-up with questions and inspections. Similarly, the recommended revision to strike language in the proviso and add "information not related to MICS verification" is unnecessary for the CGCC's expressed objectives. Section (m)(1)(A)(ii) already specifies that CGCC will receive *all* NIGC's Supporting Papers

[4] In the CGCC Public Staff Report addressing the "Need for Regulation" at page 21, CGCC staff assert that there are "provisions of the NIGC MICS that are applicable to even a flat fee Tribe." Footnote 38, also addressing necessity, contends "the MICS provide a valuable tool for the State to verify the accuracy of the amount paid" where payments are made based upon number of machines. However, these contentions are not and cannot be supported. The CGCC routinely performs verification of flat fee payments per each Amended Compact. As demonstrated by the inspections currently being conducted, federal MICS compliance testing and standards cited on page 21 (which to a large degree go to statistical analysis) are not directly relevant to verifying the number of machines on the floor. Instead, the CGCC tests the actual documentation demonstrating the number of devices on the floor for the relevant quarterly period as well as may physically count such devices. Moreover, in any event, SGA could, if desired, inspect internal controls and documentation as reasonably necessary for this purpose. Footnote 38, also addressing necessity, inaccurately states amended compacts after 18 years "revert back to net win calculations." The Amended Compact at Section 4.3.3.3(d) provides for a *potential* payment by net win if it is less than the flat fee, but also expressly provides the SGA with the right to "audit the net win calculation."

"pertaining to the MICS review and preparation of the NIGC Report." The proviso pertains to another type of review routinely performed by the NIGC, a financial review/audit, pursuant to federal requirements and regulations, and previously recognized in the CGCC's April 15 draft as documentation that would not be included.

While we object to all of the changes in the CGCC staff recommended version of September 10 from the Task Force revised draft and do not list each specific one here, we do want to note that the recommended revisions to sections (m), (g), (f), and (d) are particularly unnecessary and unfortunate in light of the time and effort undertaken by the Task Force to develop the revised draft. As one further example, the recommended revision to section (g) purports to authorize compliance inspections by the SGA that exceed the authority conferred to the SGA under the Compacts for reasons stated in our previous correspondence. For instance, while as a practical matter the Tribal Gaming Agency and gaming operation may make its respective staff available for interview by the SGA, the compact does not provide the SGA with authority to mandate this.

We also object to many of the assertions in the CGCC Staff Report, CGCC Amended Response, and related materials. For instance, we are troubled by the assertions that CGCC-8 and particular sections thereof are necessary to ensure the state's revenue share. A statewide uniform regulation on minimum internal controls is not the proper manner in which to address the accuracy of revenue payments made to the state or to the Revenue Sharing Trust Fund ("RSTF"), which are paid in varying methods pursuant to different compacts and amendments to compacts. Each of these compacts and amended compacts provide the state with the right to verify payments made to the state, whether that payment is based upon a percentage of net win, *or* flat fee payments made to the state, *or* flat fee payments made to the RSTF.

The CGCC staff emphasize the need to verify revenue share based upon a percentage and the "integral" function of internal controls to these types of payments; however, the CGCC can and does request documents related to internal controls in connection with verification of Special Distribution Fund ("SDF") payments, and the CGCC can do so as well for tribes paying a percentage of revenue share to the General Fund. Indeed, footnote 10 of the Amended Response acknowledges that CGCC financial audit staff "look at areas of internal controls critical to Class III gaming device net win and some of those controls are captured in MICS compliance." Moreover, the same state interest and asserted objective simply do not exist where a tribe does not contribute based upon percentage of revenue, such as the Pala Tribe's flat fee payment to the state or a tribe paying flat license device fees into the RSTF. A uniform statewide regulation and portions thereof should not be driven by a state objective that does not uniformly apply to all tribes with compacts or that otherwise is achievable through the express provisions of the respective compacts, such as SDF audit provisions at Section 5.3(d) of the 1999 Compacts and audit provisions in recently amended compacts.

We disagree with the CGCC staff's characterization of the SGA's inspection rights under Section 7.4. For instance, while Section 7.4 provides the SGA with certain inspection rights, it does so "subject to the following conditions" listed, which include that such

access be reasonably necessary to ensure compliance with the Compact. The staff's claim that Section 7.4.4 "makes clear the SGA's broad right of access to documents, equipment and facilities" is simply not supported by the plain language of Section 7.4 and its subsections, by the jurisdictional balance struck in the Compact, by a common sense reading, or by applicable law, including Public Law 280, the doctrine of reasonableness, and the covenant of good faith and fair dealing inherent in any contract.[5]

RESERVATION OF RIGHTS

We further note that these comments are provided in summary fashion and are not exclusive, and any point or argument not made herein is not waived. We reserve the right to advance other arguments at appropriate times and in appropriate forums as this process may proceed.

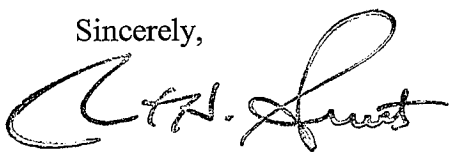
CONCLUSION

To the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, we urge the CGCC to adopt the Task Force's revised draft for submission to the Association. We, however, do not support any unilateral modification of the Task Force's revised draft.

We further urge you to recognize that any regulation adopted by the CGCC at its September 24, 2009, hearing must be approved by the Association to become effective at the Pala Casino.

We appreciate this opportunity to submit comments and your consideration of these comments.

Sincerely,



Robert Smith
Chairman

Cc: Anthony Barnes, Chairman, Pala Gaming Commission
Jane G. Zerbi, Esq.

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[5] While we are providing comments in summary form and do not list all assertions to which we object, we do want to note that we disagree with the CGCC staff's characterization of Section 8.4.1, as previously stated, and with the assertion on page 16 of the Amended Response that "one may logically infer" that a regulation adopted by SGA "shall govern pending conclusion of the dispute resolution process." Further, the Task Force Final Report of February 2008 did not put forth a "nullity theory" as alleged by staff at page 17 of its CGCC Amended Response. That Report makes the essential point that a regulation must fall within the bounds of the compact, the negotiated agreement between two sovereign governments which provides the state/SGA with the only civil regulatory authority it has over the Tribe's gaming activities.

ATTACHMENT H

Rincon Band of Luiseño Indians

PO Box 68 · Valley Center · CA 92082 · (760) 749-1051 · Fax: (760) 749-8901

September 15, 2009

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Re: Request to Meet and Confer re: CGCC-8 - Addendum

Honorable Governor Schwarzenegger:

By letter dated September 10, 2009, the Rincon Band of Luiseño Indians submitted a meet and confer letter to your office pursuant to Section 9.1 of the 1999 Tribal-State Gaming Compact between the Rincon Band of Luiseño Indians and the State of California ("Compact").

On September 14, 2009, the California Gambling Control Commission ("CGCC") posted a revised version of CGCC-8 dated September 10, 2009 on its website. The Rincon Band continues to object to the form of CGCC-8 proposed by the CGCC for the reasons included within, but not limited to, our September 10th meet and confer letter, and for the reasons listed within the Rincon Band's comments to the various previous versions of CGCC-8, which have been delivered to the CGCC, and are hereby incorporated within by reference.

The Rincon Band hereby submits this addendum to the Rincon Band's September 10, 2009 request to meet and confer regarding the anticipated material breach of the Rincon Band's Gaming Compact by the State due to the California Gambling Control Commission's ("CGCC") anticipated vote on September 24, 2009 to adopt and begin enforcement of CGCC-8 dated September 10, 2009. The CGCC actions of: (i) posting the date of potential CGCC action to adopt CGCC-8; (ii) posting CGCC-8 as amended dated September 10, 2009 on the CGCC's website; and (iii) stating that the CGCC-8 may be adopted over the objection of the Association[1], each constitute independent events giving rise to a dispute under the Compact pursuant to Section 9.1(a).

This addendum letter and request to meet and confer is being sent under the assumption that the CGCC will move forward on September 24th to adopt a form of CGCC-8 over the objection of the Association and attempt to begin immediate enforcement. This letter is not meant to extend the 10 day time period initiated by our September 10th letter. In the alternative, if the September 10th letter is untimely for any reason, this letter shall be construed to trigger the 10 day meet and confer requirements of Section 9.1 of the Compact.

[1] See Amended Detailed Response to Tribal-State Association Objections to Internal Control Standards (CGCC-8) September 10, 2009 at Page 1.

M-352

Thank you for your prompt attention to this matter. We expect to be able to meet and discuss the adoption and enforcement of CGCC-8 promptly and in no event later than 10 days from receipt of this letter. Please contact Council Chairman Bo Mazzetti at 760-801-4550, or Scott Crowell, the Band's Attorney General, at 425-802-5369 to schedule the meeting and/or address any questions you may have.

Respectfully submitted,

Bo Mazzetti
Chairman
Rincon Band of Luiseño Indians

cc: Edmund G. Brown Jr., Attorney General, Department of Justice
Dean Shelton, California Gambling Control Commission

ATTACHMENT I

September 21, 2009

Via Facsimile 916-263-0499

California Gambling Control Commission
ATTN: Jason Pope, Legal Division
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: CGCC Invitation for Comments
On Draft CGCC-8 of April 15 & Association Task Force Report

Dear California Gambling Control Commissioners:

The Jackson Rancheria Band of Miwuk Indians of the Jackson Rancheria (the "Tribe") submits these comments in response to your letter dated August 20, 2009, inviting comments on your revised draft regulation entitled CGCC-8 dated April 15, 2009, and the Tribal-State Gaming Association's Task Force Report and its revised draft CGCC-8.

The Jackson Rancheria supports and ensures strong, effective, and efficient regulation of our tribal casino. The Tribal Gaming Agency is the primary regulator of our casino performing on-site monitoring of compliance with regulatory controls as well as ensuring the conduct of internal audits throughout each year and annual independent external audits. The National Indian Gaming Commission ("NIGC") continues to provide regulatory oversight, and the State Gaming Agency performs inspections of the Tribe's gaming operation, including its internal controls, under conditions set forth in the Tribe's Amended Compact.[1]

SUPPORT FOR ASSOCIATION TASK FORCE

We support the collaborative efforts of the Task Force formed by the Tribal-State Gaming Association ("Association") and composed of tribal and state delegates, including the California Bureau of Gambling Control and staff of the CGCC, to review and address the April 15, 2009, draft of CGCC-8.

[1] For these reasons and those expressed and incorporated in our previous correspondence, we continue to be concerned that CGCC-8 is generally unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC. As a matter of preservation of rights, we note that such objections are not intended to be, and are not, waived by anything set forth herein.

OBJECTION TO APRIL 15 DRAFT OF CGCC-8

The Association Task Force, with the exception of the CGCC representatives, objects to CGCC's April 15 draft of CGCC-8 for a variety of reasons. The Tribe joins in that objection to the April 15 draft for the reasons previously stated in the letters and testimony submitted to the CGCC by our Tribe, Association delegates, and representatives regarding CGCC-8 as well as the Association Task Force Final Report dated February 13, 2008, all of which are incorporated herein by reference (and referred to herein collectively as "previous correspondence").

In summary, while the April 15 draft includes improvements over the prior proposed CGCC-8, it continues to: (1) exceed the authority granted to the State in the Tribe's Compact and constitutes a compact amendment installing the CGCC as the primary regulator of our casino and displacing the Tribal Gaming Agency; (2) has not been approved by the Association as required, and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC.

OBJECTION TO "RE-ADOPTION" OF ANY CGCC-8 REGULATION AS "FINAL" WITHOUT ASSOCIATION APPROVAL

We also reiterate that, while the Compact at Section 8.4.1 enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was disapproved by the Association (such as CGCC-8), it cannot thereafter become effective unless and until it is approved by the Association. Such a proposed regulation, whether in its original or amended form, must be resubmitted to and approved by the Association in order to become effective at tribal casinos.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift in civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the state and our Tribe: "Except as provided in subdivision (d) [pertaining to regulations adopted under exigent circumstances, which are later subject to Association disapproval], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."[2]

[2] We further note that the CGCC's April and September draft versions are substantially different than the previous version CGCC submitted to the Association as a proposed regulation for approval. Section 8.4.1, the Association Protocol, and due process considerations each require the CGCC to submit the revised version to the Association as a new proposed regulation.

SUPPORT FOR TASK FORCE'S COLLABORATIVE DEVELOPMENT OF REVISED DRAFT

We support the Task Force's collaborative development of a revised draft put forth by both state and tribal delegates, which strives to strike a more appropriate balance between the tribes' role as primary regulator under the Compacts and the state's authority to verify Compact compliance. The NIGC Alternative Compliance Section strives to recognize that federal oversight ensures MICS compliance while also addressing CGCC concerns.

On balance, we believe the Task Force's revised draft (at Attachment B of its Report) incorporates significant improvements and the process of collaborative development is a positive model for the development of uniform statewide regulations, which must be approved by the Association to become effective. For these reasons, to the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, we urge the CGCC's adoption of the Task Force's revised draft without modification for submission to the Association.

Additionally, for these reasons, our Association delegate voted in favor of, and we support, the Association's recent motion to approve the Task Force Report and to recommend to the CGCC to adopt the Task Force revised draft for submission to the Association per Compact requirements and Association protocols.

RECENT CGCC STAFF REPORT, RESPONSE, AND REVISED CGCC-8

On September 14, 2009, the CGCC staff posted a Public Staff Report ("CGCC Staff Report"), an Amended Detailed Response to Tribal-State Association Objections to Internal Control Standards (CGCC-8) dated September 10, 2009 ("CGCC Amended Response"), a recommended revised version of CGCC-8 dated September 10, 2009, and numerous related documents.[3]

We do not support unilateral modification of the Task Force revised draft, as recommended by CGCC staff in its revised version dated September 10, 2009, because such revisions upset the balance the Task Force attempted to achieve in its revised draft and for the reasons stated above and in our previous correspondence.

We object to all of the changes in the recommended version of September 10 from the Task Force revised draft and do not list each specific one here. However, we do want to note that the changes to sections (g), (m), (f), and (d) are particularly unnecessary and unfortunate in light of the time and effort undertaken by the Task Force to develop the revised draft. As one example only, the recommended revision to section (g) purports to authorize compliance inspections by the SGA that exceed the authority conferred to the SGA under the Compacts for reasons stated in our previous correspondence. For instance, while as a practical matter the Tribal Gaming Agency and gaming operation

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may make its respective staff available for interview by the SGA, the compact does not provide the SGA with authority to mandate this.

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The CGCC staff emphasize the need to verify revenue share based upon a percentage and the "integral" function of internal controls to these types of payments; however, the CGCC can and does request documents related to internal controls in connection with verification of Special Distribution Fund ("SDF") payments at our casino, and the CGCC can do so as well for tribes paying a percentage of revenue share to the General Fund. Indeed, footnote 10 of the Amended Response acknowledges that CGCC financial audit staff "look at areas of internal controls critical to Class III gaming device net win and some of those controls are captured in MICS compliance." Moreover, the same state interest and asserted objective simply do not exist where a tribe does not contribute based upon percentage of revenue. A uniform statewide regulation and portions thereof should not be driven by a state objective that does not uniformly apply to all tribes with compacts or that otherwise is achievable through the express provisions of the respective compacts, such as SDF audit provisions at Compact Section 5.3(d).

We disagree with the CGCC staff's characterization of the SGA's inspection rights under Section 7.4. For instance, while Section 7.4 provides the SGA with certain inspection rights, it does so "subject to the following conditions" listed, which include that such access be reasonably necessary to ensure compliance with the Compact. The staff's claim that Section 7.4.4 "makes clear the SGA's broad right of access to documents, equipment and facilities" is simply not supported by the plain language of Section 7.4 and its subsections, by the jurisdictional balance struck in the Compact, by a common sense reading, or by applicable law, including Public Law 280, the doctrine of reasonableness, and the covenant of good faith and fair dealing inherent in any contract.[4]

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We further urge you to recognize that any regulation adopted by the CGCC at its September 24, 2009, hearing must be approved by the Association to become effective at our tribal casino.

Sincerely,

Irvin "Bo" Marks
Chairperson

Cc: Kelly Steinhoff, Executive Director Jackson Rancheria Tribal Gaming Agency
Jane G. Zerbi, Esq.

ATTACHMENT J

September 21, 2009

Via Facsimile 916-263-0499

California Gambling Control Commission
ATTN: Jason Pope, Legal Division
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: CGCC Invitation for Comments
On Draft CGCC-8 & Association Task Force Report

Dear California Gambling Control Commissioners:

The Cher-Ae Heights Indian Community of the Trinidad Rancheria (the "Trinidad Rancheria" or "Tribe") submits these comments in response to your letter dated August 20, 2009, inviting comments on your revised draft regulation entitled CGCC-8 dated April 15, 2009, and the Tribal-State Gaming Association's Task Force Report and its revised draft CGCC-8.

The Trinidad Rancheria supports and ensures strong, effective, and efficient regulation of our tribal casino. The Trinidad Gaming Commission is the primary regulator of our casino performing on-site monitoring of compliance with regulatory controls as well as ensuring the conduct of internal audits throughout the year and annual independent external audits. The National Indian Gaming Commission ("NIGC") continues to provide regulatory oversight, and the State Gaming Agency performs inspections of the Tribe's gaming operation, including its internal controls, under conditions set forth in the Tribe's Amended Compact.[1]

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[1] For these reasons and those expressed and incorporated in our previous correspondence, we continue to be concerned that CGCC-8 is generally unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC. As a matter of preservation of rights, we note that such objections are not intended to be, and are not, waived by anything set forth herein.

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In summary, while the April 15 draft includes improvements over the prior proposed CGCC-8, it continues to: (1) exceed the authority granted to the State in the Tribe's Amended Compact and constitutes a compact amendment installing the CGCC as the primary regulator of our casino displacing the Trinidad Gaming Commission; (2) has not been approved by the Association as required, and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC.

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CONCLUSION

To the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, we urge the CGCC to adopt the Task Force's revised draft for submission to the Association. We, however, do not support any unilateral modification of the Task Force's revised draft.

We further urge you to recognize that any regulation adopted by the CGCC at its September 24, 2009, hearing must be approved by the Association to become effective at our tribal casino.

Sincerely,

Garth Sundberg
Chairman

Cc: Robert Lanham, Tribal Gaming Commission
Jane G. Zerbi, Esq.

MIWOK MAIDU United Auburn Indian Community of the Auburn Rancheria

JESSICA TAVARES CHAIRPERSON | JOHN SUEHEAD VICE CHAIR | DAVID KEYSER SECRETARY | DOLLY SUEHEAD TREASURER | GENE WHITEHOUSE COUNCIL MEMBER

September 22, 2009

Via Facsimile 916-263-0499

California Gambling Control Commission
ATTN: Jason Pope, Legal Division
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

RE: CGCC Invitation for Comments Prior to September 24, 2009, Hearing

Dear California Gambling Control Commissioners:

The United Auburn Indian Community ("United Auburn" or the "Tribe") submits these additional comments in light of the recent materials posted on the California Gambling Control Commission ("CGCC") website and the Tribal-State Gaming Association meeting of September 17, 2009. We appreciate your consideration of our comments.

INTRODUCTION

United Auburn supports and ensures strong, effective, and efficient regulation of our Thunder Valley Casino. The Tribal Gaming Agency is the primary regulator of our casino performing on-site monitoring of compliance with regulatory controls as well as ensuring the conduct of internal audits throughout the year and annual independent external audits. The National Indian Gaming Commission ("NIGC") monitors and enforces compliance with the federal minimum internal control standards ("MICS") and the State Gaming Agency performs inspections of our gaming operation, including its internal controls, under conditions set forth in the Tribe's Amended Compact.[1]

SUPPORT FOR ASSOCIATION'S SEPTEMBER 17 ACTION & TASK FORCE'S COLLABORATIVE DEVELOPMENT OF REVISED DRAFT

We want to reiterate our support for the collaborative efforts of the Task Force formed by the Tribal-State Gaming Association ("Association") and composed of tribal and state delegates, including the California Bureau of Gambling Control and staff of the CGCC, to review and address the April 15, 2009, draft of CGCC-8. We support the Task

[1] For these reasons and those expressed and incorporated in our previous correspondence, we continue to be concerned that CGCC-8 is generally unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published regulation of the NIGC. As a matter of reservation of rights, we note that such objections are not intended to be, and are not, waived by anything set forth herein or in our previous correspondence.

Force's collaborative development of a revised draft put forth by both state and tribal delegates, which strives to strike a more appropriate balance between the tribes' role as primary regulator under the Compacts and the state's authority to verify Compact compliance. While the NIGC Alternative Compliance Section is far from the language we originally advocated, it strives to recognize that federal oversight ensures MICS compliance while also addressing CGCC concerns.

On balance, we believe the Task Force's revised draft (at Attachment B of its Report) incorporates significant and practicable improvements and the process of collaborative development is a positive model for the development of uniform statewide regulations which must be approved by the Association to become effective, and we therefore expressed support in our September 3, 2009, correspondence and continue to support and urge, that to the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, **CGCC adopt the Task Force's revised draft without modification for submission to the Association.**[2]

Additionally, **for these reasons, our Association delegate voted in favor of, and we support, the Association's recent motion to approve the Task Force Report and to recommend to the CGCC to adopt the Task Force revised draft for submission to the Association per Compact requirements and Association protocols.**

OBJECTION TO APRIL 15 DRAFT OF CGCC-8

We reiterate that we, along with all members of the Association Task Force, with the exception of the CGCC representatives, object to CGCC's April 15 draft of CGCC-8, and we do so for the reasons previously stated in the letters and testimony submitted to the CGCC by our Tribe, Tribal Gaming Agency, Association delegates, and representatives regarding CGCC-8 as well as the Association Task Force Final Report dated February 13, 2008, all of which are incorporated herein by reference (and referred to herein collectively as "previous correspondence"). In summary, while the April 15 draft includes improvements over the prior proposed CGCC-8, it continues to: (1) exceed the authority granted to the State in the our Tribe's Amended Compact and constitutes a compact amendment installing the CGCC as the primary regulator of our casino and displacing the Tribal Gaming Agency; (2) has not been approved by the Association as required, and (3) is unnecessary, duplicative, unduly burdensome, unfairly discriminatory, and conflicts with a final published NIGC regulation.

OBJECTION TO "RE-ADOPTION" OF ANY CGCC REGULATION AS "FINAL" WITHOUT ASSOCIATION APPROVAL

We also reiterate that, while the Compact at Section 8.4.1 enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was disapproved by the Association (such as CGCC-8), it cannot thereafter become effective unless and until it is approved by the Association. Such a proposed regulation, whether

[2] Our support is in no way intended to, and does not, waive any of our objections to the CGCC's drafts of CGCC-8 or any of our general objections to CGCC-8. See fn. 1.

in its original or amended form, must be resubmitted to and approved by the Association in order to become effective at tribal casinos.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, this would be a dramatic shift in civil regulatory jurisdiction to the state and consequently the Compact would clearly provide for this. To the contrary, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the state and our Tribe: "Except as provided in subdivision (d) [pertaining to regulations adopted under exigent circumstances, which are later subject to Association disapproval], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."[3]

RECENT CGCC STAFF REPORT, RESPONSE, AND REVISED CGCC-8

On September 14, 2009, the CGCC staff posted a Public Staff Report ("CGCC Staff Report"), an Amended Detailed Response to Tribal-State Association Objections to Internal Control Standards (CGCC-8) dated September 10, 2009 ("CGCC Amended Response"), a recommended revised version of CGCC-8 dated September 10, 2009, and numerous related documents.[4]

We do not support unilateral modification of the Task Force revised draft, as recommended by CGCC staff in its revised version dated September 10, 2009, because such revisions upset the balance the Task Force attempted to achieve in its revised draft and for the reasons stated above and in our previous correspondence.

For instance, **United Auburn appreciates the inclusion of an NIGC alternative compliance section.** While the Task Force revised draft is far from the exemption language we first advocated, its NIGC Alternative Compliance section on balance strives to create a workable and practical alternative. The NIGC performs an on-site MICS inspection designed to ensure MICS compliance, the SGA receives all Supporting Papers "pertaining to the [NIGC] MICS review" and final written reports issued by the NIGC, and the SGA has the ability to follow-up with questions and inspections to ensure the SGA interests are met, including on-site inspection. We respectfully request that you carefully read the language of the Task Force revised draft at section (m), which we believe adequately addresses and covers the CGCC interests and objectives expressed by CGCC staff.

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[3] We further note that the CGCC's April and September draft versions are substantially different than the previous version CGCC submitted to the Association as a proposed regulation for approval. Section 8.4.1, the Association Protocol, and due process considerations each require the CGCC to submit the revised version to the Association as a new proposed regulation.

[4] Note that various objections of United Auburn submitted to CGCC in its previous correspondence are not noted in the Public Staff Report where other tribes' particular objections are listed, nor are all our objections referenced.

In the Public Staff Report at page 58, the CGCC staff explain that the primary reason for recommending at Section (m)(2)(C) the word "comprehensive" and listing out the ten areas of the gaming operation is that "NIGC has no interest or desire in ensuring Compact compliance and its relation to calculations of net win, SDF contributions or RSTF contributions." This is true, but as stated below, the SGA has the ability through each respective compact to ensure this objective, and in any event, SGA can conduct follow up under section (m) where reasonably necessary. Moreover, this explanation and objective simply does not apply to United Auburn which pays by flat fee, as demonstrated by the fact that verification of *flat fee* payments is not mentioned in the foregoing staff explanation supporting the recommended revisions.[5]

The recommended deletion of "upon the written request of the SGA" would not serve the CGCC's interest. This phrase provides latitude for the CGCC staff in the future where they may find some of this material to be unnecessary. It alleviates CGCC staff from being compelled to receive and consider all such material. Instead, the CGCC staff could simply provide notice that materials required under section (m)(1)(A) will be posted on the CGCC website, which may or may not include in its sole discretion all the items listed in section (m)(1)(A).

The recommended deletion of "if any" in section (m)(1)(A)(ii) would be short-sighted and unnecessary to achieve CGCC's stated objectives. Section (m) as drafted in the Task Force's revised draft obligates the tribe to request the Supporting Papers from the NIGC and provide those to CGCC. The tribe cannot provide what the NIGC may not have to give. For instance, there may be instances where all documentation may be incorporated into the final written report. Moreover, even *assuming arguendo* that there may be instances where CGCC staff believe they do not have adequate information, section (m) enables the CGCC to follow-up with questions and inspections. Similarly, the recommended revision to strike language in the proviso and add "information not related to MICS verification" is unnecessary for the CGCC's expressed objectives. Section (m)(1)(A)(ii) already specifies that CGCC will receive *all* NIGC's Supporting Papers "pertaining to the MICS review and preparation of the NIGC Report." The proviso pertains to another type of review routinely performed by the NIGC, a financial review/audit, pursuant to federal requirements and regulations, and previously recognized in the CGCC's April 15 draft as documentation that would not be included.

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[5] In the CGCC Public Staff Report addressing the "Need for Regulation" at page 21, CGCC staff assert that there are "provisions of the NIGC MICS that are applicable to even a flat fee Tribe." Footnote 38, also addressing necessity, contends "the MICS provide a valuable tool for the State to verify the accuracy of the amount paid" where payments are made based upon number of machines. However, these contentions are not and cannot be supported. The CGCC routinely performs verification of flat fee payments per each Amended Compact. As demonstrated by the inspections currently being conducted, federal MICS compliance testing and standards cited on page 21 (which to a large degree go to statistical analysis) are not directly relevant to verifying the number of machines on the floor. Instead, the CGCC tests the actual documentation demonstrating the number of devices on the floor for the relevant quarterly period as well as may physically count such devices. Moreover, in any event, SGA could, if desired, inspect internal controls and documentation as reasonably necessary for this purpose. Footnote 38, also addressing necessity, inaccurately states amended compacts after 18 years "revert back to net win calculations." The Amended Compact at Section 4.3.3.3(d) provides for a *potential* payment by net win if it is less than the flat fee, but also expressly provides the SGA with the right to "audit the net win calculation."

While we object to all of the changes in the CGCC staff recommended version of September 10 from the Task Force revised draft and do not list each specific one here, we do want to note that the recommended revisions to sections (m), (g), (f), and (d) are particularly unnecessary and unfortunate in light of the time and effort undertaken by the Task Force to develop the revised draft. As one further example, the recommended revision to section (g) purports to authorize compliance inspections by the SGA that exceed the authority conferred to the SGA under the Compacts for reasons stated in our previous correspondence. For instance, while as a practical matter the Tribal Gaming Agency and gaming operation may make its respective staff available for interview by the SGA, the compact does not provide the SGA with authority to mandate this.

We also object to many of the assertions in the CGCC Staff Report, CGCC Amended Response, and related materials. For instance, we are troubled by the assertions that CGCC-8 and particular sections thereof are necessary to ensure the state's revenue share. A statewide uniform regulation on minimum internal controls is not the proper manner in which to address the accuracy of revenue payments made to the state or to the Revenue Sharing Trust Fund ("RSTF"), which are paid in varying methods pursuant to different compacts and amendments to compacts. Each of these compacts and amended compacts provide the state with the right to verify payments made to the state, whether that payment is based upon a percentage of net win, *or* flat fee payments made to the state, *or* flat fee payments made to the RSTF.

The CGCC staff emphasize the need to verify revenue share based upon a percentage and the "integral" function of internal controls to these types of payments; however, the CGCC can and does request documents related to internal controls in connection with verification of Special Distribution Fund ("SDF") payments, and the CGCC can do so as well for tribes paying a percentage of revenue share to the General Fund. Indeed, footnote 10 of the Amended Response acknowledges that CGCC financial audit staff "look at areas of internal controls critical to Class III gaming device net win and some of those controls are captured in MICS compliance." Moreover, the same state interest and asserted objective simply do not exist where a tribe does not contribute based upon percentage of revenue, such as United Auburn's flat fee payment to the state or a tribe paying flat license device fees into the RSTF. A uniform statewide regulation and portions thereof should not be driven by a state objective that does not uniformly apply to all tribes with compacts or that otherwise is achievable through the express provisions of the respective compacts, such as SDF audit provisions at Section 5.3(d) of the 1999 Compacts and audit provisions in recently amended compacts.

We disagree with the CGCC staff's characterization of the SGA's inspection rights under Section 7.4. For instance, while Section 7.4 provides the SGA with certain inspection rights, it does so "subject to the following conditions" listed, which include that such access be reasonably necessary to ensure compliance with the Compact. The staff's claim that Section 7.4.4 "makes clear the SGA's broad right of access to documents, equipment and facilities" is simply not supported by the plain language of Section 7.4 and its subsections, by the jurisdictional balance struck in the Compact, by a common

sense reading, or by applicable law, including Public Law 280, the doctrine of reasonableness, and the covenant of good faith and fair dealing inherent in any contract.[6]

RESERVATION OF RIGHTS

We further note that these comments are provided in summary fashion and are not exclusive, and any point or argument not made herein is not waived. We reserve the right to advance other arguments at appropriate times and in appropriate forums as this process may proceed.

CONCLUSION

To the extent CGCC intends to adopt a proposed CGCC-8 regulation at its September 24, 2009, hearing, we urge the CGCC to adopt the Task Force's revised draft for submission to the Association. We, however, do not support any unilateral modification of the Task Force's revised draft.

We further urge you to recognize that any regulation adopted by the CGCC at its September 24, 2009, hearing must be approved by the Association to become effective at Thunder Valley Casino.

We appreciate this opportunity to submit comments and your consideration of these comments.

Sincerely,

Jessica Tavares
Chairperson

cc: Ron M. Jaeger, Chairman, United Auburn Tribal Gaming Agency
Jane G. Zerbi, Esq.

[6] While we are providing comments in summary form and do not list all assertions to which we object, we do want to note that we disagree with the CGCC staff's characterization of Section 8.4.1, as previously stated, and with the assertion on page 16 of the Amended Response that "one may logically infer" that a regulation adopted by SGA "shall govern pending conclusion of the dispute resolution process." Further, the Task Force Final Report of February 2008 did not put forth a "nullity theory" as stated at page 17 of the CGCC Amended Response. That Report makes the essential point that a regulation must fall within the bounds of the compact, the negotiated agreement between two sovereign governments which provides the state/SGA with the only civil regulatory authority it has over the Tribe's gaming activities.