

**California Gambling Control Commission**  
2399 GATEWAY OAKS DRIVE, SUITE 220  
SACRAMENTO, CA 95833  
(916) 263-0700 FAX (916) 263-0499  
[www.cgcc.ca.gov](http://www.cgcc.ca.gov)

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**MINUTES OF APRIL 29, 2010  
COMMISSION MEETING**

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**OPEN SESSION**

1. Call to Order and Pledge of Allegiance.

Chairman Dean Shelton called the meeting to order at 10:01 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken, with Chairman Dean Shelton and Commissioners James Shelby and Stephanie Shimazu present.

3. Consideration of Uniform Tribal Gaming Regulation CGCC-8 - (Tribal-State Gaming Compact Section 8.4.1 (b) & (c))
  - Consideration of readoption of Uniform Tribal Gaming Regulation CGCC-8 in light of amendments supported by a majority of the delegates to the Tribal-State Association at its meeting of April 5, 2010 for submission to all Compact Tribes and consideration by the Tribal-State Association.

Jason Pope, Staff Counsel indicated that CGCC-8 is a regulation put forth by the California Gambling Control Commission intended to provide protocols for interaction over state gaming agencies compact inspections related to internal control standards. CGCC-8 was voted on by the Tribal State Association at the February 4, 2010 association meeting where it was disapproved. On February 24, 2010 this Commission readopted CGCC-8 according to the compacts and sent it out to the tribes for comment. On March 5, 2010 the Bureau of Gambling Control mailed out a notice of a Tribal State Association meeting on April 5, 2010 on CGCC-8 as readopted by this Commission on February 24, 2010. At the April 5, 2010 meeting the Association voted overwhelmingly to recommend amending CGCC-8 in two areas including the Tribal Action Plan and the NIGC Alternative Compliance section. The Association vote also recommended forwarding these amendments to the Commission for approval and for an Association vote to be held at the earliest possible time at the next Association meeting. The next Tribal Association meeting is scheduled for June 2, 2010. Staff recommends approving

## Commission Meeting Minutes of APRIL 29, 2010

the amendments to CGCC-8 as recommended by a majority of the Association delegates at the April 5, 2010 Tribal State Association meeting.

Jacob Appelsmith, Bureau of Gambling Control wanted to thank the Commission and tribes for their patience and staff for continuing to negotiate on this regulation. Mr. Appelsmith further indicated that this is what was envisioned for this regulation, which is that there may be times when fixes that will serve both sides need to be addressed and this is an example of that at an early stage.

Richard Armstrong, Attorney, indicated that now there is the clarity that the Commission needs, in terms of confidence, in the future of this regulation if the proposed revisions to the regulation are made today. Mr. Armstrong expressed that it is the hope of his clients that the Commission take action to promote the revisions.

Chairman Shelton made a motion to accept the amendments to the CGCC8 as presented. The motion was seconded by Commissioner Shimazu and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Shelby and Shimazu voting yes.

Chairman Shelton expressed his appreciation for the hard work put forth by all and that communication is what is needed to work with each other to continue the government to government exercise.

A complete transcript of the proceedings is incorporated into the minutes as Attachment A.

### **PUBLIC COMMENT**

There was no public comment at this time.

### **ADJOURNMENT**

Chairman Shelton adjourned the meeting at 10:08 a.m.

STATE OF CALIFORNIA  
GAMBLING CONTROL COMMISSION

COMMISSION MEETING

California Gambling Control Commission  
2399 Gateway Oaks Drive  
Suite 100  
Sacramento, California 95833  
APRIL 29, 2010  
10:00 A.M.

Reported by: Desiree C. Tawney, CSR No. 12414

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APPEARANCES:

DEAN SHELTON  
Chairman

STEPHANIE SHIMAZU  
Commissioner

JAMES C. SHELBY  
Commissioner

JOY CALKIN  
Staff Services Analyst

TERRI A. CIAU  
Executive Director

JOE DHILLON  
Chief Counsel, Legal Division

Public Speakers:

Richard Armstrong  
Jason Pope  
Jacob Appelsmith

1           BE IT REMEMBERED, that on APRIL 29, 2010, commencing  
2           at the hour of 10:00 A.M., at the California Gambling  
3           Control Commission, 2399 Gateway Oaks Drive, Suite 100,  
4           Sacramento, California, before me, DESIREE C. TAWNEY,  
5           Certified Shorthand Reporter in and for the county of  
6           Placer, state of California, the following proceedings took  
7           place:

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9           (The following proceedings were held on the record.)

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11           CHAIRMAN SHELTON: Good morning. I'll call the  
12           meeting to order.

13           Mr. Appelsmith, would you lead us in the Pledge of  
14           Allegiance.

15           JACOB APPELSMITH: I am?

16           CHAIRMAN SHELTON: You are.

17           JACOB APPELSMITH: True story. I was a product of the  
18           Berkeley public schools.

19           CHAIRMAN SHELTON: You're not running for office.

20           (Laughter.)

21           (Pledge of Allegiance.)

22           CHAIRMAN SHELTON: Sorry to rudely interrupt you.

23           JACOB APPELSMITH: We were the only school district in  
24           the entire state of California that did not say the Pledge  
25           of Allegiance. They tried at one time to cut off our

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1 funding. Not until my daughter was in school did I  
2 actually learn the Pledge of Allegiance.

3 That is my impoverished upbringing story.

4 CHAIRMAN SHELTON: You're from San Francisco?

5 JACOB APPELSMITH: Berkeley.

6 CHAIRMAN SHELTON: I won't even go there.

7 (Laughter.)

8 CHAIRMAN SHELTON: Roll call, please.

9 JOY CALKIN: Chairman Shelton?

10 CHAIRMAN SHELTON: Here.

11 JOY CALKIN: Commissioner Shelby?

12 COMMISSIONER SHELBY: Here.

13 JOY CALKIN: Commissioner Shimazu?

14 COMMISSIONER SHIMAZU: Here.

15 JOY CALKIN: Thank you. Good morning.

16 CHAIRMAN SHELTON: We have a new group. We had a  
17 meeting yesterday and I asked Commissioner Shelby, as our  
18 new Commissioner for our quorum finally that when we have  
19 this hearing, if he would introduce himself. I would like  
20 him to do that for the Tribes' sake.

21 COMMISSIONER SHELBY: I'll just remember what I said  
22 yesterday.

23 Good morning. James Shelby. I'm the new kid on the  
24 block. It was a pleasure meeting some of you this morning.  
25 I've been around public policy for approximately 30

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1 years on boards and commissions in the county. I've served  
2 14 years of City Council for the City of Citrus Heights,  
3 California.

4 I'm glad to be here. I think I can add something to  
5 the body and now need your help in terms of learning. And  
6 I like to listen. And so, please, feel free to share with  
7 me anything you'd like to share. I'd like to get around to  
8 meet all of you.

9 Thank you.

10 CHAIRMAN SHELTON: Mr. Pope?

11 JASON POPE: Good morning, Mr. Chairman,  
12 Commissioners. Jason Pope, staff counsel here at the  
13 Commission.

14 As you are no doubt aware, CGCC-8 is a regulation put  
15 forward by the California Gambling Control Commission  
16 intended to provide protocols for interaction over State  
17 Gaming Agency Compact inspections related to internal  
18 control standards.

19 Most recently the CGCC-8 was voted on by the  
20 Tribal-State Association at the February 4th, 2010  
21 Association meeting where it was disapproved.

22 On February 24th, 2010 this Commission readopted  
23 CGCC-8 according to the Compacts and sent it out to the  
24 Tribes for comment.

25 On March 5th the Bureau of Gambling Control mailed out

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1 a notice of a Tribal-State Association meeting on April  
2 5th, 2010 on CGCC-8 as readopted by this Commission on  
3 February 24th.

4 At the April 5th meeting the Association voted  
5 overwhelmingly to recommend amending CGCC-8 in regards to  
6 two areas, including the Tribal Action Plan and the NIGC  
7 Alternative Compliance Section.

8 The Association vote also recommended forwarding these  
9 amendments to the Commission for approval and for an  
10 Association vote to be held at the earliest possible time  
11 at the next Association meeting.

12 I believe the next Tribal-State Association meeting is  
13 currently scheduled for June 2nd.

14 Staff recommends approving the amendments to CGCC-8 as  
15 recommended by majority of the Association delegates at the  
16 April 5th Tribal-State Association meeting.

17 A version of CGCC-8 with these amendments have been  
18 made available on the back table as well as staff's  
19 discussion of these changes.

20 Deputy Dick Ross is available to answer any questions  
21 you may have in regards to these amendments and how they  
22 modify the current version of CGCC-8.

23 CHAIRMAN SHELTON: Mr. Appelsmith, you have anything  
24 you'd like to add?

25 JACOB APPELSMITH: I just want to say --

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1 A-p-p-e-l-s-m-i-t-h. I just want to thank the Commission  
2 for its patience and the Tribes for their patience and your  
3 staff for continuing to negotiate this.

4 I think this is something that we had envisioned for  
5 this regulation in the long term, which is that there may  
6 from time to time fixes that we need to serve both sides  
7 interests. I think this is an example of that in a very  
8 early stage.

9 I think they are good amendments and they help both  
10 sides. One of them clarified something; the other one  
11 really cleared a hole in the amendment we had before and  
12 that is the NIGC cure.

13 CHAIRMAN SHELTON: Generally I'd ask Commissioners for  
14 questions. I think I'll open it up to the public first for  
15 comment to the Tribes, if that is all right with the  
16 Commissioners.

17 If anybody would like to come forward and address the  
18 issues this morning, please come forward.

19 Please state your name and spell your last name for  
20 the record.

21 RICHARD ARMSTRONG: Richard Armstrong,  
22 A-r-m-s-t-r-o-n-g.

23 Good morning, Commissioner -- Chairman Shelton,  
24 Commissioners. Welcome to the Commission, Commissioner  
25 Shelby.

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1           Thank you for the opportunity to speak this morning,  
2           Chairman.

3           Just wanted to on behalf of the Tribes that my firm  
4           Rosette & Associates works with, thank your legal staff,  
5           Jacob Appelsmith and all of the Tribes that have been  
6           involved in this matter to this point.

7           At that meeting that Mr. Pope was just speaking about  
8           at Viejas where there was an overwhelming vote of, I  
9           believe, 35 to one and two abstentions, I think the matter  
10          came through and we now have the clarity you need in terms  
11          of confidence and the future of this regulation if these  
12          proposed revisions to the regulation are made today.

13          And certainly my clients hope that you take action to  
14          make those revisions and we certainly appreciate that.

15          Thank you.

16          CHAIRMAN SHELTON: Thank you. Any questions? Anyone  
17          else, please.

18          Well, I talked to staff. And I find the amendments  
19          acceptable. I think we've come a long way. It has been a  
20          tough road for everybody. I'm sure.

21          So with the permission of my Commissioners I'll make a  
22          motion to accept the amendments to the CGCC-8 as presented.

23          COMMISSIONER SHIMAZU: Second.

24          CHAIRMAN SHELTON: Any conversation? Any questions?

25          COMMISSIONER SHIMAZU: For once, no.

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1 CHAIRMAN SHELTON: I'll call for the vote.  
2 JOY CALKIN: Commissioner Shelby?  
3 COMMISSIONER SHELBY: Aye.  
4 JOY CALKIN: Commissioner Shimazu?  
5 COMMISSIONER SHIMAZU: Aye.  
6 JOY CALKIN: Chairman Shelton?  
7 CHAIRMAN SHELTON: Aye.  
8 JOY CALKIN: Motion carried.  
9 CHAIRMAN SHELTON: We've gone a long way. This  
10 Commission thanks everybody for their hard work. We've got  
11 a long way to go. We'll get there. Communication seems to  
12 be the biggest venture we need to work with each other and  
13 do our government-to-government exercise.  
14 I think we've come a long way since the first day I  
15 arrived.  
16 Thank everybody for attending. We'll adjourn now.  
17 Thank you very much.  
18 (End of proceedings.)

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CERTIFICATE  
OF  
CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter of the state of California does hereby certify:

That the foregoing Commission meeting was taken before me at the time and place therein set forth;

That the testimony of the public and all objections made at the time of the hearing were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date \_\_\_\_\_.

\_\_\_\_\_  
Desiree C. Tawney  
Certificate Number \_\_\_\_\_

## Uniform Tribal Gaming Regulation CGCC-8 (9-24-09)

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

(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 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's 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 (1)(2) below.

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

(A) The Tribe accepts the Draft Report;

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

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

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

(i) TRIBAL ACTION PLAN.

(1) If the Final Report requests further action on the part of the Tribe, the Tribe ~~will~~ may 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 (1)(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) Should a Tribe desire to re-establish applicability of this NIGC alternative compliance section, following the occurrence of a disqualifying event listed in Section (m)(2) above, the Tribe may provide written notice to the SGA of such desire and this NIGC alternative

compliance section shall apply beginning one (1) year after such notice, or such other date as is mutually agreeable in writing, so long as the Tribe meets the requirements of Section (m)(1).

~~(3)~~(4) 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.

## CALIFORNIA GAMBLING CONTROL COMMISSION

Address: 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231  
Phone: (916) 263-0700 • FAX: (916) 263-0452



## ATTACHMENT C

*Memorandum*

Date: April 20, 2010

To: Chairman Dean Shelton  
Commissioner Stephanie Shimazu  
Commissioner James Shelby

Via: Terresa Ciau, Executive Director

From:  Richard Ross, Deputy Director,  
Compliance Division, California  
Gambling Control Commission (CGCC);

Re: CGCC-8; Tribal-State Association (TSA) proposed amendment; April 5, 2010.

Recommendation: Commissioners approve the amendments to the CGCC 8 as proposed.

Purpose: To provide Compliance Division analysis of the amendments adopted at the TSA meeting April 5, 2010.

Background: The TSA adopted by vote 35 to 1, with 2 abstentions, to amend the Commission adopted version of CGCC 8, copy attached. The amendments are identified in the narrative below.

Page 4, Part (i) Tribal Action Plan, section (1) changes the first sentence from 'will' provide a tribal action plan to 'may' provide.

The change converts an obligation to respond to an option to respond. The purpose of an Action Plan is to detail how the Tribe intends to address deficiencies found in the internal controls. No response inhibits fixing deficiencies. It is noted that preceding section (h) contains significant detail by which the two parties can work out differences of opinion as to the audit deficiencies identified. It is acknowledged however that the following section (2) anticipates a Tribe not providing an Action Plan and expresses a need for good faith mutual effort to create such a plan.

A second amendment on page 4 part (i) (2) eliminates the phrase "and to create a mutually agreeable Tribal Action plan." This is consistent with not

requiring an action plan in section (i)(1) above and clearly identifies there will be no Tribal authored proposal (action plan) to correct an exception if the Tribe so desires. The impediment created is there is no Tribal documentation of an admission or rebuttal that there is a basis for a final report 'exception.' This allows the Tribe to continue on to dispute resolution with the Commissioners or Governor's Office without taking a documented position on how the Tribe sees the issues, further clouding how to resolve an audit finding exception and potentially cluttering the Executive ranks with minor issues.

At the TSA meeting commission staff asked the reason for this amendment and the attorney Richard Armstrong replied that Tribes that had voted 'no' previously 'found the requirement of a plan as too obligatory.'

As noted above the Action Plan would frame resolution of the audit deficiencies as to how it could be fixed. The deficiencies are identified in the audit report however; hence any subsequent dispute resolution activity would have the benefit of those documented facts.

Staff assessment is that the amendment is not fatal to the overall objective of the regulation, although it inhibits creating solutions at the lowest working level.

The third amendment on page 6, Section (m), NIGC Alternative Compliance, section (3) is changed to section (4) and a new section is inserted as follows.

"(3)Should Tribe desire to re-establish applicability of this NIGC alternative compliance section following the occurrence of a disqualifying event listed in Section (m) (2) above, the Tribe may provide written notice to the SGA of such desire and this NIGC alternative compliance section shall apply beginning one (1) year after such notice, or such other date as is mutually agreeable in writing so long as the Tribe meets the requirements of Section (m) (1).

This amendment speaks to a situation after a Tribe opts out of the NIGC alternative compliance methodology. This event was presently unaddressed and open to interpretation should these circumstances occur which is not unlikely.

This amendment is similar in purpose to one proposed by the CGCC staff in the 9/24/09 staff draft version that addressed the immediate consequences of the Tribe no longer qualifying for the part (m) NIGC Alternative Compliance. The staff version was:

(ii) Notwithstanding section (m) (2) (C) (i), at its sole discretion, the SGA may determine that NIGC alternative compliance subsection (m) will

continue to apply to a Tribe's gaming operation. In making this determination, the SGA may consider without limitation:

- (a) Whether the Tribe has substantially complied with Class III internal control standards, after having reviewed all information and documents in its possession;
- (b) Whether the Tribe has complied with all other applicable provisions of CGCC-8; and,
- (c) Any other factors the SGA deems relevant or significant.

The staff version above allowed the Commission to continue the (m) alternative by postponing the regulation consequence of the NIGC alternative ending. The Tribe proposed amendment is broader in that it addresses all possible events which negate the NIGC Alternative Compliance option. The proposed new (m)(3) resolves how a Tribe can move back into Alternative Compliance while allowing the SGA to consider SGA actions for at least one year. This clause fills a missing element in (m). As presently written it is clear how to move out of the Alternative Compliance option but not how to move back in.

The new TSA amendment allows the Tribe the option to invoke application of the NIGC Alternative Compliance, but does require a one year or mutually agreeable period of time to elapse. During this period the other compliance section of CGCC 8 would be applicable and the commission could choose to initiate audit activity accordingly.

Staff does not object to this amendment.