San Manuel Band of Mission Indians
Tribal Gaming Commission
OFFICE OF THE COMMISSION

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December 28, 2010

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. N.W., Suite 9100
Washington, D.C. 20005

Dear Chairwoman Stevens,

We are pleased to respond to your Notice of Inquiry seeking comments on the need (if any) to revise existing regulations or promulgate new regulations. We will also express our opinion on the priority and method best suited to implement changes, as you have requested.

We will address each item noted in your inquiry by using the same alpha-numeric identifier that you have assigned to it in your notice. Thank you for this opportunity.

IV. Regulations Which May Require Amendment or Revision

A. Part 502 – Definitions of this Chapter

(1) Net Revenues –

(a) Net Revenues – Management Fees

We believe that the NIGC definition should be consistent with the generally accepted accounting principles (GAAP).

(b) Net Revenues – Allowable Uses

While we believe sound fiscal responsibility would include tribal

considerations for prioritizing the use of cash flow to protect the solvency of the gaming operation, we also believe that for the NIGC to micro manage the use of gaming revenues beyond those specified by IGRA, would be overreaching beyond NIGC's authority and intruding on tribal sovereignty by dictating the discretionary use of its revenues. Those business decisions, good or bad, should remain within the purview of the tribal government.

We view these potential revisions as a medium to low priority. However, if the NIGC pursues revisions of these definitions, a tribal advisory committee composed of tribal representatives with strong accounting skills and experience would be recommended.

(2) Management Contract

We would definitely not welcome an expansion of the definition of management contracts to include slot lease agreements, loan or development agreements, or non gaming contracts.

Having said that, it would be appropriate to publish guidelines to management contractors, lenders, developers, etc. Advising them that the NIGC should be afforded the opportunity to review contracts believed to be non-management contracts. This review should be to ensure that these contracts do not have "default" provisions allowing the lender or developer to assume any management responsibilities. Such reviews, as have been done in the past, protect both the tribe and the contractor. However these "non-management" contracts should be considered as separate independent tribal governmental obligations.

This would be viewed as a medium to low priority. If the NIGC does elect to proceed with a total review of this part, we believe it would be appropriate to assemble a tribal advisory committee composed of tribal representatives with contract law and accounting expertise.

B. Part 514 – Fees

- The question of changing fee assessments to coincide with the tribe's fiscal year rather than the current calendar year requirement is a low priority. We do not believe that any benefit will outweigh the added confusion or complexities of implementation. The amount of money affected by the existing system is generally not going to be "material" to either the gaming operation or the NIGC's budget.
- Should "gross gaming revenue" be redefined to be consistent with GAAP? We don't believe that a definition of gross gaming revenue, for the purpose of calculating NIGC fee assessments, must be necessarily be consistent with GAAP, provided that it is more favorable to the tribe. Considered a low priority.
- Fingerprint Fees: We view these fees as a "handling and processing" fee, the bulk of which is forwarded to the FBI as their fee for processing. We would not consider this money to be NIGC revenue. It would be recommended that the NIGC bi-annually review the fingerprint fee to determine the appropriateness in covering the costs of processing. This is considered a low priority.

- Should NIGC consider a late payment system in lieu of NOV's for late fee payments?

We would encourage consideration of such a system. Any such regulation might include an automatic additional percentage as a late payment penalty. Generally, this would be preferable to automatic NOV's which are costly and cumbersome, and generally result in a settlement agreement with an associated fine. We understand that any such system should have provisions to discourage abuse and have time limits for delinquency and compliance. This would be a medium priority.

For the issues raised in Part 514 we believe that standard notice and comment would be adequate.

C. Part 518 Certification of Self Regulation for Class II Gaming

We believe that this regulation is definitely overly burdensome for both, the tribe and the NIGC. The costs far outweigh the rewards for this cumbersome process. The burden of compliance should be "substantial compliance". As it is written, the NIGC apparently is seeking "total and absolute compliance" for all criteria set forth in the regulation.

Much of the qualifying criteria exceeds that which is specified in IGRA, Tribal Gaming Ordinances, and other NIGC regulations. Much of the "proof" of qualifying criteria is already in the possession of NIGC, i.e. outside independent audits, MICS compliance AUP's, facility licensing certifications, key employee licensing records, etc.

The "Public Notice" requirements are excessive and arbitrary. Additionally, if a more streamlined application is adopted, the NIGC could simply provide the tribe a list of

documents it wishes to review during a qualification investigation, rather than require so much documentation to be submitted with the application.

We have a regulatory agency staff of 135 personnel. It seems excessive to have to provide a list of all of their names and titles with the application, and for what purpose?

If self regulation were to have any real value, it should be expanded to also include Class III Gaming. It is worth noting that in Senator McCain's last attempt to amend IGRA, the "11th Hour" mark up of the Bill included a provision to expand certificates of self regulation to Class III gaming. NIGC may wish to champion this issue in it's annual legislative agenda.

We would give this issue a relatively "low" priority and believe that either standard notice and comment, or tribal advisory committee are acceptable.

D. Part 523 Review and Approval of Existing Ordinances

We agree, this part is likely obsolete. We would recommend elimination of this part using the standard notice and comment process, and consider this a "low" priority.

E. Management Contracts

(1) Part 531 – Collateral Agreements

We believe that this part should include specific requirements to provide any "collateral agreements" as part of the submission requirements for a management agreement. We also agree that it is consistent with NIGC's "trust" responsibilities to ensure that such agreements do not violate the sole proprietary interests provisions of IGRA. Any review of these agreements should also consider whether they contain any "default" provisions which would trigger expanded management control.

We would speculate that there will be a diminishing frequency of future management contract submissions in the coming years. For this reason we would give this matter a "low" priority. However, if the NIGC does proceed with revising this and any other parts of the Management Contract Regulations, we strongly recommend a tribal advisory committee comprised of Contract Analysts (Attorneys) and Accountants.

(2) Part 533 – Approval of Management Contracts

While we believe the NIGC should clearly have the option of disapproving a contract for the reasons suggested, we recommend that exercising that discretion be used sparingly and as a last resort, after first giving the contractor ample opportunity to amend their submission package for compliance.

We would consider this issue a low priority and standard notice and comment should be sufficient.

(3) Part 537 – Backgrounds on Management Contractors

We agree that there could be confusion in the applicability relative to the class of games to be managed. We also believe that the same confusion exists in Parts 531 and 533.

We would recommend that at the beginning of Parts 531 and 533, language be added to clarify that these parts are applicable to both Class II and Class III gaming (including adding "Class III gaming" to 25CFR 531(c)(4). As an alternative, you could remove all references to classes of games in all parts relative to Management Contracts thereby making all parts applicable to any Management Contract.

We would prioritize this mid to low and don't believe it necessitates assembling an advisory committee.

F. Proceeding Before the Commission

- 25 CFR Part 519 (Service) – We believe this part is sufficiently clear and requires no modification.
- 25 CFR Part 524 Appeals (Ordinances)

  Part 539 Appeals (Management Contracts)

  Part 577 Appeals (Enforcement Actions)

Generally speaking we believe that the more informal and simpler the process the better. As they now exist, these parts afford the NIGC more flexibility in both process and time lines. Likewise the processes are less cumbersome and less expensive (relative to legal counsel) for the tribe to pursue while at the same time allowing a more expedited process.

If these parts are revised to make them more legally technical, the processes will be bogged down in motions, briefs, and additional service requirements all of which will add significant time (potentially a year) to complete a complex due process. Those who stand to gain the most will be well compensated attorneys. Consequently, we would urge the NIGC to leave these parts "as is" with the possible exception of adding an informal hearing option for oral presentations in Part 524 and 539.

We consider these issues as a low priority, and if the NIGC does pursue revising these parts, we would definitely recommend the use of a tribal advisory committee.

G. MICS and Technical Standards

(1) Part 542 – Class III Minimum Internal Control Standards

The NIGC raises several important questions regarding this section. Questions

such as: should this part be struck completely, revised, or converted to a bulletin or guidelines? If struck what would be the impact on compacts and ordinances which cite the NIGC MICS as the required standard and/or reliance upon the NIGC for compliance oversight of those standards?

Attached to these comments is a copy of a letter dated November 10, 2010. This letter addressed to NIGC Chairwoman Stevens is signed by Chairman James Ramos of the San Manuel tribe and sets forth our position describing our belief that Part 542 must be kept and updated in order for our tribe to appropriately comply with our compact. Additionally in order for our tribe to comply with our NIGC approved ordinance and for NIGC to enforce that ordinance with the MICS oversight authority given to it, Part 542 must continue to exist.

We recognized that there would be no discussion on this subject had the courts not ruled in favor of the Colorado River Indian Tribes (CRIT) who challenged NIGC's authority to enforce Class III MICS. While the court's ruling struck down NIGC's authority over Class III MICS, it justified that decision by reasoning that regulatory oversight relative to internal controls for Class III gaming should be by compacted agreements between the states and gaming tribes within those states. We do not believe that this relieves the NIGC of a responsibility to maintain Class III MICS for cases in which those compacted agreements require the NIGC MICS to be used as the standard. Simply maintaining and updating Part 542 does not convey oversight and enforcement authority to NIGC for tribes that do not have compacts or ordinances citing the NIGC MICS as the required standard.

It would also seem that Section 542.4(6) suggest that if the compact cites NIGC MICS as the required standard, the compact shall prevail.

In addition to putting some tribes out of compliance with their compacts and ordinances, we believe that the total absence of NIGC Class III MICS would have the following unintentional but likely consequences.

With no NIGC standards, there is a very real possibility that it could prompt states whose compacts cite those standards, to seek amendments to compacts and/or promulgate state MICS. This would be a most unwelcomed scenario.

Perhaps most importantly, the entire concept of "Agreed Upon Procedures" (AUP's) with outside independent auditors to conduct an independent internal controls compliance review (which is also required by some compacts and ordinances) will be unable to be accomplished. State and tribal regulators rely heavily upon these independent reviews to identify potential weaknesses. With no NIGC standards or checklists, or audit guidelines, there are increased risks of weaknesses that may go undetected without AUP compliance reviews.

We consider this issue NIGC's highest regulatory priority. We are aware that a highly competent tribal advisory committee in a joint effort with NIGC representatives, has completed a "clean up" of Part 542 which is ready for publishing for further public comment. We respectfully urge the NIGC to move forward with this process. If deemed necessary, at least assemble another advisory committee to expeditiously review, revise as deemed necessary, and move forward with the process.

(2) Part 543 – Class II Minimum Internal Control Standards

We believe that updating Part 543 is equally as high a priority as Part 542. As

it currently exists, Part 543 is desperately lacking in completeness. It requires an auditor to refer to Part 542 to pick out the portions still residing there to complete a Class II compliance review.

While we would not object to having a working group or advisory committee revisit what has already been done to complete Part 543, we would encourage NIGC to expedite the process. The current state of Class II MICS is in disarray and inhibits our ability for quality compliance reviews.

As we comment later in this document, we believe that the use of tribal advisory committees is a valuable and effective means of obtaining input from tribal representatives with expertise in specific areas to produce a quality and useful document.

The solicitation of tribal views on the importance and priority of regulatory issues via this Notice of Inquiry (NOI) process is certainly a positive first step for the NIGC to gauge Indian County's views on these matters. If there is sufficient comment to warrant moving forward with revising, amending, or promulgating new regulations, we would suggest that a draft product be distributed informally to tribes for informal comment before formally publishing in the Federal Register for formal public comment. This would be a reasonable next step in the implementation process to obtain tribal input.

(3) Part 547 – Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games

Regulatory technical standards as well as minimum internal control regulations are living documents which will require continuous monitoring and revision to keep pace with the continuing evolution of technology which affects their usefulness or applicability.

We are not surprised that the first attempt (useful and valuable as it was) to establish Class II Gaming Equipment Technical Standards, may not have been perfect and should likely be revisited.

We recognize that a "working group" of industry representatives (manufacturers and providers of Class II equipment and systems) can provide valuable technical expertise to formulate technical standards. However, we also recognize the real possibility that many recommendations may be self serving and in the interest of their own products.

In order to achieve the proper balance and produce fair and objective standards we would again recommend the use of a tribal advisory committee with tribal representatives with the Class II experience and technical knowledge to draft the standards. We would further recommend that any such effort be supplemented by contracted unbiased technical consultant(s) from independent testing laboratories.

We view this issue as having a relatively high priority.

H. Backgrounds and Licensing

(1) Part 556 – Background Investigations for Licensing

Enrollment in the pilot program is now essentially the rule rather than the exception. The process of submitting lists of employees and Notification of Results (NOR's) of background investigations has proven to be expeditious, far more cost effective, and sufficiently effective in the compliant handling of licensing employees.

The terms of the pilot program should most definitely be converted to the regulatory process in Part 556. Since the vast majority of tribes are currently on the pilot program already, there is not a genuine urgent need to address this issue. Consequently, from a practical standpoint, the priority is low, while we encourage the NIGC to move forward

with this. Since we can't conceive of any negative impact on tribes, we believe that the standard notice and comment process would be sufficient.

(2) Fingerprinting for Non-Primary Management Officials and Key Employees

We fully support the idea of tribal regulatory authorities to submit fingerprints on non employees (vendors – both principals and those company reps accessing the property). We have strived for this capability for years.

The key point here is "at the tribes' option" or as deemed appropriate by the tribal regulatory authority. While some specific NIGC guidelines might be appropriate to minimize abuses, we would not wish to see NIGC attempting to determine and dictate who can or can't, should or shouldn't be fingerprinted.

We are not sure if a "regulation" is necessary, or if a "guidance policy" would suffice. If a regulation is deemed necessary, and assuming it is all positive and optional for the tribes, the standard notice and comment process should be sufficient. We would rank this matter as a "medium to high" priority.

I. Part 559 Facility Licensing Notifications, Renewals, and Submissions

We do not find this part problematic and do not believe it requires revision.

J. Sections 571.1 – 571.7 Inspection and Access

We acknowledge that NIGC should have the ability to access and inspect Gaming records wherever kept to fulfill its responsibilities under IGRA. It would appear that Section 571.6(b) would sufficiently address this issue, however we would have no objection to further clarification for this issue in Part 571.

We would view this issue as a medium to low priority, and something other than the standard notice and comment process would likely be appropriate.

K. Part 573 Enforcement

Regarding the question of whether the NIGC could withdraw an NOV once issued, we do not believe a regulation is necessary. Part 573 does not mandate the issuance of NOV's or closure orders for certain violations, nor does it prohibit withdrawal of such notices, it simply allows for the discretionary imposition of those sanctions.

We see nothing in Part 573 that would prohibit the withdrawal of any NOV and believe that an NIGC internal policy establishing criteria would be adequate. We would recommend that any such policy require approval of a majority of the Commission.

V. Potential New Regulations

A. Tribal Advisory Committee

We highly support and encourage the use of Tribal Advisory Committees. They have proven to be most valuable over the years by providing expertise in various complex disciplines and provide useful tribal perspectives. However we do not believe a regulation should be necessary to use them.

Having said that, it is critically important to distinguish the difference between a "Tribal" Advisory Committee and an "Advisory Committee" composed of other stakeholders and industry representatives.

Historically, Tribal Advisory Committees (TAC's) have been composed of individuals nominated by qualified elected tribal leaders with the express delegated authority to represent the tribal government in discussions on designated issues. Consequently, the NIGC has been able to have these advisory discussions on a government to government basis precluding the need for compliance with the "Federal

Advisory Committee Act" (FACA). Compliance with FACA is genuinely bureaucratically cumbersome, burdensome and expensive.

With the use of TAC's the NIGC should have the flexibility to exercise its discretion in the selection of committee members, provided they are firstly bonafide tribal government representatives. Care must be given to a reasonable representation of a broad cross section of tribes, large and small operations, geographical representation, and the knowledge and experience relative to the subject matter. The committee should be large enough to accommodate the kind of representation suggested above, but small enough so as not to be unwieldly.

While we recognize that not every tribe will always be happy with the selection, we believe this is a practical and reasonable approach. We also believe that this is a valuable "component" of the consultation process while recognizing it need not and should not be the only component.

B. Sole Proprietary Interest

We believe that a regulatory definition and guidelines relative to "sole proprietary interest" is very much needed. It would be beneficial in helping to protect the tribes. It would also be helpful to give guidance to developers, lenders, management contractors and others to know up front how not to run afoul of this IGRA requirement.

It is a delicate and complex subject with wide ranging opinions on what it really means. The biggest challenge for NIGC will be in striking a balance where they do not become overly intrusive on a tribe's sovereign right and authority to make its own economic development and business decisions, even though those decisions may occasionally not be optimum.

We would rate this as a medium priority. We would also encourage the use of a Tribal Advisory Committee comprised of tribal representatives competent in contract and Indian law.

C. Communication Policy or Regulation Identifying When and How the NIGC Communicates with Tribes

A regulation addressing this would truly be an effort in futility. All tribes are not created equal in communication policies. One size will not be able to fit all. There are an overwhelming number of factors that effect this with tribes, including but not limited to tribal culture, customs and traditions, politics, maturity and experience of the governing body, tribal policies, tribal gaming ordinances and regulations, and the list goes on.

Additionally, it would likely prove to be unwise for the NIGC to bind itself to such a regulation. To do so sets the NIGC up for allegations and accusations of failing to follow the appropriate regulatory communication requirements. This is a slippery slope.

While we respect the communication challenges and occasional frustrations, there is no magical solution. To require approximately 240 tribal resolutions directing communication protocols for 240 different gaming tribal governments and their respective agencies would be an administrative nightmare for NIGC to track and monitor. Also it is highly unlikely that outgoing tribal authorities will keep the NIGC informed of changes.

Having served four different tribal governments over the course of the last eighteen years as their senior tribal regulator, my experience compels me to suggest that you simply provide duplicate communication simultaneously to both, the tribal chairman

and the tribal regulatory agency. Generally this will be satisfactory unless you are directed otherwise by the recognized elected tribal leader.

We recommend no regulation, and view as a low priority.

D. Buy Indian Act Regulation

We view any required compliance by NIGC with this act to be a matter of an internal NIGC policy and should not be the subject of a regulation.

VI. Other Regulations

A. Part 501 - We agree, no revision is necessary. No further comment

B. Part 503 - We agree, no revision is necessary. No further comment

C. Part 513 - We agree, no revision is necessary. No further comment

D. Part 515 - We agree, no revision is necessary. No further comment

E. Part 517 - We agree, no revision is necessary. No further comment

F. Part 522 - We agree, no revision is necessary. No further comment

G. Part 531 - We agree, no revision is necessary. No further comment

H. Part 535 - We agree, no revision is necessary. No further comment

I. Sections 571.8 - 571.11 We agree, no revision is necessary. No further comment

J. Sections 571.12 - 571.14 We agree, no revision is necessary. No further comment

K. Part 575 - Civil Fines

While we agree that this regulation is not in need of any revision, we offer the following comment.

We understand that any fines collected are deposited directly to the U.S. Treasury, thereby precluding tribes or the NIGC from any benefit from the collected monies. However, we also understand that the NIGC has historically engaged in the practice of

entering into settlement agreements with tribes found in violation of laws or regulations. Historically, often times, the terms of these settlement agreements included provisions that " in lieu of fines", money that would have been used to pay fines is committed to specified tribal governmental programs, often times in support of their tribal regulatory agencies. This practices affords the tribe to be a direct beneficiary of money that otherwise would have gone to the U.S. Treasury.

We highly encourage the Commission to continue this practice.

In closing we would like to express our appreciation for the opportunity to respond to your "Notice of Inquiry" regarding comments on existing or contemplated NIGC regulations. We respect this approach and look forward to learning what results this inquiry has yielded.

We hope that you find value in our comments and that you will give them careful consideration.

Sincerely,

Norman H. DesRosiers
Gaming Commissioner

San Manuel Band of Mission Indians

November 10, 2010

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L St., N.W., Suite 9100
Washington, D.C. 20005

RE: Updating 25 CFR Part 542

Dear Madam Chairwoman:

On behalf of the San Manuel Band of Serrano Mission Indians and the San Manuel Tribal Gaming Commission, I write you to respectfully request that the NIGC move forward with updating the NIGC's Class III Minimum Internal Controls as set forth in 25 CFR Part 542.

We fully understand that the court rulings in Colorado River Indian Tribes vs. NIGC (CRIT) clearly negated NIGC's oversight and enforcement authority for Class III Minimum Internal Controls (MICS). The court went on to emphasize that such Class III regulatory oversight and enforcement should be strictly within the authority of states and tribes as agreed to in Class III Gaming Compacts.

Therein resides our dilemma. Virtually all compacted tribes in California, as well as Arizona and other states, have agreed that the NIGC MICS will be operational standards for Class III gaming. More specifically, San Manuel and other tribes, have an Appendix to our Compacts in which we have agreed to comply with 25 CFR 542 (NIGC MICS) as existing on October 19, 2006 or thereafter amended. That Appendix also requires us to provide the state with copies of our annual outside independent auditor's agreed upon procedures report (AUP) required by 25 CFR 542 (f) relative to MICS compliance reviews.

Additionally, after several years of negotiations between the Tribes and the California Gaming Control Commission, a uniform statewide regulation (CGCC-8) has been adopted. CGCC-8 (b)(2) cites 25 CFR 542 as the MICS standards for Class III gaming regulation in California. That same regulation in Section (m) allows for an "NIGC alternative". In effect it states that California tribes who have amended their Tribal Gaming Ordinances to cede authority for Class III MICS oversight and enforcement to the NIGC (which San Manuel has done), will be essentially exempt from MICS compliance oversight by the California State Gambling Control Commission. This exemption is conditioned on the agreement that we provide the state with copies of any compliance review reports conducted by the NIGC as well as any outside independent auditor MICS AUP reports.

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The current state of the 25 CFR 542 is in a poor and confusing condition with many provisions obsolete with time or outdated with current technology. That part also has a confusing mix and integration of some Class II MICS. Our outside independent auditing firm also finds part 542 (f) a bit cumbersome and confusing in their attempts to provide the appropriate AUP reports. It is our understanding that after considerable time and effort by the NIGC and a highly experienced Tribal Advisory Committee, that Part 542 has been updated and is ready to be proposed as a revised regulation.

While we are aware of NIGC's reluctance to publish any proposed regulations, many tribes are in urgent need of an up-to-date, useable set of NIGC MICS as required by our Compacts. Simply updating Part 542 does not convey oversight or enforcement authority to NIGC, thereby having no negative effect on tribes not bound to NIGC MICS in their Compacts. However, updating Part 542 would have a most valuable and positive impact on those many tribes that have agreed to those standards in our Compacts.

For the reasons set forth above, we respectfully urge you to move forward with updated NIGC Class III MICS.

Thank you for your thoughtful consideration of this request.

Sincerely,

James C. Ramos, M.B.A
Tribal Chairman

JCR:cjt

cc: Ms. Stephani A. Cochran, Vice Chairperson
Mr. Daniel Little, Commissioner
Ms. Rita Homa, Administrative Assistant