TWENTY-NINE PALMS GAMING COMMISSION

February 8th, 2011

National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, DC 20005
Via email: reg.review@NIGC.gov

Chairwoman Stevens, Vice-Chairwoman Cochran and Commissioner Little,

The Twenty-Nine Palms Gaming Commission would like to thank you for the opportunity to comment on the Notice of Inquiry published in the Federal Register on November 18, 2010. We appreciate the Commission's willingness to consult with tribes on this important matter and we look forward to working with you as the Commission moves forward.

We begin with a discussion of the changes we think you should implement and then turn to a discussion of the changes that we believe should not be made. As you requested, we also tried to note the situations in which a Tribal Advisory Committee should be used rather than simple notice and comment rulemaking in the Federal Register. We hope that you find our comments helpful.

I. Part 514 – Late Payment System for Fees

We agree that the Commission should do away with its current policy of issuing NOVs where a tribe's payment of fees is late. The current system is unnecessarily inflexible, particularly in cases where payments are only a few days late. And frankly, we believe that the settlement meetings with the Commission's Office of the General Counsel that naturally arise from the issuance of an NOV are a waste of resources – both for tribes and the Commission.

As an alternative, we think the Commission should implement a policy where it forgives one late payment in a given period of time. For example, each tribe would be forgiven for one payment that is up to two weeks late in an 18-month period of time. If a tribe submits more than one late payment in this pre-set period, the second late payment should be subject to some sort of action, but still short of an NOV. We believe that an NOV should be issued only where the violation becomes egregious or where it is intentional.

Also, we do not think that a Tribal Advisory Committee is needed to implement this change. Notice and comment rulemaking should be sufficient. We also respectfully request that the Commission consider making this same change for late audits.

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II. Part 523 – Review and Approval of Existing Ordinances or Resolutions

It is our understanding that there are no tribes whose gaming ordinances justify keeping this section in place. If this understanding is correct, then we agree with the Commission that this Part can be eliminated. Further, we believe this change can be made through notice and comment rulemaking in the Federal Register. While we do not view this as a high priority, we also believe that elimination of this Part can be done quite easily and in parallel with some of the other more comprehensive ideas being explored.

III. Part 556 – Formalize the Pilot Project

At this point, more tribes make use of the pilot project than not. We would also note that the process employed by the pilot project is much more user friendly than the process currently outlined in the Commission's regulations. Accordingly, we agree that the Commission should formalize the pilot project within its regulations. Again we think this change can be accomplished through notice and comment rulemaking in the Federal Register and can be done in parallel with other Commission actions.

IV. Part 556 – Fingerprinting for Non-Primary Management Officials or Key Employees

The Commission also asked whether it should adopt regulations that would allow tribes to submit fingerprint cards for non-primary management officials or key employees. We believe that permitting tribes to submit fingerprints for vendors, consultants and other non-employees who have access to gaming operations would enable tribes to better protect the integrity of their gaming operations. At the same time however we would not want the other reporting requirements associated with the submission of fingerprint cards to accompany this ability. Reporting requirements here should be kept to an absolute minimum. And as with the items noted above, we believe this change can be done through notice and comment rulemaking in the Federal Register and can done in parallel with other Commission actions.

V. Part 542 – Replace the Class III MICS with Guidelines

The Twenty-Nine Palms Band of Mission Indians, as you are aware, has amended its gaming ordinance to provide that we will maintain compliance with the NIGC's class III MICS despite the holding in the CRIT decision. Our gaming ordinance also grants enforcement authority to the Commission over our compliance with the class III MICS. As such, we do not take issue with the current status of the class III MICS.

Still, we understand that many tribes may encourage the Commission to withdraw its class III MICS and replace them with some sort of guidance. Our primary concern in doing so would be the reaction of the states. As you know, the State of California's reaction to the CRIT decision was CGCC-8, which when first proposed was onerous and extremely offensive to tribal sovereignty. It took a lot of resources and a united front for California tribes to transform

CGCC-8 into something that was appropriate given the relationship between the tribes and the state. We would not want to see this happen again.

In the event the Commission decides to replace its class III MICS, we would ask that this action be properly characterized. In light of the CRIT decision, we would argue that the NIGC's class III MICS are *already* guidance as the Commission is without authority to enforce them. The Commission's action would simply be an acknowledgment of the status quo rather than any sort of change to the regulatory structure. Further, it is important that the Commission keep its class III MICS updated and that it employ a Tribal Advisory Committee to do so. Maintaining current MICS – regardless of their status – would go a long way toward assuring states that there is no cause for alarm and no void that needs to be filled.

VI. Part 502 – Definitions

In general, we believe that the definitions contained within Part 502 of the Commission's regulations should be consistent with the Indian Gaming Regulatory Act ("IGRA"). While we understand that at times clarification is needed, to veer too far from the intent and directives of IGRA is to reach beyond the Commission's authority.

A. Net Revenues – Allowable Uses. We do not believe that the Commission should add a definition that would require tribes to consider cash flow before it allocates gaming revenues for non-gaming purposes. IGRA gives tribal governments relatively wide discretion in deciding how to allocate their net revenues as long as those revenues are intended for one of the five permitted types of expenditures. Tribes *may* consider cash flow – or any other factor – before allocating their net revenues to non-gaming programs, but there is no specific requirement that they do so. And we believe that it should stay this way.

Decisions about how tribal revenue should be spent lie at the very core of tribal governmental decision-making, and at the core of tribal sovereignty. While the Commission may want to assist tribes in making prudent financial decisions, it should not undermine tribal sovereignty by limiting tribal governmental discretion beyond the limitations explicitly imposed by Congress. Tribal sovereignty must be respected, subject only to Congressional limitation. To do otherwise would be to reach beyond the Commission's authority. As such, the Commission should not add this definition.

B. Definition of Management Contract. For a variety of reasons, we do not think the Commission should expand the definition of management contract to include "any contract, such as slot lease agreements, that pays a fee based on a percentage of gaming revenues." First, we see no justification for requiring their submission. These types of contracts do not involve "management." Instead, they involve vendors providing games. While we appreciate that the Commission will review these agreements when asked, we do not think that their submission should be required. Second, we think the number of agreements that tribes would submit would quickly overwhelm the Commission. Several thousand agreements – above and beyond those currently submitted – would be submitted to the NIGC annually. Lastly, tribal gaming operations must be free to enter into percentage-based gaming agreements easily and quickly. Were the Commission to require approval for each percentage-based slot lease, tribal gaming

operations would lose much needed flexibility in introducing new games and removing unsuccessful ones – a key to running a successful casino. Accordingly, the Commission should not modify this definition.

VII. Part 531 – Collateral Agreements

Finally, the Commission asks whether it should formalize its authority to approve agreements that are collateral to a management contract. While we appreciate that some tribes may voluntarily submit certain agreements to ensure that they do not violate IGRA, we do not think that their submission should be mandatory.

We understand that this request is based in part on the Commission's intent to examine whether the tribe has the "sole proprietary interest" in a gaming operation. Such justification is inadequate to support this type of a change. IGRA distinguishes between the review of management contracts (25 U.S.C. § 2711) and the issue of "sole proprietary interest" (25 U.S.C. § 2710). While we realize that in recent years these two concepts have been presented as being interrelated, IGRA only grants the Commission authority to review the "sole proprietary interest" issue when it approves tribal gaming ordinances. No equivalent authority expressly exists in connection with the approval of contracts. We fear that what the Commission is exploring would amount to an intermingling of two issues that are now distinct. The Commission should refrain from attempting to expand its approval authority to include collateral agreements and the sole proprietary interest issue. Such an expansion would be detrimental to tribes and contrary to existing law.

On behalf of the Twenty-Nine Palms Gaming Commission, I thank you for the opportunity to provide comments on the Notice of Inquiry. Please feel free to contact me should you have any questions.

Sincerely,

Joe Murillo, Executive Director

For: Norm Hansen, Chairman
Twenty-Nine Palms Gaming Commission

cc: Tom Sedlock, General Manager
Steve Gralla, Tribal CFO
Spencer Kimball, Internal Audit Director
Teri Poust, Legal Counsel
Commissioners