February 11, 2011

Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Re: Comments Pursuant to Notice of Inquiry and Request for Information

Dear Chairwoman Stevens:

On behalf of the Mohegan Tribe of Indians of Connecticut, I want to thank you and the Commission for the opportunity to comment on the NIGC's Notice of Inquiry and Request for Information dated November 12, 2010. While we were not able to attend the regional consultations in Washington, D.C. or Florida because of the repeated snow storms this season, we applaud the new NIGC commissioners on their first initiative to schedule these consultations. These consultations and the critical and comprehensive review of the Commission's regulations which they foster reflect the purpose and spirit of Executive Order 13175 as reinforced in President Obama's memorandum on tribal consultation in November 2009 and reflect the special government-to-government relationships between Tribes and the federal government. The Mohegan Tribe strongly supports the goals of IGRA to protect Indian gaming as a means to generate revenue for Tribes, ensuring that Indian gaming is conducted fairly and honestly and ensuring that Tribes are the primary beneficiaries of gaming operations. This can only be accomplished through a comprehensive regulatory system primarily conducted by the Tribes with assistance and support from the NIGC. The Mohegan Tribe and its Tribal Gaming Commission look forward to meeting their ongoing regulatory challenges with the newly installed commissioners of the NIGC. The Mohegan Tribe and its Gaming Authority have also responded to a need among Tribes that are new or less successful in gaming for a sharing of the expertise, talent and experience of Mohegan Sun through management, development and consulting assistance to other Tribes. We look forward to working with the Commission and its staff to foster cooperation through consistent and efficient regulations and application of those regulations.

As Chairman of the Mohegan Tribe and in consultation with the Mohegan Tribal Gaming Commission, I offer the following comments:

A. Part 502-Definitions

(1) *Should NIGC consider definitions for the following two terms: Net Revenues-management fee; and Net Revenues -allowable uses*? The Mohegan Tribe has supported past clarification of the term "net revenues" as defined under IGRA (25 U.S.C.2703(9)), including the reference to "gross gaming revenues" in Section

502.16 and would support further clarification in this area subject to the statutory limits of IGRA.

(a) *Should the NIGC consider revising the definition for "Net Revenues" used to calculate management fees to be consistent with GAAP, i.e. "Net income plus management fee?"* Consistency with GAAP is always advisable for accounting practices and reconciliation of the statutory term to the GAAP standards developed for the gaming industry may be required for financing or consistent reporting by management contractors. NIGC should conform its accounting requirements to GAAP. However, since the term "net revenues" is already defined by statute at 25 U.S.C.2703(9) NIGC is bound by the statutory definition until Congress acts to modify it.

(b) *Should NIGC consider adding a new definition for "Net Revenues-allowable uses" that is based on cash flow?* Yes, cash flow and available funds to the gaming facility should be a consideration when decisions are made concerning distributions to the Tribe and other allowable uses of net revenues, including payment of management fees. Any change to this definition should be made with the intention of allowing Tribe's more discretion to make sound judgments about the use of its net revenues in accordance with the tenets of Tribal Sovereignty.

(2) (a) *Should the definition of management contract be expanded to include any contract, such as slot lease agreements, that pays a fee based on a percentage of gaming revenues?* No, NIGC should not seek to expand its authority by requiring its review of any agreements such as slot lease agreements based on a percentage of revenue. IGRA does not confer this review authority to NIGC relative to Class III gaming and it should be left to the Tribe to exercise this authority in compliance with its gaming ordinance and compact. NIGC should continue to review these agreements only upon the request of a Tribe; it should not be made a mandatory requirement.

(b) Should [NIGC promulgate] a definition regarding acceptable compensation to a management contractor? No, especially if NIGC is considering the reimbursement of expenses as compensation, which would be contrary to GAAP.

B. Part 514-Fees

(1) *Should NIGC consider allowing the payment of annual fees based on a Tribal gaming operations fiscal year?* Yes, payment of fees based on a fiscal year is preferable to an annual calendar year payment calculation, however the current method is not overly burdensome. Tribes should be given the option of electing which method they prefer. As a general matter, any changes to this part or the fees assessed by the Commission should reflect and be sensitive to the duplication of fees paid pursuant to Tribal-State

Compacts and for the direct regulation of gaming by Tribes, particularly those primarily engaged in Class III gaming.

(2) *How should NIGC implement such a revision?* NIGC should provide notice and sufficient time to Tribes to elect either a calendar or fiscal year basis to calculate its fee payments. A sufficient implementation period would be 24 to 36 months for a Tribe to make this determination.

(3) *Should the Commission consider amending [Part 514] to define gross revenue consistent with the GAAP definition of this term?* As stated above it is advisable to make all accounting related definitions consistent with GAAP. Any proposed change to this definition should be examined in terms of the impact on fee assessments on the Tribal Gaming Operations. However, since the term "gross revenues" is defined at 25 U.S.2717(a)(6) NIGC is bound by the statutory definition until Congress acts to modify it.

(4) *Should the Commission consider amending this part to include fingerprint processing fees?* Pursuant to Mohegan's compact with the State of Connecticut fingerprint processing fees are paid to the State not the NIGC so we do not take a position on this issue.

(5) *[S]hould the Commission consider a late payment system in lieu of a Notice of Violation (NOV) for submitting fees late?* Yes, a NOV should only be used when NIGC has information that the late payment was intentional or is a repeated action on the part of the gaming operation. A late payment system for isolated excusable circumstances is preferable.

C. Part 518-Self-Regulation of Class II

A reasonable streamlined process should be considered by NIGC with Tribal input and should also be available for Class III Gaming.

D. Part 523-Review and Approval of Existing Ordinances

Should the Commission consider eliminating part 523 as obsolete? Since Part 523 applies only to ordinances enacted prior to February 1993 that have not been acted on by the Commission, it is obsolete and should be eliminated.

E. Management Contracts

(1) Part 531-Collateral Agreements

Should the Commission consider whether it has authority to approve collateral agreements to a management contract? 25 U.S.C.2711(a)(3) states that for the

purposes of IGRA "any reference to the management contract...shall be considered to include all collateral agreements to such contract that relate to the gaming activity." As stated by the Commission it currently only approves the management contract although it believes that collateral agreements must be submitted. NIGC should not seek to expand its approval authority to each separate collateral agreement. Any guidance from the Commission in this area should provide safe harbor language for lenders and developers providing financing assistance to Tribes and clarify that such financial assistance does not violate the sole proprietary interest rule.

(2) Part 533-Approval of Management Contracts

The Commission seeks comment on whether an amendment would clarify the trustee standard by adding the following two grounds for disapproval under Section 533.6(b): failure to meet submission requirements of 25 CFR 533; or, failure to contain regulatory requirements of 25 CFR 531.

Such technical grounds should only be used as a basis for denial if the Tribe has been informed in advance of NIGC's intention to deny for failure to meet one or more of those requirements and has failed to remedy the omission in a reasonable timeframe. NIGC should publish a bulletin explaining its new rules after its standard rulemaking procedures have been complied with.

(3) Part 537-Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract.

There appears to be some confusion about whether the contractor should be required to submit the Class II background information when the contract is only for Class III Gaming...the Commission is seeking comment on whether this part should be revised. Since IGRA does confer the authority to approve both Class II and Class III management contracts to the NIGC chair, this part should be revised to clearly state what background information is applicable to class III management contractors. This part and any revisions to Part 556 should streamline the background investigation process and permit the expedited review of individuals and entities who hold gaming licenses in other Tribal and state jurisdictions.

F. Proceedings Before the Commission

The Commission should consider more comprehensive and detailed procedural rules for appeals. NIGC should look to other federal agencies administrative procedures for guidance especially those agencies with long histories of administrative procedure practice.

G. MICS & Technical Standards

(1) Part 542-Class III MICS

The Commission is seeking comment regarding Class III MICS as it has been suggested that the rule should be struck and replaced by a set of recommended guidelines. Since some Tribal-State Compacts, especially those in California, incorporate Section 542 by reference, there is a need to update and maintain Section 542. In light of the *Colorado River Indian Tribes* decision NIGC should amend Section 542 to state that its provisions are advisory but Tribes may independently elect to adopt Section 542 in cases where Tribal-State Compacts require the use of such standards.

(2) Part 543-Class II MICS and (3) Part 547-Minimum Technical Standards for Gaming Equipment used with the Play of Class II Games.

This is a complex and highly technical area of gaming which requires day-to-day involvement to provide meaningful comments or recommendations to the NIGC. As such, we recommend that NIGC give careful consideration and deference to the recommendations of the Tribal Gaming Working Group (TGWG) that is comprised of Tribal leaders and regulators as well as Class II operators and manufacturers. The TGWG has devoted substantial time and energy to the review of Class II MICS and Technical Standards and their work product to date is comprehensive.

H. Backgrounds and Licensing

(1) Part 556-Backgrounds and Investigations for Licensing

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

The pilot program should be expanded to streamline the background investigation process and permit the expedited review of individuals and entities who hold gaming licenses in other Tribal and state jurisdictions.

I. Part 559-Facility License Notifications, Renewals and Submissions

The Commission is seeking comment in whether this part should be revised.

NIGC should carefully review this section and consider whether it exceeds its express authority under IGRA. Tribes already have stringent health, safety and building standards through their own laws in addition to Compact provisions. NIGC at the very least should consider a longer license term than the three year maximum currently permitted. Previous facility licenses were allowed to have indefinite or non-expiring terms and NIGC should reconsider this for the new facility license requirements.

J. Sections 571.1-571.7-Inspection and Access

Should the Commission revise its regulations in Sections 571.5 and 571.6 to clarify commission access to [Class II] records at off-site locations, including at sites maintained or owned by Third Parties? A plain reading of these sections would seem to give NIGC the necessary authority to review all Class II records no matter where they are located. NIGC also has deposition and subpoena authority as set forth in 25 U.S.C. 2715.

K. Part 573-Enforcement

Should NIGC promulgate a regulation concerning withdrawal of a Notice of Violation (NOV) after it has been issued? If such power to withdraw a NOV isn't already vested in the chair then it would be advisable to issue a regulation expressly stating the authority to do so and the guidelines under which it may be done.

L. A. Potential New Regulations

Should a Tribal Advisory Committee (TAC) be formed to provide input and advice to the NIGC and, if so, how should Committee members be selected? Should the cost of a TAC be a factor when considering whether to form a TAC? A TAC can be a useful resource especially in complex technical areas of gaming regulation. Extensive consideration will have to be given to how TAC members would be selected in order to fairly represent the sometimes diverse interests and perspectives of the various tribes. For a TAC system to work there would need to be a consensus of approval on the member selection process. If no consensus can be reached the TAC advice will be met with skepticism as we have seen in the past. Cost should be a minor consideration in the formation of a TAC.

B. Sole Proprietary Interest

Should the Commission consider a regulation identifying when the sole proprietary interest provision of IGRA is violated and providing a process at the Tribes request in which NIGC will review the documents and make a determination?

We agree with NIGA's approach in this area that Tribal governments should have the right to exercise their own judgment as it relates to the operation of their gaming facilities. Any guidance from the Commission in this area should provide safe harbor language for lenders and developers providing financing assistance to Tribes and clarify that such financial assistance does not violate the sole proprietary interest rule.

C. Communication Policy or Regulator Identifying when and how the NIGC communicates with the Tribe.

NIGC should endeavor to set a basic communication policy after receiving input from Tribes. It is very unlikely that there will be a consensus among the Tribes as there are numerous government models among them as well as individual political considerations. A communication system that provides simultaneous notification to Tribal Leadership and the Tribal Regulatory Agency will suffice in most cases. In rare instances when it does not, NIGC will have to use its best judgment that will hopefully be based on its knowledge and understanding of the particular Tribe. Requiring annual communication resolutions from individual Tribes is a burdensome and unrealistic way of dealing with this issue.

D. Buy Indian Act Regulation

A regulation that would require the NIGC to give preference to qualified Indian-owned businesses when purchasing goods or services would be a positive action on NIGC's part.

VI. Other Regulations

We concur with NIGC that the regulations set forth in subsections A-K of Section VI are not in need of revision and we therefore do not provide any comments regarding those subsections.

Thank you for anticipated consideration of these comments. Please contact me if you have any questions concerning these matters.

Sincerely,

Bruce "Two Dogs" Bozsum
Chairman, Mohegan Tribal Council

cc: The Mohegan Tribal Council
Helga M. Woods, Attorney General, The Mohegan Tribe
John Meskill, Director of Regulations, The Mohegan Tribe