PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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Via Federal Express

National Indian Gaming Commission
1441 L Street, NW
Suite 9100
Washington, DC 20005

Re: **Preliminary Draft – Part 518 Self Regulation of Class II Gaming**

Dear Commissioners,

On behalf of the Pechanga Band of Luiseño Mission Indians ("Tribe"), I would like to thank the National Indian Gaming Commission ("NIGC" or "Commission") for the opportunity to comment on the proposed changes to 25 CFR Part 518 – Self Regulation of Class II Gaming. Given the importance of a strong class II industry to the overall health of Indian gaming, the Tribe appreciates the attention this Commission is paying to this segment of the market.

As currently drafted, Part 518 is problematic to say the least. The requirements associated with obtaining a certificate of self-regulation are exceptionally burdensome, and the benefits minimal. The preliminary draft is a step in the right direction, but the Tribe believes that further revision is needed. I outline our comments below.

1. Requirement that Class II Gaming Must Operate Continuously for Three Years Before Application

The Tribe is particularly concerned with the requirement that class II gaming must be continuously operated for three (3) years before a tribe can apply for a certificate of self regulation. The ramifications of such a requirement are severe – particularly for tribes in California – and we therefore request that the NIGC delete it.

The Tribe opposes this requirement because it subjects us the political whims of state and local governments. In an effort to force tribes into signing inferior Compacts and/or to gain the upper hand in a variety of other contexts, the State of California has in the past made a number of unsubstantiated claims against California tribes that would hinder our ability to satisfy this requirement. A discussion of the California Compact is in order to illustrate this point.

Under Section 11.2.1(c) of both the 1999 Compact and the Tribe's Amended Compact, one party to the Compact actually has the ability to *unilaterally terminate* the *entire Compact*. The state, for example, would simply have to write a letter to the Tribe stating that they believe the Tribe is in material breach of the Compact. If within the next 60 days, the Tribe fails to cure, the state can file suit against the Tribe in federal court. If the court agrees with the state that the Tribe was in material breach, the state could then unilaterally terminate the Compact. What the Tribe chooses to do within those 60 days therefore becomes critical to the future of our *entire* gaming operation.

The State of California has in the past sent numerous tribes what we call a "Section 11" letter, and as I am sure the Commission can understand, it is generally easier for the tribe to comply rather than place their entire gaming operation in jeopardy. Is this fair? No. But so long as this provision remains within the Compact, tribes are left with little alternative.

So why does this trouble us in this context? A number of tribes share revenue with the State of California based upon the number of class III games in operation. As such, the state has alleged at times that class III games are being played as class II in an effort to avoid sharing revenue. Even when confident that the games are indeed class II, a tribe has little choice but to discontinue their use pending resolution of the matter; placing the entire Compact at risk is hardly worth their continued operation. The state made the same sort of allegations when the number of class III games we could operate was limited to 2,000. Again, though fully within our right to do so and confident that the games were class II, the prudent choice was to discontinue play pending resolution.

With this in mind, I am sure you can understand why the Tribe is concerned with the three year requirement. Simply because we have not been allowed to operate class II gaming consistently for three years does not mean that the Tribe is without the requisite expertise or lacks a strong regulatory framework. Instead, a tribe should be eligible to apply so long as they have operated either class II or class III gaming for a minimum of three (3) years. To require otherwise will cause tribes to be held captive to the whims of state and local politicians, and to suffer even more as a result of something that is not wholly within our control.

2. Use of the Term "Tribal Regulator"

The NIGC proposes to modify Section 518(a)(2)(iii) of the regulation so that a tribe must provide: "A brief description of the criteria tribal regulators must meet before being eligible for employment as a tribal regulator." We believe that the meaning of the term "tribal regulator" is unclear.

While we assume that the intent is for this term to encompass only the elected or appointed members of the Tribal Gaming Commission, this is merely an assumption based upon our knowledge of the NIGC's regulations as a whole. Our concern, of

course, is that someone new to the industry would read this term more broadly, and perhaps to include *all* persons working for the Tribal Gaming Commission. Notably, it is common for all persons working within the Tribal Gaming Commission to be considered "tribal regulators." To avoid confusion, we suggest that this term either be defined or better described.

3. Adding Subjectivity to the Approval Process

The Tribe certainly appreciates that the NIGC has scaled-back some of the more onerous application requirements. We are concerned, however, that what is left is a rather subjective review process. For example, as proposed sections 518.4(b)(8) and (10) provide simply that the Tribe must "demonstrate" certain things in order to have their application viewed favorably. While the Tribe's concern is certainly aimed more at future Commissions, without specifics as to what *exactly* must be submitted and/or demonstrated, much is left to interpretation. This of course would not serve tribes well with a hostile Commission as it would be easy to assert that the tribe simply did not do enough. We therefore encourage the NIGC to rethink these changes and insert specific, attainable criteria.

4. Added Benefits to Self Regulating Status

As already mentioned, the current benefits of obtaining a certificate of self-regulation are minimal. The Tribe is therefore pleased with the changes proposed to section 518.9 whereby a tribe certified as "self regulating" would assume the sole regulatory role with regard to the listed activities. These types of changes are exactly what should be incorporated into the regulation as they go a long way toward bringing significance to the status of "self regulating."

On behalf of the Pechanga Band of Luiseño Indians, I again thank you for the opportunity to provide comment on this preliminary draft. Please let me know if you need any additional information or have any questions.

Sincerely,

Mark Macarro
Tribal Chairman