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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

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IN REPLY REFER TO:
Indian Gaming Management
MS 4743-MIB

APR 14 2003

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T G F

Honorable Georgia Tucker
Sycuan Band of Mission Indians
5459 Dehesa Road
El Cajon, California 92019

Dear Chairperson Tucker:

On December 26, 2002, the Superintendent, Southern California Agency submitted the Sycuan Band of Mission Indians (Tribe) Ordinance Prescribing Allocation and Distribution of Net Revenues from Gaming Activities (Ordinance) to this office for review and approval. In accordance with the Indian Gaming Regulatory Act (IGRA), 25 USC 2701 *et seq.*, and 25 CFR Part 290, Tribal Revenue Allocation Plans, we have reviewed the Ordinance adopted by Sycuan General Council Resolution No. 2002-21GC dated August 5, 2002.

On February 5, 2003, pursuant to 25 CFR 290.19.(b), we advised the Tribe that Article VI Section 6.1 of the Ordinance did not comply with IGRA or the regulations, specifically 25 CFR 290.12(b)(4) which requires that the plan describe the process for withholding federal income tax. On March 6, 2003, the Tribe submitted the necessary changes to the Ordinance which now complies with IGRA and the regulations.

It is our determination that the Ordinance complies with IGRA and the regulations in 25 CFR Part 290. Therefore, pursuant to 25 U.S.C. 2710(b)(3)(B), and the authority delegated to the Deputy Commissioner of Indian Affairs by Amendment No. 3 of Secretary's Order 3214, the Ordinance is hereby approved.

Under the RAP the tribe proposes to utilize the funds in the following manner:

- 28% Tribal Government Operations
- 40% Tribal Programs
 - 8% General Welfare
 - 32% Per Capita Payment
- 32% Tribal Economic Development and Charitable Organizations
 - 30% Tribal Economic Development
 - 2% Charitable Organizations or Operation of Local Government

Article III, Section 3.2 provides that the Business Committee shall have authority to transfer

not more than 25% of the funding in Sections 3.1(a) Tribal Government Operations; (b)(1) Tribal Programs; and (c)(1) Tribal Economic Development and (2) Charitable Organizations or Operation of Local Government to any other category if it is determined that funds are not necessary for the stated purposes and funding is required for category to which it is being transferred. Section 3.1(b)(2) Per Capita Distributions is excluded.

Article IV, Section 4.1 provides that all eligible tribal members will receive equal shares of a percentage of net gaming revenues on a per capita basis.

Article IV Section 4.2 provides that every living enrolled member who is 18 years of age on or before the date of the per capita distribution shall be eligible to receive a full per capita payment.

Article V Section 5.4 provides that the Business Committee or its appointed agent shall have the authority to make disbursements for the health, education and welfare of any legally incompetent tribal member upon petition by the legal guardian. The petition shall include a detailed budget of monies necessary. The petitioning guardian may also be required to submit an accounting of all expenditures before any future disbursements are made. The establishment of a regular monthly allowance shall remain at the discretion of the Business Committee.

Article V Section 5.5.4 provides that the Business Committee or its appointed agent shall have the authority to make disbursements from the Children's Trust Fund on behalf of an eligible minor tribal member. Requests for disbursement shall include a detailed budget of monies necessary for the essential living expenses, including health, safety, welfare or education costs and a detailed justification for such funds. The Business Committee or its appointed agent may also require the submission of receipts of expenditures before any future disbursements are made.

Article VI Section 6.1 provides that the Business Committee or its appointed agent shall ensure that each per capita recipient receives a written notification of the withholding procedure and applicability of federal income tax at the time of each payment.

Article VII Section 7 provides a dispute resolution process for members to the Business Committee and appeal process to the General Council whose decision shall be final and unreviewable.

If you have any questions regarding this matter, please contact Nancy Pierskalla, Office of Indian Gaming Management, at 202-219-4066.

Sincerely,

TERRANCE L. VIRDEN

Deputy Commissioner of Indian Affairs

cc: Pacific Region
Southern California Agency

**SYCUAN BAND OF MISSION INDIANS
ALLOCATION ORDINANCE**

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ORDINANCE PRESCRIBING ALLOCATION AND DISTRIBUTION
OF NET REVENUES FROM TRIBAL GAMING ACTIVITIES

SYCUAN BAND OF MISSION INDIANS

ARTICLE I.

DECLARATION OF PUBLIC POLICY AND PURPOSE

Section 1.1. The Sycuan Band of Mission Indians ("Sycuan Band") owns and operates the Sycuan Gaming Enterprise ("Gaming Enterprise") on the Sycuan Indian Reservation ("Reservation") for the purposes of employing its members and generating revenues to help fund Tribal government operations and programs, promoting Tribal economic development and providing for the general health, education, and welfare of the Sycuan Band and its members.

Section 1.2. Federal Law currently governs how the net revenue from the Gaming Enterprise may be expended by a tribe that makes per capita distributions of net gaming revenues. [25 U.S.C. § 2710(b)(2)(B).] The Sycuan Band hereby formalizes its plan for the allocation of such net gaming revenues both for general Tribal purposes and for per capita distributions to the members of the Sycuan Band.

ARTICLE II.

DEFINITIONS

Section 2.1. As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

(a) "Eligible Tribal Member" means any living enrolled member of the Sycuan Band of Mission Indians who is not less than eighteen years of age, is in good standing, and who is not excluded by this Ordinance from receiving per capita distributions of net gaming revenues, in accordance with Article IV below, the Band's Articles of Association (or current governing document) and Enrollment Ordinance.

(b) "Gaming Enterprise" means the Sycuan Gaming Enterprise, owned and operated by the Sycuan Band on the Sycuan Indian Reservation.

(c) "General Council" means the General Council of the Sycuan Band of Mission Indians, which is composed of the voting membership of the Band as a whole.

(d) "Sycuan Band" means the Sycuan Band of Mission Indians, a federally recognized Indian Tribe exercising jurisdiction over the Sycuan Indian Reservation.

(e) "Net Gaming Revenues" means gross revenues of the Gaming Enterprise remaining at the end of each calendar month or other applicable period of accounting or disbursement, less amounts paid out as, or paid for, prizes and total operating expenses as determined in accordance with GAAP, and including but not limited to, tribal gaming agency regulatory fees; fees mandated by the Tribal-

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State Gaming Compact; debt service (including both principal and interest) and rental fees payable on any gaming-related land leases.

(f) "Per Capita Payment" or "Per Capita Distribution" means those payments made or distributed equally to Eligible Tribal Members of the Sycuan Band, or to groups of members identified by this Ordinance, which are paid directly from the Sycuan Band's share of the Net Gaming Revenues of the Gaming Enterprise.

(g) "Per Capita Pay Period" means that period of time established by the Business Committee that is used to calculate Net Gaming Revenues available for Per Capita Payments.

(h) "Business Committee" means the seven-member Business Committee of the Sycuan Band of Mission Indians, which exercises the executive powers of the Band pursuant to the Band's Articles of Association (or current governing document).

(i) "Tribal Member" means any enrolled member of the Sycuan Band of Mission Indians in accordance with the Band's Articles of Association (or current governing document) and Enrollment Ordinance.

(j) "Eligible Minor Tribal Member" means any biological issue of a Tribal Member, born before or after the establishment of the Sycuan Children's Trust Fund, who meets the criteria for eligibility defined in Section 2 of the "Sycuan Children's Trust Document."

ARTICLE III.

ALLOCATION PLAN

Section 3.1. The Sycuan Band allocates its Net Gaming Revenues to the following purposes and in approximately the percentages set forth in this Article III.

(a) **Tribal Government Operations.** Twenty-eight percent (28%) of Net Gaming Revenues shall be used to fund Tribal government operations, services, and administration. Tribal governmental operations, services, and administration to which Net Gaming Revenues may be applied under this Section shall include, but shall not be limited to, the following: Tribal government offices, Tribal public works program, Tribal enrollment program, Tribal housing authority, Tribal health services (including medical and dental), Indian Child Welfare Act and other family services, Tribal cultural programs, Reservation facilities maintenance and cleanup program, Tribal library, Tribal recreation program, Tribal daycare, D-Q University and Vocational Rehabilitation programs, Tribal justice system, and Tribal police and fire department.

(b) **Tribal Programs.** A total of forty percent (40%) of Net Gaming Revenue shall be used to fund Tribal Programs for the general welfare of the Tribe and its members, in the following proportions:

- (1) Eight percent (8%) of Net Gaming Revenues shall be used for programs to enhance the general welfare of the Tribal community through provision of community services and programs, including but not limited to, social welfare, education, housing, health and nutrition, planning and environmental protection.

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(2) Up to thirty-two percent (32%) shall be available for payment as Per Capita Distributions to Eligible Tribal Members;

(c) **Tribal Economic Development and Charitable Contributions.** A total of thirty-two percent (32%) of Net Gaming Revenues shall be available for Tribal Economic Development and Charitable Contributions, in the following proportions:

- (1) thirty percent (30%) to promote Tribal Economic Development, including but not limited to, developing and/or expanding Tribal business enterprises, and investments in land, business opportunities, goods and services that may provide employment and financial returns for the Sycuan Band and its members. The investment policy of the Tribe shall be weighted toward investments that provide for the long-term security of the Tribe, and the Business Committee shall be authorized to make multi-year appropriations to facilitate long-term investments and projects.
- (2) Charitable Organizations or Operation of Local Government. Up to two percent (2%) of Net Gaming Revenue shall be available to donate to Tribal and/or non-Tribal charitable organizations and to help fund operations of local governments, including agencies of the State of California and/or subdivisions of the State, special districts, and municipal corporations.

Section 3.2. The Business Committee shall have the authority to transfer not more than twenty-five percent (25%) of the funding provided in each category of Sections 3.1 (a), (b)(1), and (c)(1) and (2) to any other category if the Committee determines that the funding in the category from which the money is being taken is not necessary for the stated purposes and the funding is required for the category into which the money is being transferred (for the purposes of this Section, Section 3.1 (b)(2) is excluded). Otherwise, the purposes and proportions for the expenditure of Net Gaming Revenue may be changed only by a vote of the General Council, except as provided in Article IX herein relating to amendments required to obtain Secretarial approval of this Ordinance pursuant to the Indian Gaming Regulatory Act.

Section 3.3. The Business Committee shall ensure that a monthly accounting is made of Net Gaming Revenues, and that each month, or other applicable period of disbursement, the appropriate percentages of such Net Gaming Revenues are earmarked and set aside for the expenditures described in Article III, Sections 3.1(a), (b)(1), and (c)(1) and (2) above.

ARTICLE IV.

ELIGIBILITY FOR PER CAPITA PAYMENTS

Section 4.1. In order to advance the personal health, safety, and welfare of Eligible Tribal members, the Tribe hereby allocates a percentage of the Net Gaming Revenue to be divided into equal shares and paid to all Eligible Tribal members;

Section 4.2. Every living person who is an enrolled member of the Sycuan Band of Mission Indians and who has attained the age of eighteen on or before the date of the Per Capita Distribution is eligible to receive a full Per Capita Payment, unless:

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- (a) that person was found by vote of a majority of the members of the General Council, or by a court of competent jurisdiction, to be guilty of or liable for any offense against or relating to the Gaming Enterprise or the Sycuan Band involving theft, conversion, embezzlement, or extortion. Such a person will forfeit his or her right to any Per Capita Payment for the period prescribed by the General Council;
- (b) that person becomes disenrolled, is determined to be ineligible for or withdraws from membership during a Per Capita Pay Period prior to the date of distribution, in which case such person shall not receive a Per Capita Payment for that Pay Period; or
- (c) that person dies prior to the date of the Per Capita Payment, in which case no payment shall be due to that person's estate or heirs.

Section 4.3. Distribution shall be based on the latest BIA and General Council-approved membership list of enrolled Tribal Members. Except as specifically provided in Section 4.4 below, any person excluded from eligibility by the terms of this Ordinance or by any act of the Business Committee shall have the right to file a complaint or appeal with the General Council, in accordance with the procedures set forth in Article VII below. In making eligibility determinations, the Business Committee shall be entitled to require such evidence in the support of the claim as the General Council, in its sole discretion, determines will be of probative value in resolving the complaint or appeal.

Section 4.4. The Business Committee's determination on the basis of scientific evidence that a person is ineligible to participate in Per Capita Payments by reason of a lack of biological relationship to an Eligible Tribal Member shall be final and unreviewable; however, the Business Committee shall have the discretion to consider, at a future date, a renewed application based upon newly discovered evidence that could not, with due diligence, have been presented at the time of the original determination.

ARTICLE V.

CALCULATION AND DISBURSEMENT OF PER CAPITA PAYMENTS TO ELIGIBLE TRIBAL MEMBERS, LEGAL INCOMPETENTS, AND ADMINISTRATION OF THE SYCUAN CHILDREN'S TRUST FUND

Eligible Tribal Members:

Section 5.1. The percentage of Net Gaming Revenue devoted to Per Capita Payments pursuant to Article III above shall be divided such that, except as expressly provided herein or in Article IV, Sec. 4.2 and 4.3 above, every Eligible Tribal Member receives an equal Per Capita Payment, share and share alike.

Section 5.2. Each Per Capita Payment shall be disbursed within thirty (30) days after the end of the Per Capita Pay Period as declared by the Business Committee.

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Section 5.3. Each Per Capita Payment shall be made by Tribal check, made payable only to the Eligible Tribal Member, except in the case of legal incompetents (see Article V, Section 5.4 below).

Legal Incompetents:

Section 5.4. The Business Committee or its appointed agent shall make disbursements necessary for the health, education, and welfare of any individual declared legally incompetent by a court of competent jurisdiction or other competent adjudicative body from the proceeds of any Per Capita Payment placed into trust upon the petition of the legal guardian or to the person holding a valid power of attorney for such incompetent Tribal Member. Such petition shall include a detailed budget of monies necessary for the health, education, and welfare of that individual declared legally incompetent. The Business Committee or its appointed agent may also require that the petitioning guardian submit receipts of expenditures made from funds disbursed hereunder before any future disbursements are made. The establishment of a regular monthly allowance for any individual declared legally incompetent from the proceeds of any Per Capita Payment placed into trust under this Section shall remain at the discretion of the Business Committee. The Business Committee shall have the authority, in its discretion, to require affirmative evidence of the incompetence of a Tribal Member or that a power of attorney was freely and knowingly given, shall not be bound by a determination of incompetence by the courts of any state, and may require that a person claimed to be legally incompetent be brought before the Business Committee or otherwise examined to determine that person's status. The decision of the Business Committee to accept a court's determination regarding the competence of an Eligible Tribal Member to receive Per Capita Payments shall be final and unreviewable except by petition to the General Council, in accordance with the procedures set forth in Article VII below.

Administration of the Sycuan Children's Trust Fund:

Section 5.5.

Section 5.5.1. Purpose. In order to provide for the future safety and well-being of the children of the Sycuan Band of Mission Indians, the General Council hereby authorizes establishment of a "Minors Trust Fund" (referred to as the "Sycuan Children's Trust Fund") into which payments designated for Eligible Minor Tribal Members shall be deposited and governed according to the terms and conditions of the Sycuan Children's Trust Document.

Section 5.5.2. Contribution. Payments into the Sycuan Children's Trust Fund shall be deposited for the benefit of each Eligible Minor Tribal Member into the respective accounts of the Eligible Minor Tribal Members, monthly in accordance with the Sycuan Children's Trust Document. Account balance statements shall be available to the custodial parent, parents or legal guardian of the Eligible Minor Tribal Member.

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Section 5.5.3. Maturity Payment. Upon attaining the age of 18, each Eligible Minor Tribal Member, provided they have obtained a high school diploma or its equivalent such as GED, shall receive a distribution of thirty-three percent (33%) of the balance in his/her account. Upon attaining the age of 21, and subject to the foregoing academic requirements, each Eligible Minor Tribal Member shall receive an additional fifty percent (50%) of the remaining balance in his/her account. Upon attaining the age of 25, and subject to the foregoing academic requirements, each Eligible Minor Tribal Member, shall receive the balance in his/her account. The Business Committee, or its appointed agent, shall amend the trust document as needed to conform to needs of the Tribe and applicable regulations. The Business Committee, or its appointed agent, shall approve application for maturity payment upon sufficient evidence showing eligibility.

Section 5.5.4. Authority to disburse proceeds of fund. The Business Committee or its appointed agent shall have the authority to disburse proceeds of any funds placed into the Sycuan Children's Trust Fund on behalf of an Eligible Minor Tribal Member, in accordance with the Sycuan Children's Trust Document. Any requests for such disbursements shall include a detailed budget of monies necessary for essential living expenses, to include any health, safety, welfare or education costs and a detailed justification for such essential living needs. The Business Committee or its appointed agent may also require that petitioners submit receipts of expenditures made from funds disbursed hereunder before any future disbursements are made.

ARTICLE VI.

TAXATION

Section 6.1. The Business Committee or its appointed agent shall ensure that each recipient of a Per Capita Payment receives written notification that such payment is subject to federal income tax when such distribution is made. The Business Committee or its appointed agent shall also implement a procedure by which Eligible Tribal Members who receive Per Capita Payments shall have applicable taxes automatically withheld from Per Capita Payments. The Business Committee or its appointed agent shall include in the notice of the application of federal tax laws, a notice of the existence of the withholding procedure. The notification required herein shall be required for all distributions provided for in this Section.

ARTICLE VII.

DISPUTE RESOLUTION

Section 7.1. Any Tribal Member directly affected by a decision concerning the allocation of Net Gaming Revenues and the distribution of Per Capita Payments shall have recourse to the Dispute Resolution Process ("Process"). The Business Committee shall oversee the Process. All claims of disputes shall be submitted in writing to the Business Committee,

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within thirty (30) days after the dispute arises. The Business Committee shall respond with a decision within sixty (60) days after receiving written notice of the dispute.

Section 7.2. All decisions of the Business Committee shall be appealable to the General Council, which shall have discretion as to affirm, modify or vacate the Business Committee's decision and remand for further proceedings.

Section 7.3. Any request for an appeal of a final Business Committee decision must be made at the next regularly scheduled General Council meeting. The General Council shall then review the appeal request and vote on whether to hear the appeal. The General Council may vote (eligible voters are determined by the Band's Articles of Association) to accept an appeal provided that the vote is by at least fifty-one percent (51%) of the voters, when at least thirty percent (30%) of the eligible voters are present at the General Council meeting and vote on the appeal.

Section 7.4. The General Council will only hear an appeal of a final Business Committee decision if the Appellant shows new evidence, or other information, which would affect the decision of the Business Committee. The General Council may overrule any final decision of the Business Committee by a vote of at least fifty-one (51%) of the voters, if at least thirty percent (30%) of the eligible voters voted in the decision, at a meeting called for the purpose of reviewing a Business Committee decision. However, the General Council, or its designated representative, must provide a written explanation providing a compelling reason for overturning the decision to the Business Committee, the Appellant and each Tribal Member.

Section 7.5. Upon accepting an appeal, the General Council shall give the appellant notice within five (5) days of the decision to accept or reject and shall schedule a hearing within the next five (5) days upon which any decision rendered will be final and unreviewable.

Section 7.6. The Business Committee will cause the distribution of any notices and written decisions of the General Council in compliance with this Ordinance.

ARTICLE VIII.

SEVERABILITY

Section 8.1. If any Article, or part thereof, of this Ordinance or the application thereof to any party, person, or entity or, in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or the Department of the Interior, the remainder of the Article or Section of the Allocation Ordinance shall not be affected and shall remain in force and effect as though no Section or part thereof has been declared to be invalid.

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ARTICLE IX.

ADOPTION AND AMENDMENT

Section 9.1. This Ordinance shall become effective upon its approval by majority vote of the General Council of the Sycuan Band of Mission Indians at a duly noticed meeting. If no Allocation Ordinance is prepared for the subsequent fiscal year, the terms of the Ordinance shall automatically be adopted without any further Business Committee action to govern the allocation of Net Gaming Revenues for the subsequent fiscal year.

Section 9.2. This Ordinance may only be amended by majority vote of the General Council of the Sycuan Band of Mission Indians; provided, however, that the Business Committee shall be authorized and hereby is directed to make any amendments to this Ordinance required by the Secretary of Interior in order to obtain the Secretary's approval of this Ordinance for compliance with 25 U.S.C. §2710 et seq.

ARTICLE X.

EFFECTIVE DATE

This Allocation Ordinance shall govern the distribution of all Net Gaming Revenues for the fiscal year in which this Ordinance was adopted, and in all subsequent fiscal years until amended or repealed.