United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 14 1998

Honorable Clifford M. LaChappa
Chairman
Barona Band of Mission Indians
1095 Barona Road
Lakeside, California 92040-1599

Dear Chairman LaChappa:

On September 4, 1998, we received the Tribal-State Compact between the State of California (State) and the Barona Band of Mission Indians (Tribe), dated August 12, 1998. We have completed our review of this Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to delegated authority and Section 11 of IGRA, we approve the Compact. The Compact shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

Notwithstanding our approval of the Compact, Section 11 (d)(1) of IGRA, 25 U.S.C. § 2710(d)(1), requires that tribal gaming ordinances be approved by the Chairman of the National Indian Gaming Commission (NIGC). Regulations governing approval of Class II and Class III gaming ordinances are found in 25 C.F.R. §§ 501.1-577.15 (1997). Pursuant to IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

In addition, if the Tribe enters into a management contract for the operation and management of the Tribe's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11 (d)(9) of IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations governing management contracts. The Tribe may want to contact the NIGC for information on submitting the ordinance and the management contract for approval by the NIGC.

Finally, although we believe that the Counsel to the Governor may be correct in asserting, in his October 5, 1998, letter to the Acting Director of the Indian Gaming Management Staff, that a change in the Tribe's allocation of lottery devices set out in an addendum to the Compact may not require Secretarial approval under Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), to become effective, we recommend that such approval be sought to eliminate any uncertainty regarding this issue.

We wish the Tribe and the State success in their economic venture.

Sincerely,

/s/ Kevin Gover

Assistant Secretary - Indian Affairs

Enclosure

Identical Letter Sent to: Honorable Pete Wilson
Governor of California
Sacramento, California 95814

cc: Sacramento Area Director w/copy of approved Compact
Supt., Southern California Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Pacific SW Regional Field Solicitor w/copy of approved Compact
California United States Attorney w/copy of approved Compact

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

BARONA BAND OF MISSION INDIANS

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Barona Band of Mission Indians, which was executed on August 12, 1998.

DATES: This action is effective October 22, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 14, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28313 Filed 10–21–98; 8:45 am]

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TABLE OF CONTENTS

PREAMBLE 1

ARTICLE 1
DEFINITIONS 3

ARTICLE 2
TERM OF COMPACT 8

ARTICLE 3
AUTHORIZED GAMING ACTIVITIES 12

ARTICLE 4
INTEGRITY OF AUTHORIZED GAMING DEVICES 17

ARTICLE 5
APPROVAL OF GAMING EMPLOYEES AND
OTHER ASSOCIATED PERSONS 25

ARTICLE 6
ACCOUNTING AND AUDITS 45

ARTICLE 7
MONITORING 50

ARTICLE 8
CONFIDENTIALITY 56

ARTICLE 9
LIMITATIONS ON GAMING 61

ARTICLE 10
PATRON DISPUTES 74

ARTICLE 11
LIABILITY TO THIRD PARTIES AND INSURANCE 75

ARTICLE 12
PUBLIC HEALTH AND SAFETY 79

ARTICLE 13
EMPLOYEE PROTECTION 85

ARTICLE 14
SCOPE OF STATE CRIMINAL JURISDICTION 95

ARTICLE 15
COUNTY PARTICIPATION AGREEMENT 99

ARTICLE 16
ADVISORY VOTE OF THE LOCAL ELECTORATE 106

ARTICLE 17
DISPUTE RESOLUTION AND ENFORCEMENT OF COMPACT.....109

ARTICLE 18
REIMBURSEMENT FOR REGULATION 117

ARTICLE 19
MISCELLANEOUS PROVISIONS.....119

ARTICLE 20
TRANSITION PROVISIONS 123

EXHIBITS:

EXHIBIT A-1/INDIAN VIDEO LOTTERY
MATCH GAME 128

EXHIBIT A-2/INDIAN VIDEO LOTTERY
SCRATCHER GAME 135

PREAMBLE

WHEREAS, the Indian Gaming Regulatory Act (hereinafter "IGRA") provides that a federally-recognized Indian tribe may engage in Class III Gaming activities on its lands pursuant to a compact negotiated between the State and the tribe; and

WHEREAS, in the spirit of good faith and in recognition of each party's sovereign rights, the Barona Band of Mission Indians (hereinafter the "Barona Band" or the "Tribe") and the State of California (hereinafter the "State") have entered into this Compact in compliance with their rights and obligations under IGRA; and

WHEREAS, in accordance with IGRA's purposes, this Compact seeks to achieve the goals and objectives of the Tribe and the State, including the promotion of tribal economic development and strong tribal government, and the protection of the California public; and

WHEREAS, the State and the Tribe recognize that any successful negotiation must involve compromise so that each party achieves its most important goals while accommodating the most important goals of the other; and

WHEREAS, for the Tribe, this Compact —

- Secures the right to operate legally permissible Class III Gaming activities heretofore authorized only to the State Lottery, including games not currently offered by the State Lottery;
- Generates revenues to the Tribe without reducing needed revenues by requiring it to share any portion thereof with the State;
- Promotes tribal economic stability through a Compact term of up to twenty years;
- Provides the Tribe with the primary responsibility for the on-site regulation of gaming personnel; and
- Permits the resolution of disputes through an impartial tribunal; and

WHEREAS, for the State, this Compact —

- Secures the legal rights of Californians who choose to enter the Tribe's gaming facility, whether as employees or patrons;
- Grants the State a significant regulatory role so as to ensure a safe, honest and crime-free gaming operation;
- Restrains the expansion of gambling in the State in light of the California constitutional prohibition against casinos of the type operating in Nevada and New Jersey; and
- Protects the environmental and other local interests of the communities surrounding the Tribe's gaming facility by granting the local jurisdiction a significant voice in these issues; and

WHEREAS, for both the Tribe and the State, this Compact —

- Fosters alternatives to gaming as a means to achieve tribal economic self-sufficiency; and
- Affords non-gaming tribes, many of which are located in remote areas, an opportunity to participate in gaming revenues so that all California tribes that wish to do so can promote their economic development and self-sufficiency; and

WHEREAS, the Tribe and the State believe that the principles underlying the specific agreements reached herein and the respectful and cooperative process in which the negotiations have been conducted offer hope of a new chapter for tribal-state relations;

NOW, THEREFORE, the Tribe and the State hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following definitions apply throughout this Compact. Defined terms are indicated by the use of initial capital letters.

1.1 Board. The California Gambling Control Board.

1.2 Certified Mail. Certified or registered mail, Federal Express, United Parcel Service, Express Mail or any similar mail delivery service generating a return receipt or a signature of the recipient, confirming delivery of that mail.

1.3 Class II Gaming. Class II gaming as that term is used in IGRA.

1.4 Class III Gaming. Class III gaming as that term is used in IGRA.

1.5 Commission. The California Gambling Control Commission.

1.6 Compact. This compact between the State of California and the Barona Band of Mission Indians.

1.7 County Participation Agreement. The agreement entered into pursuant to Article 15 of this Compact.

1.8 Crime. A crime as defined by section 16 of the California Penal Code.

1.9 Criminal Laws. Laws prohibiting conduct defined as a crime by the laws of the State of California.

1.10 Department or Department of Justice. The California Department of Justice.

1.11 Director. The Director of the Division of Gambling Control of the California Department of Justice.

1.12 Distributor. Any Person who sells, leases, markets, offers, or otherwise distributes any electronic, mechanical, or electromechanical device, including, but not limited to, a Lottery Device or a Lottery Device System, which is used on the Reservation in connection with a Class III Gaming activity.

1.13 Division. The Division of Gambling Control in the California Department of Justice.

1.14 Economic Development Zone. Any zone which eliminates, suspends or relaxes, in whole or in part, regulatory or tax requirements which apply elsewhere in the State, including, but not limited to, tax credits and relief from possessory interest taxes, payroll taxes, business license taxes, development fees, and construction related fees.

1.15 Facility. The location or locations on the Reservation where the Tribe has authorized Class III Gaming to be conducted, including the buildings, parking lots, and associated infrastructure. The 244-acre golf course previously approved for construction by the Tribe's General Council on June 15, 1994 (and not adjacent to the Facility) shall not be considered a part of the Facility.

1.16 Gambling Control Act. The California Gambling Control Act as enacted by California Statutes 1997, Chapter 867.

1.17 Gambling Enterprise Employee. A gambling enterprise employee within the meaning of the Gambling Control Act.

1.18 Hotel. Any structure which contains sleeping rooms which are offered to the public for rent or other payment, and the only significant purpose of which, other than to provide lodging, is to facilitate patronage of the Class III Gaming operations authorized by this Compact.

1.19 IGRA. The Indian Gaming Regulatory Act, 25 U.S.C. § 270 *et seq.*

1.20 Immediate Family Member. The spouse, parent, or child of a member of the Tribal Gaming Commission, or a parent or child of the spouse of that member.

1.21 Indian Lands. The Tribe's Indian lands as defined under IGRA.

1.22 Indian Lottery Game. A procedure authorized by the Tribe whereby prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares which provide the opportunity to win such prizes.

1.23 Interested Parties. Persons, groups, or agencies, other than Responsive

Agencies, that (a) request in writing a notice of preparation of a draft environmental impact report under subsection 15.2.1, (b) are identified by the County Board of Supervisors as concerned with the environmental effect of a Project, or (c) have commented on the Project in writing to the Tribe or the County Board of Supervisors.

1.24 Key Employee. A key employee within the meaning of the Gambling Control Act and the regulations of the State Gambling Control Agency where the employee is associated with Class III Gaming.

1.25 Lottery Device. An electronic, mechanical, or electromechanical device or mechanism by means of which a lottery is played by a single player, including any part or component of such a device or mechanism.

1.26 Lottery Device License. A license granted for valuable consideration by one tribe to another tribe, representing authorization to the grantee tribe to operate one or more Lottery Devices in the stead of the grantor tribe.

1.27 Lottery Device System. A combination of one or more Lottery Devices and any other computer, server, machine, monitor, or other device, which is used for the conduct of any lottery game authorized by this Compact, including for the determination, recordation, and display of draw outcomes, wins, and losses, or for the recordation, distribution, or reporting of revenue receipts, payouts, and transactions.

1.28 Manufacturer. Any Person who manufactures, assembles, produces, programs, or makes modifications to any electronic, mechanical, or electromechanical device, including, but not limited to, a Lottery Device or a Lottery Device System, which is used on the Reservation in connection with a Class III Gaming activity.

1.29 Mitigation. Mitigation within the meaning of the California Environmental Quality Act ("CEQA"), Chapter 1 (commencing with section 21000) through Chapter 6 (commencing with section 21165) of Division 13 of the California

Public Resources Code.

1.30 Net Income. Net income within the meaning of Generally Accepted Accounting Principles ("GAAP").

1.31 Off-Reservation Gambling Establishment. A gambling establishment within the meaning of the Gambling Control Act that reports the same level of gross revenue from gambling as the Tribe's gross revenue from all Class II and Class III Gaming.

1.32 Person. A person within the meaning of the Gambling Control Act and the regulations of the State Gambling Control Agency.

1.33 Phase I. The period in the administration of the Gambling Control Act prior to issuance of the Executive Order described in California Statutes 1997, Chapter 867, section 66.5.

1.34 Phase II. The period in the administration of the Gambling Control Act following issuance of the Executive Order described in California Statutes 1997, Chapter 867, section 66.5.

1.35 Project. An activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and which is (a) authorized by the Compact or (b) may be undertaken by the Tribe to directly facilitate activities authorized by the Compact. This definition shall be understood to include, but not be limited to, the construction or expansion of any Facility, any activity on or within a Facility, and any construction or expansion ancillary to a Facility, including, but not limited to, access roads, utility or waste disposal systems, or water supply.

1.36 Reservation. The Tribe's Indian Lands.

1.37 Responsive Agencies. All local, state and federal agencies which, if a Project were not taking place on Indian Lands, would have responsibility for approving the Project or would exercise authority over natural resources that

may be affected by the Project.

1.38 Service Employee. Food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Facility or Hotel, if any.

1.39 Significant Effect on the Environment. A significant effect on the environment within the meaning of California Public Resources Code section 21083 and the regulations promulgated thereunder.

1.40 State. The State of California.

1.41 State Gambling Control Agency. In Phase I, the Division, as defined herein, but in Phase II, the Commission, as defined herein.

1.42 Suitability or Suitable. Satisfaction of the conditions stated in California Business and Professions Code section 19848 or section 19848A, and the absence of any disqualifying condition stated in California Business and Professions Code section 19850 or section 19850A.

1.43 Tribal Gaming Commission. The agency of the Tribe's government responsible for the regulation of tribal gaming and the licensing of persons associated therewith as provided in this Compact.

1.44 Tribe. The Barona Band of Mission Indians, California.

1.45 Unsuitable. Not suitable within the meaning of subsection 1.42 of this Compact.

ARTICLE 2. TERM OF COMPACT

2.1 Effective Date. This Compact shall be effective upon publication of the notice of approval thereof by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B).

2.2 Termination Date. This Compact shall terminate on January 1, 2009, unless renewed or extended pursuant to Section 2.3 or terminated earlier pursuant to Section 2.4.

2.3 Renewals. The Tribe shall have the right to renew the Compact for two additional five-year periods pursuant to a written notice of renewal served on the Governor by the Tribe not more than one year before the termination date nor less than one hundred eighty (180) days before the termination date as long as none of the following has occurred prior to the effective date of the renewal:

2.3.1 The Tribe has been found by a court, an arbitral tribunal, or either or both of them to have:

A. Engaged in unauthorized Class III Gaming activities on two or more separate occasions; or

B. Violated any of the provisions of this Compact on five or more separate occasions.

2.3.2 At any time after January 1, 1998, slot machines as defined in California Penal Code sections 330a, 330b, or 330.1, or any other heretofore prohibited forms of Class III Gaming are authorized by legislation, initiative, or final judicial decision for use or operation in the State by any person, organization or entity, for any purpose. In such an event, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

2.3.3 At least one year before the termination date of the Compact, the

Governor has served upon the Tribe a notice of intention not to renew, setting forth the reasons for the decision with reasonable specificity. In such an event, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

Where the Tribe serves a notice of renewal, and one or more of the events described in subsection 2.3.1 or 2.3.2 have occurred, the Governor may, within ninety (90) days after service of the notice of renewal or the occurrence of the event, whichever is later, serve upon the Tribe a notice rejecting the notice of renewal. Notwithstanding the foregoing, where a notice rejecting the notice of renewal based on subsection 2.3.2 is served less than one hundred twenty (120) days before the termination date, the term of the Compact shall be extended for an additional twelve (12) months from the date of service of the notice of rejection in order to permit negotiation under Section 2.7 before the Compact expires.

2.4 Early Termination.

2.4.1 This Compact may be terminated by the Governor, at his or her discretion, at any time if any of the following occurs:

2.4.1.1 At any time on or after January 1, 1998, legislation or an initiative statute or constitutional amendment becomes effective which authorizes slot machines as defined in California Penal Code sections 330a, 330b, or 330.1 for use or operation in the State by any person, organization, or entity for any purpose.

2.4.1.2 The Tribe has been found to have:

A. Engaged in unauthorized Class III Gaming activity on two or more separate occasions by a court, an arbitral tribunal, or either or both of them; or

B. Violated any of the provisions of this Compact on five or more separate occasions by a court, an arbitral tribunal, or either or both of them, where the parties have been unable to resolve their dispute through a meet and confer process.

2.4.1.3 IGRA is repealed or the State's obligation to negotiate a compact is held unconstitutional in a final judicial decision of a federal appellate court.

2.4.2 To effectuate the termination, a notice of termination shall be served upon the Tribe in accordance with Section 2.6 and shall be effective no earlier than twelve (12) months following the date of service of a notice based on subsection 2.4.1.1 and no earlier than six (6) months following the date of service of a notice based on subsection 2.4.1.2 or 2.4.1.3 unless an earlier date is required by law. In the event that a notice of termination based on subsection 2.4.1.1 or 2.4.1.2 is served, the Governor shall commence negotiations in good faith with the Tribe to enter into a new compact pursuant to, and subject to, the provisions of Section 2.7.

2.4.3 Nothing herein shall be construed to impair the State Legislature's power to enact any statute terminating this Compact; however, the State acknowledges the Tribe's position that the State Legislature has no such power.

2.5 Amendments. In the event that IGRA is amended, or any State statute or constitutional provision expanding or restricting the types of Class III Gaming permitted in this State is enacted, either party may request the other party to enter into negotiations in good faith to amend this Compact with respect to the impact on the Compact of the above-referenced change or changes, and the other party must then negotiate in good faith over such amendment.

2.6 Service of Notices. A notice of renewal under Section 2.3 must be mailed by Certified Mail and shall be deemed served on the Governor on the date of mailing. A notice of intention not to renew under subsection 2.3.3 and a notice of termination under Section 2.4.2 must be mailed by Certified Mail and shall be deemed served on the Tribe on the date of mailing.

2.7 Obligation to Negotiate Following Termination. If the Governor serves a notice rejecting the Tribe's notice of renewal based on subsection 2.3.2, or if the Governor serves a notice of intention not to renew under subsection 2.3.3, or if the Governor serves a notice of termination of the Compact under subsections 2.4.1.1 or 2.4.1.2, the Governor shall immediately thereafter commence negotiations in good faith with the Tribe to enter into a new compact as long as IGRA's requirement of good faith negotiations under 25 U.S.C. § 2710(d)(3)(A) or analogous provision has not been repealed or held unconstitutional by a final decision of a federal appellate court. In any proceeding brought by the Tribe in court pursuant to 25 U.S.C. § 2710(d)(7)(A)(i), or before an arbitral tribunal pursuant to the provisions of subsection 17.2.10 in the event the court declines or is unable to exercise its jurisdiction, the court or arbitral tribunal may take into consideration the reasons stated in the Governor's decision not to renew the compact under subsection 2.3.3.

ARTICLE 3. AUTHORIZED GAMING ACTIVITIES

3.1 Authorized Games. The Tribe is authorized by this Compact to offer the Indian Lottery Games identified in Exhibit A of this Compact, as amended from time to time in accordance with Sections 3.2 and 3.3.

3.2 Restrictions on Indian Lottery Games. No Indian Lottery Game may be included in Exhibit A of this Compact unless it is permitted to the California State Lottery under the California State Lottery Act.

3.2.1 Indian Lottery Games may not utilize any device that constitutes a slot machine prohibited under California Penal Code sections 330a, 330b, or 330.1, unless, and only to the extent that, a final decision of the California Supreme Court, the U.S. Supreme Court, or the Ninth Circuit Court of Appeals rules that said slot machine prohibition does not apply to the California State Lottery. In the event of a conflict between the final decision of the Ninth Circuit Court of Appeals and the California Supreme Court concerning the above-referenced issue of state law, the final decision of the California Supreme Court shall prevail.

3.2.2 If, after the effective date of this Compact, a final decision of the California Supreme Court, the U.S. Supreme Court, or the Ninth Circuit Court of Appeals construes state law concerning the types of and limitations on lottery games permissible to the California State Lottery under the California State Lottery Act, the parties shall be bound by that final decision for purposes of determining the Indian Lottery Games which are available to authorization under Exhibit A of this Compact or which may remain authorized under Exhibit A of this Compact. In the event of a conflict between such a final decision of the Ninth Circuit Court of Appeals and the California Supreme Court concerning the above-referenced issues of state law, the final

decision of the California Supreme Court shall prevail.

3.3 Amendments to Exhibit A of this Compact. If the Tribe wishes to change any of, or add to, the Indian Lottery Games included on Exhibit A of this Compact, it may do so with the consent of the State, whose consent shall not be withheld as long as the Indian Lottery Game is authorized under Section 3.2.

3.4 Safe Harbor for Determination of Game Status.

3.4.1 The Tribe, at its option, may apply to the State Gambling Control Agency for a determination that a gaming activity is not a Class III Gaming activity, including associated electronic, mechanical, or electromechanical equipment, and, thus, whose operation is not subject to this Compact nor a basis for a violation thereof.

3.4.1.1 Applications for approval shall be made to the Division on forms provided by the Division, and shall be accompanied by an application fee of five hundred dollars ($500) for each gaming activity for which approval is sought. Said five hundred dollar ($500) fee will be refunded if the Tribe is making an application concerning the same gaming activity which is the subject of a pending application by another tribal applicant. The Division may require the applicant to pay reasonable additional costs for research relevant to the evaluation of whether the submitted gaming activity is a Class III Gaming activity. Applications shall describe the gaming activity in sufficient detail to enable the State Gambling Control Agency to render an opinion on the question whether the gaming activity constitutes Class III Gaming.

3.4.1.2 In his or her sole and absolute discretion, the Director may reject an application as incomplete, shall state the reasons therefor, and shall grant the Tribe fifteen (15) days (which may be extended by mutual agreement) to submit an amended application. The Director shall not be obligated to grant more than one opportunity to submit an amended application.

3.4.1.3 The Director may summarily deny the application on the ground that an application is patently without merit. Upon review of an application amended pursuant to subsection 3.4.1.2, the Director may summarily reject the amended application as too incomplete to enable the Director to render an opinion. Upon summary denial or rejection, the Division shall refund the application fee to the Tribe, less the reasonable costs involved in the processing and consideration of the application, and the Tribe may seek judicial review, including a stay or preliminary injunction, as provided under subsection 3.4.4.

3.4.1.4 If the Director has not, within twenty (20) days following submission of an application, summarily denied or rejected the application, then the following shall occur depending on whether Phase I or Phase II of the Gambling Control Act is in effect:

A. Phase I.

(1) The Director shall render an opinion on the question whether the activity that is the subject of the application constitutes Class III Gaming

Prior to rendering an opinion, the Director shall solicit the views of third parties on the issue and provide a reasonable time for receipt of comments by third parties.

(2) The Tribe may, thereafter, proceed in accordance with California Business and Professions Code section 19858(e). The Board shall provide an opportunity for pre-hearing briefing and oral argument on the application.

B. Phase II: The Director shall make a recommendation to the Commission. Prior to making a recommendation, the Director shall solicit the views of third parties on the issue and provide a reasonable time for receipt of comments by third parties. The Commission shall schedule a hearing on the Director's recommendation in accordance with California Business and Professions Code section 19858A and section 19858.7A, and shall provide an opportunity for pre-hearing briefing and oral argument on the application.

3.4.2 The Tribe may commence the gaming activity that is the subject of the application upon the application's submission to the Division, and may continue to conduct the gaming activity until the expiration of the period specified in subsection 3.4.3.

3.4.3 The Tribe shall discontinue any gaming activity that is the subject of an application within five (5) days of the summary denial or rejection of the application by the Director or upon a final action of the Division or Board, as applicable, or the Commission, finding that it

is a Class III Gaming activity.

3.4.4 The Tribe may seek judicial review of any decision made under this Section by the Director, Board or Commission in accordance with California Business and Professions Code section 19804 and, as applicable, section 19858A(e), in state court only. However, a stay or preliminary injunction of the agency action may only be sought in connection with a summary denial or rejection under subsection 3.4.1.3 herein, and not in connection with a final agency decision under subsections 3.4.1.4.A or 3.4.1.4.B.

3.4.5 No agency action under Section 3.4.3 and no state court action under Section 3.4.4 is intended to bind the National Indian Gaming Commission.

3.5 Prohibition Against Unauthorized Games. The lottery games, as authorized under this Article, are the only forms of Class III Gaming permitted at the Facility under this Compact, and any Class III Gaming activity not permitted under the terms of this Compact is expressly prohibited anywhere on the Reservation or elsewhere. Nothing in this Compact authorizes the use of the internet to conduct lotteries, but this provision shall not be construed to prohibit the use of the internet for purposes of communications among tribal Class III Gaming operations if each such tribe has a compact with the State of California that authorizes such Class III Gaming.

ARTICLE 4. INTEGRITY OF AUTHORIZED GAMING DEVICES

4.1 Designation of Independent Gaming Test Laboratory. The Tribe shall propose to the State Gambling Control Agency, with supporting documentation, an independent gaming test laboratory (hereinafter "Gaming Test Laboratory"), which is (a) competent and qualified to conduct scientific tests and evaluations of Lottery Devices or Lottery Device Systems and to otherwise perform the functions set out in this Article; and (b) licensed or approved to test electronic gaming devices by the states of Nevada, New Jersey, Colorado, Minnesota or Missouri, except that no such Gaming Test Laboratory may be used if determined to be Unsuitable by the State Gambling Control Agency pursuant to Article 5 of this Compact. The retention of the Gaming Test Laboratory is subject to the consent of the State Gambling Control Agency, but the State Gambling Control Agency shall not unreasonably withhold its consent if the Gaming Test Laboratory meets the standards in this Section and if all licenses the laboratory holds with gaming jurisdictions in the United States are in good standing. If, at any time, any of the Gaming Test Laboratory's licenses are suspended, terminated or subject to disciplinary action, the Gaming Test Laboratory shall discontinue its responsibilities under this Article and the Tribe shall propose a new Gaming Test Laboratory as provided herein.

4.2 Establishment of Technical Standards for Lottery Devices and Lottery Device Systems. At least ninety (90) days prior to the purchase, lease or other acquisition of any Lottery Device or Lottery Device System authorized by this Compact

4.2.1 The Tribe shall (a) request the Gaming Test Laboratory retained pursuant to Section 4.1 to prepare comprehensive technical standards for any such Lottery Device or Lottery Device System and serve such request upon the Division, and (b) cause the Gaming Test

Laboratory to submit a draft of such technical standards to the Tribe and the Division within thirty (30) days.

4.2.2 Neither party shall unreasonably withhold its consent to the draft standards submitted by the Gaming Test Laboratory.

4.2.3 The State Gambling Control Agency and the Tribe shall, within thirty (30) days of the submission of the Gaming Test Laboratory's draft technical standards, either: (a) approve such standards; or (b) serve written objections to the standards. In the event of such objections, the parties shall meet with the Gaming Test Laboratory following the objections to negotiate any requested modifications to the standards. If no agreement is reached within fifteen (15) days of commencement of the negotiations, unless the parties agree otherwise, the standards shall be deemed to be disapproved.

4.2.4 In the event the standards are disapproved under subsection 4.2.3, standards shall be adopted by another Gaming Test Laboratory agreed upon by the parties. If the parties cannot agree on a Gaming Test Laboratory within thirty (30) days of the disapproval, then the standards shall be adopted by a Gaming Test Laboratory selected (a) by an arbitrator chosen by the parties within ten (10) days thereafter or (b) failing that, by an arbitrator selected by the American Arbitration Association in Los Angeles pursuant to the request of either party. The parties shall share equally the cost of the arbitrator and of the American Arbitration Association. The new Gaming Test Laboratory's adoption of standards shall be final.

4.3 Testing and Approval of Lottery Devices and Lottery Device Systems. No Lottery Device or Lottery Device System may be acquired by the Tribe or exposed for play unless:

4.3.1 The Manufacturer or Distributor which sells, leases or distributes

such Lottery Device or Lottery Device System has been determined to be Suitable by the State Gambling Control Agency as required by this Compact; and

4.3.2 The Lottery Device or Lottery Device System, or a prototype thereof, has been tested, approved and certified by the Gaming Test Laboratory as meeting the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2, in accordance with the following process:

4.3.2.1 The Tribe shall provide, or require that the Manufacturer provide, to the Gaming Test Laboratory two (2) copies of Lottery Device or Lottery Device System illustrations, schematics, block diagrams, circuit analyses, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Gaming Test Laboratory. The Tribe shall make all such materials available to the State Gambling Control Agency upon request, subject to the confidentiality provisions of Article 8.

4.3.2.2 If requested by the Gaming Test Laboratory, the Tribe shall require the Manufacturer to transport no more than two (2) working models of the Lottery Device or Lottery Device System to a location designated by the laboratory for testing, examination or analysis. Neither the State nor the Gaming Test Laboratory shall be liable for any costs associated with the transportation, testing, examination or analysis, including any damage

to the components of the Lottery Device or Lottery Device System resulting from the testing, examination or analysis. If requested by the Gaming Test Laboratory, the Tribe shall require the Manufacturer to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination and analysis.

4.3.2.3 At the conclusion of each test, the Gaming Test Laboratory shall provide to the State Gambling Control Agency and the Tribe a report that contains findings, conclusions and a certification that the Lottery Device or Lottery Device System conforms or fails to conform to the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. If the Gaming Test Laboratory determines that it fails to conform to such requirements or technical standards, and if modifications can be made which would bring the Lottery Device or Lottery Device System into compliance, the report may contain recommendations for such modifications. The State will be bound by the findings, conclusions or certifications of the Gaming Test Laboratory for purposes of its enforcement of the provisions of this Compact if it fails to object to such findings, conclusions, or certifications within 180 days of their service on the State Gambling Control Agency.

4.3.3 The Manufacturer or Distributor has assembled and installed all Lottery Devices or Lottery Device Systems in a manner approved by

the Gaming Test Laboratory.

4.3.4 Where the Tribe seeks to acquire a Lottery Device or Lottery Device System from the same Manufacturer from which another tribe has acquired them, and has retained, with the State's consent, the same Gaming Test Laboratory that tested, approved, and certified the Lottery Device or Lottery Device System of that Manufacturer, the Tribe may submit the same report that the Gaming Test Laboratory prepared for that Manufacturer's device or system in satisfaction of the requirements under subsection 4.3.2, as long as the Gaming Test Laboratory's report contains findings, conclusions, and a certification that the Lottery Device or Lottery Device System conforms with the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2.

4.4 Modifications of Approved Lottery Devices or Lottery Device Systems.

4.4.1 No modification to the assembly or operations of any Lottery Device or Lottery Device System may be made after testing and certification unless the Gaming Test Laboratory certifies to the State Gambling Control Agency and the Tribe that the Lottery Device or Lottery Device System as modified conforms to the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. All such proposed modifications shall be described in a written request made to the State Gambling Control Agency and the Gaming Test Laboratory, which request shall contain information describing the modification and the reason therefor, and provides all documentation required by the Gaming Test Laboratory. In emergency situations where modifications are necessary to preserve the integrity of the Lottery

Device or Lottery Device System, the Gaming Test Laboratory is authorized to grant temporary certification of the modifications for up to fifteen (15) days, pending compliance with this Section.

4.4.2 With respect to any modifications proposed to the Lottery Device or Lottery Device System, other than to its assembly or operations, the Tribe shall advise the Division in writing of any such modification no less than ten (10) days prior to implementing the modification, and the Division shall have the right to direct the Tribe to seek testing and certification of the modification. However, the Tribe shall not be precluded from implementing such modification prior to any such direction by the Division. The modification shall be withdrawn if the Gaming Test Laboratory concludes that the modified Lottery Device or Lottery Device System fails to conform to the requirements specified by Article 3 or Exhibit A of this Compact or by the technical standards established pursuant to Section 4.2.

4.5 Conformity to Technical Standards. Before a Lottery Device or Lottery Device System may be exposed for play, the Tribe shall first have obtained and submitted to the State Gambling Control Agency a written certification from its Manufacturer or Distributor that upon installation, each such Lottery Device or Lottery Device System placed at the Tribe's Facility (a) conforms precisely to the exact specifications of the Lottery Device or Lottery Device System tested and approved by the Gaming Test Laboratory and (b) operates and plays in accordance with the requirements specified in Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. Authorization to operate a Lottery Device or Lottery Device System requires that it operate and play in accordance with the requirements specified by Article 3 and Exhibit A of

this Compact and by the technical standards established pursuant to Section 4.2, provided that while the failure of such Lottery Device or Lottery Device System to comply with such requirements and standards will suffice as a grounds to enjoin or otherwise terminate said Lottery Device or Lottery Device System's operation, such non-compliance will not be deemed a violation of this Compact as long as the Tribe has relied in good faith on the certification of the Manufacturer or Distributor and provided, further, that instead of an injunction or termination of the Lottery Device or Lottery Device System in the event it fails to comply with such requirements or standards, the State may, in its discretion, seek and cause to be imposed other sanctions that the circumstances warrant.

4.6 Ex Parte Communication. Neither party shall directly or indirectly communicate with the Gaming Test Laboratory, whether in writing, by telephone or otherwise, concerning the establishment of standards or the approval of the Lottery Devices or Lottery Device Systems without providing the other party with a reasonable opportunity to participate in such communication. The State and the Tribe shall ensure that copies of all written communications sent to or received from the Gaming Test Laboratory are provided to the other party.

4.7 Payment of Gaming Test Laboratory Fees. The Tribe shall be responsible for the payment of all Gaming Test Laboratory fees and costs in connection with the duties described in this Article. The Tribe shall provide copies of all Gaming Test Laboratory invoices and payments by the Tribe to the Division, which shall have the right to audit such fees pursuant to Article 6.

4.8 Gaming Test Laboratory Duty of Loyalty. The Tribe shall inform the Gaming Test Laboratory in writing that, irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty and reporting requirements run equally to the State and the Tribe.

4.9 Random Inspections. The Division may inspect one Lottery Device or Lottery Device System for each type of Indian Lottery Game specified in Exhibit A of this Compact on a random basis every six (6) months to confirm that it operates and plays in accordance with the requirements specified by Article 3 and Exhibit A of this Compact and by the technical standards established pursuant to Section 4.2. In any such inspection the Division may utilize the services of a gaming test laboratory, provided that it meets the criteria set forth in subparagraphs (a) and (b) of Section 4.1. The Tribe shall pay for all reasonable costs incurred for such inspection and testing by the Division.

ARTICLE 5. APPROVAL OF GAMING EMPLOYEES AND OTHER ASSOCIATED PERSONS

5.1 Jurisdiction Over Persons Associated with Class III Gaming.

5.1.1 The Barona Band as a governmental entity, is not subject to licensure by the State.

5.1.2 The Class III Gaming activities authorized by this Compact constitute "controlled games" within the meaning of California Penal Code section 337j(e)(1).

5.1.3 The State and the Tribe shall have concurrent jurisdiction over all Persons with respect to their association with the Tribe's Class III Gaming operation.

5.1.4 As authorized by 25 U.S.C. §§ 1321 and 1322, 18 U.S.C. section 1166(d), and 25 U.S.C. § 2710(d)(3)(C), and except as otherwise expressly provided in this Article, the State's jurisdiction under the Gambling Control Act (whether civil, criminal, or regulatory) shall extend over all Persons and entities who are or may become associated with the Tribe's Class III Gaming operation.

5.1.5 Except as otherwise expressly provided in this Article, all Persons who are or seek to become associated with the Tribe's Class III Gaming operation, and who are or could be required to apply for and obtain a state determination of Suitability under this Compact, are subject to the jurisdiction of the State Gambling Control Agency, and shall pay all fees and deposits with respect to any required applications for a determination of Suitability, to the same extent as are Persons who are or may be required to apply for a license in connection with an Off-Reservation Gambling Establishment.

5.1.6 It is the purpose of this Article to enable the State and the Tribe to prevent employment of Unsuitable Persons in any position that may

have a significant influence over the conduct of a Class III Gaming activity, and to prevent the conduct of business transactions related to Class III Gaming between the Tribe and Unsuitable Persons.

5.1.7 Except as expressly provided in this Article, other than the parties to this Compact, no Person who is or may be subject to the jurisdiction of the State under the Gambling Control Act by virtue of this Compact, including members of the Tribe, shall have a remedy under this Compact against the State, or any official or agency thereof, as a result of any action taken, not taken, or threatened to be taken by the State. Except as expressly provided otherwise in this Article, the availability of any remedy for such action, inaction, or threatened action shall be governed solely by the Gambling Control Act.

5.2 Tribal Gaming Commission.

5.2.1 In order to carry out the Tribe's government-to-government relationship with the State in the area of licensing and regulation of personnel associated with the Tribe's Class III Gaming operation and to protect the health, safety and welfare of members of the public and the Tribe, the Tribe shall enact an ordinance that establishes a Tribal Gaming Commission and provides that the Tribal Gaming Commission, as an agency of the Tribe's government, is bound by the provisions of this Compact.

5.2.2 The Tribal Gaming Commission shall have the primary responsibility under the Compact for the on-site regulation of Persons associated with the Tribe's Class III Gaming operation.

5.2.3 No Person may associate with the Tribe's Class III Gaming operation, unless that Person possesses all necessary licenses and permits from the Tribal Gaming Commission.

5.2.4 The Tribal Gaming Commission shall be independent of the Tribe's Gaming operation and shall have at least the following powers and responsibilities:

5.2.4.1 To employ qualified personnel who shall have unrestricted access to the Tribe's Class III Gaming operation in order to carry out the Tribal Gaming Commission's responsibilities under this Compact.

5.2.4.2 To perform the regulatory functions assigned to the Tribe by this Article and to the Tribal Gaming Commission by other provisions of this Compact.

5.2.4.3 To conduct background investigations and issue permanent and temporary licenses and work permits to employees of, and other Persons associated with, the Tribe's Class III Gaming operation, as required by this Compact or tribal ordinance, and to renew, suspend, deny or revoke said licenses or permits.

5.2.4.4 To impose fines or other sanctions within the Tribe's jurisdiction against Persons associated with the Tribe's Class III Gaming operation including, but not limited to employees thereof.

5.2.4.5 To timely make its background investigation reports and actions it takes on licenses and work permits available to the State Gambling Control Agency as required by this Compact.

5.2.4.6 To designate a Person to serve as the Tribe's principal liaison with the Division and/or Commission in connection with the implementation of the provisions of this Compact.

5.2.5 The Tribal Gaming Commission may perform other functions concerning the Tribe's Class III Gaming operation where assigned by the Tribe or requested by the State Gambling Control Agency, so long as said functions are consistent with its responsibilities under this Compact.

5.2.6 The Tribe shall enact a conflict-of-interest code for the Tribal Gaming Commission which, at a minimum, shall include the following provisions:

5.2.6.1 Members of the Tribal Gaming Commission and their Immediate Family Members shall not have any financial interest in the gaming regulated by the Tribal Gaming Commission, other than a financial or similar benefit earned pursuant to tribal ordinance or resolution solely by virtue of being members of the Tribe.

5.2.6.2 No Tribal Gaming Commission member shall participate in the consideration of any decision before the Tribal Gaming Commission involving his or her Immediate Family Member or any matter in which the member or his or her Immediate Family Member could be deemed to have a financial interest under California Government Code section 87103, other than a financial or similar benefit earned pursuant to tribal ordinance or resolution solely by virtue of being a member of the Tribe.

5.3 Suitability of Persons Associated With Class III Gaming, Generally.

5.3.1 The Tribe shall not conduct Class III Gaming in association with any Person, including a member of the Tribe, who is required to apply for a state determination of Suitability, if the Person's application for

such a determination has been denied, if the Person's state determination of Suitability has been suspended or revoked, or if the Person's state determination of Suitability has expired and the Person has failed to reapply.

5.3.2 The Tribal Gaming Commission may require any Person to apply for and obtain a state determination of Suitability as a condition of association with the Tribe's Class III Gaming operation.

5.3.3 The State Gambling Control Agency may, at any time, require that a Person described in California Business and Professions Code sections 19842 or 19842A, or the implementing regulations of the State Gambling Control Agency, including a member of the Tribe, apply for a determination of Suitability if the Person is associated with the conduct of Class III Gaming. The terms "gambling enterprise" or "gambling establishment," as used in those statutes, shall be understood to refer to the Tribe's gaming operation. The Manufacturer and any Distributor of a Lottery Device or Lottery Device System authorized by this Compact and operated at the Facility, and a Gaming Test Laboratory selected pursuant to Section 4.1 or subsection 4.2.4, is a Person who may be required to apply for a determination of Suitability by the State Gambling Control Agency.

5.4 Suitability of Tribal Members Associated with Class III Gaming

5.4.1 Prior to requiring the filing of an application by an enrolled member of the Tribe for a determination of Suitability pursuant to subsection 5.3.3, the Director shall advise the Tribal Gaming Commission of those concerns that warrant an application for a determination of Suitability, in order to allow the Tribe an opportunity to resolve informally those concerns consistent with protecting the public

interest. Resolution of those concerns through a government-to-government consultation is preferred; however, if the State's concerns are not resolved by this informal process within ten (10) days, then the following procedures shall apply, depending upon whether Phase I or Phase II of the Gambling Control Act is in effect:

A. Phase I Procedures:

(1) The Director shall serve on the Tribe a written request that the Tribe require the member to apply for a determination of Suitability.

(2) Within ten (10) days after receiving a copy of the request, the Tribe may do one of the following:

(a) Require the member to apply for a state determination of Suitability, in which case the member shall file an application for a state determination of Suitability within forty (40) days from the date of service of the Director's request under subsection 5.4.1.A(1). Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.3.1, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.4.1.A(2)(a) to constitute a denial of an application for a determination of Suitability.

(b) File an objection with the Board on the ground that the member is not a Person described in California Business and Professions Code section 19842, or the implementing regulations of the Division, or on the ground that the member is not and shall not be associated with the conduct of Class III Gaming. No Person other than the Tribe may file an objection under this subsection.

(3) Upon receipt of a timely filed objection pursuant to subsection 5.4.1.A(2)(b), the Board shall schedule an informal hearing on the objection. The decision of the Board is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(4) If after the informal hearing, the Board affirms the Director's action, the Tribe shall, within ten (10) days after service of notice of the Board's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of the notice of the Board's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of Section 5.3.1, the State-

may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.4.1.A(4) to constitute a denial of an application for a determination of Suitability.

B. Phase II Procedures:

(1) The Director shall make a written recommendation to the Commission.

(2) Upon receipt of the Director's recommendation, the Commission shall schedule an informal hearing with the Tribe. If the Director recommends an order that the member apply for a determination of Suitability, the Tribe may object to the recommendation on the ground that the member is not a Person described in California Business and Professions Code section 19842A or the implementing regulations of the Commission, or on the ground that the member is not and shall not be associated with the conduct of Class III Gaming. The decision of the Commission is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(3) If, after the informal hearing, the Commission requires the filing of an application for a determination of Suitability, the Tribe shall, within ten (10) days after service of notice of the Commission's action, require the member to apply for a state determination of

Suitability. The member shall file an application for state determination of Suitability within forty (40) days after the date of service of notice of the Commission's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.3.1, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in Section 5.4.1.B(3) to constitute a denial of an application for a determination of Suitability.

5.5 Suitability of Key Employees, Generally.

5.5.1 Except as provided in Section 5.6, the Tribe shall require every Person occupying a Key Employee position to apply for a state determination of Suitability not later than ten (10) days after commencement of any responsibilities or duties of the Key Employee position.

5.5.2 The Tribe shall not permit any Person, including a member of the Tribe, to occupy a Key Employee position if the Person's application for a state determination of Suitability has been denied, or if the Person's state determination of Suitability has been suspended or revoked, or if the Person's state determination of Suitability has expired and the Person has failed to reapply.

5.6 Suitability of Key Employees, Tribal Members.

5.6.1 An enrolled member of the Tribe who occupies a Key Employee position shall not be required to apply for a state determination of

Suitability unless requested to do so by the Director.

5.6.2 Prior to requiring the filing of an application by an enrolled member of the Tribe, the Director shall advise the Tribal Gaming Commission of those concerns that warrant an application for a determination of Suitability, in order to allow the Tribe an opportunity to resolve informally those concerns consistent with protecting the public interest. Resolution of those concerns through a government-to-government consultation is preferred; however, if the State's concerns are not resolved by this informal process within ten (10) days, then the following procedures shall apply depending on whether Phase I or Phase II of the Gambling Control Act is in effect:

A. Phase I Procedures:

(1) The Director shall serve on the Tribe a written request that the member apply for a determination of Suitability.

(2) Within ten (10) days after service of a copy of the request, the Tribe may do one of the following:

(a) Require the member to apply for a state determination of Suitability, in which case the member shall file an application for a state determination of Suitability within forty (40) days from the date of service of the Director's request under subsection 5.6.2.A(1). Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is

final and non-reviewable. For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.6.2.A(2)(a) to constitute a denial of an application for a determination of Suitability.

(b) File an objection with the Board on the ground that the member is not a Key Employee as defined in this Compact. No Person other than the Tribe may file an objection under this subsection.

(3) Upon receipt of a timely filed objection pursuant to subsection 5.6.2.A(2)(b), the Board shall schedule an informal hearing on the objection. The decision of the Board is not reviewable except by an action in state court initiated by the Tribe or the enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(4) If, after the informal hearing, the Board affirms the Director's action, the Tribe shall, within ten (10) days after service of notice of the Board's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of notice of the Board's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable

cause shown, however, the Director's decision concerning the extension is final and non-reviewable.

For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in this subsection 5.6.2.A(4) to constitute a denial of any application for a determination of Suitability.

B. Phase II Procedures:

(1) The Director shall make a written recommendation to the Commission.

(2) Upon receipt of the Director's recommendation, the Commission shall schedule an informal hearing with the Tribe. If the Director recommends an order that the member apply for a determination of Suitability, the Tribe may object to the recommendation on the ground that the member is not a Person described in California Business and Professions Code section 19842A or the implementing regulations of the Commission, or on the ground that the member has not and shall not be associated with the conduct of Class III Gaming. The decision of the Commission is not reviewable except by an action in state court initiated by the Tribe or enrolled member in issue, subject to the provisions of California Business and Professions Code section 19804.

(3) If, after the informal hearing, the Commission requires the filing of an application for a determination of Suitability, the Tribe shall, within ten (10) days after

service of notice of the Commission's action, require the member to apply for a state determination of Suitability. The member shall file an application for a state determination of Suitability within forty (40) days after the date of service of notice of the Commission's action. Nonetheless, the foregoing period may be further extended by the Director on the basis of any reasonable cause shown; however, the Director's decision concerning the extension is final and non-reviewable. For purposes of subsection 5.5.2, the State may, in its discretion, deem a failure to file an application for a determination of Suitability within the time period specified in subsection 5.6.2.B(3) to constitute a denial of an application for a determination of Suitability.

5.6.3 Safeguards for Current Key Employees. The fact that a Key Employee was associated with the Tribe's Class III Gaming activities prior to the execution of this Compact shall not in and of itself be a ground for denying, suspending, or revoking a state determination of Suitability.

5.7 Term of a State Determination of Suitability. The term of a state determination of Suitability shall be one (1) year from the date of issuance.

5.8 Required Reports.

5.8.1 The Tribe shall provide the Division with all documents, reports, records, and audits that are required from owners of Off-Reservation Gaming Establishments under the Gambling Control Act and regulations of the State Gambling Control Agency, within the time period and in the manner required of all such owners, except for

audited financial statements, which are governed by Article 6 of this Compact, or to the extent that any such requirement conflicts with an express provision of this Compact regarding reporting.

5.8.2 The State Gambling Control Agency may, after consultation with the Tribe, adopt reasonable protocols for the submission of documents, reports, records, and audits that are not required from Off-Reservation Gambling Establishments, if the documents, reports, records, or audits peculiarly relate to the conduct of the Class III games authorized by this Compact.

5.9 Employee Work Permits.

5.9.1 No Person shall be employed as a Gambling Enterprise Employee in the Tribe's Class III Gaming operation unless the Person has first applied for, obtained, and renews annually a work permit from the Tribal Gaming Commission; provided that during the first thirty (30) days following the effective date of this Compact pursuant to Section 2.1, the Tribe may, in its discretion, issue a temporary work permit to an employee who has not filed an application therefor, except that the temporary work permit shall expire thirty (30) days from the date of issuance unless an initial application has been filed and transmitted to the Division in accordance with subsection 5.9.2.

5.9.2 An initial application filed with the Tribal Gaming Commission for a work permit shall be accompanied by two duplicate completed fingerprint cards, on a form approved by the Division, and two duplicate photographs of the applicant, which photographs must have been taken not earlier than three (3) months before the date of filing the application.

5.9.2.1 The Tribe shall transmit, for receipt by the Division within forty-eight (48) hours, excluding Saturdays,

Sundays, and state holidays, a copy of all initial applications for work permits, together with the following:

(1) One of the two fingerprint cards.

(2) One of the two photographs.

(3) An initial application fee of fifty dollars ($50) for each application; provided however, that the State may reduce the amount of the initial application fee to twenty-five dollars ($25) in consideration of the background investigation that was conducted by the Tribal Gaming Commission; provided further that, after January 1, 2001, the application fee herein shall be changed to equal the application fee charged by the Division for work permits in connection with Off-Reservation Gambling Establishments.

5.9.2.2 The Tribe shall transmit, for receipt by the Division within forty-eight (48) hours, excluding Saturdays, Sundays, and state holidays, a copy of all renewal applications for work permits, together with a twenty-five dollar ($25) renewal fee for each application provided that after January 1, 2001, the renewal fee shall be changed to equal the renewal fee charged by the Division for work permits in connection with Off-Reservation Gambling Establishments.

5.9.3 The Tribe may, in its discretion, issue a temporary work permit to the applicant.

5.9.4 The provisions of this subsection 5.9.4 and of subsections 5.9.4.1

5.9.4.2 and 5.9.4.3 apply to all applicants who are not enrolled members of the Tribe. If, within ninety (90) days of receipt by the Division of the application, the State has not notified the Tribe of its objection to the applicant, the application for the employee work permit shall be deemed approved by the State, and the Tribe, in its discretion, may issue, renew, or deny the application; provided that nothing herein shall be construed to affect the State's powers under subsection 5.9.7, or the Tribe's obligation under subsections 5.5.2 and 5.9.8; provided further that the ninety (90) day period described in this subsection shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. If the Division objects to the issuance of a work permit, written notice of the objection shall be served on the applicant (or the employee) and on the Tribe.

5.9.4.1 In Phase I of the administration of the Gambling Control Act, procedures for obtaining review of the Division's objection, if any, shall be governed by California Business and Professions Code section 19910.5, subdivisions (c) through (e), inclusive, and related regulations of the Division and Board. In Phase II of the administration of the Gambling Control Act, such procedures shall be governed by California Business and Professions Code section 19910.5A, subdivisions (c) through (e), inclusive, and related regulations of the Commission.

5.9.4.2 Upon receipt of notice from the Division that no request for review of the Division's objection was filed within the time required by statute and the State

Gambling Control Agency's regulations, the Tribal Gaming Commission shall cancel any temporary work permit and deny the application.

5.9.4.3 Where review of the Division's objection has been sought, written notice of the subsequent action by the Board or the Commission, as applicable, shall be served on the applicant and on the Tribe. Within ten (10) business days after service of notice of an adverse action by the Board or the Commission, the Tribal Gaming Commission shall cancel any temporary work permit and deny the application, unless the effectiveness of the state agency's order is stayed by a state court; provided however, that any action to review the decision and order of the state agency shall be governed by California Business and Professions Code section 19804.

5.9.5 The provisions of this subsection 5.9.5 apply only to applicants who are enrolled members of the Tribe. If, within ninety (90) days of receipt by the Division of the application, the Division objects to the issuance of a work permit, written notice of the objection shall be served on the applicant (or the employee) and on the Tribe; provided however, that the ninety (90) day period described in this subsection shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. The Tribal Gaming Commission and the Division shall thereupon confer over the question whether the work permit should be denied by the Tribal Gaming Commission, whose decision shall be determinative of the issue. However, nothing herein shall be construed to affect the

State's powers under subsection 5.9.7, or the Tribe's obligation under subsections 5.5.2 and 5.9.8.

5.9.6 An employee work permit shall expire if the holder ceases to be employed as a Gambling Enterprise Employee in the Facility for more than ninety (90) days.

5.9.7 The State may revoke a work permit issued by the Tribal Gaming Commission, whether to a member of the Tribe or otherwise, on any of the grounds stated in California Business and Professions Code sections 19912 or 19912A, in accordance with proceedings conducted pursuant to Article 9.5 (commencing with section 19920) of the California Business and Professions Code, including, in Phase II, California Business and Professions Code sections 19920A and 19921A, and related regulations of the Division, Board, or Commission.

5.9.8 The Tribe shall terminate any employee whose work permit has been revoked pursuant to this Section, within ten (10) business days after service of notice of the action by the Board or the Commission, unless the effectiveness of the state agency's action is stayed by a state court, provided however, that any action to review the decision and order of the state agency shall be governed by California Business and Professions Code section 19922.

5.10 Application and Investigation Procedures. Applications to, and background investigations by, the State, including payment of all fees and deposits, shall be governed by the Gambling Control Act and regulations of the State Gambling Control Agency, except to the extent that those regulations conflict with express provisions of this Compact.

5.11 Transportation of Lottery Devices.

5.11.1 The Tribe shall keep a written list of the date of receipt of each

Lottery Device and the serial number of each Lottery Device, and shall provide such list to the Director immediately upon request. All records required by this Section must be maintained for five years.

5.11.2 The Tribe shall not permit the removal, disposal, or transportation of a Lottery Device from the Reservation without the written approval of the Director. Applications for approval to remove, dispose of, or transport a Lottery Device from the Reservation must be made, processed, and determined in such manner and using such forms as the Director may reasonably prescribe.

5.11.3 If the Director does not deny the application for approval to remove, dispose of, or transport the Lottery Devices off the Reservation within five (5) working days of receipt of a completed application, the application shall be deemed to be approved; provided however, that the five (5) day period shall not begin to run during any period in which the conduct of Class III Gaming is precluded under subsection 18.3.1. An application may be denied for either of the following reasons:

5.11.3.1 The Lottery Device would be transported to a destination where possession or operation of the device is unlawful.

5.11.3.2 The Person distributing, transporting, or receiving the Lottery Device is or would be found to be Unsuitable for association with gambling in California.

5.11.4 Upon request, the Tribe shall permit an agent of the Division to inspect all Lottery Devices prior to their transport off the Reservation.

5.11.5 After the effective date of this Compact, Persons who knowingly distribute, or transport a Lottery Device or gambling device to a

destination where possession or operation of the device is unlawful are deemed to be Unsuitable for association with gambling in California. Nothing herein shall be construed to diminish the authority of the State Gambling Control Agency to base a determination of Unsuitability on similar conduct occurring prior to the effective date of this Compact.

ARTICLE 6. ACCOUNTING AND AUDITS

6.1 Books and Records. The Tribe shall make and keep books and records which accurately and fairly reflect each day's transactions, including but not limited to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid, and other financial transactions of or related to the Tribe's gaming operations, so as to permit preparation of monthly and annual financial statements in conformity with Generally Accepted Accounting Principles as applied to the gaming industry and to maintain daily accountability, and which shall be susceptible of an annual audit in accordance with this Compact. Permanent accounting books and records shall be maintained in accordance with Generally Accepted Accounting Principles. A chart of accounts shall be adopted that will ensure consistency, comparability, and effective disclosure of financial information. To the extent reasonable and practicable, and not inconsistent with the Tribe's obligations under federal law, the chart of accounts shall conform to the chart of accounts (if any) required to be maintained by Off-Reservation Gambling Establishments under regulations of the State Gambling Control Agency.

6.2 Additional Reports and Records Related to Financial Transactions.

6.2.1 The Tribe shall maintain all records and shall make all reports required by the Bank Secrecy Act, Pub. L. 91-508, as amended, and the regulations for the implementation thereof, including 31 CFR Part 103, as amended from time to time. If the Tribe, for any reason, is not subject to the requirements of the Bank Secrecy Act, or the implementing regulations adopted thereunder, then the Tribe shall be subject to the requirements imposed upon financial institutions under Title 11 (commencing with section 14160) of Part 4 of the California Penal Code.

6.2.2 Notwithstanding 31 CFR section 103.51, agents of the Department of Justice shall have access to and may inspect records required to be maintained pursuant to Subpart C (commencing with section 103.31) of 31 CFR Part 103, subject to the provisions of Article 8 of this Compact.

6.2.3 If requested to do so by the Division, the Tribe shall contemporaneously submit to the Division copies of all reports, letters, and other documents filed with the National Indian Gaming Commission pursuant to 25 CFR section 571.13. All such reports, letters, and documents shall be treated in accordance with Article 8 of this Compact.

6.3 Class III Accounting and Auditing Procedures.

6.3.1 The Tribe shall, at its own expense, cause the annual financial statements of the Class III Gaming operations to be audited in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry by a certified public accountant licensed by the State Board of Accountancy. Such audit may be conducted in conjunction with any other independent audit of the Tribe, provided that the requirements of this Section are met, and provided further that, except as otherwise provided in this Compact, the information in said audit not related to Class III Gaming need not be submitted to the Division under subsections 6.3.3 and 6.3.6. Prior to engaging a certified public accountant or accountants, the Tribe shall notify the Division of its intended selection or selections and shall take into consideration objections raised by the Division concerning the competency or trustworthiness of the Person or Persons chosen.

6.3.2 The annual financial statements shall be prepared on a comparative

basis for the current and prior calendar or fiscal year and shall present the financial position and results of operations in conformity with Generally Accepted Accounting Principles as applied to the gaming industry.

6.3.3 A copy of the current audited financial statement, together with the report thereon of the Tribe's independent auditor, shall be submitted on an annual basis to the Division not later than one hundred twenty (120) days following the end of the accounting period under review.

6.3.4 The Tribe shall require its independent auditor to render the following additional reports:

6.3.4.1 A report on the material weaknesses, if any, in accounting and internal controls.

6.3.4.2 A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Tribe's Class III Gaming operation has followed in all material respects during the period covered by the examination the system of accounting and internal controls adopted by the Tribe. Whenever in the opinion of the independent auditor, the Tribe's Class III Gaming operation has deviated from the system of accounting and internal controls or the accounts, records and control procedures examined are not maintained by the Tribe in accordance with the system of accounting and internal controls adopted by the Tribe, the report shall enumerate such deviations in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry. The independent auditor

shall also report on areas of the system no longer considered effective, and shall make recommendations in writing regarding improvements in the system of accounting and internal controls.

6.3.5 The Tribe's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work papers in connection therewith, for a period of not less than three (3) years.

6.3.6 A copy of the reports required by subsection 6.3.4 and a copy of any other reports rendered by the Tribe's independent auditor on accounting and internal controls, administrative controls, or other matters relating to the Tribe's accounting or operating procedures with respect to its Class III Gaming operation shall be submitted to the Division by the Tribe not later than one hundred twenty (120) days following the end of the accounting period under review, or within thirty (30) days of receipt, whichever is earlier.

6.3.7 The Division shall, upon its request, be provided copies of any engagement letter and management's representation letter, and shall be given reasonable access to the auditor's work papers as the Division deems necessary to ensure compliance with this Compact by the Tribe.

6.3.8 If an independent auditor who was previously engaged to audit the Tribe's financial statements resigns or is dismissed as the Tribe's auditor, or another accountant is engaged as an independent auditor of the Tribe's Class III Gaming operations, the Tribe shall submit a report to the Division within ten (10) days following the end of the month in which such event occurs, setting forth the following:

6.3.8.1 The date of such resignation, dismissal or engagement.

6.3.8.2 Whether in connection with the audits of the two most recent years preceding such resignation, dismissal, or engagement there were any material disagreements with the former auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former auditor caused or would have caused him to make reference in his report to the subject matter of the disagreement, including a description of each such disagreement. Those disagreements to be reported include those both resolved and unresolved.

6.3.8.3 The Tribe shall request the former auditor to furnish to the Tribe a letter addressed to the Division stating whether he or she agrees with the statements made by the Tribe pursuant to subsection 6.3.8. Such letter shall be submitted to the Division as an exhibit to the reports required by subsection 6.3.4.

6.3.9 Nothing herein shall be construed to affect the right of the Department of Justice to conduct audits for the purpose of confirming compliance by the Tribe with the provisions of this Compact. Access to books and records for purpose of such audits shall be governed by Article 7.

ARTICLE 7. MONITORING

7.1 Access. The Division shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribe's Class III Gaming operations to ensure that said operations are conducted in compliance with the provisions of this Compact. In order to properly monitor the Tribe's Class III Gaming operations, duly authorized personnel of the Division shall have the following access:

7.1.1 Access to Public Areas. The Division shall have free and unrestricted access to all public areas in the Facility at any time the Facility is open to persons other than employees of the Facility, with or without giving prior notice to the Tribe. Areas in the Facility that are temporarily closed to the public shall continue to be treated as public areas for purposes of access under this subsection.

7.1.2 Access to Non-Public Areas.

7.1.2.1 For purposes of subsection 7.1.2, the following terms shall have the following meanings:

A. "Adequate justification" means that the Division has a reasonable suspicion, based on information in its possession, that the Compact is being violated. Nothing herein shall be construed as requiring the Division to disclose the basis for its suspicion as part of the notice required under subsection 7.1.2.2.A; however, the State may disclose the basis of its suspicion if it so chooses.

B. The "notification" described in subsection 7.1.2.2.B shall be effective only if it includes the following:

(1) A listing of the names of all personnel authorized by the Division to make the specific

inspection of the non-public areas that has been requested.

(2) The name, title, and telephone number of a supervisory official in the Division who can immediately confirm to the Tribal Gaming Commission's duty officer that the Division representatives who are listed in accordance with subsection 7.1.2.1.B(1) are authorized to make the inspection.

C. "Duty officer" means a representative of the Tribal Gaming Commission with authority to admit authorized representatives of the State to non-public areas of the Facility.

D. The "identification" required under subsection 7.1.2.2.D shall be:

(1) A facially valid credential identifying the bearer as a duly authorized agent or representative of the Division, together with

(2) A facially valid identification badge issued by the Tribe to the Division pursuant to subsection 7.2.

7.1.2.2 Except as set forth in subsection 7.1.2.3, authorized personnel of the Division shall be granted free and unrestricted access to all non-public areas of the Facility for the purpose of monitoring compliance with this Compact, provided that all of the following four conditions are satisfied:

A. The Division has represented in writing that it has

adequate justification for the access at or before the time access to the non-public areas is requested.

B. The Division has given at least 24 hours' prior written notification to the Tribal Gaming Commission of the intended visit;

C. The authorized Division personnel has contacted the Tribal Gaming Commission duty officer at the time that access is sought, and

D. The authorized Division personnel show the Tribal Gaming Commission duty officer proper identification at the time that access is sought and the duty officer is able to confirm by telephone, facsimile or otherwise with a supervisory official of the Division that the Division personnel are authorized to make the inspection.

7.1.2.3 Notwithstanding anything to the contrary in subsection 7.1.2, within any calendar year, the Division may have access to non-public areas of the Facility:

A. On up to twelve (12) occasions, without the representation of the justification required under subsection 7.1.2.2.A; and

B. On up to an additional six (6) occasions, without the notice required in subsection 7.1.2.2.B above, but only if:

(1) Adequate justification and the information described in subsections 7.1.2.1.B.(1) and (2) is given in writing to the Tribal Gaming Commission duty officer at the time that the

non-noticed access is sought, and

(2) The provisions of subsection 7.1.2.2.D are satisfied.

7.1.2.4 If the effective date of the Compact does not fall on a date in January, the maximum number of occasions on which access is allowed under subsections 7.1.2.3.A and B during the first calendar year of the Compact shall be prorated for the remainder of that calendar year. If such proration results in a fraction, the number of occasions shall be rounded up to the next whole number.

7.1.2.5 The Tribe shall ensure that the Tribal Gaming Commission's duty officers are provided with updated information concerning the number of official visits made pursuant to subsection 7.1.2.3.

7.1.2.6 Representatives of the Tribal Gaming Commission shall be permitted to accompany the Division's representatives during visits to non-public areas of the Facility.

7.1.2.7 While exercising access in non-public areas of the Facility pursuant to this Section, authorized Department personnel shall display on their person identification badges issued by the Tribe, as described in Section 7.2, together with photo identification badges issued by the Department.

7.1.3 Books and Records. Notwithstanding subsection 7.1.2, upon reasonable notice to the Tribal Gaming Commission, personnel authorized by the Department, including, without limitation, auditors

on contract with the Department, shall be granted unrestricted access, during reasonable business office hours, to all books and records of the Facility for the purpose of monitoring the Tribe's compliance with this Compact and, as reasonably necessary, copying books and records for said purpose. The Tribe shall make available to the Department sufficient office space in which Department personnel may inspect records and maintain files.

7.1.4 Non-Interference with Employees. In making any inspection of the Facility, personnel of the Department shall not interfere with the performance of duties by employees of the Facility by direct interaction with Facility employees. Upon reasonable request therefor, the Tribe shall use its best efforts to make Facility employees available for confidential interviews by Department personnel at all reasonable times when the Facility is open for business; provided that a representative of the Tribal Gaming Commission shall be notified and may attend such interviews, but upon the request of the Department's agent all other persons shall be excluded. Nothing herein shall be construed to preclude the Department from interviewing Facility employees who are agreeable thereto after work outside the workplace and outside the presence of tribal officials, nor shall anything herein be construed to preclude the Department's auditors from requesting books, records, or information from Facility employees with responsibility for such books, records, or other information.

7.2 Tribal Badges. Not later than fifteen (15) days after the effective date of this Compact, the Tribe shall deliver to the Division ten (10) identification badges to be used by authorized Department personnel in carrying out their duties under this article. Such identification badges shall be made of a

durable material permitting repeat uses of the badge. In the event the Tribe makes changes in identification badges, and not less than thirty (30) days before the effective date of those changes, the Tribe shall forthwith deliver ten (10) new badges to the Division for use by authorized personnel. Failure by the Tribe to deliver currently recognized identification badges to the Division shall constitute justification for authorized personnel to enter upon public and non-public areas of the Facility with Department identification alone. The Division shall ensure that identification badges supplied by the Tribe are kept in a secure place and are distributed only to authorized Department personnel for use in carrying out its duties or powers under this Compact.

7.3 Monitoring Reports. Within seventy-two (72) hours following any such monitoring visit or inspection in which any alleged violation is noted, the Division shall provide the Tribal Gaming Commission with a report noting any alleged violation and describing each such violation in sufficient detail to make correction possible, unless the Division has reasonable cause to believe that the Tribe or Tribal Gaming Commission is participating in said violation.

7.4 Law Enforcement Unaffected. This Article shall not affect any access or rights provided to state and local law enforcement officers under Article 14.

ARTICLE 8. CONFIDENTIALITY

8.1 Purpose. Disclosure of financial and other information and records by the Tribe pursuant to this Compact is essential to the ability of the State to ensure compliance by the Tribe with the terms and conditions of this Compact and is therefore necessary for the protection of the public health, safety, and welfare of the people of California. The confidentiality provisions of this Article are necessary to ensure ongoing and candid disclosure of information by the Tribe as required by this Compact.

8.2 Public Records Act. In the event of any request to the State under the California Public Records Act seeking disclosure of records obtained from the Tribe pursuant to this Compact or of records containing information obtained from the Tribe pursuant to this Compact, where the record has been designated "TRADE SECRET" or "PERSONAL INFORMATION" pursuant to Section 8.3, the State shall object to disclosure on the basis of Government Code section 6255 on the ground that the Tribe and the State agree that the public interest served by not making the disclosure clearly outweighs the public interest served by disclosure of the record. In the event that a Person institutes legal proceedings for the purpose of obtaining records pursuant to such a request, the State shall give reasonable prior notice to the Tribe of the action and will defend its assertion of the exemptions identified in its response to the Public Records Act request, provided however, that if the State, after consultation with the Tribe, determines that the confidentiality of the record has been waived, the State shall so notify the Tribe and need no thereafter defend its assertion of the exemption, in which case the State shall nevertheless withhold release of the record for two (2) court days unless otherwise ordered by a court; provided further, that the State shall have no duty to appeal from an adverse ruling.

8.3 Trade Secrets and Personal Information. The State shall preserve the

confidentiality of trade secrets and personal information obtained from the Tribe in accordance with the provisions of this Section:

8.3.1 The Tribe is entitled to designate any record provided to the State which the Tribe believes constitutes a trade secret, as defined under California Civil Code section 3426.1, or constitutes personal information under the Information Practices Act of 1977, California Civil Code section 1798 *et seq.*, by marking on the first page of the document "TRADE SECRET" or "PERSONAL INFORMATION," respectively. The Tribe shall exercise good faith in making this designation.

8.3.2 In any case where the State has removed records from the Facility and the Tribe has not had an opportunity to examine those records for purposes of making a designation under this Section, the records shall be presumed to be trade secrets and personal information for a period of ten (10) days from the date on which the Tribe is given notice of the records that have been removed from the Facility. At the expiration of the 10-day period, records that have not been so designated by the Tribe shall no longer enjoy a presumed status as trade secrets or personal information.

8.3.3 The State may dispute the Tribe's designation of "TRADE SECRET" or "PERSONAL INFORMATION" pursuant to binding arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association in accordance with the procedures set forth in subsection 17.2.10.2 to 17.2.10.5.

8.3.4 Where any record is designated "PERSONAL INFORMATION," the State shall not voluntarily disclose the record except as permitted by the Information Practices Act of 1977, California Civil Code section 1798 *et seq.*

8.3.5 Where any record is designated "TRADE SECRET," the State shall not voluntarily disclose such record to any Person who is not an employee or official of the federal, state or local government, acting in his or her official capacity, or is not a consultant, accountant, or auditor performing services under contract with the State, unless required by court order or by subpoena or as provided under subsection 8.3.8. The State may only disclose designated records to an accountant, auditor or other consultant whom the State has retained if it advises the accountant, auditor, or consultant in writing that such information is confidential and obtains a written agreement from that Person that the confidentiality of the records will be maintained.

8.3.6 Disclosure of any record by the Tribe to the State or a representative of the State pursuant to this Compact shall not constitute a waiver by the Tribe of any privilege that the Tribe is entitled to claim under sections 1060 or 1061 of the California Evidence Code.

8.3.7 Where disclosure of designated records that the State may not voluntarily disclose is required by a court order or subpoena of a legislative, administrative, or judicial body, the State shall give the Tribe reasonable prior notice, or where it is not reasonably practicable to give such prior notice, the State shall request the court or other body to provide the Tribe with a reasonable opportunity to resist the order or subpoena. Nothing in this subsection shall be construed to prohibit the State from making any disclosure required by law.

8.3.8 Nothing in this Article shall be construed to prevent the State from disclosing records designated by the Tribe pursuant to subsection 8.3.1, or presumed confidential under subsection 8.3.2, in any

criminal, civil, or regulatory action, or arbitral proceeding, to which the State is a party, where nondisclosure would compromise the State's ability properly or effectively to carry out its governmental responsibilities; provided however, that the State shall give prior notice to the Tribe of its intent to disclose such records, unless such notice is impracticable under the circumstances or would compromise the State's ability to properly or effectively carry out its governmental responsibilities. Where such records are to be filed or lodged with a judicial or administrative body, the State shall seek to file or lodge such records under seal unless the State has determined that such action would compromise its ability properly or effectively to carry out its governmental responsibilities. Before the State discloses such records to another party in any such action or proceeding (other than to the Tribe or any of its agents who had access to the records), it shall use its best efforts to obtain a stipulation for a protective order from that party, which stipulation shall prevent the party from disclosing or using the records for any purpose not related to the action or proceeding.

§ 4 Breach of Confidentiality. The Tribe shall be entitled to invoke all statutory and common law remedies for breach of confidentiality of those records deemed confidential under subsections 8.3.1 through 8.3.3 inclusive, in accordance with the Compact, the Information Practices Act of 1977 (commencing with California Civil Code section 1798), and the Uniform Trade Secrets Act (commencing with California Civil Code section 3426); provided however:

A. Nothing in this Article shall be construed independently to create any right of action for monetary damages that does not otherwise exist in statute or at common law.

B. Nothing in this Article shall be construed to relieve the Tribe or any other Person of any obligation imposed by Division 3.6 (commencing with section 810) of Title 1 of the California Government Code.

C. Nothing in this Article shall be construed as a waiver of any immunity or defense available to the State or to any state or local government entity, or to any employee or official of the State or of any state or local governmental entity, under any state law, including but not limited to, any provision of Division 3.6 (commencing with section 810) of Title 1 of the California Government Code, or any federal law.

D. Disclosure of records made confidential by this Article shall not constitute a violation of this Compact or of any duty owed to the Tribe or any Person, if disclosure is compelled by a facially valid subpoena, warrant, or court order or is authorized by this Compact.

E. Nothing in this Article shall be construed as consent by the State, or by any agent or employee of the State, to suit in federal court.

8.5 Law Enforcement Unaffected. Nothing in this Article shall affect the powers of state or local law enforcement personnel to investigate and enforce the criminal laws of the State of California.

ARTICLE 9. LIMITATIONS ON GAMING

9.1 Purpose. Article IV, Section 19(e) of the California Constitution provides that the Legislature "has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey." The parties to this Compact intend to avoid any violation of this prohibition. Further, the State has asserted an interest in avoiding undue concentrations of electronic gaming devices in a single location and within California in light of this constitutional prohibition and the fact that no other organization in the state has such concentrations.

9.2 No Nevada- or New Jersey- Style Casinos.

9.2.1 The Tribe shall not operate or conduct, or cause to operate or conduct, any Class III Gaming in any Hotel or structure which houses a Hotel.

9.2.2 No card games, including but not limited to Class II card games, shall be played in the same room in which any non-card Class III Gaming is conducted. Any non-card Class III Gaming must be conducted in a room that is separated from the location of any card tables or card games by (a) a wall or walls that reasonably prevent any card tables or games from being discerned from the room in which non-card Class III games are conducted or vice versa, with no more than one entryway per wall, which entryway shall be no more than six (6) feet wide or as otherwise required by the applicable fire code, or (b) an area dedicated exclusively to non-gaming activities that reasonably prevents any card tables or games from being discerned from the room in which the non-card Class III games are conducted or vice versa. If the Tribe and the State subsequently agree to the conduct of simulcast wagering and provide for the regulation thereof, nothing herein shall be construed to preclude

placement of authorized electronic simulcast wagering equipment in either the Class II or Class III Gaming areas.

9.2.3 No complimentary alcoholic beverages may be served to patrons at the Facility.

9.2.4 Gaming may not be the exclusive business activity at any Facility.

9.2.5 All payments for tickets or shares in any authorized game shall be made by cash, check, debit card, credit card or other cash equivalent, prior to the issuance of the ticket or share. This provision shall not be construed to prevent the Tribe from allowing a patron to pay in advance by one of the aforementioned methods in exchange for a voucher that can be redeemed for tickets or shares of equal face value. However, the Tribe shall not offer credit to any patron of the Facility for the purpose of participating in any authorized game, nor shall the Tribe permit any other person to do so.

9.3 Age Restriction. No persons under the age set by Business and Professions Code section 19932 (which is presently 21 years of age) may play or be present in any room in which Class III Gaming is offered in the Facility, provided that such underage persons may be escorted by a person 21 years of age or older through a room in which Class III Gaming is conducted for the sole purpose of reaching non-Class III Gaming areas of the Facility. This age restriction shall be prominently displayed on any entrance leading to the Class III Gaming area. The area in which any Class III games are located must be monitored at all times by an employee to prevent unauthorized access to, or play of, such games by persons under the age restriction. Lottery Devices which dispense tickets or shares shall have printed in a conspicuous place on them a notice that no person under the age restriction may play the game or receive a prize. Solely for purposes of

verifying compliance with this provision, Department of Justice personnel who are otherwise present at the Facility pursuant to Article 7 may request patrons suspected of violating this Section to produce identification and proof of age. Nothing herein shall be construed to diminish the jurisdiction of state and local law enforcement officers to enforce state laws as acknowledged by subsection 14.2.1.

9.4 Tribal Allocation of Lottery Devices.

9.4.1 The Barona Band is hereby allocated one hundred ninety-nine (199) Lottery Devices. As used in this Article, "Allocation" refers to the one hundred ninety-nine (199) Lottery Devices allocated to the Barona Band. The Allocation is subject to adjustment in accordance with the procedures set forth in Sections 9.5 and 9.7.

9.4.2 Notwithstanding the Allocation granted pursuant to subsection 9.4.1, the Tribe may obtain, in accordance with Section 9.6, Lottery Device Licenses to operate additional Lottery Devices on mutually agreeable terms from other tribes which have unused allocations of Lottery Devices, but in no event may the Barona Band operate, or have the right to operate (including its allocation) more Lottery Devices than the number of gaming devices in operation at its Facility on July 1, 1998, which the Tribe and the State agree was one thousand fifty-seven (1,057) devices.

9.4.3 The State shall grant to other tribes which agree not to conduct Class III Gaming, or which agree not to operate their full allocation of Lottery Devices authorized under their tribal-state compacts, the right to license their unused allocation of Lottery Devices to the Barona Band or other compacting tribes pursuant to a Lottery Device License. In this way, tribes which choose to forego Class III Gaming, or to limit the size of the Class III Gaming operations in

their communities can still benefit financially from Class III Gaming. At the same time, a decision by those tribes to forego or limit their Class III Gaming operations can enable the Barona Band to increase the number of Lottery Devices it can operate.

9.4.4 The Barona Band is also authorized to license, in accordance with Section 9.6, some or all of its Allocation to other tribes with which the State compacts.

9.4.5 The State recognizes that some number of federally recognized California tribes may choose to neither enter into a compact nor accept the right to license an allocation of Lottery Devices in accordance with subsection 9.4.3 (hereinafter referred to as "non-participating tribes"). The State further recognizes that the non-participation of such tribes may prevent the Tribe from licensing sufficient allocations in order to be permitted to operate up to the number of Lottery Devices permitted under subsection 9.4.2. Accordingly, where such non-participating tribes can be named, and the Tribe shows due diligence in seeking Lottery Device Licenses, the State agrees to act, by a negotiated addendum to this Compact, on behalf of or in the place of said non-participating tribes, so as to license any available unused allocations to the Tribe with the objective of giving the Tribe the opportunity of operating up to the number of Lottery Devices permitted under subsection 9.4.2; provided, however, that (i) no non-participating tribe's allocation may be licensed more than once, and (ii) said license may be terminated if the non-participating tribe(s), on whose behalf the State has licensed the Tribe, either enter into a compact with the State or are granted by the State the right to license an allocation of Lottery Devices. In the event such non-participating tribe (on whose behalf

the State has licensed the Tribe) enters a compact or receives the right to license an allocation of Lottery Devices, the State will substitute any available, unused allocation (of the same size) of another non-participating tribe entitled to engage in Class III Gaming, as long as the Tribe can identify it by name.

9.5 Adjustment of Tribal Allocation.

9.5.1 If a tribal-state compact allocates to any tribe a higher number of Lottery Devices than one hundred ninety-nine (199), the Barona Band's Allocation shall be increased to that higher number on the effective date of that compact, which increase shall be memorialized in an addendum to this Compact initialed by the State and the Tribe.

9.5.2 If the State grants allocations of Lottery Devices to more than ninety-nine (99) other federally recognized tribes in California pursuant to compacts or other agreements, the State is authorized to reduce proportionately the Barona Band's Allocation if necessary to ensure that the total number of Lottery Devices available for use by tribes in the state does not exceed nineteen thousand, nine hundred (19,900). Any proportionate reduction in the Tribe's Allocation that results in a fraction shall be rounded up to the nearest whole number, so that the total number of Lottery Devices available for use by the tribes in the State is not increased. Any reduction in the Allocation shall only become effective upon the occurrence of all of the following: (a) at least six (6) months' written notice by the State to the Tribe that a reduction will be necessary, (b) the commencement of operations under the new compact(s) which would otherwise increase the number of Lottery Devices available for use by tribes in the State beyond that permitted herein; and (c) upon at least five (5) business days' further notice to the Tribe by the State of the commencement

of said operations under the new compact(s). Any reduction in the Allocation shall be memorialized in an addendum to this Compact initialed by the State and the Tribe, but a failure to memorialize the reduction shall not affect the Tribe's obligation to reduce the number of Lottery Devices if the requirements of this subsection are otherwise satisfied.

9.5.3 On March 1, 1999, the Tribe and the State shall reconsider in good faith whether the amount of the Tribe's Allocation shall be modified, provided, however, that this subsection shall not be interpreted to constitute a presumption in favor of increasing or decreasing the Allocation or requiring such an increase or decrease. Any such modification on which agreement is reached shall be set out as an Addendum to this Compact, initialed by the State and the Tribe, and shall take effect immediately.

9.6 Licenses of Tribal Allocations.

9.6.1 To effectuate the right to operate additional Lottery Devices pursuant to a Lottery Device License, and prior to operating any Lottery Device pursuant thereto, the Barona Band shall submit to the Division a written notice that identifies the grantor tribe and the grantee tribe, states the number of Lottery Devices licensed and the expiration date of the license, and is signed by authorized representatives of both the grantor tribe and the grantee tribe. In the event of any dispute over the number of Lottery Devices which the Barona Band is authorized to operate under this Compact, the text of this Compact and the number reflected in a properly signed and completed written notice shall control. Any operation of Lottery Devices that exceeds such authorized numbers or the Lottery Device maximum permitted under section 9.4.2, whichever is less, shall

constitute a violation of the Compact and be subject to an injunction pursuant to the procedures in Article 17. Any dispute over whether one or more Lottery Devices have been licensed to or by the Barona Band may also be submitted to arbitration pursuant to the procedures under subsection 17.2.10, but said arbitration shall not prevent the State from seeking an injunction pursuant to the procedures in Article 17.

9.6.2 Until March 1, 2001, a grantee tribe shall not pay consideration in excess of, and a grantor tribe shall not receive consideration in excess of, five thousand dollars ($5,000) per Lottery Device per year with respect to any Lottery Device License. At least six (6) months before the expiration of this ceiling, at the request of either party to this Compact, the State and the Tribe shall negotiate in good faith over whether a new ceiling should be imposed, and if so, the amount of that ceiling.

9.6.3 The Tribe may not act as a broker on behalf of another tribe in connection with a Lottery Device License. The Tribe may also not employ or contract with any Person to act as an agent in connection with a Lottery Device License if that Person is granted a commission, share, or other financial interest in the license, or in the value of, or the proceeds generated by, that license. Any Lottery Device License which is granted or received in violation of this subsection is null and void.

9.6.4 The Tribe may not assign or otherwise transfer (a) its right to license its Allocation or any portion thereof, or (b) any Lottery Device License, in whole or in part, to any Person except to a Tribe with which the State has a Compact.

9.6.5 Nothing in subsections 9.6.3 and 9.6.4 shall preclude the Barona

Band in association with other California tribes from establishing an organization through which unused allocations of Lottery Devices authorized by the State may be licensed to other California tribes, including to the Barona Band, so long as no antitrust laws are violated in connection therewith.

9.6.6 After the execution date of this agreement, the State shall advise tribes to whom it grants licenses pursuant to subsection 9.4.3 that they should consider including provisions in their Lottery Device License providing for payment of license fees on a quarterly basis and for the automatic termination of the Lottery Device License if payment is not made within 30 days of the end of each quarter.

9.7 Economic Development Zones.

9.7.1 The parties acknowledge that the purpose of IGRA is to promote tribal economic development, tribal self-sufficiency, and strong tribal government through the generation of revenues. They further acknowledge that revenues generated from non-gaming businesses can also achieve these objectives.

9.7.2 If the State enacts legislation authorizing economic development zones which are applicable to all or part of Indian lands, the annual Net Income generated to the Barona Band, or any tribal corporation or other business entity controlled by the Tribe, after the date such Economic Development Zone is established on the Reservation, by reason of any private investments that benefit in whole or in part from the Economic Development Zone on the Barona Reservation shall reduce the number of Lottery Devices operated at the Facility for the following calendar year by the number of Lottery Devices representing fifty percent (50%) of the Net Income generated by the private investment, provided that no

such reduction shall be required unless Net Income from the investment in the Economic Development Zone exceeds twenty-five percent (25%) of the annual Net Income generated by the Lottery Devices operated at the Facility during the previous calendar year. The parties to this Compact recognize that some private investments may choose not to take advantage of any of the benefits offered by an Economic Development Zone, and accordingly, this subsection should be construed to trigger the reductions in Lottery Devices only if the private investment benefits in whole or in part from the Economic Development Zone and the other provisions in this subsection are satisfied.

9.7.3 For purposes of this Section, the following formulae apply:

9.7.3.1 The amount of annual Net Income generated by a Lottery Device will be based on the annual Net Income of all Lottery Devices operated at the Facility, divided by the average daily number of Lottery Devices operating at the Facility during that year. This shall be referred to as the "average annual per-device net income."

9.7.3.2 The number of Lottery Devices representing the Net Income generated by the private investment shall be that number of Lottery Devices which, when multiplied by the average annual per-device net income for the previous calendar year, equals or most nearly equals the amount of the Net Income generated to the Tribe, or any tribal corporation or other business entity controlled by the Tribe, from any private investment in the Economic Development Zone for the previous

calendar year. If fifty percent (50%) of the Net Income generated from the private investment equals the annual average Net Income generated by a specified number of Lottery Devices plus a fraction, the Tribe need only base its reduction on the number of Lottery Devices whose Net Income is fully substituted by fifty percent (50%) of the Net Income from the private investment.

9.7.3.3 The calculation of the reduction in Lottery Devices shall be done on an annual basis. Each calendar year, the reduction, if any, of the Lottery Devices shall be subtracted from the Tribe's Allocation. For example, if the amount of the reduction is determined to be five (5) Lottery Devices, the Tribe's Allocation would be reduced from one hundred ninety-nine (199) to one hundred ninety-four (194). In the next calendar year, the amount of any reduction would once again be subtracted from the Allocation of one hundred ninety-nine (199). If, for any calendar year, the calculated reduction in Lottery Devices exceeds the Allocation, the Tribe shall not use any of its Allocation for that year and shall reduce the number of additional Lottery Devices operated at the Facility in order to achieve the full reduction required by subsection 9.7.2.

9.7.4 On May 1 of each calendar year, the Tribe shall give notice to the Division of the number of Lottery Devices which the Tribe is reducing and its calculations upon which the reduction was derived. The parties shall thereafter memorialize the reduction of Lottery Devices by a written addendum to the Compact initialed by both

parties, but a failure to enter into the addendum shall not affect the Tribe's obligation to reduce the number of Lottery Devices being operated at the Facility. Any dispute over the number of Lottery Devices to be reduced shall be settled by arbitration pursuant to subsection 17.2.10.

9.7.5 If this Section requires a reduction in the number of Lottery Devices, the reduction shall take effect on June 1 of the calendar year following the calendar year in which the Net Income from the private investment was generated, and said reduction shall continue in effect until May 31 of the succeeding calendar year.

9.8 Judicial Construction of the Casino Prohibition.

9.8.1 If, after the effective date of this Compact, the California Legislature enacts a statute pursuant to Article IV, Section 19(e) of the California Constitution, the parties shall be bound by that statute upon its effective date, so long as its operation has not been enjoined by an appellate court, or by a court before which the Tribe or the State is a party, where the other party had an opportunity to intervene.

9.8.2 If, after the effective date of this Compact, a final decision of the United States Supreme Court, California Supreme Court, the Ninth Circuit Court of Appeals, or any California Court of Appeal construes the California Constitution's prohibition under Article IV, Section 19(e) of casinos of "the type currently operating in Nevada and New Jersey," or a statute implementing that constitutional provision, or determines the applicability of that constitutional provision or statute to tribal-state compacts, the parties shall be bound by that interpretation as soon as the decision becomes final, provided that the Tribe and the State have had an opportunity to intervene. Except where the Tribe is a party to a contrary binding

decision, conflicts between the decisions of these courts shall be treated as follows:

9.8.2.1 In the event of a conflict between a decision of the Ninth Circuit Court of Appeals and the California Supreme Court, the decision of the California Supreme Court concerning the interpretation of the California constitutional prohibition or statute shall prevail.

9.8.2.2 In the event of a conflict between a decision of the Ninth Circuit Court of Appeals and any California Court of Appeal, the decision of the California Court of Appeal concerning the interpretation of the California constitutional prohibition or statute shall prevail.

9.8.2.3 In the event of a conflict between decisions of the California Courts of Appeal, only the decision, if any, of the Court of Appeal for the Fourth Appellate District concerning the interpretation of the California constitutional prohibition or statute shall apply unless and until the conflict is resolved by the United States or California Supreme Court.

9.8.2.4 In the event of a conflict between the Ninth Circuit Court of Appeals and any California appellate court concerning the applicability of the state constitutional prohibition or statute to tribal-state compacts under IGRA, in a case in which the State has had an opportunity to intervene, the decision of the Ninth Circuit shall prevail, except that in such a case the parties shall not be bound by any Ninth Circuit interpretation of State law.

9.8.3 Nothing in this Section shall be construed to prevent any party to this Compact from bringing any action in a court or tribunal of competent jurisdiction to determine the construction or application of any constitutional provision or statute affecting this Compact, but neither shall anything in this Section be construed as a waiver of sovereign immunity in any such action.

ARTICLE 10. PATRON DISPUTES

10.1 Whenever the Tribe or its agents refuse payment to a patron of alleged winnings from any Class III Gaming, the patron shall be (a) advised of his or her right to request, within thirty (30) days of the date of the refusal, resolution by the Tribal Gaming Commission, and if dissatisfied with the proposed resolution, to seek binding arbitration of the dispute; and (b) given a copy of Sections 10.2 and 10.3 of this Article and subsection 17.2.10.5 of this Compact.

10.2 Upon request by a patron, the Tribal Gaming Commission shall conduct an appropriate investigation and shall render a decision whether payment of the alleged winnings should be made. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.

10.3 If the patron is dissatisfied with the decision of the Tribal Gaming Commission or no decision is issued within the sixty (60) day period specified in Section 10.2, the patron may request that the dispute be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in San Diego, and upon such request, the Tribe shall consent to such arbitration in accordance with the provisions of subsection 17.2.10.5. If the alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure that is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings, but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure.

ARTICLE 11. LIABILITY TO THIRD PARTIES AND INSURANCE

11.1 Insurance Requirements. Prior to the commencement of Class III Gaming operations, the Tribe shall obtain and maintain during the term of this Compact public liability insurance which provides coverage of no less than five million dollars ($5,000,000) per occurrence for personal injury and property damage arising out of or relating to the operation of the Facility.

11.2 Scope of Tribal Sovereign Immunity.

11.2.1 The Tribe does not waive its sovereign immunity in connection with any claim for: (a) negligent injury to Persons or property arising out of or relating to the operation of the Facility, except as provided in subsection 11.2.2, or (b) damages based on an intentional tort committed by an employee or other authorized agent of the Tribe arising out of or relating to the operation of the Facility except as provided in subsection 11.2.3.

11.2.2 The Tribe shall not invoke sovereign immunity up to the limits of the insurance policy referred to in Section 11.1 in connection with any claim for negligent injury to persons or property, or any judgment resulting therefrom, arising out of or relating to the operation of the Facility, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Facility or providing goods or services to the Facility. (Entry onto the Tribe's land for purposes of patronizing the Facility or providing goods and services to the Facility shall be evidenced by having exited the county road and having proceeded down any road that leads directly to the Facility or by having exited the Facility.) The Tribe's insurance policy shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the policy referred to in Section 11.1.

11.2.3 Where the Tribe (a) had advance knowledge of the unfitness of an employee or authorized agent who is alleged to have committed an intentional tort and employed or engaged said employee or agent with a conscious disregard of the rights and safety of others, or (b) authorized or ratified the wrongful conduct for which damages are awarded, the Tribe waives its sovereign immunity in connection with such a claim arising out of the employee's or agent's actions, or any judgment resulting therefrom, with respect to compensatory damages only, up to five million dollars ($5,000,000).

11.3 Liability of Employees and Agents. No employee or authorized agent of the Tribe may invoke, and the Tribe shall not invoke on behalf of the employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for: (a) negligent injury to persons or property arising out of or relating to the operation of the Facility, or (b) damages based on a physical injury resulting from an intentional tort committed by the employee or authorized agent arising out of or relating to the operation of the Facility. Nothing in this Section 11.3, however, shall be construed as an admission or concession by the State that any employee or agent of the Tribe has the right to invoke the Tribe's sovereign immunity or as a limitation on the Tribe's right to invoke its sovereign immunity on its own behalf.

11.4 Liability of Independent Contractors. Notwithstanding anything in this Article to the contrary, any independent contractor which has been retained in whole or part in connection with the Facility shall not be entitled to invoke, and the Tribe shall not invoke on behalf of the independent contractor, the Tribe's sovereign immunity in any actions against said independent contractor. Nothing in this Section 11.4 shall be deemed to limit the Tribe's invocation of its sovereign immunity on its own behalf.

11.5 Tribe's Cooperation in Enforcement of Judgments Against Employees or Agents of the Facility. As a matter of comity, upon receipt of a written request for enforcement from a Person who has obtained a judgment against an employee or authorized agent as permitted under this Article, the Tribe shall honor requests for garnishing any wages or attaching any other assets of the employee or authorized agent of the Facility by converting the judgment rendered pursuant to federal or state law to Barona judgments. Any Person who has obtained such a judgment from a state or federal court against an employee or authorized agent of the Facility may submit to the Tribe an Application for Acknowledgment of Judgment on a form the Tribe shall make available upon request, together with a $25 processing fee, a copy of the applicable state or federal judgment and any order to enforce the judgment. Upon receipt of the application form, processing fee and judgment, the Tribe will notify the employee or agent that a Barona judgment has been requested and shall honor the request for garnishment or attachment unless the employee or authorized agent is not the judgment debtor.

11.6 Choice of Law. California tort law shall govern all claims of intentional or negligent injury to Persons or their property arising out of or relating to the operation of the Facility, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Facility or providing goods or services to the Facility. Nothing in this Section shall be construed to waive the Tribe's sovereign immunity except as authorized by this Article.

11.7 Coverage of Claims of Employees. In light of the workers' compensation remedy afforded under Article 13, this Article shall not cover injury to employees of the Tribe at the Facility in their capacity as employees except for physical injury to their property.

11.8 Coverage of Claim by Tribal Members. The Tribe may adopt an ordinance providing that this Article, in whole or in part, does not cover claims by members of the Tribe.

ARTICLE 12. PUBLIC HEALTH AND SAFETY

12.1 The Tribe shall conduct its Class III Gaming in a manner that and shall conduct such gaming in a Facility that is constructed and maintained in a manner that, adequately protects the public health and safety of patrons, employees, and the public generally.

12.2 The Tribe agrees to conduct its Class III Gaming operation in conformity with regulations that are adopted by the State Gambling Control Agency and are applicable to Off-Reservation Gaming Establishments, unless those regulations conflict with an express provision of this Compact or are not related to law enforcement considerations; provided however, that no local ordinance shall be deemed to apply to the Tribe's Class III Gaming operations unless agreed to in the County Participation Agreement. In adopting regulations relating to law enforcement considerations, the State Gambling Control Agency shall give due consideration to the impact on, or applicability of those regulations to, tribal gaming operations, if the Tribe submits written comments concerning the impact or applicability of the regulations during the comment period prior to the adoption of said regulations.

12.3 Fire Safety and Suppression.

12.3.1 The Tribe shall take all necessary steps to (a) reasonably ensure on-going availability of sufficient and qualified fire suppression services to the Facility, and (b) reasonably ensure that the Facility satisfies all fire-safety and life-safety codes, regulations, and ordinances applicable to similar facilities in San Diego County.

12.3.2 Not later than thirty (30) days before the commencement of Class III Gaming activities under this Compact, and not less than biennially thereafter, and upon at least five (5) days' notice to the Division, the Facility in which Class III Gaming is conducted shall be inspected at

the Tribe's expense, by a tribal official, if any, who is responsible for fire protection on the Reservation, or by an independent expert. The official or independent expert shall issue a report on the assessment within fifteen (15) days, identifying any deficiencies in fire safety at the Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Facility. The official or independent expert shall propose adoption of a specific plan for correcting deficiencies, whether in fire safety at the Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Facility. A copy of the report shall be served on the Division upon delivery of the report to the Tribe.

12.3.3 The State shall be entitled to have a qualified representative present during the inspection described in subsection 12.3.2. During such inspection, the State's representative shall report to the tribal official or independent expert, as the case may be, any condition(s) which the representative reasonably believes would preclude certification of the Facility as meeting a reasonable standard of fire safety. Prior to certifying that the Facility meets a reasonable standard of fire safety, the tribal official or independent expert shall inform the State's representative of the corrective steps, if any, that will be taken in response to such report(s).

12.3.4 Prior to the conduct of Class III Gaming under this Compact, or within such period of time as is agreeable to the Division, which agreement shall not be unreasonably withheld, the Tribe's official or independent expert shall certify in writing to the State that all deficiencies identified in the report described in subsection 12.3.2 have been corrected.

12.3.5 The Tribe may satisfy the requirements of subsection 12.3.1(a) either

by contract or other arrangement with federal, state, or local governmental entities for provision of fire suppression services; by utilization of fire suppression personnel and equipment maintained by the Tribe; or by any combination thereof. Upon request of the State, the Tribe shall provide a copy of current contracts and other appropriate documents, including letters, identifying the provider or providers of fire suppression services and describing the services to be provided.

12.4 Emergency Medical Response Services.

12.4.1 The Tribe shall take all necessary steps to reasonably ensure availability of sufficient and qualified emergency medical response services to the Facility in the event of disaster. As used in the Section, the term "disaster" includes fire, earthquake, or other natural or man-made event that might reasonably be expected to occur and involve the Facility, and that, if it occurred, might reasonably be expected to cause catastrophic loss of life or injury.

12.4.2 Not later than thirty (30) days before the commencement of Class III Gaming under this Compact, and not less than biennially thereafter, the Tribe shall submit to the Division a copy of the current plan, certified and adopted by the Tribe as described herein, for meeting the reasonably expected emergency medical response needs of the Facility in the event of a disaster.

12.4.3 Biennially, or upon reasonable request by the State, the Tribe shall conduct an assessment of the need for emergency medical response services at the Facility for any purpose, including in the event of disaster. Such an assessment shall be at the Tribe's expense and shall be conducted by the tribal official responsible for emergency medical services, if any, or by an independent safety examiner

having no financial interest in the Tribe's gaming operations. The official or independent examiner shall prepare a written report detailing the reasonably expected emergency medical response needs of the Facility and explaining how those needs would be met. The official or independent examiner shall propose adoption of a specific plan for meeting those needs and shall certify that the plan has been adopted by the Tribe. A copy of the report and of such certified adopted plan shall be provided to the Division not later than thirty (30) days after the certification or one hundred twenty (120) days after receipt of the State's request for the conduct of the assessment, whichever is later. Where the State requests an assessment of the need for emergency medical response services more frequently than biennially, the request shall be reasonable and set forth those facts which justify the State's request for a more frequent assessment.

12.4.4 The Tribe may satisfy the requirements of this Section either by contracting with one or more private providers of emergency medical response services, by agreement with federal or local governmental providers of such services, by utilization of emergency medical response personnel and equipment maintained by the Tribe, or by any combination thereof. Upon request of the State, the Tribe shall provide a copy of current contracts and other appropriate documents including letters, identifying the provider or providers of emergency medical response services and describing the services to be provided.

12.5 Security Services.

12.5.1 The Tribe shall employ or otherwise provide for an adequate security force at the Facility to reasonably secure from theft, injury, or threat thereof, the person and property of patrons, contractors, licensees, and other persons entering upon the Facility.

12.5.2 Not later than thirty (30) days before the commencement of Class III Gaming under this Compact, and not less than biennially, and upon notice to the State, the Tribe shall conduct an assessment of the need for security services resulting from the conduct of Class III Gaming pursuant to this Compact. Such an assessment shall be at the Tribe's expense and shall be conducted by the Tribe's chief security officer or an independent security examiner having no financial interest in the Tribe's gaming operations. The official or independent examiner shall prepare a written report detailing the security needs presented by the Class III Gaming activities and describing how they are or will be met, including use of security services from agencies within the county in which the Tribe's Reservation is located, and shall submit said report to the Division for its approval, which shall not be unreasonably withheld. Prior to the commencement of Class III Gaming by the Tribe, the Division must approve the report, and the official or independent examiner shall certify that the security needs identified in the report have been met, a copy of which certification shall be provided to the Division, along with any security service contract or contracts entered into by the Tribe for the purpose of implementing its plan. If, however, the Division has not approved the report within thirty (30) days of receipt of the report, the Tribe may commence, or in the case of biennial assessments, continue Class III Gaming, as long as the certification has previously been provided to the Division. At such time that the Division has disapproved of the report, the Tribe shall implement those recommendations of the Division necessary to gain its approval, or within thirty (30) days of the service of notice of disapproval, shall seek arbitration pursuant to Section 17.3 as to whether the approval

was unreasonably withheld.

12.6 Improvements to State Highways. The Tribe shall pay for all improvements to enhance access to or from state highways, as defined in California Streets and Highways Code section 24, that are necessitated by the operation of the Facility, including traffic control signals, in accordance with standards of the California Department of Transportation. To effectuate this agreement, the Tribe shall enter into agreements with the California Department of Transportation. The State shall cooperate with the Tribe in providing, at the Tribe's expense, such signage as is reasonable and appropriate in order to permit members of the traveling public to locate the Reservation from the major road approaches.

12.7 Compliance with this Article. Disputes between the Tribe and the State concerning the adequacy of the Tribe's satisfaction of the obligations described in this Article shall be resolved in accordance with Article 17. Notwithstanding anything to the contrary in this Compact, it shall be a violation of this Compact for the Tribe to deny access to fire, safety, or security inspectors authorized by the State to such records, credentials, licenses, certifications, personnel, premises, or equipment as is reasonably necessary to ensure compliance with the provisions of this Article, provided that said fire, safety or security inspectors have given reasonable advance notice.

12.8 Confidentiality. The reports and certificates provided in this Article shall be subject to the provisions in Article 8.

ARTICLE 13. EMPLOYEE PROTECTION

13.1 Workers' Compensation

13.1.1 With respect to the employees employed in the Facility and/or the Hotel, the Tribe agrees as follows:

13.1.1.1 The Tribe shall comply with and be subject to the workers' compensation laws of the State of California. These laws include, but are not limited to, laws relating to the securing of payment of compensation under Labor Code sections 3700 - 3760 through one or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws.

13.1.1.2 All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board in accordance with Labor Code sections 5300 - 6002. The Tribe hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement.

13.1.2 When the Tribe or its agents enter into a contract with a person or entity that is not a member or entity of the Tribe for the performance of any services at the Facility and/or the Hotel, the contract shall specify that said Person or entity shall comply with and be subject to the workers' compensation laws of the State of California, including the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement.

13.1.3 Notwithstanding Section 13.1.1, the Tribe, or its agents, or their

insurance carriers, are free to assert before the Workers' Compensation Appeals Board, and thereafter in the courts on any appeal therefrom, as an additional and separate jurisdictional defense to any employee claim, that the employee was not employed in the Facility or Hotel.

13.1.4 Nothing in this Section shall be construed as an admission by the Tribe that, in the absence of this Compact, the workers' compensation laws would otherwise be applicable to the Reservation under Public Law 280, nor as an admission by the State that, but for this Compact, they would not otherwise be applicable.

13.2 Occupational Safety and Health.

13.2.1 Except as provided in subsection 13.2.2, with respect to the employees employed in the Facility and/or the Hotel, the Tribe acknowledges that it is subject to and will comply with the provisions of the federal Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. section 651 *et seq.*

13.2.2 If a final decision of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit holds that the federal Occupational Safety & Health Act does not apply to Indian tribes or if federal law should otherwise exempt Indian tribes from its application, then the Tribe agrees to comply with and be subject to the provisions of the Occupational Safety and Health Act of the State of California, commencing with California Labor Code section 6300 and consents to the jurisdiction of the state agencies charged with the enforcement of those laws, including the Occupational Safety and Health Standards Board and Occupational Safety and Health Appeals Board, and of the courts of the State of California for purposes of enforcement.

13.2.3 The Tribe agrees to be subject to and comply with, and consents to the jurisdiction of the state agencies and courts of the State of California charged with the enforcement of:

A. Parts 7 and 10 of Division 5 of the California Labor Code regarding Volatile Flammable Liquids and Use of Carcinogens, unless the application of such provisions is preempted by the federal Occupational Safety & Health Act; and

B. Articles 3 (commencing at section 2350) and 5 (commencing at section 2440) of Chapter 1 of Part 9 of Division 2 of the California Labor Code regarding certain sanitary and health conditions at business establishments, unless the application of such provision is preempted by the federal Occupational Safety & Health Act.

13.3 Unemployment and Disability Compensation Benefits. The Tribe agrees to participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed by the Tribe at the Facility and/or the Hotel. To effectuate the foregoing, the Tribe shall comply with and be subject to the provisions of the California Unemployment Insurance Code, and consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

13.4 Withholding and Payment of Tax for Non-Members. As a matter of comity with respect to Persons employed at the Facility and/or the Hotel, other than members of the Tribe, the Tribe shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to

the State.

13.5 Compensation and Working Hours. Except to the extent preempted by the federal Fair Labor Standards Act, as amended, 29 U.S.C. section 201 *et seq.* (to which the Tribe acknowledges it is subject), or inconsistent with any provisions therein, with respect to employees employed at the Facility and/or the Hotel, the Tribe agrees to comply with and be subject to the provisions of Parts 1 and 2 of Division 2 of the California Labor Code and consents to the jurisdiction of the state agencies charged with enforcement of those parts and of the courts of the State of California for purposes of enforcement, to the same extent that public employers, including the State, are required to do so with respect to their employees.

13.6 Application of Other Statutes.

13.6.1 The failure to expressly specify the application of any other state statute or regulation governing employment, health, or safety shall not be deemed an admission by the State that said statute or regulation does not otherwise apply to the Tribe, the Facility, and/or the Hotel. Nothing in this Article shall be construed to affect the applicability or enforceability under Public Law 280 of any state law that is not expressly made applicable herein.

13.6.2 If the State contends that the Tribe is not complying with a federal or state statute or regulation governing the employment, health, or safety of the employees associated with the Class III Gaming enterprise that the State claims applies to the Tribe, the Facility, and/or the Hotel, the State shall serve a written notice on the Tribe identifying the statute or regulation and requesting the Tribe to comply. If, within thirty (30) days of service of the State's notice, the Tribe does not agree in writing to comply with the statute or

regulation, the State may bring suit over the Tribe's failure to comply, and the Tribe consents to the jurisdiction of the court in connection with such a suit. The Tribe agrees to abide by any statute or regulation which is held to be applicable to Indian tribes in California pursuant to a final judgment from which no further review can be obtained, whether the judgment is against the Barona Band or any other tribe; provided, however, that if the judgment is against another tribe, the State must have given the Barona Band written notice of the suit in sufficient time to provide the Tribe with a reasonable opportunity to intervene.

13.7 Concerted Activity and Representation of Employees by Employee Organizations.

13.7.1 The Tribe's Service Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Tribe shall refrain from any interference with, restraint or coercion of Service Employees in the exercise of these rights; provided that the exclusive remedy for a violation of these obligations shall be the arbitration set forth in subsection 13.7.2.

13.7.2 The Tribe shall afford to Service Employees or an employee organization seeking to represent them, the opportunity to settle by binding arbitration in accordance with the procedures set forth in subsection 13.7.3.G any claims, disputes or controversies arising out of any alleged violation of the rights and obligations described in subsection 13.7.1.

13.7.3 The Tribe agrees that if an employee organization offers in writing