

NATIONAL  
INDIAN  
GAMING  
COMMISSION

JUL 11 1994

Albert S. Martin, Tribal Chairman  
Tyme Maidu Tribe  
Berry Creek Rancheria  
1779 Mitchell Avenue  
Oroville, California 95966

Dear Chairman Martin:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by the Tyme Maidu Tribe (the Tribe) on June 29, 1994. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Tyme Maidu Tribe for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

**Anthony J. Hope**

Anthony J. Hope  
Chairman

ORDINANCE OF THE GENERAL COUNCIL OF THE TYME  
MAIDU TRIBE OF THE BERRY CREEK RANCHERIA  
ADOPTING GAMING ORDINACE FOR THE RANCHERIA

**Findings.**

1. The Tyme Maidu Tribe of the Berry Creek Rancheria ("Tribe") is a federally recognized Indian Tribe, exercising jurisdiction over all lands owned by the Tribe or the United States for the benefit of the Tribe.

2. The General Council of the Berry Creek Rancheria is the Rancheria's governing body. (Art. III, § 1, Articles of Association, Berry Creek Rancheria.)

3. Through the adoption of ordinances, the General Council has the authority to administer all Berry Creek assets and economic affairs. (Art. V, § 1 (f).)

4. Gaming as authorized by the Indian Gaming Regulatory Act will provide funds for essential governmental services and jobs for tribal members. It may also produce capital which the Tribe can use to further develop its reservation based economy.

5. In order to permit gaming subject to the necessary controls and promote the health, safety and welfare of its members, the General Council adopts this ordinance.

NOW, THEREFORE, the General Council of the Berry Creek Rancheria hereby ordains as follows:

Section 1. Purpose.

The purpose of this Ordinance is to regulate all Class 2 and 3 gaming activity that occurs within the boundaries of the Berry Creek Rancheria.

Section 2. Definitions.

a. "General Council" means the governing body of the Berry Creek Rancheria as established by Article II of the Articles of Association of the Berry Creek Rancheria, adopted on February 5, 1977, as amended.

b. "Gaming" means Class 2 Gaming and Class 3 Gaming (but only if Class 3 Gaming is authorized by a compact between the Tribe and the State of California).

c. "Class 1 Gaming" means social games solely for prizes of

minimal value or traditional forms of Indian gaming as part of Tribal ceremonies or celebrations.

d. "Class 2 Gaming" means:

(1) The games of chance known as bingo or lotto whether or not electronic, computer, or other technological aids are used in connection therewith, which are played for prizes, including monetary prizes, with cards bearing numbers or other designations, when objects, similarly numbered or designated, are drawn or electronically determined and the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards;

(2) If played in the same location as bingo, pull-tabs, punch board, tip jars, instant bingo, and other games similar to bingo;

(3) Non-banking card games that are:

i. Explicitly authorized by the laws of the State; or

ii. Not explicitly prohibited by the laws of the State and played at any location in the State, but only if such card games are played in conformity with laws and regulations of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games;

(4) Class 2 gaming does not include baccarat, blackjack, or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

e. "Class 3 Gaming" means all forms of gaming that are not Class 1 gaming or Class 2 gaming.

f. "Gaming facility" means a facility owned by the Tribe for the purpose of conducting gaming, and any other such facility operated or licensed by the Tribe and located on the Berry Creek Rancheria.

g. "Key Employee" means:

(1) A person who performs one or more of the following functions:

- (a) Bingo Caller;
- (b) Money Room Supervisor;
- (c) Security Supervisor;
- (d) Floor Supervisor/Manager;
- (e) Custodian of Gaming Supplies or Cash;
- (f) Card Table Supervisor/Manager;
- (g) Pit Boss;
- (h) Dealer;
- (i) Croupier;
- (j) Approver of Credit; or
- (k) Custodian of gambling devices including persons with access to cash and accounting records within devices;

(2) If not otherwise included, the four most highly compensated persons in the gaming operation; or

(3) If not otherwise included, any other person employed in the gaming facility whose total compensation is in excess of \$50,000 per year;

h. "Primary Management Official" means:

(1) The person having management responsibility for a management contract; and

(2) Any person who has authority:

- (a) To hire and fire employees;
- (b) To set up working policy for the gaming operation.

### Section 3. Consistency.

All provisions of this Ordinance shall be interpreted, whenever possible, to be consistent with the Indian Gaming Regulatory Act. ("IGRA"; 25 U.S.C. §2701-2721.)

### Section 4. Objective.

The objective of gaming activities on the Berry Creek Rancheria is to create employment and to generate income that promotes self-sufficiency, self-determination and the general well being of the membership of the Berry Creek Rancheria.

### Section 5. Permissible use of net revenues.

a. To provide per capita payments to Berry Creek Rancheria members;

b. To fund Rancheria government operations or programs;

- c. To provide for the general welfare of the Berry Creek Rancheria and its members;
- d. To promote Berry Creek Rancheria economic development;
- e. To donate to charitable organizations.

Section 6. Per Capita Payments.

a. The General Council shall prepare a financial plan to allocate revenues to uses authorized under Section 5. The General Council may form an advisory committee consisting of General Council members and voting members of the Rancheria to make recommendations regarding the financial plan.

The financial plan to allocate revenue must be approved by the Berry Creek Rancheria membership at a meeting at which a majority of Berry Creek Rancheria voting members in attendance accept or reject the financial plan for the uses of the net revenues from the gaming activities.

The financial plan is subject to approval by the Secretary of the Interior.

b. All per capita payments made to Berry Creek Rancheria members are subject to federal taxation. The members will be notified of such tax liability when payments are made.

Section 7. Proprietary interest.

The Berry Creek Rancheria shall have the sole proprietary interest and responsibility for the conduct of all gaming activities.

It shall be unlawful for any person, organization or other legal entity, other than the tribe itself, to conduct gaming activities on the Rancheria.

Section 8. Audits.

The General Council shall contract with a qualified Certified Public Accountant ("CPA") or firm of CPAs to conduct annual independent audits of all Class 2 or 3 gaming conducted on tribal lands. It will furnish a copy of the audit to the Commission and also to any Berry Creek Rancheria member who requests a copy.

All contracts for services, supplies or concessions to gaming facilities for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services), shall be subject annually to independent audit by a CPA or firm of CPAs engaged by the General Council.

Section 9. Construction and maintenance of gaming facility.

a. The construction, maintenance and operation of the gaming facility will be conducted in a manner which adequately protects the environment, public health and safety.

Section 10. Licenses for Key Employees and Primary Management Officials.

a. Licensing requirement. The Tribe shall cause to be licensed all key employees and primary management officials working in a gaming facility. No person shall hold a position as a key employee or management official for more than ninety (90) days without having been issued a license under this Section.

b. Application forms.

(1) All key employees and management officials employed by the gaming facility on the effective date of this Ordinance or seeking employment with or hired to work in the gaming facility after the effective date of this Ordinance must complete an application for a license within thirty (30) days of the effective date of this Ordinance or the date they submit an application for employment, whichever is later.

(a) The General Council may establish a standard application form which will elicit all of the information required by subsection c (1).

(b) The General Council may establish a fee for the cost of processing an application for employment and/or a license which may include the cost of processing fingerprints (including the Commission's charges for processing fingerprints) and conducting a background investigation.

(2) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by Commission

members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a Tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(3) Existing key employees and primary management officials shall be notified in writing that they shall either:

(a) Complete a new application form that contains a Privacy Act notice; or

(b) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(4) The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)

(5) The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

(a) Complete a new application form that contains a notice regarding false statements; or

(b) Sign a statement that contains the notice regarding false statements.

c. Background Investigations.

(1) The Tribe shall request from each primary management official and from each key employee all of the following information:

- a. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- b. Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
- c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1)(b) of this Section;
- d. Current business and residence telephone numbers;
- e. A description of any existing and previous business relationships with Indian Tribes, including ownership interests in those businesses;
- f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, the date and disposition, if any;
- i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic

violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this section, the criminal charge, the name and address of the court involved and the date and disposition.
- k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- l. A current photograph;
- m. Any other information the Tribe deems relevant; and
- n. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. §522.2(h).

(2) The Tribe shall conduct an investigation sufficient to make a determination under subsection d below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(3) In conducting its investigation, the Tribe shall take the following steps to process fingerprint cards of applicants for employment in a gaming facility and for a license as a key employee or management official.

- a. The Tribal Chairperson shall execute the Memorandum of Understanding ("MOU") furnished by the Commission governing the treatment of fingerprints.
- b. The Tribe shall notify the Commission that the Butte County Sheriff's Department ("Department") will be taking the fingerprints for the Tribe and shall notify the Commission of the currently designated contact person at the Department. In addition, the Tribe should indicate the number of cards which the Commission should send to the Tribe, making allowances for lost or damaged cards.
- c. The Tribe shall provide the Commission with current and periodically updated lists of individuals whose fingerprint cards the Commission will be receiving

from the Department and shall pay the Commission's established fees for processing the cards. The lists should also contain the Social Security Number and the date of birth of each listed individual and the name of the law enforcement agency/office taking the fingerprints.

- d. Once fingerprints have been taken, the agency taking the prints should forward the completed cards directly to the Commission. The Commission will process only those cards received directly from a law enforcement agency.
- e. Upon receipt of the FBI report forwarded by the Commission, the Tribe will complete the background investigation.

d. Eligibility Determination.

The Tribe shall review a persons's prior activities, criminal record, if any, reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming facility. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming facility shall not employ that person in a key employee or primary management official position, or issue a license to that employee.

e. Report to the Commission.

(1) Within sixty (60) days after an employee begins work for the gaming facility or within sixty (60) days of the effective date of this Ordinance, whichever is later, the Tribe shall prepare and forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- (a) Steps taken in conducting a background investigation;
- (b) Results obtained;
- (c) Conclusions reached; and
- (d) The bases for those conclusions.

(2) The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection d of this section.

- (3) If a license is not issued to an applicant, the Tribe:
  - (a) Shall notify the Commission; and
  - (b) May forward copies of its eligibility determination and investigative report (if any) to the Commission for inclusion in the Indian Gaming Individuals Records System.
- (4) With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the Commission or his or her designee for no less than three (3) years from the date of termination of employment.

f. Granting a Gaming License.

(1) If, within a thirty (30) day period after the Commission receives a report, the Commission notifies the Tribe that it has no objection to issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Tribe has provided an application and investigative report to the Commission, the Tribe may issue a license to such applicant.

(2) The Tribe shall respond to a request for additional information from the Chairman of the Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph f(1) of this section until the Chairman of the Commission receives the additional information.

(3) If, within the (30) day period described above, the Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

g. License Suspension.

(1) If, after the issuance of a gaming license, the Tribe receives from the Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection d above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(2) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license. The hearing shall be conducted by a hearing panel of three persons appointed by the General Council. The licensee shall be given not less than ten (10) days' prior notice of the date, time and location of the hearing. The licensee shall have the right to be represented at the hearing. The technical rules of evidence shall not apply and any evidence of the type relied upon by reasonable men in the conduct of serious affairs may be considered by the hearing panel. The licensee may present testimony and other evidence and may cross-examine any other witnesses testifying at the hearing. The hearing panel shall base its decision exclusively on the evidence presented at the hearing and may uphold, modify or reverse the proposed revocation. The General Council shall issue a written decision, based on the recommendation of the hearing panel, and serve a copy on the licensee.

Section 11. Enforcement and Public Safety.

The General Council shall adopt such additional rules and regulations and take or authorize such enforcement actions as it deems necessary to ensure full compliance with the provisions of this Ordinance. The General Council is hereby authorized to cooperate with local, state and federal law enforcement officials to the extent deemed necessary by the General Council to ensure that Class 2 or Class 3 gaming complies with all applicable laws and that persons engaged in gaming do not commit any illegal acts that could endanger persons or property.

Section 12. Public/Patron Disputes.

If any customer or member of the general public has a dispute with the manager of a gaming facility or the Tribe, it shall be resolved using the following procedure.

Any gaming facility manager and the Tribe must endeavor to resolve disputes at the lowest level of management possible. Toward that end, any dispute involving gaming must be presented using a multistep process.

Step 1: If a patron has a complaint involving the conduct of a game or his or her treatment at the facility, he or she must discuss the matter with the employee involved in the incident. The employee must listen carefully and courteously to the patron's complaint. All employees shall receive training in customer relations. If the employee fails to resolve the complaint to the customer's satisfaction or lacks the authority to remedy the complaint, he or she shall immediately contact his or her immediate supervisor, if available, or the floor manager.

Step 2: If the supervisor or floor manager fails to resolve the dispute to the customer's satisfaction or lacks the authority to remedy the complaint, he or she shall refer the complaint to the gaming facility manager. The supervisor or floor manager shall also notify security. If a customer is referred to the gaming facility manager, the gaming facility manager shall interview the customer and, if necessary, the involved employee(s) and shall make a decision within a reasonable time, not to exceed, five (5) days. The manager shall obtain the customer's name, address and telephone number. The manager shall notify the customer that if he or she remains dissatisfied, he or she can request in writing review by the Tribal Gaming Representative ("Representative") within seven (7) days of the manager's decision.

Step 3: The Representative shall review the customer's written appeal and may interview the customer, the manager and any involved employees. The Representative shall issue a written decision to the customer within five (5) working days of receiving the customer's appeal. The Representative's written decision shall include a notice that the customer may appeal the Representative's decision to the hearing panel appointed by the General Council. The written appeal must include all information the customer wants the hearing panel to consider in acting on the appeal. The appeal must be filed within seven (7) days of the date on the Representative's decision.

Step 4: The hearing panel shall conduct such hearing on the appeal as it deems appropriate. It may limit its review to the written appeal and the written decision of the Representative or it may invite the customer to present written testimony and it may receive testimony from the involved employees. General Council, based on the recommendation of the hearing panel, shall issue a written decision which shall be final.

All written notices and decisions shall be sent by regular first class mail to the customer at the address furnished by the customer. The time limits for complainants shall be calculated from the date appearing on the notices or decisions, provided these items are mailed on that date. The time limits for tribal officials shall be calculated from the postmarks appearing on the envelopes containing the appeals.

### Section 13. Investment and Management Contract.

a. The terms of any gaming management contract shall not contravene any provision of the IGRA.

No gaming management contract may be assigned without the prior written approval of the General Council. Such approval may be withheld without any reason given.

b. The majority of Berry Creek Rancheria members in attendance, at a duly called special or general meeting, shall be required to approve any contract for the construction and management of any gaming facility on the Berry Creek Rancheria, and any amendments thereto.

Section 14. Preference.

Any management and investment gaming contracts must make provision for the preferential hiring Berry Creek Rancheria members followed by a preference for Native people from the Berry Creek and surrounding areas for jobs in the construction and operation of any gaming facilities or activities.

Section 15. Scope and Licensing.

Class 2 and Class 3 gaming is covered by the provisions of this Ordinance.

(1) A separate license for each gaming place, facility or location on Berry Creek Rancheria lands is required where Class 2 or Class 3 gaming is conducted or occurs.

(2) Class 3 gaming will only be authorized, if it is conducted in accordance with an approved Class 3 gaming compact between the Tribe and the State of California.

Section 16. Designation of Agent for Service of Process

The Berry Creek Rancheria hereby designates its chairperson as its agent for service of any official determination, order, or notice of violation by the National Indian Gaming Commission. The Rancheria shall notify the Commission of the name, address and phone and fax numbers of the current chairperson.

**CERTIFICATION**

We, the undersigned duly elected officials of the Berry Creek Rancheria, do hereby certify that the foregoing Ordinance was adopted on June 29, 1994, at a duly called meeting of the General Council of the Berry Creek Rancheria with a quorum present by a vote of 11 for, 1 against, 0 abstaining and 0 absent.

  
BERRY CREEK RANCHERIA, CHAIRPERSON  
Albert S. Martin, Chairperson

*Thelma E. Edwards'*

BERRY CREEK RANCHERIA, SECRETARY

Thelma E. Edwards, Tribal Secretary