NATIONAL
INDIAN
GAMING
COMMISSION

APR 26 1995

Kenneth L. Smith, Secretary-Treasurer
Confederated Tribes of the Warm
Springs Reservation of Oregon
P.O. Box C
Warm Springs, Oregon 97761

Dear Mr. Smith:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) on December 28, 1994, in Ordinance 76. 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.

With the Chairman's approval of the Tribes' gaming ordinance, the Tribes are now required to conduct background investigations on their 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 Confederated Tribes of the Warm Springs Reservation of Oregon for review and approval. The NIGC staff and I look forward to working with you and the Tribes in implementing the IGRA.

Sincerely yours,

Harold A. Monteau
Chairman

1850 M STREET, NW, SUITE 250 WASHINGTON, D.C. 20036 TEL: 202-632-7003 FAX: 202-632-7066

AFFIDAVIT OF AUTHENTICATION

STATE OF OREGON)
) ss.
County of Jefferson)

I, KENNETH L. SMITH, being duly sworn hereby deposes and says:

1. I am the Secretary-Treasurer of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon.

2. Under the Tribe's constitution and bylaws, I am required to certify all resolutions and ordinances duly adopted by the Warm Springs Tribal Council, the Tribe's governing body.

3. Attached to this affidavit is a true, accurate and complete copy of Warm Springs Tribal Ordinance No. 76 (the gaming ordinance) that I hereby certify as authentic pursuant to 25 C.F.R. §522.2(a).

KENNETH L. SMITH

SUBSCRIBED and SWORN to before me this 7th day of March, 1995.

Carla T. Conner-Greene
Notary Public for Oregon
My Commission Expires: 2-29-96

OFFICIAL SEAL
CARLA T. CONNER-GREENE
NOTARY PUBLIC-OREGON
COMMISSION NO. 012900
MY COMMISSION EXPIRES FEB. 29, 1996

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WHEREAS, At a referendum of the eligible tribal voters held on December 27, 1994, the tribal members voted to authorize the conduct of class III gaming by the Confederated Tribes of the Warm Springs Reservation of Oregon on eligible trust lands; and

WHEREAS, The Tribal Council proposes to enter into a compact with the State of Oregon providing for Class III gaming; and

WHEREAS, The Indian gaming Regulatory Act, P.L. 100-447, US U.S.C. §2701 et. seq. requires a tribal gaming ordinance in order for the Tribe to conduct Class II and Class III gaming activities; now, therefore

BE IT ORDAINED, By the (19th) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(l), of the Tribal Constitution that the Class II and Class III Gaming Ordinance attached hereto as Exhibit "A" is adopted as Chapter 260 of the Warm Springs Tribal Code.

BE IT FURTHER ORDAINED, That Warm Springs Tribal Code Section 305.451 is amended to read as follows:

> 305.451 Gambling. Any Indian who shall gamble or participate in any gambling activity, other than traditional Indian games, or during traditional Indian ceremonies, or gaming as authorized by the class II and Class III Gaming Ordinance, WSTC Chapter 260, for money or other value, shall be deemed guilty of unlawful gambling. Class I gambling as defined by the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §2703, is not prohibited by this section.

CERTIFICATION

The undersigned, as Secretary-Treasurer of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members of whom 8, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held this 28th day of December 1994; and that the foregoing resolution was passed by the affirmative vote of 7 members, the Chairman not voting; and that said resolution has not been rescinded or amended in any way.

Ken Smith
Secretary-Treasurer

NOTED: JAN 9 1995

Gordon E. Cannon
Superintendent

cc: Secretary-Treasurer
Superintendent
Administrative Service Center

ORIGINAL

WARM SPRINGS TRIBAL CODE
CHAPTER 260
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON CLASS II AND CLASS III GAMING ORDINANCE

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WARM SPRINGS TRIBAL CODE
CHAPTER 260
CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
CLASS II AND CLASS III GAMING ORDINANCE

260.001 **PURPOSE**. The Tribal Council, pursuant to the authority contained in Article V, Section 1(i) and (l) of the Constitution and Bylaws, as amended, of the Tribe, hereby enacts this Ordinance in order to set the terms for Class II and Class III gaming operations on tribal lands.

260.002 **GAMING AUTHORIZED**. Class II gaming and Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. §2703 ("IGRA"), and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992) is hereby authorized.

260.003 **OWNERSHIP OF GAMING**. The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

260.004 **USE OF GAMING REVENUE**.

(1) Net revenues from Class II and Class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

(2) If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. §2710(b)(3).

260.005 **AUDIT**.

(1) The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

(2) All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000.00 annually, except contracts for professional legal and accounting services, shall be specially included within the scope of the audit that is described in subsection 260.005(1) above.

260.006 **PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY**. Class II and Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

260.007 **LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS**. The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any Class II and Class III gaming enterprise operated on Indian lands:

(1) **Definitions**. For the purposes of this section, the following definitions apply:

(A) "Key employee" means

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

(i) Bingo caller;
(ii) Counting room supervisor;
(iii) Chief of security;
(iv) Custodian of gaming supplies or cash;
(v) Floor manager;
(vi) Pit boss;
(vii) Dealer;
(viii) Croupier;
(ix) Approver of credit; or
(x) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

(B) "Primary management official" means:

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

(b) Any person who has authority:

(i) To hire and fire employees; or

(ii) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

(2) Application Forms.

(A) 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 National Indian Gaming 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 prosecu-tions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revoca-tion 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."

(B) 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.

(C) 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 or 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)"

(D) 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.

(3) <u>Background Investigations</u>.

(A) 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 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's 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 (3)(A)(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, and 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 (3)(A)(h) or (3)(A)(i) of this section, the criminal charge, the names 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).

(B) The Tribe shall conduct an investigation sufficient to make a determination under subsection 260.007(4) 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.

(4) **Eligibility Determination**. The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. 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 operation shall not employ that person in a key employee or primary management official position.

(5) **Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission**.

(A) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection 260.007(4) of this ordinance.

(B) The Tribe shall forward the report referred to in subsection 260.007(6) of this ordinance to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

(C) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

(6) **Report to the National Indian Gaming Commission.**

(A) Pursuant to the procedures set out in subsection 260.007(5) of this ordinance, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigation 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.

(B) The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection 260.007(4) of this ordinance.

(C) If a license is not issued to an applicant, the Tribe:

(a) Shall notify the National Indian Gaming Commission; and

(b) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

(D) 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 National Indian Gaming Commission or his or her designee for no less than three (3) years form the date of termination of employment.

(7) **Granting a Gaming License.**

(A) If, within a 30 day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe that it has no objection to the 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 National Indian Gaming Commission, the Tribe may issue a license to such applicant.

(B) The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming 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 subsection 7(A) of this ordinance until the Chairman of the National Indian Gaming Commission receives the additional information.

(C) If, within the 30 day period described above, the National Indian Gaming 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 National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

(8) **License Suspension.**

(A) If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection 260.007(4) of this ordinance, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(B) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(C) After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

260.008 **LICENSE LOCATIONS.** The Tribe shall issue a separate license to each place, facility, or location on Indian lands were Class II or Class III gaming is conducted under this ordinance.

260.009 **GAMING COMMISSION.**

(1) **Establishment of Gaming Commission.** There is hereby established by the Tribe a Commission to be known as the Warm Springs Tribal Gaming Commission (hereafter "The Gaming Commission"). The Gaming Commission shall be composed of three (3) persons, who shall be designated as "Gaming Commissioners." Gaming Commissioners may be members or non-members of the Tribe, provided that not less than one Gaming Commissioner shall be a tribal member.

(2) **Selection of Gaming Commission.** The Tribal Council shall by motion appoint a five-member Gaming Commission Selection Committee (hereafter "The Selection Committee") composed of two members of the Tribal Council, the Secretary-Treasurer of the Tribal Council and two members at large. Members of the Selection Committee may be either members or non-members of the Tribe. The Selection Committee shall establish procedures for notice of vacancies on the Gaming Commission, recruitment of qualified applicants, interview and selection processes. The Selection Committee shall submit their nominee(s) for any vacancy on the Gaming Commission to the Tribal Council for confirmation and appointment by Tribal Council resolution.

(3) **Disqualifications for Office.** The following persons may not serve as Gaming Commissioners:

(A) Members of the Tribal Council;

(B) Employees of any gaming enterprise on the Reservation;

(C) The immediate family of any gaming contractor (including any principal thereof or closely associated independent contractor). For the purposes of this section, immediate family members are defined as: husband, wife, son, daughter, mother, father, brother, sister, grandfather, grandmother, legal guardian, or other totally dependent relative of the individual.

(D) Persons who would not be eligible to receive a gaming license from the Tribes; or

(E) Persons having any interest in or responsibility for, either directly or indirectly, any gaming related contract with the Tribes or any gaming enterprise on the Reservation.

(4) **Terms of Office**. The Gaming Commissioners shall serve for three-year terms, except that immediately after enactment of this Act one (1) of the Gaming Commissioners shall serve for two years, one (1) of the Gaming Commissioners shall serve for three years, and one (1) of the Gaming Commissioners shall serve for four years. The respective term for each Gaming Commissioner shall be designated in their appointment. Gaming Commissioners may serve for more than one term.

(5) **Removal from Office**. Gaming Commissioners may only be removed from office before the expiration of their terms by the Tribal Council for neglect of duty, malfeasance or other good cause shown, in the same manner as members of the Tribal Council may be impeached.

(6) **Quorum**. Two (2) Gaming Commissioners shall constitute a quorum of the Gaming Commission, provided at least one of such Gaming Commissioners shall be a tribal member.

(7) **Officers and Duties**. The Gaming Commission shall select, by majority vote, a Chair, Vice-Chair and Secretary. The Chair shall preside over meetings of the Gaming Commission and the Vice-Chair shall preside in absence of the Chair. The Secretary shall record in writing the minutes of all Gaming Commission meetings and all official actions taken by the Gaming Commission.

(8) **Voting**. All actions of the Gaming Commission shall be taken by majority vote. The Gaming Commission Chair may vote on any issue.

(9) **Meetings**. Meetings shall be held at least once per month at such place as specified in the notice of meeting. Additional meetings shall be held as called by the Chair or by at least two (2) Gaming Commissioners. Notice of meetings shall be given in writing to each Gaming Commissioner, served by first class mail or personal delivery at least five (5) business days prior to such meeting.

(10) **Compensation for Serving; Reimbursement of Expenses**. Gaming Commissioners shall be compensated for serving on the Gaming Commission at rates to be set by the Tribal Council. Gaming Commissioners shall be reimbursed for reasonable and necessary expenses incurred in connection with the performance of their official Gaming Commission duties.

(11) **Powers and Duties**. The Gaming Commission shall have the power and duty to:

(A) Inspect, examine and monitor gaming activities, including the power to demand access to and inspect, examine, photocopy and audit all papers, books and records respecting such gaming activities;

(B) Investigate any suspicion of wrongdoing in connection with any gaming activity;

(C) Conduct or cause to be conducted such investigations as may be necessary to determine in connection with any gaming activity, compliance with law or this Ordinance or any contracts, agreements, goods, services, events, incidents, or other matters related to gaming activities;

(D) Establish and collect license, investigation, and regulatory fees to cover the costs connected therewith;

(E) Conduct background investigations regarding any person or entity in any way connected with any gaming activity and issue licenses to, at minimum, all qualified gaming enterprise key employees and primary management officials under requirements at least as stringent as those established in 25 CFR Parts 556 and 558; and grant, suspend, revoke, and renew licenses and hear and decide matters affecting such granting, suspension, revocation, or renewal of licenses;

(F) Hold such hearings, sit and act at such times and places, summon persons on the reservation to attend and testify at such hearings, take such testimony, and receive such evidence as the Gaming Commission deems relevant in fulfilling its duties;

(G) Administer oaths or affirmations to witnesses appearing before the Gaming Commission;

(H) Implement and administer a system, including the promulgation of regulations, for investigating, licensing and monitoring management, employees, vendors and others connected with gaming activities, as described in Section 260.007 of this Ordinance, including the issuance of licenses to gaming facilities, individuals and entities and the verification of internal controls, as required under this Ordinance, IGRA, and any Tribal-State compact or equivalent procedures prescribed by the Secretary of the Interior;

(I) Promulgate rules for any Class II or Class III gaming activity on the Reservation, except that rules for Class III activities shall not be in conflict with rules, if any, adopted under any Tribal-State compact.

(J) Issue such other regulations as it deems appropriate in order to implement the provisions of this Ordinance; and,

(K) Carry out such other regulatory duties with respect to gaming activities as the Tribal Council shall direct.

(12) **Annual Reports**. On or before the last day of the third month after the close of the Tribes' fiscal year of each year, the Gaming Commission shall provide to the Tribal Council an Annual Report summarizing its activities during the prior fiscal year, and accounting for all receipts and disbursements.

(13) **Funding**. All funding of the Gaming Commission shall be pursuant to a Budget to be proposed to the Tribal Council and approved, funded and modified, if necessary, in accordance with the Tribe's procedures for approving and funding budgets for other departments and agencies of the tribal government. In preparing the Budget, all actual and anticipated surplus funds of the Gaming Commission shall be taken into account. Expenditures by the Gaming Commission shall be in accordance with the approved Budget. Changes in the approved Budget and requests for additional funds shall be by petition to the Tribal Council, in accordance with such procedures, if any, for other tribal government departments and agencies.

(14) **Gaming Commission's Relationship to Tribal Government; Supervision of Administration**.

(A) Agency of Tribal Government. The Gaming Commission shall be deemed to be an agency of the tribal government and as such shall be subject to personnel and other tribal governmental administrative policies. The administration of all such policies shall be under the supervision of the Tribal Council. In the absence of applicable tribal personnel or other administrative policies, the Gaming Commission shall promulgate its own policies, subject to approval of the Tribal Council.

(B) Independent Decision-Making Authority. Notwithstanding the fact that the Gaming Commission is an agency of tribal government, the decisions of the Gaming Commission regarding licensing, suitability, compliance with applicable law and other regulatory matters shall be within the exclusive province of the Gaming Commission.

260.010 **REPEAL**. To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.