April 16, 2002

Darren R. Pete
Monteau & Peebles, LLP
1001 Second Street
Sacramento, CA 95814

RE: Elem Indian Colony of Pomo Indians Tribal Gaming Ordinance

Dear Mr. Pete:

This letter is in response to the submission of the Elem Indian Colony of Pomo Indians Tribal Gaming Ordinance (ordinance), Resolution No. 1-5-2002D, adopted on January 5, 2002, for review and approval by the Chairman of the National Indian Gaming Commission (NIGC). The ordinance was received on January 22, 2002.

This letter constitutes approval of your submission under the Indian Gaming Regulatory Act ("IGRA"). It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Tribe has jurisdiction.

With approval of the Tribe's Gaming Ordinance, the Tribal Gaming Commission is 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, pursuant to 25 C.F.R. § 556.5(b), before the Tribal Gaming Commission issues a license to a key employee or primary management official

Thank you for submitting the Gaming Ordinance for review and approval. The NIGC staff and I look forward to working with you and the Tribe on future gaming issues.

If you have any questions concerning this letter or the ordinance review process, please contact Ms. Danna Jackson at 202/632-7003.

Sincerely yours,

Montie R. Deer
Chairman

RESOLUTION
NO. 1-5-2002D

A Resolution to Adopt the Elem Indian Colony of Pomo Indians Class II and III Gaming Ordinance of 2002 and Submit to the NIGC for Approval

WHEREAS, the Elem Indian Colony of Pomo Indians is a sovereign federally recognized tribe as established pursuant to the Constitution and Bylaws for the Elem Indian Colony of Pomo Indians; and

WHEREAS, the General Council of the Elem Indian Colony of Pomo Indians is the governing body of the Elem Indian Colony of Pomo Indians pursuant to Article III, Section 1 of the Constitution and Bylaws for the Elem Indian Colony of Pomo Indians; and

WHEREAS, the General Council of the Elem Indian Colony of Pomo Indians is authorized by its Constitution and Bylaws, Article VII, Section 1(g) to promulgate and enforce ordinances for the Elem Indian Colony of Pomo Indians; and

WHEREAS, we the General Council of the Elem Indian Colony of Pomo Indians are entrusted with the preservation of our cultural values, and promotion of the general welfare of the Elem Indian Colony of Pomo Indians; and

WHEREAS, the protection, safety and welfare of all persons, including, but not limited to, the preservation of education, economic and employment opportunities, and preservation of cultural and natural resources, within the jurisdiction of the Elem Indian Colony of Pomo Indians, are primary goals and objectives of the General Council; and

WHEREAS, the General Council has determined that it is in the best interest to adopt, in its entirety, the Elem Indian Colony of Pomo Indians Gaming Ordinance attached to this Resolution, including each Title as listed below:

Title I	Regulation of Class II and Class III Gaming
Title II	Tribal Environmental Code for Class III Gaming
Title III	Adoption of Federal Occupational Safety and Health Standards for the Class III Gaming Facility
Title IV	Adoption of the Americans with Disabilities Act Relative to Class III Gaming Facilities
Title V	Adoption of the FDA 1999 Food Code for the Class III Gaming Facility

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Title VI	Adoption of Federal Safe Drinking Water Standards for the Class III Gaming Facility
Title VII	Adoption of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, Uniform Electrical Code and other Relevant Building and Construction Standards for Development of a Class III Gaming Facility

NOW THEREFORE, BE IT RESOLVED, that the Elem Indian Colony of Pomo Indians General Council hereby adopts the Class II and Class III Tribal Gaming Ordinance of 2002 attached hereto, and the Executive Committee Chairperson is authorized to execute all documents necessary to implement this Resolution.

BE IT FURTHER RESOLVED, that the Tribe's gaming attorneys, Monteau & Peebles, LLP, are directed to submit the attached Tribal Gaming Ordinance to the National Indian Gaming Commission for approval.

C*E*R*T*I*F*I*C*A*T*I*O*N

This will certify that the foregoing resolution was considered at a meeting of the General Council of the Elem Indian Colony of Pomo Indians, duly called on the 5th day of January, 2002, and was adopted by majority vote. A quorum of 59 was present.

Dated this 5th day of January, 2002

Delbert Thomas, Jr., Chairman
Elem Indian Colony of Pomo Indians

ATTEST:

Tribal Secretary
Executive Committee

TRIBAL GAMING ORDINANCE

JAN 22 2002

OF THE

ELEM INDIAN COLONY OF POMO INDIANS

TITLE I

REGULATION OF CLASS II AND CLASS III GAMING

A law to authorize, license and regulate the conduct of Class II and Class III Gaming within the jurisdiction of the ELEM INDIAN COLONY OF POMO INDIANS.

SECTION 1 FINDINGS, INTENT AND POLICY

1.1 Findings The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") Executive Committee on behalf of the General Council finds that:

1.1.1 Tribal regulation and control of Gaming within the jurisdiction of the Tribe is essential for the protection of public health and welfare of the Tribe and visitors to the Tribal community.

1.1.2 The Tribe has the legal authority to license and regulate any Gaming Activity within the jurisdiction of the Tribe.

1.1.3 Properly licensed and regulated Gaming are in conformance with announced Federal policy promoting Indian self-government and Indian Tribal economic self-sufficiency.

1.1.4 It is essential that the Executive Committee regulate Gaming in a manner commensurate with applicable Federal, State of California ("State") and Tribal law and policy.

1.1.5 The present needs of the Tribe are not adequately addressed by State and Federal programs including the need for increased employment, training, housing, health care, nutrition, educational opportunities, preservation of culture, social services and community and economic development.

1.1.6 Tribal operation and licensing of Gaming is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goal of self-sufficiency and self-determination.

1.1.7 The State, in recognition of the Tribe's sovereign right and need for Gaming, has entered into a Tribal/State Compact ("Compact") pursuant to the terms and conditions of the Indian Gaming Regulatory Act.

1.1.8 As a result of the foregoing, the adoption of a new and expanded Gaming Ordinance is in the best interest of the Tribe and State.

1.2 Intent The Executive Committee, on behalf of the General Council, declares that the intent of this Code is to:

1.2.1 Regulate, control, and oversee Gaming within the jurisdiction of the Tribe.

1.2.2 State, declare and otherwise clarify that a License related to Gaming is a revocable privilege, not a right.

1.2.3 Ensure that the operation of Tribally regulated Gaming can continue as a means of generating Tribal revenue.

1.2.4 Ensure that Gaming is conducted fairly and honestly by both Licensees and players, and that it remain free from corrupt, incompetent, unconscionable and dishonest practices.

1.2.5 Encourage Tribal economic development and employment opportunities.

1.2.6 Ensure that all Gaming revenue is used for the benefit of the Tribe and its community.

1.2.7 Ensure that the Tribe provides a fair and impartial forum for the resolution of Gaming disputes.

1.2.8 Ensure that Tribal Gaming laws are strictly and fairly enforced upon Persons involved in Gaming Activity within the jurisdiction of the Tribe.

1.3 Policy

1.3.1 Tribal Policy of Self-Government The Tribe is firmly committed to the principle of Tribal self-government. Consistent with Federal policy, Gaming revenues shall be utilized and expended by the Executive Committee by resolution and only for the following purposes:

(1) To fund Tribal government operations or programs.

(2) To provide for the general welfare of the Tribe and its members.

(3) To promote Tribal economic development.

(4) To donate to charitable organizations.

(5) To preserve and protect cultural and historic resources.

(6) To help to fund operations of local government agencies, general governmental services, the maintenance of peace and good order, the establishment of educational systems and programs, and the promotion and regulation of economic activities within the sovereign jurisdiction of the Tribe.

1.3.2 Tribal Gaming Policy The establishment, promotion and operation of Gaming is necessary, provided that such Gaming is regulated and controlled by the Tribe pursuant to the Tribal/State Compact authorized by the Indian Gaming Regulatory Act, and that the revenues of such Gaming are used exclusively for the benefit of the Tribe.

1.3.3 Tribal Ownership of Gaming Facility The Tribe shall have sole proprietary interest in and responsibility for the conduct of Gaming Facilities and/or Enterprises authorized by this Code.

1.3.4 Tribal Class II Gaming Authorized Class II Gaming is authorized as defined in the IGRA, P.L. 100-447, 25 U.S.C. Section 2703(7)(A) and by regulations promulgated by the NIGC.

1.3.5 Tribal Class III Gaming Authorized Class III Gaming is authorized and permitted only to the games identified pursuant to Section 4.1 of the Tribal/State Compact as approved by the Secretary of the Interior, and played in accordance within the definitions and scope of the IGRA, P.L. 100-447, 25 U.S.C. Section 2703(8) and by regulations promulgated by the NIGC.

SECTION 2 DEFINITIONS

In this Code, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

2.1 **"Adjusted Gross Revenues"** means gross revenues less all cash prizes or the aggregate price of merchandise prizes, except in the case of the games of draw poker and stud poker. Regarding games of draw poker and stud poker, "adjusted gross revenues" means the time buy-ins or tournament fees collected by the Licensee.

2.2 **"Applicant"** means any Person or entity who has applied for a License under the provisions of this Code.

2.3 **"Application"** means a request for the issuance of a License for employment by a Gaming Facility, or for approval of any act or transaction for which approval is required or permitted under the provisions of this Code.

2.4 **"Association"** means representatives from California tribes, the California State Division of Gaming Control and the California Gambling Control Commission as established pursuant to Section 2.2 of the Compact.

2.5 **"Bingo"** means the game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, in which the holder of each card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and in which the game is won by the first Person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip-jars, instant bingo and other games similar to bingo.

2.6 **"Breakage"** means the remainder by which the amount payable on each dollar wagered exceeds a multiple of ten cents, and in a minus pool, five cents.

2.7 **"Capital Cost"** means any disbursement for Personal property, the useful life of which is expected to extend beyond one year.

2.8 **"Cash"** means any currency commonly accepted as legal tender, including but not limited to currency, traveler's checks, credit cards, and electronic debit cards.

2.9 **"Casino"** means an establishment in which several Gaming activities or enterprises are operated.

2.10 **"Charitable Gaming Ticket"** means any game piece used in the play of a paper pull tab game, or jar ticket game, or raffle.

2.11 **"Cheating"** means a Person's operating or playing in any game in a manner in violation of the written or commonly understood rules of the game, with the intent to create for himself or someone in privity with him an advantage over and above the chance of the game.

2.12 **"Class II Gaming"** means those Gaming activities as defined as Class II Gaming in the IGRA of 1988, P.L. 100-447, 25 U.S.C. Section 2703(7).

2.13 **"Class III Gaming"** means those Gaming activities as defined as Class III Gaming in the IGRA of 1988, P.L. 100-447, 25 U.S.C. Section 2703(8).

2.14 **"Code"** means this Tribal Gaming Ordinance of the Elem Indian Colony of Pomo Indians, as amended.

2.15 **"Committee" or "Executive Committee"** means the elected members of the General Council pursuant to Article III, Section 3 of the Tribe's Constitution.

2.16 **"Compact"** means the Gaming compact between the Tribe and the State, as authorized by the Indian Gaming Regulatory Act.

2.17 **"Compensation"** means all wages salaries, perks, bonuses and all other forms of enumeration for services rendered.

2.18 **"Contract"** means any legally binding agreement made between an Licensee and another Person for the purpose of conducting any form of lawful Gaming Activity, or providing goods or services to any lawful Gaming Activity or operation.

2.19 **"Council" or "General Council"** means the governing body of the Tribe.

2.20 **"Determination of Suitability"** means a formal finding by the Tribal Gaming Commission or State Gaming Agency that the Applicant or Licensee is suitable to obtain and/or maintain the License.

2.21 **"Employee"** means any person who (a) operates, maintains, repairs, assists in any Gaming Activity, works in, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, account for, or supervise any such Gaming Activity, (b) is in a category under federal or Tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Commission with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

2.22 **"Enrolled Tribal Member"** means a Person who is enrolled with the Tribe, and whose name appears on the tribal membership roll.

2.23 **"Enterprise"** means the economic entity that is licensed by the Tribal Gaming Commission, operates the games, receives the revenues, issues the prizes, and pays the expenses. A Gaming Enterprise may be operated by the Tribe or a Management Contractor.

2.24 **"Equipment for Games of Chance"** (see "Gaming Device").

2.25 **"Exclusive License"** means a license, which precludes the Tribal Gaming Commission from issuing to another a license for the same specific form of Gaming during the life of the exclusive license. An Applicant must demonstrate and the Tribal Gaming Commission must find that the issuance of an Exclusive License is in the economic interest and welfare of the Tribe.

2.26 "**Financial Source**" as that term is used in § 6.4.6 of the Compact, and in this Code, means every Person, with whom the Tribe enters into an agreement or contract for the purpose of extending financing to the Tribe, the proceeds of which are used either directly or indirectly to finance the Gaming Facility or Enterprise. For the purposes of this section and § 5.1.3, the term "Contract" means an agreement between the Tribe, or any Tribal subdivision, arm, or entity, and another Person. Financial Sources must be licensed.

2.27 **"Games of Chance"** means any game or activity, which falls within the broad definition of Gaming or Gaming Activity.

2.28 **"Gaming" or "Gaming Activity"** means any activity, operation or game of chance in which any valuable consideration may be wagered upon the outcome determined by chance, skill, speed, strength or endurance, and in which any valuable prize is awarded to the player so wagering.

2.29 **"Gaming Device"** means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

2.30 **"Gaming Facility"** means any building in which Class III Gaming Activities or Gaming operations occur, or in which the business records, receipts, or other funds of the Gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including hotels, ancillary businesses, parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming operation, provided that nothing herein prevents the conduct of Class II Gaming (as defined under IGRA) therein.

2.31 **"Gaming Program"** means any Tribal program, which oversees one or more parts of the operation of Gaming. The Gaming Program must be licensed by the Tribal Gaming Commission.

2.32 **"Gaming Vendor"** means the same as a "Gaming Resource Supplier" as defined by the Compact or any Person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases or otherwise purveys Class II Gaming or Class III Gaming resources to the Gaming Facility, provided that the Tribal Gaming Commission may interpret this definition to exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection of Gaming. Gaming Vendors must be Licensed

2.33 **"General Manager"** means the Person or entity, which has management responsibilities for the Gaming Activity, and which shall have access to all areas of the Gaming Facility, provided that such access to the surveillance room and count room shall be by prior notice to the Tribal Gaming Commission.

2.34 **"Gross Revenues"** means all gaming and non-gaming revenues collected or received from the lawful Gaming Enterprise.

2.35 **"Immediate Family"** means, with respect to the Person under consideration, a husband, wife, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

2.36 **"Indian Gaming Regulatory Act" or "IGRA"** means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. §§2701, *et seq.* (1988), as amended.

2.37 **"Indian Lands"** means:

2.37.1 Lands within the limits of the Tribe's exterior boundaries, whereby it exercises sovereign jurisdiction over such lands, notwithstanding the issuance of any patent and including rights-of-way running through such lands; and

2.37.2 Land title to which is either held in trust by the United States for the benefit of the Tribe or individual Indian or held by the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises governmental powers; and

2.37.3 Lands that may be acquired by the Tribe that meet the requirements of 25 U.S.C. Section 2719 et. seq.

2.38 **"In privity with"** means a relationship involving one who acts jointly with another or as an accessory before the fact to an act committed by the other or as a co-conspirator with the other.

2.39 **"IRS"** means the United States Internal Revenue Service.

2.40 **"Key Employee"** means:

2.40.1 A Person who performs one or more of the following functions:

(1) Bingo caller;

(2) Counting room supervisor and Personnel;

(3) Chief of security, or any Person who supervises or directs other employees engaged in providing security or surveillance services;

(4) Custodian of Gaming supplies or cash;

(5) Floor manager; manager or General Manager;

(6) Pit boss;

(7) Dealer;

(8) Croupier;

(9) Approver of credit or whose recommendation in this regard are ordinarily sought or followed; or

(10) Custodian of gambling devices including Persons with access to cash and accounting records within such devices;

2.40.2 If not otherwise included, any other Person whose total cash compensation is in excess of $50,000 per year; or

2.40.3 If not otherwise included, any other Person who supervises or directs other employees engaged in the control of Gaming assets and revenues and record keeping, including the recording of cash and evidences in indebtedness, and the maintenance, review, or control of the records, accounts, and reports of transactions; or

2.40.4 If not otherwise included, the four most highly compensated Persons in the Gaming Facility; or

2.40.5 Any Applicant or Person the Tribal Gaming Commission finds is important or necessary to the operation of the Gaming Facility.

2.41 **"License"** means the official, legal and revocable permission granted by the Tribal Gaming Commission to an Applicant to conduct "Licensed" Gaming Activities of the Tribe.

2.42 **"Licensee"** means the Employee, Key Employee, Primary Management Official, Vendor, Enterprise or Facility that has legitimately obtained a valid License.

2.43 **"Lotto"** means a form of Gaming in which the revenues derived from the sale of tickets or chances are pooled and those revenues or parts thereof allotted by chance to one or more chance takers or ticket purchasers. The amount of cash prizes or winnings is determined by the Licensee conducting the "lottery," and a progressive pool is permitted.

2.44 **"Management Contract"** means any Contract for the management of Class II or Class III Gaming within the meaning of IGRA and any Contract entered between the Tribe and a Vendor, which authorizes the Vendor to manage any Gaming or Gaming Facility, including any Contract defined as a Management Contract under IGRA by the NIGC.

2.45 **"Management Contractor"** means any Person or entity who has entered into a Class II or Class III Gaming Management Contract or is a Vendor who is authorized to manage Gaming or Gaming Facility, including any Person who is regarded as a Management Contractor within the meaning of IGRA or the NIGC.

2.46 **"National Indian Gaming Commission" or "NIGC"** means the National Indian Gaming Commission established by the IGRA.

2.47 **"Net Revenues"** means Gross Revenues less amounts paid out as prizes and less total Gaming related operating expenses, excluding Management Contractor fees.

2.48 **"Net Win"** means the "net win" as defined by the American Institute of Certified Public Accountants.

2.49 **"Participate"** in any Gaming means operating, directing, financing or in any way assisting in the establishment of or operation of any class of Gaming or any site at which such Gaming is being conducted, directly or indirectly, whether at the site in Person or off the Reservation.

2.50 **"Person"** means any individual, partnership, joint venture, corporation, joint stock company, company, firm, association, trust, estate, club, business trust, municipal corporation, society, receiver, assignee, trustee in bankruptcy, political entity and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe or any of the above listed forms of business entities that are wholly owned or operated by the Tribe; provided, however, that the term does not include the Federal Government and any agency thereof. The plural of "Person" is "people."

2.51 **"Player"** means a Person participating in a game with the hope of winning money or other benefit, but does not include an Licensee or any assistant of an Licensee.

2.52 **"Primary Management Official"** means:

2.52.1 The Person having management responsibility for the overall operation of the Enterprise or Facility, or a management contract; or

2.52.2 Any Person who has authority to:

(1) Hire and fire employees; or

(2) Set up working policy for the Gaming Operation; or

2.51.3 The Chief Financial Officer or other Person who has financial management responsibility.

2.53 **"Progressive Gaming"** means any game in which a cash prize which, not being won by any player during any game, is retained and further monetarily enhanced by the Licensee or eligible organization, and offered as a prize to players in the next game.

2.54 **"Pull-tabs, Punchboards and Tip Jars"** means a form of Gaming in which preprinted cards utilizing symbols or numbers in random order which are uncovered by random choice in expectation of cash prizes if prescribed combinations of symbols and numbers are revealed.

2.55 **"Raffle"** means a form of Gaming in which each player buys a ticket for a chance to win a prize with the winner determined by a random method. "Raffle" does not include a slot machine.

2.56 **"Reservation"** means lands defined as "Indian Lands" herein.

2.57 **"State"** means the State of California.

2.58 **"State Gaming Agency"** means the entity of the State pursuant to the Gambling Control Act, pursuant to Division 8 of the Business and Professions Code, Chapter 5, Sec. 19800 et. seq.

2.59 **"State Gaming Facility Compliance Agent"** means the Person appointed pursuant to Section 6.4.2(d) of the Compact.

2.60 **"Tribal Court"** means the Court created, if and when created by the Tribe's Constitution, or in the alternative, the Executive Committee until such Tribal Court is created.

2.61 **"Tribe"** means the Elem Indian Colony of Pomo Indians.

2.62 **"Wager"** means the initial bet made in any game.

SECTION 3 GENERAL PROVISIONS

3.1 **Authority** This Code is enacted pursuant to the inherent sovereign powers of the Tribe pursuant to Article VII, Section 1(g) of the Tribal Constitution, and pursuant to the powers of the Executive Committee pursuant to Article VII,

Section 2(a) of the Tribal Constitution.

3.2 **Title, Repeal of Prior Laws, and Effect of Repeal** This Code may be cited as the Elem Indian Colony of Pomo Indians Gaming Code or "Code".

3.2.1 All titles, chapters and sections of the Tribal Code which pertain to Gaming and are in effect as of the date that this Code becomes operative, are hereby repealed, and all other laws, or parts thereof, inconsistent with the provisions of this Code are hereby repealed.

3.2.2 Repeal of this Code, or any portion thereof, shall not have the effect of reviving any prior Law, Ordinance, or Resolution theretofore repealed or suspended.

3.3 **Construction** In construing the provisions of this Code, unless the context otherwise requires, the following shall apply:

3.3.1 This Code shall be liberally construed to effect its purpose and to promote substantial justice.

3.3.2 Words in the present tense include the future and past tenses.

3.3.3 Words in the singular number include the plural, and words in the plural number include the singular.

3.3.4 Words of the masculine gender or neuter include masculine and feminine genders and the neuter.

3.4 **Severability** If any section of this Code is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

3.5 **Effective Date** The Code shall become effective upon the date of its approval by the Chairman of the NIGC pursuant to the IGRA.

SECTION 4 TRIBAL GAMING COMMISSION

4.1 **Establishment** The General Council hereby charters, creates and establishes the Elem Indian Colony of Pomo Indians Tribal Gaming Commission as a governmental subdivision of the Tribe.

4.2 **Location and Place of Business**

4.2.1 Gaming Facility The Tribal Gaming Commission shall maintain its headquarters, principal place of business and office within the Gaming Facility.

4.2.2 Other Locations The Tribal Gaming Commission may, however, with a majority vote from the General Council, establish other places of business in such other locations as the Tribal Gaming Commission may from time to time determine to be in the best interest of the Tribe.

4.3 Duration The Tribal Gaming Commission shall have perpetual existence and succession in its own name, unless dissolved by the General Council pursuant to Tribal law.

4.4 Attributes As a governmental subdivision of the Tribe, the Tribal Gaming Commission is responsible and accountable to the Executive Committee, and is under the directive and control of the General Council, but it is the purpose and intent of the General Council that the operations of the Tribal Gaming Commission be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members and the residents of the Reservation.

4.4.1 Arm of Tribe In carrying out its purposes under this Code, the Tribal Gaming Commission shall function as an arm of the Tribe.

4.4.2 Tribe Actions Notwithstanding any authority delegated to the Tribal Gaming Commission under this Code, the Tribe reserves to itself the right to bring suit against any Person or entity in its own right, on behalf of the Tribe or on behalf of the Tribal Gaming Commission, whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Tribal Gaming Commission.

4.5 Recognition as a Political Subdivision of the Tribe The General Council, on behalf of the Tribal Gaming Commission, shall take all necessary steps to acquire recognition of the Tribal Gaming Commission as a political subdivision of the Tribe, recognized by all branches of the United States Government as having been delegated the right to exercise one or more substantial governmental functions as specifically authorized under the terms and conditions of this Code.

4.6 Sovereign Immunity of the Tribal Gaming Commission

4.6.1 Authority The Tribal Gaming Commission is clothed by Federal and Tribal law with all the privileges and immunities of the Tribe, except as specifically limited by this Code, including sovereign immunity from suit in the State, Federal or Tribal Court.

4.6.2 No Waiver Nothing in this Code shall be deemed or construed to be a waiver of sovereign immunity of the Tribal Gaming Commission from suit, which shall only be waived pursuant to subsection 4.7 below.

4.6.3 No Consent to Jurisdiction Nothing in this Code shall be deemed or construed to be a consent of the Tribal Gaming Commission to the

jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Tribal Gaming Commission.

4.7 Waiver of Sovereign Immunity of the Tribal Gaming Commission The sovereign immunity of the Tribal Gaming Commission may be waived only by express resolutions of both the Tribal Gaming Commission and the General Council after consultation with its attorneys.

4.7.1 Resolution Effecting Waiver All waivers of sovereign immunity must be preserved with the resolutions of the Tribal Gaming Commission and the General Council of continuing force and effect.

4.7.2 Policy on Waiver Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Tribal Gaming Commission.

4.7.3 Limited Nature to Waiver Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Tribal Gaming Commission subject thereto, court having jurisdiction pursuant thereto and law applicable thereto.

4.7.4 Limited Effect of Waiver Neither the power to sue and be sued provided in subsection 4.7 herein, nor any express waiver of sovereign immunity by resolution of the Tribal Gaming Commission or the General Council, shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribal Gaming Commission other than property specifically pledged or assigned, or a consent to suit in respect of any land within the exterior boundaries of the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

4.8 Sovereign Immunity of the Tribe All inherent sovereign rights of the Tribe as a Federally-recognized Indian Tribe, with respect to the existence and activities of the General Council and the Executive Committee, are hereby expressly reserved, including sovereign immunity from suit in any state, Federal or Tribal court.

4.9 Assets of the Tribal Gaming Commission The Tribal Gaming Commission shall have only those assets specifically assigned to it by the General Council or acquired in its name by the Tribe or by it on its own behalf. No activity of the Tribal Gaming Commission nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal Membership or the Tribe not assigned in writing to the Tribal Gaming Commission.

4.10 Membership

4.10.1 Number of Commissioners The Tribal Gaming Commission shall be comprised of five (5) Tribal Gaming Commissioners.

4.10.2 Organization The Commission will consist of a Chairman and four (4) Commissioners.

(1) The Chairman shall direct Tribal Gaming Commission meetings, be responsible for day-to-day operations of the Tribal Gaming Commission and supervise Tribal Gaming Commission employees, provided that the Chairman shall not supervise the Commissioners.

(2) The Chairman shall be the agent for service of process.

(3) The Tribal Gaming Commission shall keep minutes of meetings and provide a copy to the Executive Committee.

4.10.3 Qualifications for Tribal Gaming Commission Positions

(1) Must be an Enrolled Member of the Tribe.

(2) Must pass the scrutiny of a background check pursuant to 4.10.5 below.

(3) Tribal Gaming Commissioners shall have expertise, experience, education or a combination thereof in the following areas: finance, management, legal, business, governmental regulation, and Tribal policy and law.

(4) Tribal Gaming Commissioners shall be at least twenty-one (21) years of age.

(5) Must not be an Immediate Family Member of an existing Commissioner.

4.10.4 Date of Election The Tribal Gaming Commissioners shall be elected during a duly called General Council meeting. The election of the Tribal Gaming Commissioners shall take place in the month of November of each year when necessity dictates. The Executive Committee shall create job descriptions, terms and conditions of employment for each Tribal Gaming Commissioner.

4.10.5 Background Check Prior to the time that any Tribal Gaming Commission member takes office on the Tribal Gaming Commission, the Tribe shall

perform or arrange to have performed a comprehensive background check on each prospective member. No Person shall serve as a Commissioner if:

(1) His/Her prior activities, criminal record, if any, or reputation, habits or associations:

(i) Pose a threat to the public interest; or

(ii) Threaten the effective regulation and control of Gaming; or

(iii) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Gaming; or

(2) He/She has been convicted of or entered a plea of *nolo contendere* to a felony of any jurisdiction or to a misdemeanor involving dishonesty or moral turpitude in any jurisdiction; or

(3) He/She has a direct monetary or financial interest in the conduct of any Gaming Enterprise or is in privity with a Management Contractor; or

(4) He/She is presently a member of the Executive Committee.

4.11 Term of Office The **first** Tribal Gaming Commission elected under this Code shall hold their respective Commission as follows: three (3) Commissioner positions shall be for three (3) years; a Commissioner position for two (2) years; and a Commissioner position for one (1) year. Upon the expiration of the first terms, each Commissioner **thereafter** shall be elected for three (3) year staggered terms. The Tribal Gaming Commissioners holding their respective positions prior to this Code shall remain in their positions until the first Tribal Gaming Commission election under this Code.

4.12 Ex-Officio Members At the sole direction of the Executive Committee, any member of the Executive Committee, Tribal or Bureau of Indian Affairs employee, or any other Person may be designated to Participate, without vote, in Tribal Gaming Commission meetings.

4.13 Meetings

4.13.1 Regular Meetings The Tribal Gaming Commission shall set a day of the week to conduct formal business at least once per week. Nothing in this Code shall prohibit the Commission from authorizing telephone and off-site meetings.

4.13.2 Special Meetings Special meetings may be called at the request of the Executive Committee, the Chairman of the Tribal Gaming Commission or by a majority vote of the Gaming Commissioners.

4.13.3 Quorum A quorum for all meetings shall consist of three (3) members.

4.13.4 Voting All questions arising in connection with the action of the Tribal Gaming Commission shall be decided by majority vote.

4.14 Compensation of Commissioners The compensation of Tribal Gaming Commissioners shall be established by the Executive Committee.

4.15 Removal of Members or Vacancies

4.15.1 Removal A Commissioner may be removed by the Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of the Tribal Gaming Commission or otherwise violates the letter or intent of this Code.

4.15.2 Due Process Except as provided below, no Commissioner may be removed without notice and an opportunity for a hearing before the Council, and then only after the Commissioner has been given written notice of the specific charges at least ten (10) days prior to such hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in Person, or at their own expense by legal counsel, and to present witnesses on his behalf.

4.15.3 Temporary Suspension If the Council determines that immediate suspension of a Commissioner is necessary to protect the interests of the Tribe, the Council may hold a hearing with the Commissioner to suspend the Commissioner temporarily, and the question of permanent removal shall be determined thereafter pursuant to Tribal Gaming Commission hearing procedures pursuant to 4.15.2 herein.

4.15.4 Written Record A written record of all removal proceedings together with the charges and findings thereon shall be kept by the Executive Committee Secretary.

4.15.5 Removal Final The decision of the General Council upon the removal of a Commissioner shall be final.

4.15.6 Vacancies If any Commissioner shall die, resign, be removed or for any reason be unable to serve as a Commissioner, the Council shall declare his/her position vacant and shall cause to be conducted an election to fill the position within thirty (30) days of the vacancy. The terms of office of

each Commissioner elected to replace an initial Commissioner shall be for the balance of any un-expired term for such position provided, however, that any prospective electee must meet the qualifications established by this Code.

4.16 Conflict of Interest No Person shall serve as a Commissioner if he/she or any member of his/her Immediate Family has an ownership, partnership or other direct financial interest, other than a regular salary interest, in any Gaming Enterprise, or if he/she has any other Personal or legal relationship which places him/her in a conflict of interest.

4.17 Powers of the Tribal Gaming Commission In furtherance, but not in limitation, of the Tribal Gaming Commission's purposes and responsibilities, and subject to any restrictions contained in this Code or other applicable law, the Tribal Gaming Commission shall have, and is authorized to exercise by majority vote, the following powers in addition to all powers already conferred by this Code:

4.17.1 To reasonably inspect and regulate all Gaming within the jurisdiction of the Tribe, provided that the Commission does not make Management decisions as to the day-to-day operations of the Gaming Enterprise.

4.17.2 To investigate any reported violations of this Code, the Compact, or any other applicable law regarding Gaming within the jurisdiction of the Tribe.

4.17.3 To act as liaison with the NIGC and the California Division of Gaming Control and the California Gambling Control Commission.

4.17.4 To publish and distribute copies of this Code and Tribal Gaming Commission rules and any Executive Committee, Tribal Gaming Commission or Tribal Court decisions regarding Gaming matters.

4.17.5 To prepare and submit for Executive Committee approval proposals, including budget and monetary proposals related to the operation of the Tribal Gaming Commission, which could enable the Tribe to better carry forth the policies and intent of this Code.

4.17.6 To work directly, and only with the Executive Committee with regard to any Gaming issues.

4.17.7 To make or cause to be made reasonable inspections or investigations as it deems necessary to ensure compliance with this Code. In undertaking such investigations, the Tribal Gaming Commission may request the assistance of Tribal Gaming staff, Federal and local law enforcement officials, legal counsel and other third parties.

4.17.8 To request the assistance of the Gaming Review Board when established, in conducting Gaming hearings.

4.17.9 To arrange for training of Tribal Gaming Commission members and employees in areas relating to the regulation or operation of Gaming.

4.17.10 Upon prior explicit resolution and approval of the General Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and Gaming professionals.

4.17.11 To promulgate rules and regulations to implement and further the provisions of this Code, including the development of a personnel and procedures policy with regard to its own employees; provided such rules or regulations are approved by General Council resolution or ordinance.

4.17.12 To accept, review, approve or disapprove any Application for a License.

4.17.13 To consult with and make recommendations to the General Council regarding changes in Tribal Gaming laws and policies.

4.17.14 To examine under oath, either orally or in writing, in hearings or otherwise any Person or agent, officer or employee of any Person, or any other witness with respect to any matters related to this Code, including enforcement of tribal Gaming laws, regulations, and policies, and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto.

4.17.15 To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible Personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Gaming operating, or suspected to be operating, within the jurisdiction of the Tribe.

4.17.16 To delegate to an individual member of the Tribal Gaming Commission, or to an individual member of the Executive Committee, or Tribal staff, such of its functions as may be necessary to administer these ordinances efficiently; provided, that the Tribal Gaming Commission may not re-delegate its power to exercise any of the substantial governmental functions of the Tribe or its power to promulgate rules and regulations; and provided further that the Tribal

Gaming Commission may not delegate to any Person the power to permanently revoke a License.

4.17.17 To issue fines and sanctions to the Gaming Facility if it is operating in violation of this Code, and report significant violations of the Compact to the Executive Committee, General Council and the State Gaming Agency.

4.17.18 To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to Sections 4.6 and 4.7 herein; provided, that no suit shall be brought by the Tribal Gaming Commission without the prior explicit written approval of the General Council.

4.17.19 To use the seal of the Tribal Gaming Commission, or the seal of the Tribe with the approval of the General Council.

4.17.20 To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Tribal Gaming Commission's authorized activities.

4.17.21 To exercise the Tribal power to tax, authorized by the Tribal Constitution in accordance with a General Council resolution delegating such power to the Tribal Gaming Commission solely for the purpose of allowing it to charge administrative and License Application fees to Gaming License Applicants which are reasonably related to the costs of operating the Commission.

4.17.22 To purchase insurance from any stock or mutual company for any property or against any risk or hazard.

4.17.23 With prior approval of the General Council, to make application and accept grants and other awards from private and governmental sources in carrying out or furthering the purposes of the Tribal Gaming Commission or the Tribe.

4.17.24 To establish and maintain such bank accounts as may be necessary or convenient.

4.17.25 To require the filing of any records, forms, and reports and all other information desired by the General Council or required by this Code.

4.17.26 To provide for an internal system of record keeping with adequate safeguards for preserving confidentiality as deemed necessary by the Tribal Gaming Commission for retaining records, forms and reports at least three (3) years.

4.17.27 To adopt a schedule of fees to be charged for Licenses.

4.17.28 To adopt a schedule of fees for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records.

4.17.29 To conduct or arrange for background investigations of all Applicants.

4.17.30 To discipline any Licensee or Person participating in Gaming by ordering immediate compliance with this Code, and to issue an order of temporary suspension of any License issued under this Code pursuant to the hearings and due process required by Section 4.22 and 4.23 herein.

4.17.31 To issue an order of temporary closure of a Gaming Facility in the event the Tribal Gaming Commission determines that immediate closure is necessary to protect assets or interests of the Tribe pursuant to the due process and hearings required by Section 4.22 and 4.23 herein.

4.17.32 To become self-regulating whenever the Tribe becomes eligible for a certificate of self-regulation under the IGRA.

4.17.33 To file with the State Gaming Agency a request to be heard on any denial of a Determination of Suitability as defined by the Tribal/State Compact.

4.17.34 To ask for the assistance of the State Gaming Agency to carry out the Class III provisions of this Code and to reimburse the State Gaming Agency for any costs that it occurs in the provision of this service.

4.17.35 To assist Management in taking all steps necessary and appropriate to insure the physical safety of all Tribal Gaming Enterprises, their Licensees, patrons and employees.

4.17.36 Notwithstanding any authority granted herein, the Tribal Gaming Commission shall endear to follow rules, regulations, standards, specification and procedures which are consistent with the State Gaming Agency's rules, regulations, standards, specifications and procedures adopted pursuant to Sections 6.0- 8.0 of the Compact.

4.17.37 To enact and adhere to its own internal controls including a Conflict of Interest Policy governing Commissioners and Tribal Gaming Commission staff.

4.17.38 To file a quarterly report to the Executive Committee summarizing reports received from the Tribe's Management Contractor or General Manager pursuant to Section 9.1.3, and further to make such comments as it deems necessary to keep the Executive Committee fully informed as to the status of the Tribal Gaming Commission's activities in response to those reports.

4.18 Annual Budget The Tribal Gaming Commission shall prepare an annual operating budget for all Tribal Gaming Commission activities and present it to the Council by October 15 of each year.

4.19 Tribal Gaming Commission Regulations

4.19.1 Tribal Gaming Commission regulations necessary to carry out the orderly performance of its duties and powers shall include, but shall not be limited to, the following:

(1) The Minimum Internal Control Standards ("MICS") as issued by the NIGC;

(2) Interpretation and application of this Code, as may be necessary to enforce the Tribal Gaming Commission's duties and exercise its powers;

(3) A regulatory system for overseeing Gaming, including accounting, contracting, management and supervision;

(4) The findings of any reports or other information required by or necessary to implement this Code; and

(5) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Tribal Gaming Commission authorized by this Code.

4.19.2 No regulation of the Tribal Gaming Commission shall be of any force or effect unless it is adopted by the Tribal Gaming Commission by written resolution and subsequently approved by a resolution of the General Council and both resolutions filed for the record in the office of the Executive Committee Secretary.

4.20 Right of Entrance; Bi-Monthly Inspection. The Tribal Gaming Commission and duly authorized officers and employees of the Tribal Gaming Commission, during regular business hours, may reasonably enter upon any premises of any Licensee or Gaming Facility for the purpose of making inspections and examining the accounts, books, papers and documents of any such Gaming Facility.

4.20.1 Aid to Entry The Gaming Facility staff shall facilitate such inspection or examinations by giving every reasonable aid to the Tribal Gaming Commission and to any properly authorized officer or employee.

4.20.2 Frequency of Inspection A Commissioner or a member of the Tribal Gaming Commission's staff shall visit each Gaming Facility at least once every two weeks during normal business hours for the purpose of monitoring its operation. Such visits shall be unannounced.

4.21 Investigation The Tribal Gaming Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Person or Licensee within its jurisdiction. In conducting such investigation, the Tribal Gaming Commission shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.22.

4.22 Due Process; Notice; Hearings; Examiner The Tribal Gaming Commission shall provide due process and provide notice and a hearing if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder.

4.22.1 No Hearing, Voluntary Resolution Whenever it shall appear to the satisfaction of the Tribal Gaming Commission that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Tribal Gaming Commission may dismiss the issue without a hearing.

4.22.2 Notice of Hearing The Tribal Gaming Commission shall, within 5 days after the event giving rise to the concern, provide a written notice setting forth, with specificity, the issues to be resolved.

4.22.3 Hearing The Tribal Gaming Commission shall, within 5 days after the notice of hearing pursuant to 4.22.2, provide the affected parties the right to present oral or written testimony to all people interested therein as determined by the Tribal Gaming Commission.

4.22.4 Examiner The Tribal Gaming Commission shall act as examiner for the purpose of holding any hearing, or the Tribal Gaming Commission may appoint a Person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of

holding any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Tribal Gaming Commission under this Code with respect to any such hearing.

4.22.5 Decision The Examiner shall render a written opinion within 48 hours of the hearing.

4.22.6 Appeals Affected parties may appeal a Tribal Gaming Commission determination by filing a written appeal to the Gaming Review Board within thirty (30) days of the Tribal Gaming Commission's or Examiner's final decision.

4.23 Appeals to Gaming Review Board

4.23.1 Creation of the Gaming Review Board The General Council hereby establishes the Gaming Review Board, which shall be composed of a Trial Branch, which shall review cases de novo without any administrative deference of fact or law to prior findings, and an Appellate Branch. The Gaming Review Board shall have jurisdiction, exclusive of any other tribal entity or tribal court, over all disputes arising out of or in connection with actions of the Tribal Gaming Commission, including without limitation, actions challenging any licensing, enforcement, or regulatory actions of the Tribal Gaming Commission, Executive Committee or Tribe in connection with the financing, development, construction, or operation of the Gaming Enterprise by the Management Contractor or any actions arising under the terms and conditions of the Management Contract.

4.23.2 Procedures Within Ninety (90) days of the appointment of Judges under Section 4.23.6 below, the Gaming Review Board shall enact reasonable rules of procedure, which such rules shall be enacted by the General Council ("Rules of the Gaming Review Board"). At a minimum, these procedures must provide any claimant in the Gaming Review Board with a right to a hearing at both the trial and appellate levels, and the rules must provide each claimant with due process of law under the Tribe's Constitution. In addition, the rules must incorporate and make binding upon the Judges of the Gaming Review Board a Code of Judicial Ethics, as that document is from time to time amended.

4.23.3 Governing Law To the extent Tribal law does not otherwise govern a dispute the Gaming Review Board shall apply relevant provisions of California or Federal law.

4.23.4 Remedies The Gaming Review Board shall have full jurisdiction, exclusive of any other tribal entity or tribal court, over cases and controversies, and authority to provide legal and equitable relief, and to mandate any remedy which the Gaming Review Board finds justice

requires. Such authority shall include, but not be limited to, the power to issue temporary restraining orders, and to grant preliminary and permanent injunctive relief, in instances where the Tribe seeks to terminate any contracts entered into by the General Council, Executive Committee or the Commission relating to the grant, denial, revocation, or suspension of any gaming license.

4.23.5 Findings All findings and orders of the Gaming Review Board shall be in writing within Ninety (90) days after the dispute is submitted for the board's consideration.

4.23.6 Appointment of Judges The General Council shall appoint the Judges for the Gaming Review Board. The General Council shall, when necessity dictates, appoint four (4) Judges for the Gaming Review Board. Any time the number of judges falls below four, the General Council shall, within thirty (30) days appoint such additional Judges as necessary to restore the number of judges to four. If the General Council fails to restore the number of judges to four within thirty (30) days of a vacancy, the remaining Judges may appoint the Judges necessary to restore the number of Judges to four. All Judges shall be selected from a publicly available list of retired federal or state judges with the following qualifications:

(1) has never been convicted of a felony or any gaming offense;

(2) is not a member of the General Council or Executive Committee;

(3) is of sound mind, trustworthy, and of good moral character;

(4) is able to determine in what cases he or she will be disqualified and is willing to disqualify himself or herself;

(5) is capable of carrying out the duties of the office, including staff administration and supervision;

(6) is willing to commit, upon public oath or affirmation, to uphold this Code, the Tribal Constitution and to fairly and impartially adjudicate all matter before the Gaming Review Board;

(7) shall be subject to the same background and Licensing standards as Commissioners pursuant to Title I, Section 4.10.5 herein;

(8) shall not engage in any Gaming Activity with the Gaming Enterprise; and

(9) is not employed by the Gaming Enterprise, nor have any immediate relatives who are employed by the Gaming Enterprise.

4.23.7 Appeals Trial Branch decisions shall only be appealed to the Appellate Branch. Appeals from any decision of the Trial Branch shall be heard by the three judges that did not hear the case in the Trial Branch. There shall be no right to appeal Appellate Branch decisions to any State or Federal Court.

4.23.8 Compensation Judges of the Gaming Review Board shall be compensated by the General Council in amounts appropriate to the duties and responsibilities of the office, which compensation shall not be diminished during a judge's continuation in office. The Gaming Review Board shall have the power to take appropriate action to enforce this subsection.

4.23.9 Recall and Discipline After appointment, Judges of the Gaming Review Board shall be subject to discipline and removal for cause pursuant to the Rules of the Gaming Review Board.

SECTION 5 GAMING LICENSES

5.1 Applicability

5.1.1 Every Employee, Key Employee, Primary Management Official, Gaming Enterprise, and Gaming Facility that aids, participates or is related to Gaming is required to have a current and valid License as issued by the Tribal Gaming Commission.

5.1.2 Every Gaming Vendor that provides or receives, or is likely to provide or receive at least Twenty-five Thousand Dollars in any twelve (12) month period from the Enterprise is required to have a current and valid License as issued by the Tribal Gaming Commission.

5.1.3 Every Person extending financing, directly or indirectly, to the Facility or Enterprise is required to have a current and valid License as issued by the Tribal Gaming Commission, provided that any Person extending the financing shall be Licensed within Ninety (90) days of execution of such financing.

5.2 Application Procedure

5.2.1 Submission to Tribal Gaming Commission An Applicant seeking a License shall submit an Application to the Tribal Gaming Commission on such form as the Tribal Gaming Commission may require.

5.2.2. Privacy Act and False Statement The application form shall include the following notices:

5.2.2.1. Privacy Act

In compliance with the Privacy Act of 1974, the solicitation of 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 prosecutions 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 revocation of a gaming license, or investigation 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 my result in errors in processing your application.

5.2.2.2. False Statement

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).

5.2.3 Submission to State Gaming Agency The Tribal Gaming Commission shall forward the Applicant's Application for a Determination of Suitability along with required releases to the State Gaming Agency.

5.2.4 Application Contents At a minimum, and whether the information is relevant for the type of License applied for, the Application shall contain the following information:

(1) The full name (and other names ever used), address, telephone number, age, birth date and place, citizenship, gender, and social security number or business identification number of the Applicant.

(2) If the Applicant has resided at his current address for less than five (5) years, his previous address, and if the Applicant has been issued more than one (1) driver's license number within the last five years, each driver's license number.

(3) The name, address and telephone number of the Licensee for whom he will work and the specific location at which he will be employed. A description of the job, task, or service the Applicant will provide.

(4) The names and addresses of the Applicant's Immediate Family.

(5) The Applicant's criminal and civil record, if any, and an explanation of any crimes for which he has been convicted or civil suits he has lost, or to which he has entered a plea of *nolo contendere*.

(6) A disclosure of any judgment rendered against the Applicant.

(7) The names, addresses and telephone numbers of three (3) references who are not related to the Applicant; including one (1) personal reference acquainted with the Applicant for the last five (5) years.

(8) A list of the Applicant's previous jobs over the preceding five (5) years and his present business affiliations.

(9) The identity of any ownership interest in any past business ventures.

(10) The disclosure of whether there is a previous contractual relationship with an Indian tribe.

(11) A sworn statement whether the Applicant or any member of his/her Immediate Family has a past or current financial interest in any Gaming-related enterprise anywhere.

(12) A list of all Gaming-related licenses the Applicant has ever applied for, whether or not they were granted such license.

(13) A list of all professional, occupational or business licenses the Applicant has ever applied for, whether or not they were granted such license.

(14) A statement of all languages written or spoken.

(15) Written permission giving the Tribal Gaming Commission, State Gaming Agency and NIGC or its designees the right to the Applicant's background, including his criminal record.

(16) A complete disclosure of any pending or anticipated civil or criminal action against the Applicant.

(17) A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Tribe and the Tribal Court.

(18) A sworn statement that the Applicant will abide by all applicable Tribal and Federal laws, regulations and policies.

(19) A photograph of the Applicant taken within the past year.

(20) A written statement that the information contained in the Application is true and correct to the best of Applicant's knowledge.

5.2.5 Business Entities In addition to the relevant information requested in 5.2.4, business entities shall also submit the following:

(1) Each of its officers and directors;

(2) Each of its principle management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager;

(3) Each of its owners or partners, if an unincorporated business;

(4) Each of its shareholders who own more than 10 percent of the shares of the corporation; and

(5) Each person or entity that, alone or in combination with others, has provided financing in connection with Gaming authorized under this Compact.

5.3 Review of License Application. The Tribal Gaming Commission shall thoroughly review and conduct a background investigation for each Tribal Gaming License Application sufficient to make a determination of eligibility as required under this Code. The Tribal Gaming Commission's review and background investigation shall include, but is not limited to the following:

5.3.1 The Tribal Gaming Commission shall enter into an agreement with the Lake County Sheriff's Office, State of California, to take the Applicant's fingerprints. Each applicant shall submit the completed fingerprint card along with his/her application to the Tribal Gaming Commission.

5.3.2 The Tribal Gaming Commission shall review diligently, the information provided in the Tribal Gaming License Application, including, but not limited to, contacting and investigating all resources identified in the Tribal Gaming License Application. An authorized Tribal official, identified by the Tribal Gaming Commission, shall review an Applicant's prior activities, criminal record (if any), reputation, habits, and associations in order to make an eligibility determination for key employees and primary management officials.

5.3.3 The Tribal Gaming Commission shall provide a written report as to findings and conclusions of the foregoing background investigation, including, but not limited to:

5.3.3.1 Steps taken in conducting diligence.

5.3.3.2 Results of the conducted diligence.

5.3.3.3 Conclusions from review of conducted diligence.

5.3.3.4 The basis for those conclusions.

5.3.4 The Tribal Gaming Commission shall transmit the Applicant's Application, file, and eligibility determination report to the NIGC and the State Gaming Agency.

5.3.5 The Tribal Gaming Commission shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports, for inspection by the NIGC for no less than three (3) years from the date of termination of employment.

5.3.6 The Tribal Gaming Commission, when it does not license an Applicant, shall notify the NIGC and forward copies of the Tribal Gaming Commission's eligibility determination report and the investigative report (if any).

5.4 License Application Submission to NIGC. The Tribal Gaming Commission shall enter into an agreement with the Lake County Sheriff's Office, with approval from the General Council, to receive and process fingerprint cards for background investigation purposes, so long as such background investigation shall, at a minimum, include a State and local check of criminal history records as well as records maintained by the Federal Bureau of Investigation. The Tribal Gaming Commission, if it chooses not to contract with any other entity, may designate the NIGC as its authorized entity for receiving and processing fingerprint cards for background investigation purposes, so long as such background investigation shall, at a minimum, include a check of criminal history records information maintained by the Federal Bureau of Investigation.

5.5 Notification and MOU with NIGC. If the Tribal Gaming Commission chooses to utilize the NIGC pursuant to Section 5.4 above, The Tribal Gaming Commission, with consent of the General Council, shall notify the NIGC of the forwarding of Tribal Gaming License applications to NIGC. Before obtaining and processing fingerprint cards for background investigation purposes, the Tribal Gaming Commission shall enter into a Memorandum Of Understanding (MOU) with the NIGC providing, that any and all result obtained from the fingerprint cards for background investigation purposes shall be viewed by Tribal government officials only.

5.6 Scope and Types of License

5.6.1 Gaming Employee License Employee Gaming Licenses are for those Employees that deal in an area of Gaming or Cash Handling within the Gaming Facility or Enterprise. A License issued pursuant to this section shall be effective for only the location, job and employer contained in the Application; provided, however, nothing herein shall prohibit a Primary Management Official or Key Employee from simultaneously performing the duties and responsibilities of more than one position; provided further, that the Primary Management Official or Key Employee is performing a position that is directly in lineal descent below them in the organizational structure of the Enterprise and that they are qualified and trained to perform the duties of the positions so performed. Dealers may also be permitted to deal various card games so long as they are qualified and trained to perform the duties of the positions so performed and are specifically licensed for those positions.

5.6.2 Non-Gaming Employee License A Non-Gaming Employee License is for employees that are not permitted in areas of Gaming, for example, cooks, kitchen staff, food servers, or hostess. A License issued pursuant to this section shall be effective for only the location, job and employer contained in the Application. These Licenses will not require the same level of background scrutiny required for Gaming Licenses.

5.6.3 Part-Time or Full-Time Licenses The Employee's License shall state clearly whether the Employee is a part-time or full-time Employee.

5.6.4 Transferring Licenses A Licensee shall apply to have his/her license transferred to a new location by requesting that transfer in writing to the Tribal Gaming Commission in a manner, which details the new job and location.

5.7 Temporary Licensing Notwithstanding anything herein to the contrary, if the Applicant has completed a License Application, the Tribal Gaming Commission may immediately issue a temporary License if:

5.7.1 The Tribal Gaming Commission has conducted a preliminary, local, background investigation; and

5.7.2 Based on the preliminary investigation, the information does not indicate that the Applicant has a criminal history.

5.7.3 Temporary licenses may last no longer than 90 days.

5.8 License Issuance, Term and Substance

5.8.1 Issuance Upon completion of the necessary background investigation, and after the Tribe has complied with the 30-day NIGC review requirements found in 25 C.F.R. §558.3 and §558.4, the Tribal Gaming Commission may issue a License on a conditional or unconditional basis. If the NIGC objects to an Applicant, the Tribe shall reconsider the Application, taking into account the reasons for the objections noted by NIGC. However, the Tribe shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License.

5.8.2 Term Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance.

5.8.3 License Substance The License shall state on its face the name of the Applicant, the Tribal Logo, the Licensee who employs him, and the license number. It shall also include a photograph of Licensee.

5.9 License Denial Any Application for a License shall be denied if the Tribal Gaming Commission, after an adequate review, determines the Application is incomplete or deficient, or that the employment of the Applicant poses a threat to the public interest or the effective regulation of gaming, or creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming,. If the foregoing determinations about the Applicant are made, no management contractor or Tribal gaming operation shall employ the Applicant.

5.10 Renewals A Licensee shall petition to have the License renewed by applying to the Tribal Gaming Commission for a renewal before the License expires. Applicants may be required to provide updated material as requested.

5.11 Requirement to Produce License Upon Request Licensees must carry the License and visibly display the License during working hours and must produce the License upon the request of any Person.

5.12 License Suspension or Revocation of License

5.12.1 Temporary Suspension or Revocation The Tribal Gaming Commission may suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.22 herein, for any of the following reasons:

(1) The Licensee withheld pertinent information on the Application;

(2) The Licensee made false statements on the Application;

(3) The Licensee participated in Gaming that was not authorized by any Gaming License or regulatory approvals, and therefore deemed illegal;

(4) The Licensee attempted to bribe a Executive Committee member, Commissioner or other Person, in an attempt to avoid or circumvent Tribal law;

(5) The Licensee offered something of value to a Tribal Gaming Commission member;

(6) The Licensee knowingly promoted, played or participated in any Gaming operated in violation of Tribal or Federal law;

(7) The Licensee is knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of Gaming;

(8) The Licensee violated this Code or the rules and regulations of the Tribal Gaming Commission;

(9) The Licensee has been convicted or has entered a plea of *nolo contendere* to any crime involving Gaming, fraud, theft, or embezzlement.

(10) The Licensee has refused to comply with any lawful order, inquiry or directive of the Tribal Gaming Commission, the Executive Committee, the Federal Government or any court of competent jurisdiction;

(11) The Licensee has been convicted of, or entered a plea of *nolo contendere* to, a crime involving the sale of illegal narcotics or controlled substances;

5.12.2 Procedure for Suspension

(1) Upon reasonable cause that a violation of the Code has occurred, the Tribal Gaming Commission or its designee may either undertake an

investigation of the Licensee, or serve upon such Licensee an order to show cause why the Licensee's License should not be revoked, or why the Licensee should not be enjoined from conducting Gaming.

(2) Additionally, if the NIGC notifies the Tribe that it has received reliable information indicating that a key employee or primary management official is not eligible for employment under 25 C.F.R. §558.2, the Tribal Gaming Commission or its designee shall suspend such license and notify the licensee in writing that his/her license has been suspended and may be revoked.

(3) Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Tribal Gaming Commission pursuant to Section 4.22 herein.

(4) The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a revocation order or injunction should not be issued.

(5) The hearing shall be set for not less than two (2) days or more than five (5) days from the date of the notice. The hearing shall be governed in all respects in accordance with Tribal law and Tribal Gaming Commission regulations. Any suspension decision of the Tribal Gaming Commission after hearing shall be reviewable in the Gaming Review Board pursuant to the requirements of Section 4.22 and 4.23. The Tribe shall notify NIGC of its decision.

5.13 Enterprise License The Gaming Enterprise authorized by the Compact and this Code shall be licensed by the Tribal Gaming Commission. The Tribal Gaming Commission shall automatically issue a License if the following threshold criteria are met:

5.13.1 The Gaming is located on lands taken into trust after October 17, 1988, as a settlement of a claim.

5.13.2 The Gaming is authorized pursuant to this Code, the Compact and the IGRA.

5.13.3 The Gaming is authorized by a General Council resolution.

5.13.4 The Tribe has the sole proprietary interest and the Management Contract is consistent with Tribal and Federal law and is properly approved by the Chairman of the NIGC.

5.14 Facility License The Gaming Facility authorized by the Compact and this Code shall be licensed by the Tribal Gaming Commission.

5.14.1 A Facility License shall be issued if the following criteria are met:

(1) The Tribal Gaming Commission has determined, based on the reports of qualified inspectors and a review by the Tribal Gaming Commission of all relevant contracts and operational policies and procedures, including safety manuals and intergovernmental agreements relating to environmental protection, health, safety and emergency services, that the Gaming Facility has been constructed and shall be maintained and operated in a manner that adequately protects the environment and the public health and safety.

(2) The construction, expansion or modification of the Facility shall meet the Building and Safety Code pursuant to Title VIII of this Code.

(3) The construction, expansion or modification of the Facility shall meet the standards of the federal American with Disabilities Act pursuant to Title IV of this Code.

(4) Upon the inspection of the health and safety of the building, and upon the inspection that all Gaming controls that are necessary to insure the integrity of the Gaming are in place, the Tribal Gaming Commission shall issue to the Facility a Certificate of Occupancy, which shall be reissued upon similar inspections every two years.

5.14.2 Upon the issuance of a Facility License, the Tribal Gaming Commission shall forward the License to the State Gaming Agency within ten (10) days of issuance.

5.14.3 The Facility License shall be posted in a conspicuous and public place in the Facility at all times.

5.15 State Gaming Agency Licensing

5.15.1 Except as provided in Sections 5.15.2 and 5.15.3 below, the Tribe will not employ or affiliate with any Person whose application to the State Gaming Agency for a determination of suitability has been denied.

5.15.2 Notwithstanding Section 5.15.1, the Tribe may employ a Person who has been denied for a determination of suitability by the State Gaming Agency if:

(1) The Person holds a valid and current Tribal License;

(2) The denial by the State Gaming Agency is based on reasons that antedate the filing of the Person's initial application to the State Gaming Agency;

(3) The Person is not an Employee of another Gaming Enterprise;

(4) The Person has been in continuous employ for at least three years by the Tribe prior to the effective date of the Compact.

5.15.3 Notwithstanding Section 5.15.1, the Tribe may employ a Person who has been denied for a determination of suitability by the State Gaming Agency if:

(1) The Person is an Enrolled Member of the Tribe;

(2) The Person holds a valid and current Tribal License;

(3) The denial by the State Gaming Agency is based on reasons that antedate the filing of the Person's initial application to the State Gaming Agency;

(4) The Person is not an Employee of another Gaming Enterprise;

5.16 Miscellaneous Licensing Provisions

5.16.1 No License shall be sold, lent, assigned or otherwise transferred.

5.16.2 Each Licensee shall have a copy of the Code and regulations readily available for inspection by any Person at each authorized Gaming site.

5.16.3 The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all non-key Gaming Employees.

SECTION 6 BANK ACCOUNTS AND RECORDKEEPING

6.1 Bank Account The General Council shall open a separate bank account for the Enterprise and all receipts of each Gaming Activity shall be deposited in the account.

6.2 Record Keeping Accounting records of the Gaming, Enterprise, and Facility shall be kept on a double entry system of accounting, maintaining detailed supporting and subsidiary records. The Tribe shall maintain the following records for not less than three (3) years:

6.2.1 Revenues, expenses, assets, liabilities and equity for each location at which Class II and Class III Gaming is conducted.

6.2.2 Daily cash transactions for Gaming, including but not limited to transactions relating to each Gaming table, game drop box and game room bank.

6.2.3 All markers, IOU's, returned checks, hold checks or other similar credit instruments.

6.2.4 Individual and statistical game records to reflect statistical drop and statistical win for electronic, computer, or other technologically assisted games.

6.2.5 Contracts, correspondence and other transaction documents relating to all Gaming Vendors.

6.2.6 Records of all customer complaints and Tribal Gaming enforcement activities.

6.2.7 All gaming related audits prepared by or on behalf of the Tribe or one of its subdivisions.

6.3 Audit Requirements

6.3.1 The Enterprise shall provide a copy of an annual independent audit to the Tribal Gaming Commission, the Executive Committee, the State Gaming Agency, and the National Indian Gaming Commission.

6.3.2 Each contract between the Tribe and another Person for supplies, services (other than legal and accounting services) or concessions for a contract amount in excess of $25,000 annually shall be subject to an independent audit. Such audit shall be solely limited to a monthly printout from the accounts payable of the Gaming Operations of the checks rendered . A copy of such audit will be provided to the Tribal Gaming Commission, the Executive Committee, State Gaming Agency and the National Indian Gaming Commission.

6.4 Notices to the Public

6.4.1 The Gaming Facility shall have a copy of this Code readily available for inspection by any Person at each Gaming Facility.

6.4.2 The Gaming Facility shall post in a conspicuous location near each game an explanation of the rules of play of every game operated or shall otherwise provide the public with such an explanation.

SECTION 7 GAMING ENTERPRISE RESTRICTIONS AND COMPLIANCE

7.1 Number of Facilities

7.1.1 The Tribe may establish and operate not more than two Gaming Facilities, and only on those lands on which Gaming may lawfully be conducted under IGRA.

7.1.2 The Tribe may combine and operate in each Gaming Facility any forms and kinds of Gaming permitted under the Compact, IGRA and this Code.

7.2 Gaming Device Restrictions

7.2.1 Number of Devices The Tribe may offer no more than Two Thousand Gaming Devices combined for all Facilities.

7.2.1 Transferability of Devices The Gaming Enterprise, or any Licensee, is prohibited from selling, renting or lending Gaming Devices to any Person without prior written approval of the Tribal Gaming Commission.

7.2.2 Transportation of Devices Transportation of a Gaming Device to or from the Gaming Facility within California is permissible only if:

(1) The Tribal Gaming Commission has issued a permit to transport the Device; and

(2) The Tribal Gaming Commission has provided at least ten (10) days notice to the local County Sheriff; and

(3) The final destination of the Device is a gaming facility of any tribe in California with a Tribal/State Compact; or

(4) The final destination is in a state or country whereby the Device is otherwise legal; or

(5) The final destination is located in California for the purpose of testing, repair or storage by a Person that is licensed by the State Gaming Agency.

7.3 Gaming Device Technical Standards The technical standards for Gaming Devices shall adhere to the Gaming Laboratories International, Incorporated standards.

7.4 Age Restrictions

7.4.1 No Person under the age of Eighteen (18) shall be employed by the Gaming Facility, Management Contractor or the Tribal Gaming Commission.

7.4.2 No Person under Twenty-one (21) years of age shall be employed in the service of alcoholic beverages at the Gaming Facility.

7.4.3 No Person under the age of Twenty-one (21) shall be permitted in any area where Gaming is occurring and alcoholic beverages are being consumed.

7.4.4 No Person under the age of Eighteen (18) shall be permitted to place any wager, directly or indirectly, in any Gaming Activity.

7.4.5 No Person under the age of Eighteen (18) shall be permitted in any room in which Gaming is being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

7.5 Methods of Payment

7.5.1 Gaming chips and other tokens of value may be sold and redeemed by the Enterprise and only for full value.

7.5.2 Consideration to participate in Gaming shall be cash only. No other form of consideration shall be allowed unless the Tribal Gaming Commission gives prior written approval.

7.6 Compliance requirements

7.6.1 Evidence of win or loss incurred by a Player must, upon request, be provided in such form as will be acceptable to the Internal Revenue Service.

7.6.2 The Enterprise shall pay all fees and file all reports required by law within the time prescribed.

7.6.3 The Enterprise shall respond immediately to all inquiries, subpoenas, or orders of the Tribal Gaming Commission, the State Gaming Agency, the Executive Committee, or the NIGC.

7.6.4 The Enterprise shall make its premises and books and records available for inspection during normal business hours by the Tribal Gaming Commission, the State Gaming Agency, the National Indian Gaming Commission and members of the Executive Committee or their designee.

7.7 Miscellaneous

7.7.1 The Enterprise shall provide adequate security to protect the public before, during, and after Gaming.

7.7.2 The Enterprise may not discriminate on the basis of sex, race, color, or creed in its employment practices related to Gaming, notwithstanding Indian Preference laws.

SECTION 8 ENFORCEMENT

8.1 Jurisdiction Except as provided in this Code or the Compact, the Tribal Gaming Commission and Gaming Review Board shall have jurisdiction over all violations of this Code.

8.2 Prohibited Acts In addition to other civil and criminal offenses provided for in this Code, the following acts are prohibited by any Person and subject any violator to the civil or criminal penalties specified herein:

8.2.1 Participating in any Gaming, which is not authorized by this Code.

8.2.2 Knowingly making a false statement in connection with any Contract to participate in any Gaming Activity.

8.2.3 Attempting to bribe any Person participating in any Gaming Activity.

8.2.4 Offering or accepting a loan, financing or other thing of value between a Tribal Gaming Commission member or employee and any Person participating in any Gaming Activity.

8.2.5 Promoting or participating in any illegal Gaming Activity.

8.2.6 Failing to keep sufficient books and records to substantiate receipts, disbursements and expenses incurred or paid from any Gaming Activity authorized pursuant to this Code.

8.2.7 Falsifying any books or records that relate to any transaction connected with any Gaming Activity pursuant to this Code.

8.2.8 Conducting or participating in any Gaming Activity, which results in Cheating.

8.2.9 Allowing participation in Gaming Activity by or with an intoxicated or disorderly Player.

8.2.10 Allowing or participating in the sale of liquor when such sale is prohibited by Tribal law.

8.2.11 Accepting consideration other than money, tokens or chips for participation in any Gaming Activity.

8.2.12 Using bogus or counterfeit chips or charitable Gaming tickets, or to substitute or use any cards, charitable Gaming tickets or Gaming equipment that has been marked or tampered with.

8.2.13 Employing or possessing any cheating device or to facilitate cheating in any Gaming Activity.

8.2.14 Willfully using any fraudulent scheme or technique to change the odds of any game of chance.

8.2.15 Soliciting, directly or indirectly, or using inside information on the nature or status of any Gaming Activity for the benefit of an individual.

8.2.16 Tampering with a Gaming Device, attempting to conspire to manipulate the outcome or the payoff of a Gaming Device, or otherwise unlawfully tampering with or interfering with the proper functioning of the machine.

8.2.17 Alter or counterfeiting a Gaming license.

8.2.18 Aiding, abetting, or conspiring with another Person knowingly or knowingly to cause any Person to violate any provision of this Code or any rules and regulations adopted hereunder.

8.2.19 Operating, using or making available to the public any illegal Gaming Device, apparatus, material or equipment.

8.2.20 Selling, holding out for sale or transporting into or out of the jurisdiction of the Tribe any illegal Gaming Device, apparatus, material or equipment.

8.2.21 Assisting or allowing a Person who is under the age of Eighteen (18) to participate in a Gaming activity.

8.2.22 Possessing any illegal narcotics or controlled substances on any licensed Gaming site.

8.2.23 Stealing or attempting to steal funds or other items of value from any Gaming Facility or from the Tribal Gaming Commission.

8.2.24 Employing any Person at a licensed Gaming Facility whom the Licensee knows has been convicted of a Gaming crime or a crime of fraud.

8.3 **Criminal Violation** Any Indian who violates or fails to comply with any provision of this Code, or who fails or neglects to comply with any order, decision of the Tribal Gaming Commission, shall be charged and given due process pursuant to Section 4.22 herein. If such Indian is found to be guilty of a crime, he may be required to pay a fine not to exceed Five Thousand Dollars ($5,000) or be incarcerated for not to exceed two (2) years. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Code.

8.4 **Civil Violation** Any non-Indian who violates or fails to comply with any provision of this Code, or who fails or neglects to comply with any final order of the Tribal Gaming Commission, shall be charged and given due process pursuant to Section 4.22 herein. If the non-Indian is found liable, he may pay a civil fine not to exceed Five Thousand Dollars ($5,000) for each violation thereof. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Code. The amount of any such civil fine may be recovered in a civil action in the Tribal Court.

8.5 **Cumulative Fines** All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.

8.6 **Purpose of Civil Penalties** The civil fines imposed under this Code are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Reservation, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Code. The civil fines under this Code are also intended to coerce all people into complying with this Code and Tribal Gaming Commission regulations and not to punish such people for violation of such laws and regulations.

8.7 **Civil Action for Penalties** In enforcing the civil infraction provisions of this Code, the Tribal Gaming Commission shall proceed, in the name of the Tribe, against a Person for violation of such provision by civil complaint in the Gaming Review Board pursuant to the provisions of this Code. The Tribal Gaming Commission in such action shall have the burden of showing, by the preponderance of the evidence, that such Person violated the applicable provision of this Code.

8.8 **Seizure and Forfeiture of Property** Property utilized in violation of this Code shall be subject to seizure and forfeiture by order of the Tribal Gaming Commission pursuant to such procedures and rules as the Tribal Gaming Commission shall promulgate.

8.9 **Reporting of Offenders** The Tribal Gaming Commission, upon final conviction of any Person under this subsection, shall report the name of the Person convicted to the Executive Committee, General Council, State Gaming Board and NIGC.

SECTION 9 GAMING MANAGEMENT

9.1 Management by a Gaming Contractor

9.1.1 The Gaming Contractor, or if no Gaming Contractor the Tribe, shall identify in writing a Person(s) who shall serve as General Manager of the Gaming Enterprise. The General Manager appointed shall undergo a background check by the Tribal Gaming Commission and shall obtain a License before commencing work.

9.1.2 The General Manager shall have access to any area within the Gaming Facility in accordance with the limitations defined in Section 2.30.

9.1.3 The General Manager shall present a written monthly report to the Tribal Gaming Commission which estimates the number of patrons served, the amount of income generated, the numbers of employees working at the establishment, a detailed description of any patron complaints and other problems experienced at the establishment, a written statement of any changes in Primary Management Officials and all bills which are thirty (30) days or more past due.

9.2 **Rules and Regulations for Management** The Tribal Gaming Commission shall, with the input and suggestions of Primary Management Officials, promulgate rules and regulations or specifications governing the following subjects:

9.2.1 The enforcement of all relevant laws and rules with respect to the Gaming Operation and the Facility;

9.2.2 Ensuring the physical safety of Enterprise patrons and Employees;

9.2.3 The physical safeguarding of assets transported to, within, and from the Gaming Facility;

9.2.4 The prevention of illegal activity from occurring within the Gaming Facility including employee procedures and surveillance;

9.2.5 The recording of occurrences that deviate from normal operating policies including the following procedure for reporting incidents:

(1) Specify that security personnel record all incidents, regardless of immateriality;

(2) Require the assignment of a sequential number to each report;

(3) Provide for permanent reporting in indelible ink in a bound notebook;

(4) Require that each report include the following:

(i) The record number.
(ii) The date.
(iii) The time.
(iv) The location of the incident.
(v) A detailed description of the incident.
(vi) The persons involved in the incident.
(vii) The security personnel assigned to the incident.

9.2.6 The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like;

9.2.7 Maintenance of a list of persons barred from the Gaming Facility;

9.2.8 In accordance with section 8.4.1 of the Compact, except as provided in subdivision 8.4.1(d) of the Compact, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association, and further, the Tribe has had an opportunity to review and comment on the proposed regulations.

9.3 Insurance Requirements Pursuant to the Tribal/State Compact, the Gaming Contractor shall ensure that the Enterprise shall carry a minimum of Five Million Dollars ($5,000,000.00) liability insurance to protect the public in the event of an accident.

9.4 IRS Requirements The General Manager shall be responsible for seeing that Gaming Activity is managed in accordance with Tribal and Federal law and that such Gaming Activity complies with all IRS reporting requirements.

9.5 Audit Requirements

9.5.1 Annual Enterprise Audit The Tribal Gaming Commission and the General Manager of the Enterprise shall obtain an annual independent audit of such Enterprise by a certified public accountant using the accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

9.5.2 Contract Audits Each contract between the Management Contractor and another Person for supplies, services (other than legal and accounting

services) or concessions for a contract amount in excess of Twenty-five Thousand Dollars ($25,000) annually shall be subject to an independent audit. For the purposes of the previous sentence, the term "services" does not include contracts the purpose of which is to extend financing to the Management Contractor, the Tribe, or the Enterprise.

9.5.3 Copies A copy of all such audits shall be provided to the Tribal Gaming Commission, the Executive Committee, State Gaming Agency and the NIGC.

9.6 Annual Reports from Management Contractor. Management Contractors must file an annual report with the Tribal Gaming Commission and the Executive Committee between the 15th and the last day of the 12th month duration of each such License period. The report include, at a minimum, the following information:

9.6.1 The name, address and telephone number of the Licensee;

9.6.2 The names, addresses and titles of all of its current managers of the Licensee;

9.6.3 A description of the Gaming operated and Gross Revenue;

9.6.4 The name and address of the Person who will be designated as Primary Management Official, or new Key Employees over the next License Term;

9.6.5 Written proof that the Licensee has paid to the National Indian Gaming Commission such fees as Federal and Tribal law may require it to pay;

9.6.6 A sworn statement that the Licensee has complied with the IRS including written notice of customer winning;

9.6.7 The number of full-time equivalent people, on an annualized basis, employed by the operation during the past twelve (12) months, together with a projection of the number of full-time equivalent people who are expected to be employed during the next license period;

9.6.8 A sworn statement that the Licensee will continue to comply with all Tribal and Federal laws applicable to Gaming;

9.6.9 The name, address and signature of the agent who will accept service of process on behalf of the Licensee, who must reside on the Reservation; and

9.6.10 If the Licensee is a corporation, a copy of any amendment to its articles of incorporation, properly certified by the incorporating government, unless a current copy has already been filed with the Tribal Gaming Commission.

9.7 Management Contracts

9.7.1 Each Management Contract is subject to the prior approval of the National Indian Gaming Commission.

9.7.2 Each Management Contract shall be approved by the General Council. In making its selection, the General Council and Executive Committee shall review the following:

(1) Background information on the proposed Management Contractor including: its name, its address, the names and addresses of each Person or entity having a direct financial interest or management responsibility for the proposed management contractor, and in the case of a corporation the names and addresses of each member of its board of directors and all stockholders who hold directly or indirectly ten percent (10%) or more of its issued or outstanding stock.

(2) A description of any previous experience that each Person listed in subsection above has had with other Gaming contracts with Indian Tribes or with the Gaming industry generally, including the name and address of any tribal government or licensing agency with which such Person has had a contract relating to Gaming.

(3) A complete financial statement of each Person listed in subsection 9.7.2(1).

(4) The Executive Committee shall undertake any additional steps it can to determine the character and reputation of each proposed management contractor.

(5) If the General Council and Executive Committee, after reviewing the above described information, still desires to enter into a management contract with the proposed management contractor, such management contract shall be placed in writing and submitted to legal counsel for review before the Council approves it.

9.7.3 Any Management Contract approved by the Council must contain at a minimum the following with respect to the Gaming Enterprise to which the contract is applicable:

(1) A provision requiring a monthly financial accounting of the Gaming Enterprise's income and expenses. Such reports shall be prepared by an independent auditor who is mutually acceptable to the Tribe and the Management Contractor.

(2) A provision guaranteeing the Tribe a minimum guaranteed payment that shall always take precedence over the Management Contractor's right to recoup development and construction costs.

(3) An agreed upon ceiling for the Management Contractor's development and construction costs.

(4) A provision that the contract shall not exceed seven (7) years or 40% of Net Revenues.

(5) A provision for termination of the contract and the grounds for termination.

9.7.4 If the Council is satisfied with the information it receives it shall submit its proposed contract along with all of the above-described information to the Tribal Gaming Commission, State Gaming Agency and to the Chairman of the National Indian Gaming Commission for Licensure approval.

SECTION 10 PROCEDURES FOR RESOLVING DISPUTES BETWEEN THE GAMING PUBLIC AND GAMING MANAGEMENT

10.1 General Principles. The Tribe values its customers and intends, at all times, to see that questions, concerns, issues, and/or disputes raised by the gaming public are addressed in a fair and orderly manner. However, nothing in these procedures shall be construed as a waiver of the Tribe's sovereign immunity, or any of the rights and privileges attendant thereto.

10.2 Initial Dispute Resolution Procedure.

10.2.1 Members of the Gaming public who, in the course of their otherwise lawful and proper use of the Tribe's Gaming Facilities, have questions or concerns about the condition or operation of any part of the Gaming Facilities, or who otherwise believe themselves to be aggrieved by some aspect of the condition or operation of any part of the Gaming Facilities, shall direct their questions, concerns, or disputes (hereinafter collectively "disputes") in the first instance to gaming management at the Gaming Facility, either orally or in writing.

10.2.2 Concerns or disputes shall be raised as soon as reasonably possible after the events giving rise to the dispute occur; however, no dispute may be raised more than 10 calendar days after said events take place.

10.2.3 Upon learning about a dispute, Gaming Management shall expediently and informally gather sufficient facts to make an initial determination about the dispute (i.e. whether the dispute has any merit, whether further investigation is required, whether to take any corrective action, etc.). Gaming Management shall inform the complainant, either orally or in writing, about its initial determination as soon as is reasonably practicable. At that time, if the complainant indicates that he or she has additional concerns or is not satisfied, gaming management shall inform the complainant about how to initiate the formal dispute resolution procedure.

10.3 Formal Dispute Resolution Procedure.

10.3.1 Complainants who have followed the initial dispute resolution procedure, and who are unsatisfied with gaming management's initial determination, may appeal that determination in writing to the Tribal Gaming Commission no later than 5 days after being informed about the initial determination.

10.3.2 The Tribal Gaming Commission may investigate the dispute in any manner it chooses. The Tribal Gaming Commission shall offer the complainant a fair opportunity to be heard in person or through counsel about the dispute, either before or after it makes its own inquiries. The complainant's opportunity to be heard shall take place within 30 days after the Tribal Gaming Commission receives the complainant's written appeal.

10.3.3 After investigating (if it chooses to do so), and within 30 days after affording the complainant an opportunity to be heard, the Tribal Gaming Commission shall issue a written opinion on the complainant's appeal, and shall mail a copy of the opinion to the complainant at his/her last known address. The opinion shall inform the complainant that he or she may appeal the Tribal Gaming Commission's decision to the Gaming Review Board pursuant to Section 4.23.

TITLE II

REGULATION OF THE ENVIRONMENT FOR CLASS III GAMING

SECTION 1 INTRODUCTION

1.1 **Title** This Title shall be known as "THE ELEM INDIAN COLONY OF POMO INDIANS TRIBAL ENVIRONMENT OFF-RESERVATION IMPACT CODE."

1.2 **Authority** This Title is enacted pursuant to the inherent sovereign powers of the Tribe pursuant pursuant to Article VII, Section 1(g) of the Tribal Constitution, and pursuant to the powers of the Executive Committee pursuant to Article VII, Section 2(a) of the Tribal Constitution.

1.3 **Purpose** The basic purposes of this Code are to:

1.3.1 Inform Inform the Tribe and the public about the potential significant off-reservation environmental impacts of any (1) expansion or significant renovation or modification of an existing Tribal Gaming Facility and/or (2) significant excavation, construction, or development associated with a Tribal Gaming Facility or proposed Tribal Gaming Facility.

1.3.2 Identify Identify ways that environmental impacts of the aforementioned activities can be avoided or significantly reduced through the use of reasonable alternative or mitigation measures such as changes in the construction plans.

1.3.3 Disclose Disclose to the public the reasons why the Executive Committee approved a Gaming Facility construction plan if significant off-reservation environmental impacts are likely to occur.

1.4 **Scope or Coverage of This Ordinance.** This ordinance shall apply solely to studies of and decisions related to the potential off-reservation impacts of any:

1.4.1 Expansion or significant renovation or modification of an existing Tribal Gaming Facility; and

1.4.2 Significant excavation, construction, or development associated with a Tribal Gaming Facility or proposed Tribal Gaming Facility.

1.5 **Repeal of Prior Laws, and Effect of Repeal** All titles, chapters and sections of the Tribal Code which pertain to the environment and are in effect as of the date

that this Code becomes operative, are hereby repealed as to Gaming Activities only, and all other laws, or parts thereof, inconsistent with the provisions of this Code with regard to Gaming Activities are hereby repealed.

1.6 **Construction** In construing the provisions of this Code, unless the context otherwise requires, the following shall apply:

1.6.1 This Code shall be liberally construed to effect its purpose and to promote substantial justice.

1.6.2 Words in the present tense include the future and past tenses.

1.6.3 Words in the singular number include the plural, and words in the plural number include the singular.

1.6.4 Words of the masculine gender or neuter include masculine and feminine genders and the neuter.

1.7 **Severability** If any section of this Code is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

1.8 **Effective Date.** This Code shall be effective on certification by the General Council.

SECTION 2 DEFINITIONS

2.1 "**Cumulative Impacts**" means two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

2.2 **"Environmental Assessment"** means an initial study of the environmental impacts of a proposed Project.

2.3 **"Environmental Reports"** means any environmental assessment, environmental report, or environmental statement, as the case may be.

2.4 **"Impact"** means the direct or primary environmental effects which are caused by the Project and occur at the same time and place.

2.5 **"Mitigation"** means avoiding an impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating or restoring the impacted environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; compensating for the impact by replacing or providing substitute resources or environments.

2.6 **"Project"** means any: (1) expansion or significant renovation or modification of an existing Tribal Gaming Facility and/or (2) significant excavation, construction, or development associated with a the Tribe's Gaming Facility or proposed Tribal Gaming Facility.

SECTION 3 BASIC REQUIREMENTS

3.1 **Environment Assessment or Finding of No Significant Impact** Before commencing any expansion or significant renovation or modification of an existing Tribal Gaming Facility, or any significant excavation, construction, or development associated with a Tribal Gaming Facility or proposed Tribal Gaming Facility, the Tribe shall require the development of an Environmental Assessment which the Executive Committee shall use to determine if there is substantial evidence that the proposed Project will have a significant off-reservation environmental impact. If the Executive Committee finds that it will not, it shall follow the procedures detailed in this Code for the issuance of a Finding of No Significant Impact (FONSI).

3.2 **Off-Reservation Impact** If, however, the Executive Committee finds that there is substantial evidence that the proposed Project will have a significant off-reservation environmental impact, defined as a substantial adverse impact in the physical conditions of the off-reservation areas as they existed at the time of the study, the Executive Committee shall follow the procedures detailed in this Code for the preparation of an Environmental Report (ER).

3.3 **Response to Adverse Findings** When an Environmental Assessment shows that an expansion or significant renovation or modification of an exiting Tribal Gaming Facility or any significant excavation, construction, or development associated with a Tribal Gaming Facility or proposed Tribal Gaming Facility would cause substantial adverse changes in the off-reservation environment, the Executive Committee with approval of the General Council shall respond to the finding by one or more of the following methods:

3.3.1 Change the proposed Project.

3.3.2 Impose conditions on the approval of the Project.

3.3.3. Adopt plans or ordinances to control the adverse impact.

3.3.4. Choose an alternative way to meet the same need.

3.3.5. Disapprove the Project.

3.3.6. Find that changes in or alternatives to the Project are not feasible.

3.3.7. Find that the unavoidable, significant environmental damage is acceptable, because the Tribe's economic, legal, social, technological or other benefits of the proposed Project outweigh its unavoidable off-reservation environmental impacts.

SECTION 4 POLICIES GOVERNING ENVIRONMENTAL ASSESSMENTS AND REPORTS

It shall be the policy of the Tribe that:

4.1 **Review of Off-Reservation Impacts** These studies shall serve not only to protect the environment but also to demonstrate to the off-reservation community that it is being protected and that the Tribe has, in fact, analyzed and considered the off-reservation impacts of its actions.

4.2 **Notice to Public** These studies shall inform the Tribal and local governments and the public of the anticipated off-reservation environmental impacts of the Project.

4.3 **Decision-Making** These studies shall allow the Tribal government to make decisions regarding these proposed Projects with the off-reservation environmental consequences in mind.

4.4 **No Delay of Projects** These studies shall be undertaken in a manner which is designed to allow the Tribe to make informed and balanced decisions, not to prevent, delay or preclude the advancement of Gaming.

4.5 **Off-Reservation Influence** These studies shall be prepared early enough to allow off-reservation environmental concerns to influence the Project's design and construction, yet late enough to allow for a real and honest assessment of the Project's off-reservation environmental impact.

4.6 **Tribal/Federal Cooperation** These studies shall be prepared in a manner which eliminates duplication of federal efforts by providing for joint Tribal/federal preparation of environmental documents.

4.7 **Simple Writing** These studies shall be analytic, rather than lengthy, and shall be written in plain language. They shall also mention, only briefly, issues other than significant off-reservation environmental impacts in the Environmental Report text.

4.8 **Weighing Negative Projects** The Tribe shall give serious consideration to preventing off-reservation environmental damage and should not approve a Project as proposed if there are feasible alternatives or mitigation measures available that would substantially lesson any significant adverse off-reservation impacts that the Project would create. In deciding whether to approve a Project

that has negative off-reservation economic impact, the Tribe shall consider the specific economic, environmental, legal social and technological factors involved.

4.9 **Public Comment** The Tribe shall assure adequate opportunity and time for public review and comment on all Environmental Assessments, an Environmental Report, and a Finding of No Significant Impact, and it shall review, evaluate and respond to comments received on each of these environmental studies.

4.10 **Approving Projects** The Tribe may approve a Project which would cause significant effect on the off-reservation environment if it finds that:

4.10.1 There is no feasible way to lesson or avoid the significant off-reservation environmental impact.

4.10.2 The specifically identified expected benefits of the Project outweigh the policy of reducing or avoid significant off-reservation environmental impacts of the Project.

4.11 **Assignment of Responsibilities** Where a Project is under the requirements of the National Environmental Protection Act, the Executive Committee may delegate the responsibilities assigned to it under this Code in whole or in part to the United States government agency which is serving as the lead agency on the NEPA review. Provided, however, that the Executive Committee asks that federal agency to study and render findings on the off-reservation impact of the Project and perform the local consultation required by this Code.

4.12 **Time** The Tribe shall allow adequate time to review an Environmental Assessment or Environmental Report for completeness. Acceptance of an Environmental Assessment or Environmental Report as complete shall not prohibit the Tribe from requiring additional information during its review of the findings.

4.13 **Consultation** The Tribe shall make an effort to consult with the planning and design team on the potential off-reservation environmental impacts of any such Project during the planning and design stage.

SECTION 5 INITIAL ENVIRONMENTAL ASSESSMENT REQUIRED

5.1 **Applicability** When the Tribe commences any expansion or significant modification of an existing Tribal Gaming Facility or any significant excavation, construction or development associated with a new or proposed Tribal Gaming Facility, the Executive Committee shall require an initial Environmental Assessment to determine if the Project may have a significant effect on the environment. This initial study may rely on expert opinion supported by facts, technical studies or other substantial evidence to documents its findings.

5.2 Process for Significant Effects If, when reviewing this Environment Assessment, the Executive Committee determines that there is substantial evidence that any aspect of the Project, either individually or cumulatively, may cause a significant effect on the off-reservation environment, regardless of whether the overall effect of the Project is adverse or beneficial, it shall do one of the following:

5.2.1. Require an expanded Environmental Assessment,

5.2.2. Require the preparation of an Environmental Report, or

5.2.3. Use a previously prepared Environmental Assessment or Environmental Report, which it determines would adequately analyze the Project at hand or require an expanded study of one or more aspects of the proposed Project.

5.3 Purposes of EA's

5.3.1 To assist the Tribe in determining when a Finding of No Significant Impact is appropriate.

5.3.2 To enable the Tribe to modify or amend the Project to minimize the off-reservation impact.

5.3.3 To focus attention on those off-reservation impacts that are significant and identify those off off-reservation environmental impacts that are not significant.

5.3.4 To explain the reasons for determining that potentially significant off-reservation environmental impacts would not be significant.

5.3.5 To eliminate the need for unnecessary Environmental Impact Studies.

5.4 Substance of EA's

5.4.1 A description of the Project, including its location.

5.4.2 An identification of the environmental setting surrounding the Project.

5.4.3 A listing or chart of environmental impacts covered by the study, along with a narrative report that discusses those impacts.

5.4.4 A discussion of the ways that negative off-reservation impacts can, or have been, addressed.

5.4.5 An examination of how the Project fits into local land use patterns.

5.4.6 The name of the person or persons who prepared the report.

SECTION 6 EXECUTIVE COMMITTEE REVIEW OF AN ENVIRONMENTAL ASSESSMENT

6.1 **Review** Following the completion of an Environmental Assessment, the Executive Committee shall review its findings and determine whether the entire record, including that study, justifies the issuance of a proposed Finding of No Significant Impact or the development of an expanded Environmental Assessment or an Environmental Report. In so doing, the Executive Committee shall utilize the criteria set forth in Sections 7-9 below.

6.2 **Expanded EA's** The Executive Committee shall call for the production of an expanded Environmental Assessment when it determines that the proposed Project will have an impact on the off-reservation environment, but such impact is limited enough that it can be addressed in a shorter more concise study.

6.3 **Limited EA's** The Tribe may require an ER on only those aspects of the Project that present a significant adverse impact off-reservation.

6.4 **Urban and Rural Distinctions** A determination of whether a Project may have a significant off-reservation impact on the environment calls for careful judgement on the part of the Executive Committee, based to the extent possible on scientific and factual data. An impact that may not be significant in an urban area may be significant in a rural area.

6.5 **Mitigating Effects** If the Tribe determines that a Project will have off-reservation impacts, but this impact is mitigated to the point that the impact is no longer significant and the whole record taken together shows no significant impact, a FONSI shall be issued.

6.6 **Evidentiary Requirements** The existence of a public controversy over the off-reservation impact will not require an ER, if the evidence in the report does not show that significant impact. Substantial evidence shall not be found from opinion or narrative but only from facts, reasonable assumptions predicted on facts and expert opinions supported by facts.

6.7 **Archeological or Historical Resource** A Project which alters, in an advanced manner, those physical characteristics of an Archeological or Historical Resource (those listed in or eligible for listing in the California Register of Historical Resources or which are otherwise of historical significance) shall require mitigation.

6.8 **Biological Species** A Project which endangers the overall health of a biological species shall require mitigation.

SECTION 7 FINDINGS OF NO SIGNIFICANT IMPACT (FONSI)

The Executive Committee shall issue a proposed FONSI when:

7.1 It finds that in view of the entire records before it, including the Environmental Assessment, there is no substantial evidence that the Project will have a significant impact on the off-reservation environment.

7.2 The mitigation steps agreed to by the developer clearly mitigate the off-reservation impacts to the point that no significant impacts would occur.

7.3 The Project, as modified, would have no significant impacts on the off-reservation environment.

SECTION 8 FONSI ELEMENTS

8.1 A brief description of the Project.

8.2 The Project's location, preferably shown on a map.

8.3 A proposed finding that the Project will not have a significant effect on the off-reservation equipment.

8.4 An attached copy of the Environmental Assessment.

8.5 A description of mitigation measures taken.

SECTION 9 PROCEDURE FOR APPROVAL OF A FONSI

9.1 If the Executive Committee determines that it is prepared to approve a FONSI, it shall prepare a notice which includes each of the following items and forward that notice to the Clearinghouse of the State Office of Planning and Research, the Board of Supervisors and the County Clerk of the county in which the Project will be located.

9.2 This notice shall contain:

9.2.1 Identification of the Project and a brief description of it.

9.2.2 The date on which the Executive Committee approved the Project.

9.2.3 A determination by the Executive Committee that the Project will not have a significant effect on the off-reservation environment.

9.2.4 A statement that a FONSI has been prepared pursuant to this ordinance.

9.2.5 The address where a copy of the FONSI may be examined.

SECTION 10 DECISION TO PREPARE AN ENVIRONMENTAL REPORT (ER)

10.1 **Decision to Prepare an ER** An ER shall be prepared when the Executive Committee finds that there is substantial evidence that the proposed Project will have a substantial impact on the off-reservation environment.

SECTION 11 DETERMINING THE SCOPE OF THE ER

11.1 Before determining when to commence an Environmental Report, the Executive Committee upon approval by the General Council shall arrange for consultation with state and local agencies, including the Board of Supervisors of the county in which the Project will be located, that have an interest in the specific environmental concerns raised by the Project and seek to have input on the nature and scope of the ER. Nothing herein shall require the Executive Committee to provide these agencies with more than 30 days to submit the Environmental Report concerns.

11.2 Prior to completing the Environmental Report, the Executive Committee may arrange for consultation upon approval by the General Council with any person or organization believed to be concerned with the off-reservation environmental impact of the proposed Project. Any person may submit information or comments to the Executive Committee to assist it in preparing and evaluating the Environmental Report.

SECTION 12 PREPARATION OF ER

12.1 The Executive Committee upon approval by the General Council may arrange for the Environmental Report to be prepared by its staff, enter a contract with a third party to prepare the study, accept an Environmental Report prepared by the federal government or an Environmental Report prepared by the state on the Project. In determining the scope of an Environmental Report, the Executive Committee shall meet with and consider the views of the Board of Supervisors of the county in which the Project is to be located. It may also use a previously prepared Environmental Report.

SECTION 13 PREPARATION AND CERTIFICATION OF ER

13.1 The Executive Committee shall prepare or arrange to have prepared an Environmental Report, which shall be circulated for public comment before the Project is approved.

13.2 Contents of Environmental Report. The Environmental Report shall contain:

13.2.1 The Environmental Report and all revisions made to it.

13.2.2 A summary of the comments and recommendations received on the proposed draft.

13.2.3 A list of persons and organizations wishing to commenting on the draft.

13.2.4 The response of the Executive Committee to those comments.

13.2.5 Any additional information the Committee deems relevant.

13.3 Notice of the Final ER

13.3.1 The Executive Committee shall provide notice of completion of the Environmental Report of the public, the State Clearinghouse Office of Planning and Research, and the Board of Supervisors and County Clerk of the county in which the Project will be located. The notice to the County Clerk shall ask the clerk to post that notice in the county office within 24 hours of receipt and keep it posted for a minimum of 20 days.

13.3.2 This notice shall contain, at a minimum:

(1) A brief description of the Project.

(2) Starting and ending dates for the receipt of public comments and information on where and how those comments can be submitted.

(3) The date, time and place of any scheduled public meetings or hearings to be held by the Tribe on the proposed Project.

(4) The address or addresses where copies of the final Environmental Report can be viewed and/or obtained.

(5) All comment periods shall be for a minimum of 20 days.

SECTION 14 EXECUTIVE COMMITTEE FINDINGS FOLLOWING A FINAL ER

14.1 Issuance of Findings After reviewing the public comments received on a final Executive Committee certified ER, the Executive Committee shall issue one or more of the following findings:

14.1.1 That changes and alterations have been required in or incorporated into the Project which avoid or substantially lessen the significant environmental effect as identified in the ER.

14.1.2 Such changes or alterations are within the responsibility or jurisdiction of an entity other than the Tribe, and the Tribe recommends that they be made.

14.1.3 Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the final ER.

SECTION 15 NOTICE OF DETERMINATION

15.1 Notice Publication Upon final review and approval of the Project, the Executive Committee upon approval by the General Council shall publish a notice in a newspaper of general circulation, with the State clearinghouse Office of Planning and Research, and with the Board of Supervisors and County Clerk of the county in which the Project will be located, a notice of approval or rejection of the Project. That notice shall contain at a minimum:

15.1.1 The name and description of the Project and its locations.

15.1.2 The date upon which the Executive Committee approved the Project.

15.1.3 The determination of the Executive Committee that the Project will or will not have a significant effect on the off-reservation environment. If it will have such an effect, this notice shall be accompanied by a statement of overriding considerations which shall state that the Projects economic, legal, social, technological or other benefits override the unavoidable environmental risks associated with the Project.

15.1.4 A statement that the Environmental Report was prepared.

15.1.5 A description of the mitigation measures required.

15.1.6 The address where a copy of the final Environmental Report can be examined.

TITLE III

ADOPTION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR THE CLASS III GAMING FACILITY

The adoption of 29 C.F.R. part 1910 – Occupational Safety and Health Standards and part 1926 – Safety and Health Regulations for Construction, together will serve to regulate the safety and inspection of retail sale, wholesale/commercial and light industrial labor practices, along with the standard of tribal labor force protections from hazardous workforce environments and exposure to potential contaminants within each of these areas, establishment of contract work hours and other labor safety standards as deemed necessary by the tribal government, along with the enforcement of these codes including the setting of penalties.

SECTION 1. ADOPTION BY REFERENCE.

1.1 Findings. The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") General Council on behalf of the Tribe finds that:

1.1.1 A certain document, three copies of which are on file in the office of the Tribal Secretary, being marked and designated as 29 C.F.R. part 1910 – *Occupational Safety and Health Standards* and part 1926 – *Safety and Health Regulations for Construction*, published by the U.S. Department of Labor, Occupational Safety and Health Administration, is hereby adopted as the Tribal OSHA Standards, for regulating the safety and inspection of retail sale, wholesale/commercial and light industrial labor practices, along with the standard of tribal labor force protections from hazardous workforce environments and exposure to potential contaminants within each of these areas, establishment of contract work hours and other labor safety standards as deemed necessary by the tribal government, along with provisions for submission of labor contracts, building plans and hazardous activity permits for tribal government approval, collection of fees, and enforcement of these codes including the setting of penalties, where necessary.

1.2 Inconsistent Codes Repealed. All other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

1.3 **Certification of Adoption and Publishing.** The Executive Committee Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by law.

1.4 **Effective Date.** This Tribal Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and approval.

TITLE IV

ADOPTION OF AMERICANS WITH DISABILITIES ACT STANDARDS FOR CLASS III GAMING FACILITY

The adoption of 28 C.F.R. part 35, the Nondiscrimination on the Basis of Disability in State and Local Government Services, will serve to effectuate subtitle A of Title II of the Americans with Disabilities Act f 1990 (104 Stat. 327, Pub. L. 101-336, as amended), which prohibits discrimination on the basis of disability by public entities.

SECTION 1. ADOPTION BY REFERENCE.

1.1 **Findings.** The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") General Council on behalf of the Tribe finds that:

1.1.1 A certain document, three copies of which are on file in the office of the Tribal Secretary, being marked and designated as 28 C.F.R. part *35 – Nondiscrimination on the Basis of Disability in State and Local Government Services,* is hereby adopted as the Tribal ADA Standards, which prohibits discrimination on the basis of handicap in tribally assisted programs and activities.

1.2 **Inconsistent Codes Repealed.** All other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

1.3 **Certification of Adoption and Publishing.** The Executive Committee Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by law.

1.4 **Effective Date.** This Tribal Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and approval.

TITLE V

ADOPTION OF THE FDA 1999 FOOD CODE FOR A CLASS III GAMING FACILITY

The adoption of the 1999 edition of the "Food Code" regulating the retail sale, commercial and institutional service, and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitation, and other terms; and providing standards for employee food safety knowledge, health, and practices; food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning, and sanitation; water, and liquid and solid wastes; facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a permit to operate a food establishment; and providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties.

SECTION 1. ADOPTION BY REFERENCE.

1.1 Findings. The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") General Council on behalf of the Tribe finds that:

1.1.1 A certain document, three copies of which are on file in the office of the Tribal Secretary, being marked and designated as the *Food Code, 1999 Recommendations of the United States Public Health Service/Food and Drug Administration* as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration be, and is hereby adopted as, the Food Code of the Tribe, located in the State of California; for regulating the design, construction, management and operation of food establishments, and providing for plans submission and approval and the issuance of permits and collection of fees therefore.

1.2 Insertions and Changes. That the following provisions are hereby revised as follows:

Paragraph 8-811.10(B) Insert (as provided by California law) Paragraph 8-813.10(B) Insert (as provided by California law) Subparagraph 8-811.10(B)(2) Insert (as provided by California law)

1.3 Inconsistent Codes Repealed. All other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

1.4 Certification of Adoption and Publishing. The Executive Committee Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by law.

1.5 Effective Date. This Tribal Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect for the period of 36 months from and after the date of its final passage and approval.

TITLE VI

ADOPTION OF FEDERAL SAFE DRINKING WATER STANDARDS

The adoption of 40 C.F.R. part 141 – National Primary Drinking Water Regulations and part 142 – National Primary Drinking Water Regulations Implementation, together will serve to regulate the safety and inspection of ground and surface water aquifers and public drinking water systems on tribal lands.

SECTION 1. ADOPTION BY REFERENCE.

1.1 Findings. The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") General Council on behalf of the Tribe finds that:

1.1.1 A certain document, three copies of which are on file in the office of the Tribal Secretary, being marked and designated as 40 C.F.R. part 141 – *National Primary Drinking Water Regulations* and part 142 – *National Primary Drinking Water Regulations Implementation*, published by the U.S. Environmental Protection Agency, is hereby adopted as the Tribal Safe Drinking Water Standards, for regulating the safety and inspection of ground and surface water aquifers and public drinking water systems on tribal lands.

1.2 Inconsistent Codes Repealed. All other codes or portions of codes in conflict herewith are hereby repealed in that respect only.

1.3 Certification of Adoption and Publishing. The Executive Committee Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by law.

1.4 Effective Date. This Tribal Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and approval.

TITLE VII

ADOPTION OF THE UNIFORM BUILDING CODE, UNIFORM MECHANICAL CODE, UNIFORM PLUMBING CODE, NATIONAL ELECTRICAL CODE AND OTHER RELEVANT FEDERAL BUILDING AND CONSTRUCTION STANDARDS

The adoption of 24 C.F.R. part 200.925c -- Model Codes, including the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code and others, together will serve to regulate the operational safety and inspection of all relevant building and construction activities conducted on tribal lands.

SECTION 1. ADOPTION BY REFERENCE.

1.1 **Findings.** The ELEM INDIAN COLONY OF POMO INDIANS ("Tribe" or "Tribal") General Council on behalf of the Tribe finds that:

1.1.1 A certain document, three copies of which are on file in the office of the Tribal Secretary, being marked and designated as 5 U.S.C. 552(a) and 1 CFR part 51 is hereby adopted as the Tribal Uniform Building Code, Tribal Uniform Mechanical Code, Tribal Uniform Plumbing Code, Tribal Electrical Code and Tribal Building and Construction Standards, for regulating the construction of buildings on tribal lands. The aforementioned documents are:

(A) Model Building Codes—

(i) The BOCA National Building Code, 1993 Edition, The BOCA National Plumbing Code, 1993 Edition, and the BOCA National Mechanical Code, 1993 Edition, excluding Chapter I, Administration, for the Building, Plumbing and Mechanical Codes and the references to fire retardant treated wood and a distance of 4 feet (1219 mm) from the wall in exception number 1 of paragraph 705.6 and 707.5.2 number 2 (Chapter 7) of the Building Code, but including the Appendices of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478.

(ii) Standard Building Code, 1991 Edition, including 1992/1993 revisions. Standard Plumbing Code, 1991 Edition, Standard Mechanical Code, 1991 Edition, including 1992 revisions, and Standard Gas Code, 1991 Edition, including the 1992 revisions, but excluding Chapter I--Administration from each standard code and

the phrase ``or fire retardant treated wood" in reference note (a) of table 600 (Chapter 6) of the Standard Building Code, but including Appendices A, C, E, J, K, M, and R. Available from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(iii) Uniform Building Code, 1991 Edition, including the 1993 Accumulative Supplement, but excluding Part I--Administrative, and the reference to fire retardant treated plywood in section 2504(c)3 and to fire retardant treated wood in 1-HR type III and V construction referenced in paragraph 4203.2., but including the Appendix of the Code. Uniform Plumbing Code, 1991 Edition, including the 1992 Code Changes but excluding Part I--Administration, but including the Appendices of the Code. Uniform Mechanical Code, 1991 Edition, including the 1993 Accumulative Supplement but excluding Part I--Administrative, but including the Appendices of the Code. All available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(B) National Electrical Code, NFPA 70, 1993 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(C) National Standard Plumbing Code, 1993 Edition. Available from the National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, Virginia 22046.

1.1.2 Model Code Compliance Requirements.

(A) When a multifamily or care-type property is to comply with one of the model building codes set forth in paragraph 1.1.1 (A) of this section, the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that do not pertain to residential or institutional buildings;

(ii) Those provisions of the model codes that establish energy requirements for multifamily or care-type structures; and

(iii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

1.1.3 Where the model codes set forth in paragraph 1.1.1 (A) of his section designate a building, fire, mechanical, plumbing or other official, the Secretary's designee in the HUD Field Office serving the jurisdiction in which the property is to be constructed shall act as such official.

1.1.4 Designation of Model Codes. When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes designated in paragraphs 1.1.3 (A-C) of this section, and with any other code or codes identified in the same paragraph. However, seismic design is a mandatory requirement. In addition, the property shall comply with all of the standards that are incorporated into the code or codes by reference. By the time of application for insurance or other benefits, the developer or other interested party shall notify the Department of the code or group of codes to which the developer intends to comply.

(A) The BOCA National Building Code, The BOCA National Plumbing and The BOCA National Mechanical Code, 1993 Editions.

(B) Standard Building Code, Standard Plumbing Code, Standard Mechanical Code and Standard Gas Code, 1991 Editions, including the revisions specified in paragraph 1.1.1 (A)(ii) of this section, and the National Electrical Code, 1993 Edition.

(C) Uniform Building Code, Uniform Plumbing Code and Uniform Mechanical Code, 1991 Editions, including the 1993 Accumulative Supplements to the Building and Mechanical Codes, and the 1992 Code Changes to the Uniform Plumbing Code, and the National Electrical Code, NFPA 70, 1993 Edition.

(D) The National Electrical Code, NFPA 70, 1993 Edition.

1.2 Inconsistent Codes Repealed. All articles, titles, chapters, or other codes or portions thereof, in conflict herewith are hereby repealed in that respect only.

1.3 Certification of Adoption and Publishing. The Executive Committee Secretary shall certify the adoption of this Tribal Ordinance and cause the same to be published as required by law.

1.4 **Effective Date.** This Tribal Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and approval.