JUL 11 2008

Frances G. Charles
Chairwoman
Lower Elwha Klallam Tribe
2851 Lower Elwha Road
Port Angeles, WA 98363
Fax: (360) 452-3428

Re: Approval, Lower Elwha Klallam Tribe gaming ordinance amendment

Dear Chairwoman Charles:

This letter responds to your request that the National Indian Gaming Commission (NIGC) Chairman review and approve the Lower Elwha Klallam Tribe's (Tribe) Amended Gaming Control Ordinance of 2006 (Ordinance), adopted by Lower Elwha Klallam Tribal Business Committee by Resolution # 11:08 on April 7, 2008. The Ordinance is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and the NIGC's implementing regulations. Accordingly, the Ordinance is hereby approved.

The Ordinance's definition of *Indian Lands* now contains a legal description of a parcel of land referred to as the "Halberg Addition:"

Indian Lands means:

(1) All lands within the limits of the Tribe's reservation, as of October 17, 1988;

(2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Indian Tribe exercises governmental power; and

(3) For all lands acquired into trust for the benefit of an Indian tribe after October 17, 1988, the lands meet the requirements set forth in 25 U.S.C. § 2719, including, but not limited to the 240.77 acre parcel commonly referred to as the Halberg Addition, which is contiguous to the Lower Elwha Klallam Reservation and more specifically described in the Bureau of Indian Affairs Final Opinion of Title, dated October 11, 2001.

Ordinance, § 102(o). Because the definition references the Halberg Addition, which was acquired into trust for the benefit of the Tribe on October 11, 2001, the proposed definition requires me to determine the applicability of IGRA's general prohibition against gaming on lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719(a). If the prohibition applies, the Ordinance would purport to authorize gaming where IGRA prohibits it, and I would have to disapprove the Ordinance. Based on my review, however, I conclude that the prohibition does not apply because the Halberg Addition is contiguous to the Tribe's reservation and, therefore, eligible for Indian gaming.

Indian Lands

IGRA permits gaming only on Indian lands, 25 U.S.C. §§ 2710(b)(1), (2); 2710(d)(1), (2), which it defines as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). The National Indian Gaming Commission's implementing regulations clarify:

> Indian lands means:
>
> (a) Land within the limits of an Indian reservation; or
>
> (b) Land over which an Indian tribe exercises governmental power and that is either –
>
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
>
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12. The Halberg Addition is not within the limits of the Tribe's reservation. As such, in order to qualify as Indian lands, the Halberg Addition must be held in trust or restricted fee, and the Tribe must exercise governmental power over the land. I find that the Halberg Addition meets both criteria.

Trust Land

On October 11, 2001, the Bureau of Indian Affairs (BIA) issued a memorandum acknowledging that valid title to the Halberg Addition is vested in the United States of

America in trust for the Tribe. As such, the Halberg Addition conforms to the first requirement of IGRA's Indian lands definition.

Governmental Power

The Tribe also exercises governmental power over the Halberg Addition. This conclusion, however, is not as straightforward as simply noting that the United States holds the land in trust for the Tribe. In order to exercise governmental power over its land, the Tribe must first have jurisdiction to do so. *See, e.g., Rhode Island v. Narragansett Indian Tribe*, 19 F. 3d 685, 701-703 (1st Cir. 1994), *cert. denied*, 513 U.S. 919 (1994), *superseded by statute on other grounds, Narragansett Indian Tribe v. National Indian Gaming Commission*, 158 F.3d 1335 (D.C. Cir. 1998) (in addition to having jurisdiction, a tribe must exercise governmental power in order to trigger [IGRA]); *State ex. rel. Graves v. United States*, 86 F. Supp 2d 1094 (D. Kan. 2000), *aff'd and remanded*, *Kansas v. United States*, 249 F. 3d 1213 (10th Cir. 2001); *Miami Tribe of Oklahoma v. United States*, 5 F. Supp. 2d 1213, 1217-18 (D. Kan. 1998) (a tribe must have jurisdiction in order to be able to exercise governmental power); *Miami Tribe of Oklahoma v. United States*, 927 F. Supp. 1419, 1423 (D. Kan. 1996) (a tribe must first have jurisdiction in order to exercise governmental power for purposes of 25 U.S.C. § 2703(4)).

1. Jurisdiction

The presumption of jurisdiction exists for any federally recognized tribe acting within the limits of *Indian Country. See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998). This jurisdiction, an inherent sovereign power, can only be modified by a clear and explicit expression of Congress. *See Yankton Sioux Tribe*, 522 U.S. at 341; *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982).

Over time, the term *Indian Country* has referred to lands upon which the federal government and the Indian tribe that owns the land share primary jurisdiction. *See Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 529 (1998). The term *Indian Country* is defined by 18 U.S.C. § 1151 as follows:

> (a) All lands within the limits of an Indian reservation under the jurisdiction of the United State Government, notwithstanding the issuance of any patent, including rights of way running through the reservation,
> (b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territories thereof, and within or without the limits of a state, and
> (c) All Indian Allotments, the Indian titles to which have not been extinguished including rights of way running through the same.

In its review of 18 U.S.C. § 1151, the *Venetie* court found that the statute contains two of the indicia previously used to determine what lands constitute Indian Country: (1)

lands set aside for Indians and (2) federal superintendence of those lands. *See Venetie*, 522 U.S. at 527. In Venetie, the court observed that Section 1151 reflects the two criteria the Supreme Court previously held necessary for a finding of Indian Country. 522 U.S. at 527. Further, reservation status is not necessary for a finding of Indian Country. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) ("No precedent of this Court has ever drawn the distinction between tribal trust land and reservation that Oklahoma urges.")

The Tenth Circuit found that "[o]fficial designation of reservation status is not necessary for the property to be treated as Indian Country under 18 U.S.C. § 1151," rather, "it is enough that the property has been validly set aside for the use of the Indians, under federal superintendence." *United States v. Roberts*, 185 F.3d 1125, 1133, n.4 (10th Cir. 1999). Further, "reservation status is not dispositive and lands owned by the federal government in trust for Indian tribes are Indian Country pursuant to 18 U.S.C. § 1151." *Roberts*, 185 F.3d at 1130. Thus, as long as the land in question is in trust, the courts make no distinction between the types of trust lands that can be considered "Indian Country." *Roberts*, 185 F.3d at 1131, n.4. Accordingly, lands held in trust, fee simple restricted status, allotments and reservations are all considered Indian Country. *See United States v. Sandoval*, 231 U.S. 28 (1913) (fee restricted land as Indian Country); *United States v. Pelican*, 232 U.S. 442 (1914) (allotment as Indian Country); *United States v. McGowan*, 302 U.S. 535 (1938) (trust land as Indian Country).

Here, then, once the United States took the Halberg Addition into trust for the benefit of the Tribe, the land became Indian Country within the meaning of 18 U.S.C. § 1151. The site was "validly set apart for the use of the Indians as such, under the superintendence of the Government." *Potawatomi*, 498 U.S. at 511. Accordingly, the Tribe has jurisdiction to exercise governmental authority at the Halberg Addition.

2. Exercise of Governmental Authority

In order for the Halberg Addition to be Indian lands within the meaning of IGRA, the Tribe must also exercise present-day, governmental authority on the land. IGRA does not specify how a tribe exercises governmental authority, though there are many possible ways in many possible circumstances. For this reason, the Commission has not formulated a uniform definition of "exercise of governmental power" but rather decides that question in each case based upon all the circumstances. *National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act,* 57 Fed. Reg. 12382, 12388 (1992).

The courts provide useful guidance. For example, governmental power involves "the presence of concrete manifestations of … authority." *Narragansett Indian Tribe*, 19 F.3d at 703. Examples include the establishment of a housing authority, administration of health care programs, job training, public safety, conservation, and other governmental programs. *Id.*

The Tribe's Constitution extends the Tribal Community Council's authority to all "community lands," including its trust lands:

> The Lower Elwha Community Council shall have the following powers…
>
> (b) to encumber, lease, permit, sell, assign, manage or provide for the management of community lands, interests in such lands or other community assets; to purchase or otherwise acquire lands or interests in lands within or without the reservation; and to regulate the use and disposition of community property of all kinds, subject to the approval of the Secretary of the Interior or his authorized representative.

Constitution and Bylaws of the Lower Elwha Tribal Community, Art. 4 § (1)(b). In the exercise of that authority, the Tribal Community Council, through the Elwha Klallam Business Committee, passed Resolution 21-04 and chose the Halberg Addition as the preferred location for a fish hatchery. *Hatchery Site Alternatives Investigation and Preferred Alternative Approval*, Resolution 21-04.

Based on the foregoing, the Tribe exercises governmental authority over the Halberg Addition, it has jurisdiction to exercise that authority, and the land is held in trust for the Tribe by the United States. Accordingly, the Halberg Addition is Indian land within the meaning of IGRA. 25 U.S.C. § 2703(4)(B).

Section 20 Prohibition

The determination of whether the Halberg Addition is Indian lands, however, is not the end of the inquiry. The United States took the Halberg Addition into trust in October 2001, and, as such, the land may fall into IGRA's general prohibition against gaming on trust land acquired after October 17, 1988. 25 U.S.C. § 2719(a). Section 2719 states:

> …gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless-
>
> (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988.

25 U.S.C. 2719(a) and (a)(1). It is my opinion that the prohibition does not apply, however, because the land is located contiguous to the boundaries of the Tribe's reservation as it existed on October 17, 1988. 25 U.S.C. § 2719(a)(1).

Contiguous is defined as: "In close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded or traversed by." Black's Law Dictionary 320 (6th ed. 1990). The Department of the Interior has also adopted a similar definition for purposes of acquiring land into trust. Although

not effective yet, the Department recently published regulations pertaining to § 2719 define *contiguous* as, "two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point." 73 F.R. 29354, 29376. The Halberg Addition shares several common boundaries with the Tribe's original reservation, established in 1968, and is, therefore, contiguous to it.

In 1936 and 1937, the United States Government acquired 372 acres for the Tribe and, in 1968, used the land to establish a reservation for the Tribe. The Halberg Addition:

> [I]s located adjacent to the Lower Elwha Klallam Reservation on the southeastern boundary of the Reservation. The subject surrounds an existing 15 acre portion of the reservation purchased by the U.S. Government in 1936 and 1937 and established as the Lower Elwha Reservation in 1968.

Phase I Environmental Site Assessment, Lower Elwha Klallam Tribe-Halberg Addition, § 3.1, November 8, 1999. Maps submitted by the Tribe further demonstrate that Halberg Addition borders the southern boundary of the original reservation and also surrounds a 15-acre parcel of land located 900 feet away from the main body of, yet still part of, the original reservation. *Lower Elwha Klallam GIS Department Map,* prepared by Randall E. McCoy, 3/13/08. Consequently, the Halberg Addition is contiguous to the Tribe's Reservation and the § 2719 prohibition does not apply.

Conclusion

Based on our review of the submitted ordinance and tribal land information, the Halberg Addition is Indian land within the meaning of IGRA. Because the Halberg Addition is contiguous to the Tribe's original reservation, the general prohibition against gaming on land acquired after October 17, 1988, does not apply. As the Ordinance otherwise is consistent with the requirements of IGRA and NIGC regulations, it is approved.

Thank you for submitting the Lower Elwha Klallam Tribe Amended Gaming Control Ordinance of 2006 for our review and approval. The NIGC staff and I look forward to working with you and the Tribe on future gaming issues.

Sincerely,

Philip N. Hogen
Chairman

LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ʷə nəxʷsƛ̓ay̓əm "Strong People"

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Port Angeles WA 98363

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APR 14 2008

Amendment of Gaming Control Ordinance
Resolution # 11 : 08

WHEREAS, the Lower Elwha Community Council is the governing body of the Lower Elwha Tribal Community in accordance with its Constitution and By Laws, approved by the Secretary of Interior on April 29, 1968; and the Indian Reorganization Act of June 18, 1934; and the Treaty of Point No Point of January 26, 1855; and,

WHEREAS, the Lower Elwha Klallam Tribal Business Committee of the Lower Elwha Community Council is the duly elected representative body of the Tribe and is responsible for ensuring the health, safety, welfare, social, educational, and economic development, law and order, judicial services, and housing; and to preserve and protect the culture, treaty rights, natural resources, and promoting the welfare of our tribal citizens; and,

WHEREAS, on or about March 1, 1972, the Tribe passed and enacted the Resolution of the Lower Elwha Tribal Community Council delegating the authority of the Community Council to the Business Committee, in the absence of a quorum of the Community Council; and,

WHEREAS, on or about October 11, 2001, the Bureau of Indian Affairs issued its Final Opinion of Title regarding title to the Halberg Addition being "vested in the United States of America in trust for the Lower Elwha Klallam Tribe," as evidenced by Exhibit B; and,

WHEREAS, the Tribe has submitted the Lower Elwha Gaming Control Ordinance of 2006 to the National Indian Gaming Commission and has received approval of the Ordinance from the National Indian Gaming Commission; and,

NOW THEREFORE BE IT RESOLVED, the Tribe seeks to amend Section 102(o)(3) of the Lower Elwha Gaming Control Ordinance of 2006 as set forth below:

> "For all lands acquired into trust for the benefit of an Indian tribe after October 17, 1988, the lands meet the requirements set forth in 25 U.S.C. (2719), including, but not limited to the 240.77 acre parcel commonly referred to as the Halberg Addition, which is contiguous to the Lower Elwha Klallam Reservation and more specifically described in a Bureau of Indian Affairs Final Opinion of Title, dated October 11, 2001."

Certification

This resolution was formally adopted at a regular meeting of the Lower Elwha Klallam Tribal Community Council, and in the absence of a quorum, by a quorum of the Business Committee on the 7th day of April, 2008, by a vote of __4___ FOR, __0___ AGAINST, and __0___ ABSTAIN.

Attest:

Frances G. Charles, Chair

Verna Henderson, Secretary/Treasurer

APR 14 2008

Lower Elwha Klallam Tribe Amended Gaming Control Ordinance of 2006

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Section 101. Purpose

The Lower Elwha Klallam Tribe (Tribe), through the Lower Elwha Klallam Tribal Business Committee, empowered by the Lower Elwha Klallam Tribal Community Constitution, By-laws and Community Council Resolutions to enact ordinances, hereby enacts this ordinance in order to govern Class I, Class II and Class III gaming operations on the Tribe's Indian lands. This ordinance shall be known as the "Lower Elwha Klallam Gaming Control Ordinance of 2006."

Section 102. Definitions

Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*, and its regulations, 25 C.F.R. § 500 *et seq.*, except for references to Commissioners and Commission, which shall mean Commissioners of the Elwha Klallam Gaming Commission established herein. Specifically:

(a) **Board of Directors** means the Tribal Gaming Board of Directors, who shall serve as primary management officials in overseeing the General Manager and the day-to-day non-regulatory aspects of the gaming operation.

(b) **Class I Gaming** means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(c) **Class II Gaming** means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith);

(A) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(B) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(C) 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 cards, tip jars, instant bingo, and other games similar to bingo; and

(2) Card games that:

(A) are explicitly authorized by the laws of the State, or

(B) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only as such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card

games.

(3) The term "Class II Gaming" does not include:

(A) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(B) electronic or electromechanical facsimiles or any game of chance or slot machines of any kind.

(d) **Class III gaming** means all forms of gaming that are not Class I gaming or Class II gaming.

(e) **Closely Associated Independent Contractor** means any contractor that shares common ownership, officers or directors with any management principal or person related thereto.

(f) **Commission** means the Tribal Gaming Commission established to perform regulatory oversight and to monitor compliance with Tribal, Federal, and applicable State regulations.

(g) **Commissioner** means a Tribal Gaming Commissioner.

(h) **Compact** means a Tribal-State Compact concerning Class III gaming approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710(d).

(i) **Complimentary** shall have the meaning as set forth in 25 C.F.R. §542.2(a).

(j) **Director** means a member of the Tribal Gaming Board of Directors.

(k) **Gaming** means any activity in which a person stakes or risks something of value on the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that the person, or someone else, will receive something of value in the event of a certain outcome, but shall not include bona fide business transactions.

(l) **Gaming Activities** means any Class I, Class II, or Class III gaming conducted by or under the jurisdiction of the Tribe.

(m) **Gaming Contractor** means any person or entity that supply gaming devices or other gaming equipment, personnel, or services (including gaming management or consulting services) to any gaming activity or enterprise.

(n) **Gaming Enterprise** means any gaming business, event, enterprise or activity conducted by or under the jurisdiction of the Tribe.

(o) **Indian Lands** means:

(1) All lands within the limits of the Tribe' s reservation, as of October 17, 1988;

(2) Any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Indian Tribe exercises governmental power; and

(3) For all lands acquired into trust for the benefit of an Indian tribe after October 17, 1988, the lands meet the requirements set forth in 25 U.S.C. §2719, including, but not limited to the 240.77 acre parcel commonly referred to as the Halberg Addition, which is contiguous to the Lower Elwha Klallam

Reservation and more specifically described in Bureau of Indian Affairs Final Opinion of Title, dated October 11, 2001.

(p) **Indian Tribe** means the Lower Elwha Klallam Tribe.

(q) **Key Employee** means:

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

(A) Bingo caller;

(B) Counting room supervisor;

(C) Chief of security;

(D) Custodian of gaming supplies or cash;

(E) Floor manager;

(F) Pit boss;

(G) Dealer;

(H) Croupier;

(I) Approver of credit; or

(J) Custodian of gambling devices, including persons with access to cash and accounting records within such devices;

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

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

At the discretion of the Gaming Commission, other positions may be included under and subject to the requirements for Key Employees.

(r) **Net Revenues** means gross gaming revenues of an Indian gaming operation less

(1) Amounts paid out as, or paid for, prizes; and

(2) Total gaming-related operating expenses, excluding management fees.

(s) **Person** means any natural person or entity, including but not limited to corporations, partnerships, and trusts.

(t) **Primary Management Official** means

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

(2) Any person who has authority:

(A) to hire and fire employees; or

(B) to set up working policy for the gaming operation; or

(C) the chief financial officer or other person who has financial management responsibility.

(u) **Related To** shall be in reference to any matter specifically involving a close family relative. A close family relative means a spouse, children, foster and step-children, parents, grandparents, brothers and sisters, and those others who live in the home and are considered by the community to be part of the family.

(v) **Reservation** means the Lower Elwha Klallam Reservation.

(w) **State** means the state of Washington.

(x) **Tribal Business Committee** means the governing body as elected officials of the Lower Elwha Tribal Community Business Committee, as set forth in the Tribal Constitution and By-laws.

Section 103. Gaming Authorized

All gaming on Tribal Lands, whether Class I, Class II or Class III, is prohibited except as expressly authorized by this Ordinance.

Section 104. Ownership of Gaming

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

Section 105. Use of Gaming Revenue

(a) Net revenues from tribal gaming shall be used only for the following purposes:

- (1) To fund tribal government operations and 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; or
- (5) To help fund operations of local government agencies.

Section 106. Per Capita Payments

(a) Per Capita Payment means the distribution of money or other thing of value to all members of the Tribe or to identified groups of members, which is paid directly from the net revenues of any Tribal gaming activity.

(b) If the Tribal Business Committee elects to make per capita payments to tribal members from revenues derived from its gaming operations, it shall ensure that the following requirements of 25 C.F.R. Part 290 are met:

- (1) The Tribal Business Committee shall authorize and issue such payments only in accordance with a revenue allocation plan submitted to and approved by the

Secretary of the Interior under 25 U.S.C. § 2710(b)(3);

(2) The Tribal Business Committee shall ensure that the interests of minors and other legally incompetent persons who are entitled to receive any per capita payments under a Tribal per capita payment plan are protected and preserved, and that the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for health, education, or welfare of the minor or other legally incompetent person, under a plan approved by the Lower Elwha Klallam Tribal Business Committee and the Secretary of the Interior. The Tribe must also establish criteria and a process for withdrawal of funds by the parent or legal guardian;

(3) The Lower Elwha Klallam Tribal Business Committee shall designate or create a Tribal court system, forum or administrative process for resolution of disputes concerning the allocation of net gaming revenues and the distribution of per capita payments and will explain how it will correct deficiencies;

(4) The Lower Elwha Klallam Tribal Business Committee shall ensure that the Tribal revenue allocation plan reserves an adequate portion of net gaming revenues from the tribal gaming activity to do one or more of the following:
fund Tribal government operations or programs; provide for the general welfare of the Tribe or its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government;

(5) The Lower Elwha Klallam Tribal Business Committee shall ensure that distributions of per capita payments are made according to specific eligibility requirements;

(6) The Lower Elwha Klallam Tribal Business Committee shall ensure that Tribal members are notified of the tax liability for per capita payments and how taxes will be withheld.

Section 107. Management of Tribal Gaming

The Tribal Business Committee may enter into a contract for the management of its gaming operation with any person or entity. Such contract(s) shall be in compliance with all applicable laws. Management contracts shall be approved by the NIGC. The Tribal Business Committee shall specifically approve any management contract prior to its submission to the NIGC or another governmental entity for approval.
No elected official of the Tribe, including the Gaming Commission, or any other committee or agency of the Tribe, shall

- have a financial interest in or management responsibility for any management contract or other such agreement entered into pursuant to IGRA;

- hold, directly or indirectly, ten percent (10%) or more of the issued and outstanding stock of any corporation or any other business entity having a business relationship with the gaming operation.

Section 108. Board of Directors

(a) In addition to the General Manager for the facility, there may be established a Tribal Gaming Board of Directors which shall serve in a management oversight role over the General Manager and the day-to-day-operations of the gaming operation. In the event that the Tribal Business Committee enters into a management contract approved by the NIGC, the Board may delegate some or all duties to the approved management contractor. The Board of Directors shall oversee all non-regulatory aspects of the gaming operation. Regulation of the gaming operation shall be the sole responsibility of the Tribal Gaming Commission.

(b) The Board of Directors shall consist of three (3) members: a Chairperson, Vice-Chairperson, and Director. Terms of office for members of the Tribal Gaming Board of Directors shall be as follows: the Chairperson shall serve an initial term of one year, with subsequent Chairpersons serving three-year terms. The Vice-Chairperson and other Director(s) shall serve an initial term of two years, with subsequent Vice-Chairpersons and Directors serving three-year terms. The members of the Board shall be subject to the same background requirements as key employees and primary management officials, and must be licensed accordingly. The minimum requirements for appointment as a member of the Board of Directors shall include at least one of the following:

- Degree in Business Administration, Accounting, Marketing, or an equivalent field;
- Minimum five (5) years experience in business management;
- Minimum two (2) years experience in casino management; or
- Demonstrated knowledge of Federal Indian law, the Indian Gaming Regulatory Act, and related statutes and regulations.

  OR
- A basic knowledge of gaming management, business, finance or law.

(c) The Board of Directors shall perform the following duties:

(1) Monitor and oversee the day-to-day operations of the gaming facility, whether managed by a Tribal employee or by an approved management contractor;

(2) Inspect and examine, on a periodic basis, all books, records, and papers of the gaming facility;

(3) Set hours of operation for the gaming facility;

(4) Set wager limits;

(5) Develop marketing plans;

(6) Oversee the interview, selection, and training of employees of the gaming operation;

(7) Establish employee policies, rates of pay, and hours of work;

(8) Adopt an annual operating budget, subject to Tribal Business Committee approval;

(9) Enter into contracts on behalf of the gaming facility, subject to Tribal Business Committee approval and NIGC review;

(10) Hold hearings on employee complaints, in compliance with procedures established in the gaming ordinance and other Tribal gaming regulations or personnel policies; and

(11) Any other duties necessary to monitor and oversee the gaming operation.

(d) The Board of Director positions shall be filled through appointment by the Tribal Business Committee.

(e) At least one member of the Board of Directors shall be a local business owner or retired business executive with no ties to or financial interest in the gaming operation.

(f) The Tribal Business Committee recognizes the importance of an independent Tribal Gaming Board of Directors in maintaining a well-managed gaming operation. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribal Business Committee hereby finds that, at a minimum:

(1) No member of the Tribal Business Committee or Tribal Gaming Commission may serve on the Board of Directors;

(2) No person related to or living with any Tribal Business Committee member or Tribal Gaming Commissioner may serve on the Board of Directors;

(3) Members of the Board of Directors are prohibited from gambling in the facility; and

(4) Members of the Board of Directors are prohibited from accepting complimentary items from the gaming operation.

(g) Members of the Board of Directors may be removed from office by the Tribal Business Committee prior to the expiration of their respective terms only for neglect of duty, misconduct, malfeasance, or other acts that would render the Director unqualified for his/her position. When the Tribal Business Committee believes that a removal is appropriate, it shall so notify the Director(s) and hold a hearing on the matter. The Tribal Business Committee may opt to preliminarily remove the Director pending the hearing. At the hearing, the Director may provide evidence rebutting the grounds for his/her removal. A vote of the Tribal Business Committee on the validity of the preliminary removal shall be final and not subject to further appeal. A finding by the Tribal Business Committee that the preliminary removal was wrongful shall entitle the affected Director to compensation for expenses incurred in appealing the wrongful removal, and shall entitle the Director to any pay withheld.

(h) Members of the Tribal Gaming Board of Directors shall be compensated at a level determined by the Tribal Business Committee.

Section 109. Gaming Commission

(a) The Tribal Business Committee hereby establishes a Tribal Gaming Commission whose duty it is to regulate tribal gaming operations. The Tribal Gaming Commission shall consist of a minimum of three (3) members, not to exceed five (5) members. There shall be among them a Chairperson, Vice-Chairperson, and at least one additional Commissioner.

(b) The purpose of the Tribal Gaming Commission is regulatory, not managerial. The Commission will conduct oversight to ensure compliance with Tribal, Federal and, if applicable, State laws and regulations. The Commission shall have the power to issue all gaming and non-gaming licenses required or authorized under this Ordinance and will administer background investigations as part of the licensing process. The Commission will also have a role in monitoring compliance with the internal controls for the gaming operation and in tracking revenues. In order to carry out its regulatory duties, the Commission shall have unrestricted access to all areas of the gaming operation and to all records. The Commission shall have authority to take enforcement actions, including suspension or revocation of an individual gaming license when appropriate.

(c) The Tribal Business Committee recognizes the importance of an independent Tribal Gaming Commission in maintaining a well-regulated gaming operation. The Commission shall be and act independently and autonomously from the Tribal Business Committee in all matters within its purview. No prior or subsequent review by the Tribal Business Committee of any actions of the Commission shall be required or permitted except as otherwise explicitly provided in this Ordinance. To avoid potential conflicts of interest between the operation and regulation of the gaming facility, the Tribal Business Committee hereby finds that, at a minimum:

(1) No member of the Tribal Business Committee or Tribal Board of Directors may serve on the Gaming Commission;

(2) No person directly related to or living with any Tribal Business Committee member or Tribal Board of Directors may serve on the Gaming Commission;

(3) No member of the Tribal Business Committee may serve on the Gaming Commission;

(4) Members of the Gaming Commission are prohibited from gambling in the facility; and

(5) Members of the Gaming Commission are prohibited from accepting complimentary items from the gaming operation, excepting food and beverages valued at less than five dollars.

(d) Tribal Gaming Commissioners positions shall be filled through appointment by the Tribal Business Committee.

(e) Nominees for positions of Tribal Gaming Commissioner must satisfy the suitability standards set forth for Key Employees and Primary Management Officials in this Ordinance. Such background investigations shall be performed under the direction of the Tribal Law Enforcement Agency or its designee.

(f) The Tribal Gaming Commission shall:

(1) Conduct or cause background investigations to be conducted on, at a minimum, Primary Management Officials and Key Employees;

(2) Review and approve all investigative work conducted;

(3) Report results of background investigations to the NIGC;

(4) Obtain and process fingerprints, or designate a law enforcement agency to obtain and process fingerprints;

(5) Make licensing suitability determinations, which shall be signed by the Chairman of the Gaming Commission;

(6) Issue gaming and non-gaming licenses to employees of the gaming operation, vendors of the gaming operation, and management officials;

(7) Establish standards for licensing Tribal gaming operations;

(8) Issue facility gaming licenses to Tribal gaming operations;

(9) Inspect, examine and monitor all gaming activities, and have immediate access to review, inspect, examine, photocopy and audit all records of the gaming establishment;

(10) Ensure compliance with all Tribal laws, rules and regulations regarding Indian gaming, and any applicable State and Federal laws;

(11) Investigate any suspicion of wrongdoing associated with any gaming activities;

(12) Hold hearings on patron complaints, in compliance with procedures established in the gaming ordinance and other Tribal gaming regulations;

(13) Comply with any and all reporting requirements under the IGRA, Tribal-State compact to which the Tribe is a party, and any other applicable law;

(14) Promulgate and issue regulations necessary to comply with applicable internal control standards;

(15) Promulgate and issue regulations on the levying of fees and/or taxes associated with gaming license applications;

(16) Promulgate and issue regulations on the levying of fines and/or suspensions or revocation of gaming or non-gaming licenses for violations of the gaming ordinance or regulations adopted hereunder, or any other applicable Federal or State gaming laws or regulations;

(17) Establish a list of persons not allowed to game in Tribal gaming facilities in order to maintain the integrity of the gaming operation;

(18) Establish a list of persons who have voluntarily asked to be excluded from Tribal gaming facilities, and create regulations for enforcing this exclusion;

(19) Provide referrals and information to the appropriate law enforcement officials and other governmental agencies when such information indicates a violation of Tribal, Federal or applicable State statutes, ordinances or regulations;

(20) Create a list of regulatory authorities that conduct vendor background investigations and licensing which the Commission recognizes as trustworthy;

(21) Draft regulations exempting vendors from licensing and/or background investigation requirements if they have received a license from a recognized regulatory authority;

(22) Perform such other duties the Commission deems appropriate for the proper regulation of the Tribal gaming operation;

(23) Promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Ordinance.

(g) The Gaming Commission shall ensure that all records and information obtained as a result of an employee background investigation shall remain confidential and shall not be disclosed to persons who are not directly involved in the licensing and employment processes. Information obtained during the course of an employee background investigation shall be disclosed to members of management, human resource personnel or others employed by the Tribal gaming operation on a need-to-know basis for actions taken in their official capacities. This Section does not apply to requests for such information or records from any Tribal, Federal or State law enforcement or regulatory agency, or for the use of such information or records by the Commission and staff in the performance of their official duties.

(h) The Commissioners shall serve for three-year terms, except that immediately after enactment of this ordinance, for the initial term, one Commissioner shall serve for one (1) year, one shall serve for two (2) years, and one shall serve for three (3) years. Commissioners shall be allowed to serve in office for two consecutive terms and then shall not be allowed to serve in office until one year has passed since he/she has left service of the Commission.

(i) The following persons are not eligible to serve as commissioners as Tribal Gaming Commissioners:

(1) Tribal Business Committee members, while serving as such;

(2) Employees of the gaming operation, while serving as such;

(3) Gaming contractors, including any principal of a management or other contracting company;

(4) Persons related to or sharing a residence with any of the above;

(5) Persons ineligible to be Key Employees or Primary Management Officials.

(6) Any person who is not eligible pursuant to the Tribal Constitution and By-laws.

Non-tribal members previously convicted of a felony, or embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) cannot serve as Tribal Gaming Commissioners. Tribal members previously convicted of a felony, or embezzlement, of theft, or of any other money-related crime or honesty-related crime (such as fraud) will only be allowed to serve as Tribal Gaming Commissioners if the Tribal Business Committee specifically finds a significant amount of time has passed and that the person is now of trustworthy character. The Tribal Business Committee shall require a criminal history check with appropriate law enforcement agencies and shall review this criminal history report and make an appropriate suitability determination before appointing an individual to a position as a Tribal Gaming Commissioner.

(j) The independence of the Tribal Gaming Commission is essential to a well-regulated gaming operation. For that reason, Commissioners may only be removed from office by the Tribal Business Committee prior to the expiration of their respective terms for neglect of duty, misconduct, malfeasance, or other acts that would render a commissioner unqualified for his/her position. Any allegations of neglect of duty, misconduct, malfeasance, or other acts that would render him or her unqualified for his/her position must be substantiated by a preponderance of the evidence. Commissioners will be given an opportunity to provide evidence rebutting the grounds for their proposed removal before the removal is considered. A vote of the Tribal Business Committee on the validity of the removal shall be final and not subject to further appeal. A wrongful removal shall entitle the affected Commissioner to compensation for expenses incurred in an appeal and any pay withheld.

(k) A majority of the Commission shall constitute a quorum. The concurrence of a majority of the members appointed to the Commission shall be required for any final determination by the Commission. The Commission may act in its official capacity even if there are vacancies on the Commission.

(l) Tribal Gaming Commissioners shall be compensated at a level determined by the Tribal Business Committee. Commissioner compensation shall not be based on a percentage of gaming revenue to ensure the Commission is not improperly influenced.

(m) The Commission shall keep a written record of all its meetings.

(n) The Chairman shall preside over meetings of the Commission, and the Vice-Chair shall preside in the absence of the Chair. The Secretary shall record in writing the minutes of all Gaming Commission meetings and all related official actions of those meetings.

(o) Regular meetings of the Commission will be held monthly, in addition to an annual Tribal Gaming Commission meeting to elect the officers. Additional meetings may be called by the Chair or by at least two (2) other Commissioners. Notice of meetings shall be given in writing to each Commissioner, or in person. Regular monthly meetings may be held by telephone conference call when necessary.

(s) Commissioners shall be compensated for serving on the Tribal Gaming Commission. A stipend for attendance of meetings will be established by the Lower Elwha Business Committee. Commissioners shall be reimbursed for expenses incurred in connection with the performance of their Commission duties and shall receive a stipend for days spent in performance of their commission duties.

(t) Commissioners will have primary responsibility for fulfilling the responsibilities under the terms of the Tribe's Gaming Compact with the State of Washington and its approved Appendix X.

Section 110. Ethics

(a) The Tribal Business Committee recognizes that the duties of the Gaming Board of Directors and the Tribal Gaming Commission include making important decisions on highly

sensitive issues. As such, the Tribal Business Committee has determined that the Board of Directors and the Gaming Commission shall be held to extremely high ethical standards. Prior to taking their positions on the Board and the Commission (Members), the Members shall agree to be bound by the following principles:

(1) Members shall not hold financial interests that conflict with the conscientious performance of their duties as managers and regulators.

(2) Members shall not engage in financial transactions using nonpublic information or allow the improper use of such information by others on their behalf to further any private interest.

(3) Members shall not solicit or accept any gift or other item of monetary value, including complimentary items or services (see Section 111, below), from any person or entity seeking official action or inaction from, doing business with, or conducting activities regulated by the Member's organization, or whose interests may be substantially affected by the performance or nonperformance of the Member's duties.

(4) Members shall make no unauthorized commitments or promises of any kind purporting to bind the Tribe.

(5) Members shall not use their positions for private gain.

(6) Members shall act impartially, in accordance with all relevant Tribal, Federal and State laws (where applicable), and shall not give preferential treatment to any private organization or individual, including to any persons related to Members.

(7) Members shall ensure that Tribal property and gaming assets shall be properly segregated and safeguarded, and that such property and assets shall not be used for unauthorized activities.

(8) Members shall not engage in outside employment or activities, including seeking or negotiating for future employment, which conflict with their official duties and responsibilities.

(9) Members shall disclose waste, fraud, abuse and corruption to appropriate authorities.

(10) Members shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards listed herein.

(11) Members shall disclose any real or apparent financial or personal conflicts. If there is a real conflict or the appearance of one, the Member shall not take part in any decision related to the conflict.

Section 111. Complimentary Items

(a) The use of complimentary items shall be governed by regulations established by the Tribal Gaming Commission.

(b) No Key Employee, Primary Management Official, Tribal Business Committee member, member of the Gaming Board of Directors or Tribal Gaming Commission, or any person directly related to or sharing a residence with the persons, shall be authorized to receive complimentary items other than food and beverages valued at under five dollars or, if at a public event held at the gaming facility, the free food and beverages offered to the general public.

(c) Complimentary items shall be included in the annual budget for the gaming operation, with maximum limits specified, and shall be subject to approval by the Tribal Business Committee.

Section 112. Audit

(a) The Tribal Business Committee shall cause an annual outside independent audit of gaming operations to be conducted and shall submit the resulting audit reports to the National Indian Gaming Commission.

(b) All gaming-related contracts that result in the purchase of supplies, services or concessions in excess of $25,000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection (a) above and such contracts shall so specify.

Section 113. Environment and Public Health and Safety

(a) Gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

(b) The Tribal Business Committee shall adopt standards that assure adequate protection of the environment and the public health and safety.

Section 114. Patron Dispute Resolution

(a) It is the intent of the Tribal Business Committee that all customer disputes be resolved fairly, justly, equitable and expediently. In order to implement this directive, the gaming operation shall adopt a dispute resolution process subject to approval by the Commission, which at a minimum shall include the following procedures:

(1) The manager shall attempt to resolve the dispute with the parties.

(2) If the dispute is unresolved, the manager shall inform the customer of the right to request an investigation by the Tribal Gaming Commission.

(3) The Tribal Gaming Commission, through an inspector, shall conduct whatever investigation it deems necessary and shall determine whether payment should

be made.

(4) The Tribal Gaming Commission inspector shall mail written notice by certified mail, return receipt requested, to the manager and the customer of his decision resolving the dispute within thirty (30) days after the date that the Tribal Gaming Commission first receives notification from the manager or a request to conduct an investigation from the customer.

(5) The decision of the Inspector is effective on the date it is received by the aggrieved party, as reflected on the return receipt.

(6) Within thirty (30) working days after the date of receipt of the written decision of the Inspector, the aggrieved party may file a petition with the Tribal Gaming Commission requesting a review of the decision. The Tribal Gaming Commission may set a hearing on the matter, or may make a decision based solely upon the inspector's decision and other documentation provided to it by the customer and the manager. The Tribal Gaming Commission shall then issue a written decision and mail to the parties by registered mail or certified mail, return receipt requested.

(b) The liability of the Gaming operation in any dispute under this Section shall be limited to an amount of the alleged winnings, and a customer shall not be entitled to an award of special or punitive damages, or damages for mental distress.

(c) The decision of the Tribal Gaming Commission shall not be subject to judicial review.

Section 115. Tribal Internal Control Standards

The Tribal Gaming Commission shall adopt and implement Internal Control Standards (ICS) for the operation of its Tribal gaming operation in accordance with applicable law.

Section 116. Facility Licenses

(a) The Tribal Gaming Commission shall issue a separate license to each place, facility or location on Indian lands where Class II and Class III gaming is conducted under this ordinance once every two (2) years. The Tribal Gaming Commission shall specify the form, conditions and content for the application for such licenses, which shall be submitted by the chief management official of the facility. The initial application shall include a legal description of the lands whereon the facility is located and a certification that said premises constitute "Indian lands" as specified in the Indian Gaming Regulatory Act, and shall identify the environmental, health and public safety standards with which the facility must comply and include certifications of compliance therewith. Each subsequent application for the renewal of such facility license shall identify any changes or additions to said legal description and applicable environmental, health

and public safety standards and include current certifications of compliance therewith. The Tribal Gaming Commission shall only issue such licenses if the applications include the required information and certifications and further such conditions as the Tribal Gaming Commission shall have specified.

Section 117. Agent for Service of Process

The Tribal Business Committee hereby designates the Chairperson of the Tribe as agent for service of process, who may be contacted at:

2851 Lower Elwha Road
Port Angeles WA 98363

Section 118. Compliance with Federal Law

The Tribe will comply with all applicable federal law, including the Bank Secrecy Act, 31 U.S.C § 5311 *et seq.*

Section 119. Repeal

All prior gaming ordinances are hereby repealed.

Section 201. Licenses for Key Employees and Primary Management Officials, and Other Gaming and Non-Gaming Employees

The Tribal Gaming Commission shall ensure that the policies and procedures set out in this Ordinance are implemented with respect to key employees and primary management officials at any gaming enterprise operated on Indian lands. The Tribal Gaming Commission will issue licenses and perform background investigations according to requirements at least as stringent as 25 C.F.R. Parts 556 and 558. The Tribal Gaming Commission shall also ensure that the policies and procedures set out in this Ordinance are implemented with respect to other gaming and non-gaming employees required to be licensed by the Tribal Gaming Commission. For the purposes of this Ordinance, the following license classifications shall be utilized:

(a) A Class A license shall be obtained prior to any person being associated with any gaming activity as an inspector, management entity, primary management official, key employee, closely associated independent contractor, or other individual or entity with influence over the

management or operation of gaming or a Class II or Class III employee, supplier, manufacturer or distributor. The Tribal Gaming Commission shall conduct or cause to be conducted a background investigation to determine if such person has any criminal record or any reputation, prior activities, habits or associations which might post a threat to the public interest or to the effective regulation of gaming, or anything else in the person's background which might create or enhance the dangers or unfair or illegal practices, methods and activities in the conduct of gaming.

(b) A Class B license shall be obtained by a person, over the age of 18 and not among those identified in subsection (a), who is employed at gaming facilities on Tribal Lands in some other capacity, such as in non-gaming-related activities. Such persons must establish that they have not been convicted of a crime, or engaged in any activity which the Tribal Gaming Commission, in its sole discretion, deems would render such person a danger to the safety or integrity of the gaming activity or the safety or property of the Tribe, a Tribal member, a gaming employee or patron, or a member of the public.

(c) A Class C license may be issued to minors (persons age 18 and under), which will entitle them to work in any position for which a Class B license is required for adults and not otherwise prohibited by this Ordinance or other applicable law. Prior to issuance of a Class C license, such minors shall be deemed by the Tribal Gaming Commission to pose no threat to the safety or integrity of the gaming activity or the safety or property of the Tribe, a Tribal member, a gaming employee or patron, or a member of the public. Such licenses shall be valid for no more than six (6) months at a time and shall be revoked upon the minor reaching the age of eighteen (18), after which time either a Class A or Class B license, as applicable, will be required. Minors will not be employed as dealers or otherwise to operate or supervise the operations of games.

Class A and Class B licenses, unless otherwise exempted by the Tribal Gaming Commission, shall be subject to renewal every year, and may be revoked or suspended upon the occurrence of any act which, if known during the application process, would have disqualified such person for such a license.

Section 202. License Application Forms

(a) The following notice shall be placed on the application form for a key employee or a primary management official:

> *In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Tribe and the 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 necessary 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 being unable to hire you in a primary management official or key employee position.

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

(b) The following additional notice shall be placed on the application form for a key employee or a primary management official:

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).

(c) The Tribal Gaming Commission shall notify in writing existing key employees, primary management officials, and other Class A licensees unless otherwise exempted by the Gaming Commission, who have not completed an application containing the notices set forth above that they shall either:

(1) Complete a new application form that contains both the Privacy Act and false statement notices; or

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

(d) The following notices may be placed on the application form for a Class A license applicant other than a key employee or a primary management official:

(1) *In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by the Tribe and the 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 necessary 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 being unable to hire you in a primary management official or key employee position.

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

(2) *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).*

Section 203. License Fees

The Tribal Gaming Commission may charge a license fee, subject to approval by the Tribal Business Committee, to cover its expenses in investigating and licensing Key Employees, Primary Management Officials and other licensees of the gaming operation. Applicants may be required to pay a reasonable deposit for costs of gathering information and investigation prior to beginning processing of the application. At the discretion of the Tribal Business Committee and the Tribal Gaming Commission, members of the Tribe may be exempted from any license fees or costs. An estimate of such costs shall be provided to an applicant upon reasonable request.

Section 204. Fingerprints

Each applicant for a Key Employee, Primary Management Official or Class A license shall be required to have fingerprints taken as part of the license application procedure. Fingerprints shall be taken by the Washington State Patrol. Fingerprints will then be forwarded to the NIGC and the Washington State Gambling Commission for processing through the FBI and NCIC to determine the applicant's criminal history, if

any. The Tribal Gaming Commission may also require fingerprints from Class B and Class C license applicants.

Section 205. Background Investigations

(a) The Tribal Gaming Commission or its designee is responsible for conducting background investigations and suitability determinations on all Class A, Class B and Class C applicants.

(b) The Tribal Gaming Commission shall request from each applicant for a license all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (b)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with Indian Tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there was an ongoing prosecution or a conviction, within 10 years from the date of the application, the charge, the name and address or the court involved, and the date and disposition, if any, of the case;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years from the date of the application, the charge, the name and address or the court involved, and the date and disposition;

(10) For each criminal charge (excluding minor traffic violations), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (b)(8) or (b)(9) of this section, the criminal charge, the name and address of the court involved, and the date and disposition;

(11) The name and address of any licensing or regulatory agency (Federal, Tribal, State, local or foreign) with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A photograph taken within the last year;

(13) Fingerprints shall be taken by [name of responsible law enforcement agency]; and

(14) Any other information the Tribal Gaming Committee deems relevant.

The Tribal Gaming Commission reserves the right, at any time, to request additional information either prior to, during or subsequent to any background investigation.

(c) As part of its review procedure, the Tribal Gaming Commission or its agent shall employ or engage a private investigator to conduct a background investigation on each applicant sufficient to allow the Gaming Commission to make an eligibility determination under Section 207 below: The investigator shall:

(1) Verify the applicant's identity through items such as a social security card, drivers license, birth certificate or passport;

(2) Contact each personal and business reference provided in the license application, when possible;

(3) Obtain a personal credit check;

(4) Conduct a civil history check;

(5) Conduct a criminal history check via the submission of the applicant's fingerprints to the NIGC, and further obtain information from the appropriate court regarding past felony and/or misdemeanor convictions and criminal charges within the last ten years;

(6) Inquire into any previous or existing business relationships with the gaming industry and Indian tribes by contacting the entities or tribes;

(7) Verify the applicant's history and status with any licensing agency by contacting the agency; and

(8) Taking other appropriate steps to verify the accuracy of the information, focusing on problem areas noted.

(d) The investigator shall create an investigative report noting the steps taken, information gained, potential problem areas, and disqualifying information.

(e) The Gaming Commission and its investigator shall endeavor to keep confidential the identity of each person interviewed in the course of the investigation, other than disclosure as required under Federal, Tribal or State law.

Section 206. Eligibility Determination

The Tribal Gaming Commission shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribal Gaming Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming, a tribal gaming

operation shall not employ that person in a key employee or primary management official position.

Section 207. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

(a) On or before the date any key employee or primary management official is employed by a gaming enterprise authorized under this Ordinance, the Tribal Gaming Commission shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation, and make the determination referred to in Section 207 of this Ordinance.

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

Section 208. Report to the National Indian Gaming Commission

(a) The Tribal Gaming Commission shall prepare and forward a report on each background investigation to the National Indian Gaming Commission. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;
(2) Results obtained;
(3) Conclusions reached; and
(4) The bases for those conclusions.

(b) The Tribal Gaming Commission shall forward the completed investigative report to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this Ordinance by the Chairman of the National Indian Gaming Commission.

(c) The Commission shall submit, with the investigative report, a copy of the eligibility determination, unless the NIGC shall have advised the Tribal Gaming Committee that the submission of the eligibility determination is not necessary. This determination shall include a Statement describing how the information was submitted by the applicant verified; a Statement of results following an inquiry into the applicant's prior activities, criminal record, if any, and reputation, habits and associations; a Statement showing the results of interviews of a sufficient number of knowledgeable people (such as former employers, personal references, and others referred to by the applicant) in order to provide a basis for the Tribal Gaming Commission to make a finding concerning the eligibility for licensing required for employment in a gaming

operation; and a Statement documenting the disposition of all potential problem areas noted and disqualifying information obtained.

(d) If a license is not issued to an applicant, the Tribal Gaming Commission:

(1) Shall notify the NIGC; and

(2) Shall forward copies of its eligibility determination and investigative report (if any) to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(e) With respect to all employees, and in particular key employees and primary management officials, the Tribal Gaming Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee for no less than three (3) years from the date of termination of employment.

Section 209. Granting a Gaming License

(a) If, within a thirty (30) day period after the National Indian Gaming Commission receives a report as required in this Ordinance, the National Indian Gaming Commission notifies the Tribal Gaming Committee that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Tribal Gaming Committee has provided an application and investigative report to the National Indian Gaming Commission, the Tribal Gaming Commission, acting for the Tribal Business Committee, may issue a license to such applicant.

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

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

(d) Pending completion of an investigation for a license, temporary licenses may be issued by the Tribal Gaming Commission. Such temporary licenses shall expire ninety (90) days from the date of issuance, upon issuance of a permanent license, or until an earlier specific expiration date, whichever comes first.

(e) All persons engaged by or associated with any gaming activity on Tribal Lands shall conduct themselves with honesty and integrity, and with such decorum and manners as may be necessary to reflect positively on the Tribe, its members and the gaming activity involved. Any failure to abide by such standards, or any violation of any rule, ordinance, custom or tradition of the Tribe, the Tribal Lands, or the gaming activity, or the terms or conditions of the license, may be grounds for immediate suspension or revocation of any license issued hereunder.

Section 210. License Review

All decisions of the Tribal Gaming Commission regarding the issuance of licenses shall be considered final and effective when issued. Provided that, within fifteen (15) days of receipt of the written decision regarding issuance of the license, an applicant may file a petition for reconsideration by the Tribal Gaming Commission. Any member of the Tribe who is denied a license by the Tribal Gaming Commission may, within thirty (30) days of receiving written notice of such denial, appeal the denial to Tribal Court, which shall have the power to reverse the decision of the Tribal Gaming Commission and order that such license be issued, provided that no such license shall be issued for more than one (1) year and shall be subject to the renewal procedures set forth herein, and provided further that no order of the Tribal Court issued shall be valid if such issuance would place the Tribe in violation of the Tribal-State Compact to which the Tribe is a party, or of any applicable law.

Section 211. License Suspension

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

(b) The Tribal Gaming Commission shall notify the licensee of a time and place for a hearing on the proposed revocation of a license.

(c) After a revocation hearing, the Tribal Gaming Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify the NIGC of its decision.

Section 302. Submission of a Vendor License Application

In order to obtain a gaming vendor license, the business must complete a vendor application and submit to background checks of itself and its principals. Principals of a business include its officers, directors, management, owners, partners, non-institutional stockholders that either own 10% or more of the stock or are one of the 10 largest stockholders if the entity is not

publicly traded, and the on-site supervisor or manager under the agreement with the Tribal Gaming Committee, if applicable.

Section 303. Contents of the Vendor License Application

(a) Applications for gaming vendor licenses must include the following:

(1) Name of business, business address, business phone, federal tax ID number (or SSN if a sole proprietorship), main office address if different from business address, any other names the applicant has done business under, type of service applicant will provide;

(2) Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;

(3) If the applicant is a corporation, the state of incorporation, and the qualification to do business in the State of Washington, if the gaming operation is in a different State than the State of incorporation;

(4) Trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;

(5) General description of the business and its activities;

(6) Whether the applicant will be investing in or loaning money to the gaming operation and, if so, how much;

(7) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(8) A list of Indian tribes with which the vendor has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities;

(9) Names, addresses, and phone numbers of three business references with whom the company had regularly done business for the last five years;

(10) The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(11) If the business has ever had a license revoked for any reason, the circumstances involved;

(12) A list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition if any;

(13) List the business' funding sources and any liabilities of $50,000 or more.

(14) A list of the principals of the business, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company; and

(15) Any further information the Tribal Gaming Committee deems relevant

(b) The following notice shall be placed on the application form for a vendor and its principals:

Inclusion of false or misleading information in the vendor application may be grounds for denial or revocation of the applicant's vendor license.

(c) A vendor may submit a copy of a recent license application to another jurisdiction if it contains the information listed above. The vendor will be required to submit in writing any changes in the information since the other license application was filed and any information requested by the Tribal Gaming Committee not contained in the other application.

Section 304. Vendor Background Investigation

The Tribal Gaming Commission shall employ or otherwise engage a private investigator to complete an investigation of the gaming vendor. This investigation shall contain, at a minimum, the following steps:

(a) Verify of the business' incorporation status and qualification to do business in the State where the gaming operation is located;

(b) Obtain a business credit report, if available, and conduct a Better Business Bureau check on the vendor.

(c) Conduct a check of the business' credit history;

(d) Call each of the references listed in the vendor application; and

(e) Conduct an investigation of the principals of the business, including a criminal history check, a credit report, and interviews with the personal references listed.

Section 305. Vendor License Fee

The Tribal Gaming Committee may charge a license fee, to be set by the Tribal Gaming Commission, to cover its expenses in investigating and licensing vendors of the gaming operation.

Section 306. Vendor Background Investigation Report

The private investigator shall complete an investigative report covering each of the steps taken in the background investigation of the gaming vendor and its principals, and present it to the Tribal Gaming Commission.

Section 307. Exemption for Vendors Licensed by Recognized Regulatory Authorities

The Tribal Gaming Commission may, consistent with the Tribal State Compact, if applicable, adopt regulations naming specific licensing authorities that it recognizes and may authorize exemptions to the vendor licensing process for vendors which have received a license from one of the named regulatory authorities.

Section 308. Licenses for Non-Gaming Vendors

For non-gaming vendors, the Tribal Gaming Commission is authorized to create a less stringent vendor licensing process, including a due diligence check rather than a full background investigation as laid out in Section 304. The Gaming Commission may investigate such vendors when appropriate and may conduct audits in addition to monitoring Tribal purchases.

Section 401. Board of Review for Disputes

The Tribal Business Committee has determined that, in order to adhere to this Ordinance and all gaming regulations, there shall be established a Tribal Gaming Board of Review (Board of Review). The Board of Review shall serve as the final review body for employee disputes. Employee disputes shall include disputes with management, terminations, fines or other internal employee disputes, not to include actions taken by the Commission.

The Board of Review shall consist of five members. The membership shall be comprised of one member of the Tribal Gaming Commission, one member from the Tribal Business Committee, one primary management official or key employee, one enrolled Tribal member not employed by the gaming operation, and one employee of the gaming operation. The members from the Tribal Gaming Commission, Tribal Business Committee, and gaming operation primary management official or employees shall be elected from their representative groups and the enrolled Tribal member shall be appointed by the Tribal Business Committee. Board of Review members shall serve staggered terms. The two Tribal members shall serve three-year terms. The primary management official or key employee shall serve a two-year term. The members from the Tribal Gaming Commission and the Tribal Business Committee shall serve one-year terms. The Board of Review members who are not employed by the Tribe in some other capacity shall be compensated at a rate not to exceed $150.00 per day, to be determined by the Business Committee, and shall be reimbursed for actual costs incurred during the scope of

his/her duties as a member of the Board of Review. Compensation shall never be tied to tribal gaming revenues.

The Board of Review members shall elect a Chairperson from among them, whose duty it shall be to preside over all meetings and hearings. In addition, the members shall elect a Vice-Chair who shall be the custodian of any evidence submitted, and who shall preside in the Chairperson's absence. The Board of Review shall meet no less than four times per year and shall keep official records of the meetings. The Board of Review shall issue its findings no later than three working days following a hearing on employee disputes. Findings of the Board shall be final when issued.

No Board of Review member shall be removed prior to the end of his/her term without cause. Removal shall be effectuated by a majority vote of the entire Board of Review, and shall be a final decision. A Board of Review member shall not review any decisions affecting himself/herself, or any person directly related to him/her.