



June 22, 2022

Elizabeth D. Kipp, Chairwoman
Big Sandy Rancheria
37387 Auberry Mission Rd
PO Box 337
Auberry, CA 93602

Re: Big Sandy Rancheria Site-Specific Tribal Gaming Ordinance 02-01

Dear Chairwoman Kipp:

I am writing with respect to the April 12, 2022, request of the Big Sandy Rancheria of Western Mono Indians of California to the National Indian Gaming Commission to review and approve the Tribe's amended gaming ordinance, Ordinance 02-01. The amended gaming ordinance was adopted by Resolution No. 0122-01 of the Tribal Council.

The amended gaming ordinance contains a site-specific section that describes the original allotment of Mary McCabe (the "McCabe Allotment") as land within which the Tribe is authorized to conduct gaming. This section required the NIGC to consider whether the McCabe Allotment would constitute Indian lands on which the Tribe may conduct gaming activities under the Indian Gaming Regulatory Act. On May 13, 2022, the NIGC Office of General Counsel issued a legal opinion concluding that the McCabe Allotment constitutes Indian lands on which the Tribe may conduct such gaming. On May 17, 2022, the Department of the Interior, Office of the Solicitor, issued its concurrence with that opinion. I hereby adopt the attached May 13, 2022 Indian lands opinion, its associated record, and its conclusions.

Thank you for providing the amended gaming ordinance for our review. The ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. If you have any questions concerning this letter, please contact Senior Attorney Austin Badger at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "E. Sequoyah Simermeyer". The signature is written in a cursive style.

E. Sequoyah Simermeyer
Chairman



MEMORANDUM TO THE CHAIR

THROUGH: Michael Hoenig, General Counsel *MH*
Sharon M. Avery, Associate General Counsel *SMA*
FROM: Austin Badger, Senior Attorney *AB*
DATE: May 13, 2022
SUBJECT: Big Sandy Rancheria of Western Mono Indians of California – (McCabe Allotment) Indian Lands Opinion

On April 12, 2022, the Big Sandy Rancheria of Western Mono Indians of California submitted to the NIGC a request for approval of an amended gaming ordinance.¹ Amendments to the gaming ordinance include specifying that gaming is authorized on “the north half of Lot two of the northwest quarter of Section 18, Township 11 South, Range 22 East, Mount Diablo meridian, in Fresno County, California, being the original allotment of Mary McCabe, Sac-120...” (McCabe Allotment). This Memorandum addresses whether the McCabe Allotment qualifies as Indian lands under the Indian Gaming Regulatory Act on which the Tribe may conduct gaming.

On September 6, 2006, the Office of General Counsel opined that the McCabe Allotment qualified as Indian lands eligible for gaming by the Tribe. At that time, the McCabe Allotment was held in trust by the United States for the benefit of Big Sandy Rancheria tribal member Sherrill Anne Esteves. Ms. Esteves passed away on June 18, 2019, and pursuant to a decision of the Probate Hearings Division of the Department of the Interior’s Office of Hearings and Appeals, all of her interest in the land will pass to her daughter Carolyn Lee.² The Tribe

¹ The Tribe provided additional information concerning the McCabe Allotment on February 21 and 25, 2022. The Tribe’s submission included: Declaration of Elizabeth Kipp, Chairperson of the Tribal Council of the Big Sandy Band of Western Mono Indians (February 11, 2022) (“Kipp Declaration”), “The Public Domain Allotment of Mary McCabe and the Big Sandy Rancheria: A Preliminary Historical Report,” G. Russell Overton (February 25, 2022) (“Overton Report”), and “Tribal Jurisdiction over McCabe Allotment,” Peebles Kidder Bergin & Robinson, LLP (February 25, 2022).

² “In the Matter of the Estate of: Sherrill Anne Esteves,” Decision, Probate T000169570 (formerly P0001695701P) (April 22, 2022). The Decision is final unless a petition for rehearing is timely filed within 30 days.

therefore requests our opinion as to whether the McCabe Allotment continues to qualify as Indian lands eligible for gaming by the Tribe as currently held for the beneficial interest of the estate, as potentially held for the beneficial interest of Big Sandy Rancheria tribal member Carolyn Lee, and as potentially held for the beneficial interest of the Tribe should Carolyn Lee and the Tribe complete a trust-to-trust transfer to the Tribe. After reviewing the status of the McCabe Allotment and the effect of these potential transfers of beneficial interest, we have determined that under each scenario the land continues to qualify as Indian lands under IGRA on which the Tribe may lawfully conduct gaming. The Department of the Interior Solicitor's Office has reviewed this legal opinion and concurs.

Background

The McCabe Allotment was originally allotted out of the public domain to Mary McCabe, a "Mono Indian," in 1920 and immediately placed into trust. The McCabe Allotment is currently held in trust by the United States for the benefit of the estate of tribal member Sherrill Anne Esteves. The original heirs to the estate were Big Sandy Rancheria tribal member Carolyn Lee and Lone Pine Paiute-Shoshone tribal member Edward Esteves. The decision concluding the probate process determined that Edward Esteves renounced his interest in the parcel in favor of Carolyn Lee. The Tribe has further indicated that Carolyn Lee and the Tribe intend to complete a trust-to-trust transfer which would cause the McCabe Allotment to be held in trust by the United States solely for the benefit of the Tribe.

Applicable Law

IGRA defines "Indian lands" 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.³

NIGC regulations further clarify the definition, providing that:

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

³ 25 U.S.C. § 2703(4).

- (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.⁴

Analysis

The McCabe Allotment is not within the Big Sandy Rancheria. It is currently held in trust for the benefit of the estate of tribal member Sherrill Anne Esteves. To conduct gaming on trust lands located outside the exterior boundaries of its reservation, IGRA requires a tribe to exercise governmental power over those trust lands. Therefore, the McCabe Allotment constitutes Indian lands if the Tribe exercises governmental power over it. To exercise governmental power over its trust lands, a tribe must first possess jurisdiction over those lands.⁵

Jurisdiction

Tribes are presumed to possess jurisdiction within “Indian country.”⁶ Trust land, such as the McCabe Allotment, is “Indian country.”⁷ And, in *Opinion of the Solicitor, Sampson Johns Allotment* (September 26, 1996), Interior opined that a tribe would possess jurisdiction over a tribal member’s allotment unless the “land in question is not owned or occupied by tribal members and is far removed from the tribal community.”

Here, the McCabe Allotment is held in trust for the estate of tribal member Sherrill Ann Esteves and is located within 12 miles of the Tribe’s reservation.⁸ The Tribe, therefore, has jurisdiction over the McCabe Allotment for IGRA gaming purposes.

Our conclusion with respect to jurisdiction would not change should beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe.

Governmental Power

There are many possible ways and circumstances in which a tribe might exercise governmental power over its land. For this reason, the NIGC has not formulated a uniform definition of “exercise of governmental power,” but instead decides whether it is present in each case, based

⁴ 25 C.F.R. § 502.12.

⁵ *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 at 701-703 (1st Cir. 1993) (IGRA requires a threshold showing by tribe that it possesses jurisdiction over the lands to satisfy the Act’s “having jurisdiction” prong).

⁶ “Indian country” is defined in 18 U.S.C. § 1151 as: “(a) all land within the limits of any Indian reservation ...; (b) all dependent Indian communities ...; and (c) all Indian allotments, the Indian titles to which have not been extinguished.”

⁷ See *United States v. Roberts*, 185 F.3d 1125, 1131 (10th Cir. 1999) (“[r]eservation’ 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”).

⁸ The Tribe has also provided documentation supporting the conclusion that the heirs (Frank McCabe, Lester McCabe, and Sherrill Ann Esteves (nee McCabe)) of the original allottee, Mary McCabe, have “all identified as Western Mono members of the Big Sandy Rancheria.” See Overton Report, p. 31.

upon all the circumstances.⁹ As noted by the First Circuit, the exercise of governmental power is “not the achievement of full-fledged self-governance, but merely movement in that direction.”¹⁰

Here, the Tribe’s Constitution provides that the Tribe has jurisdiction over any allotment of a tribal member. The Tribe provides governmental services to off-reservation Indian allotments owned or occupied by tribal members including the McCabe Allotment and other allotments in the surrounding area.¹¹ The Tribe requires non-Tribal visitors, such as contractors, surveyors, and others, to obtain a permit before entering off-reservation Indian allotments to conduct work on behalf of the Tribe or a tribal member allottee.¹² The Tribe has therefore demonstrated that it exercises governmental power over the McCabe Allotment.

Our conclusion with respect to governmental power would not change should beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe.

Conclusion

Based upon the foregoing analysis, the statutory language of IGRA, and NIGC and Interior regulations, the McCabe Allotment as currently held by the estate of Sherrill Anne Esteves constitutes Indian lands eligible for gaming by the Tribe under the Indian Gaming Regulatory Act. Our conclusion with respect to such eligibility for gaming by the Tribe would not change should the beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe. The Department of the Interior, Office of the Solicitor concurs with this opinion.

⁹ *National Indian Gaming Commission: Definitions under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

¹⁰ *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618, 626 (1st Cir. 2017).

¹¹ Kipp Declaration, p. 8.

¹² Kipp Declaration, p. 3.



TRIBAL COUNCIL RESOLUTION NO. 0122-01

JANUARY 14, 2022

Amending the Tribal Gaming Ordinance

- WHEREAS,** the Big Sandy Band of Western Mono Indians (“Tribe”) is a federally-recognized Indian Tribe organized under the Constitution of the Big Sandy Band of Western Mono Indians (“Constitution”), and maintains inherent powers of tribal sovereignty and those delegated by the United States; and
- WHEREAS,** the Tribe occupies the Big Sandy Rancheria located in Fresno County, California (“Rancheria”); and
- WHEREAS,** the Tribe’s jurisdiction extends to the Rancheria and to all Indian country (as defined by 18 U.S.C. § 1151) held by the Tribe or for the benefit of the Tribe or any member of the Tribe, wherever located; and
- WHEREAS,** pursuant to Article III, Section 1 of the Constitution, the Big Sandy Rancheria Band of Western Mono Indians Tribal Council (“Tribal Council”) is the governing body of the Tribe, empowered by Article VI of the Constitution to promulgate and enforce ordinances concerning such subjects as the activity of the Tribe may require; and
- WHEREAS,** pursuant to Article VIII, Section 3 of the Constitution, a quorum of the Tribal Council is three members; and
- WHEREAS,** on December 22, 2021, the Tribal Council enacted Resolution 1221-01 Amending the Big Sandy Tribal Gaming Ordinance and directing it to be sent to Chairman of the National Indian Gaming Commission for approval; and
- WHEREAS,** the staff of the National Indian Gaming Commission (NIGC) has advised Big Sandy that this amended ordinance is missing some key provisions, which were left out of the Amended Ordinance by mistake; and
- WHEREAS,** those missing provisions deal with requiring formal tribal notice to the NIGC when the Tribe issues a key employee’s and primary management official’s license, and NIGC’s right to object to a licensee at any time and the procedures that the Tribe will follow when that happens; and
- WHEREAS,** whereas, those are all procedures that the Tribe is already following and which Big Sandy wishes to continue following; and

WHEREAS, language adding those procedures back into the Amended Ordinance have been drafted and reviewed by the Big Sandy Tribal Council.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council hereby repeals and replaces its December 22, 2021, Amended Tribal Gaming Ordinance with the document attached hereto, and directs its Tribal Chairperson to withdraw the Tribe's proposed Tribal Gaming Ordinance now pending at NIGC and resubmit this corrected Ordinance to NIGC as soon as possible;


BE IT FURTHER RESOLVED, that the Tribal Chairperson remains as the Tribe's agent for service of any official determination, order, or notice of violation for the purposes of 25 C.F.R. § 519.1;

BE IT FURTHER RESOLVED, that to allow for expeditious approval of the amended Tribal Gaming Ordinance, the Tribal Chairperson is authorized to approve any future technical changes to the amended Tribal Gaming Ordinance to the extent necessary to obtain approval by the NIGC Chairman, without the need for further action by the Tribal Council.

CERTIFICATION

The foregoing resolution was duly adopted at a duly called meeting of the Tribal Council on the 14 day of January, 2022, at which a quorum of 4 was present, by a vote of 3 for, 0 against, and 0 abstaining.


Elizabeth D. Kipp – Tribal Chairperson


Pearl A. Hutchins – Vice Chairperson


Matthew Munoz – Secretary

Absent
Leann Anguiano – Treasurer


Samuel C. Atwell – Member-at-Large



ORDINANCE 02-01

MAY 2002, AMENDED JANUARY 2022

BIG SANDY BAND OF WESTERN MONO INDIANS

TRIBAL GAMING ORDINANCE

PURPOSE

The Tribal Council of the Big Sandy Band of Western Mono Indians (“Tribe” or “Big Sandy”), empowered by Article VI, Section 1(d) of the Tribe’s Constitution to enact ordinances, hereby enacts this Ordinance to govern and regulate the operation of class II and class III gaming activity on the Tribe’s Indian lands.

ARTICLE I: DEFINITIONS

- a. Unless otherwise specified, the terms used in this document shall have the same meaning as they do in the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2703, the regulations promulgated by the National Indian Gaming Commission (“NIGC”), 25 C.F.R. Part 502 and, as it relates to Class III gaming only, any federally approved Big Sandy/State of California Tribal-State Gaming Compact in effect at the time.
- b. “Commission” in this document refers to the Big Sandy Band of Western Mono Indians Tribal Gaming Commission established under tribal law and designated as responsible to carry out Big Sandy’s regulatory responsibilities under IGRA, and as relates to Class III gaming only, under the federally approved Big Sandy/State of California Class III Gaming Compact.
- c. “Commissioners” shall mean the members of the Commission.
- d. “Compact” means a Big Sandy/State of California Class III Gaming Compact, which is legally in effect, complies with the provisions of IGRA, and which was submitted to and approved by the Secretary of the Interior and in effect at the time of the Commission’s action.

ARTICLE II: GAMING AUTHORIZED

- a. Class II and class III gaming, including all forms of class II gaming permitted by IGRA and the NIGC regulations, as well as all class III gaming permitted by those same laws and the Compact.
- b. Such gaming is authorized only on Big Sandy Indian lands. These Big Sandy Indian lands shall include (1) the federally recognized Big Sandy Rancheria and all lands added thereto under applicable law; and (2) the north half of Lot two of the northwest quarter of

Section 18, Township 11 South, Range 22 East, Mount Diablo meridian, Fresno County, California, being the original allotment of Mary McCabe, Sac-120, and (3) all other real property determined to qualify as Indian lands under the IGRA by the Chairman of the NIGC.

ARTICLE III: OWNERSHIP OF GAMING

Big Sandy shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Ordinance.

ARTICLE IV: USE OF GAMING REVENUES

- a. Net revenues from class II and class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; to provide for the general welfare of Big Sandy and its members; to promote tribal economic development; to donate to charitable organizations; or, to help fund operations of local government agencies.
- b. If the Tribal Council elects to make per capita payments to Tribal members, it must authorize the payments only in accordance with a revenue allocation plan which meets the requirements of 25 U.S.C. § 2710(b)(3) and which was submitted to, and approved by the Secretary of the Interior under that statute.

ARTICLE V: AUDIT

- a. Big Sandy shall ensure the production of an annual independent audit of gaming operations and shall submit the results of that audit to the NIGC on an annual basis, or as otherwise required by NIGC regulations.
- b. This annual audit shall include an independent audit of, among other things, all gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services.

ARTICLE VI: GAMING FACILITY LICENSES

- a. Each place, facility or location on Big Sandy Indian lands where class II or class III gaming, or both, are conducted must apply for and possess a separate Big Sandy Gaming Facility License issued under this Ordinance.
- b. To obtain a Big Sandy class II or class III gaming facility license, the gaming facility must apply to the Commission and be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety as reflected in a tribal environmental ordinance and tribal public health and safety ordinance.
- c. This Gaming Facility License may be issued after, and only after, the Commission's inspection of the facility and its formal determination that it meets the criteria detailed in Subsection (b) above.
- d. All Gaming Facilities which possess a Gaming Facility license issued by the Commission must be re-inspected on a regular basis and following each natural or man-made disaster which did, or could have, impacted the facility.

- e. Facility licenses must be renewed on not less than a two (2) year basis.

ARTICLE VII: GAMING COMMISSION

- a. The Commission has been established as an agency of the Tribal Government for the specific purpose of regulating class II and class III gaming within the Tribe's jurisdiction. The Commission shall be composed of three (3) to five (5) permanent, full-time Commissioners appointed by the Tribal Council. The Commission will include a Director, a Commissioner-Background Investigator and a Commissioner Compliance Officer. The increase or decrease in the number of Commissioners shall be the decision of the Tribal Council and shall not require an amendment to this Ordinance.
- b. Commissioners are employees of Big Sandy and shall be subject to the same Primary Management Official and Key Employee background check requirements as other Tribal Gaming Employees, and the Personnel Policies & Procedures Manual of Big Sandy. This includes the Tribe's pre-employment requirements, employee conduct and termination of employment standards.
- c. Commissioners are prohibited from working for any gaming enterprise or gaming facility of Big Sandy.
- d. Commissioners may be removed from office by the Tribal Council.

ARTICLE VIII: PATRON DISPUTE RESOLUTION

Patron complaints against the gaming operation arising from the play or operation of any class II or class III game, including any refusal to pay alleged winnings from a class II or class III game, if not resolved by gaming operation management, shall be made in writing to the Commission within three days of the play or operation at issue. The Commission shall investigate the complaint and issue a written decision within 60 days of receiving the complaint. If the dispute exceeds a minimum amount to be set by regulation or if the Commission fails to issue a timely decision, the matter may be appealed to the Tribal Council or a body designated by the Tribal Council. Patron claims shall be limited to reimbursement of the amount wagered if the claim is found to result from mechanical, electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe, the gaming operation, or their agents. All claims shall be limited to the actual proven reimbursable wager or winnings owed; no consequential or punitive damages or attorney's fees may be awarded.

ARTICLE IX: SCOPE OF GAMING COMMISSION AUTHORITY

- a. Subject to the oversight of the Tribal Council, the Commission shall have the power, duty and primary responsibility to carry out Big Sandy's Tribal Gaming Regulatory Responsibilities under this Ordinance, the IGRA and any applicable provisions of the Compact. The Commission's authority shall include, but is not limited to, the power to:
 - 1. Inspect, examine and monitor gaming activities and gaming facilities. It shall have unrestricted access to any area of the gaming operation and the authority to inspect, examine, photocopy and audit all gaming operation related papers, books and records.

2. Investigate any suspicion of wrongdoing or violations in connection with any gaming activities and require such correction of violations as the Commission deems necessary.
3. Impose fines or other sanctions established by the Commission against licensees or other persons who interfere with or violate Big Sandy's gaming regulatory requirements or applicable law.
4. Conduct, or cause to be conducted, investigations in connection with any gaming activity to determine compliance with applicable law. This shall include the power to investigate any all contracts, agreements, goods, services, events, incidents or other matters related to the Tribe's gaming activities.
5. Conduct, or cause to be conducted, facility inspections to determine the facility's compliance with 25 U.S.C. § 2710(b)(2)(E). as well as investigations of any person or activity in any way connected with any gaming activities.
6. Issues licenses, at a minimum, to all gaming facilities and all key employees and primary management officials according to requirements at least as stringent as those detailed in 25 U.S.C. § 2710(b)(2)(E) and 25 C.F.R. Parts 556 and 558.
7. Investigate all investors, contractors or others required to be licensed under the licensing standards established by Big Sandy, IGRA and the Compact.
8. Implement and administer a system of investigating, licensing, monitoring, reviewing, and renewing the licenses of all gaming facilities, gaming employees, gaming contractors and vendors, suppliers, investors and others connected with gaming activities, as required under Big Sandy tribal law, Big Sandy gaming regulations, IGRA or the Compact.
9. To the extent required, comply with any reporting requirements established under the IGRA, the tribal gaming regulations, the Compact and other applicable law;
10. Implement and monitor all applicable gaming related regulations in order to comply with the provisions of IGRA and the Compact and ensure their effective regulation of gaming. In so doing, the Commission shall focus specific attention on the areas of:
 - i. enforcement of relevant laws and rules;
 - ii. the physical safety of patrons, employees, and other persons in the gaming facility;
 - iii. the physical safeguarding of assets;
 - iv. the prevention of illegal activity within the facility or in respect to the gaming operation;
 - v. the detention of persons who may be involved in illegal acts and the appropriate notification of law enforcement authorities;

- vi. recording of any and all incidents within the gaming facility;
 - vii. establishment of employee procedures for detection of irregularities, theft, cheating, fraud, or the like;
 - viii. maintenance of a list of persons barred from the gaming facility;
 - ix. conducting annual audits;
 - x. the submission, approval, and maintenance of class II and class III game rules;
 - xi. maintenance of a copy of class II and class III game rules;
 - xii. standards for the display or availability of game rules, odds, payoff determinations, and betting limits;
 - xiii. procedures for handling of patron disputes over the application of any gaming rule or regulation;
 - xiv. the maintenance and approval of surveillance systems consistent with industry standards;
 - xv. maintenance of a cashier's cage
 - xvi. staffing and supervisory standards and requirements;
 - xvii. technical standards for the operation of gaming equipment, terminals and related machines consistent with gaming testing laboratory standards; and
 - xviii. The operation of the games consistent with applicable law.
8. Impose gaming license fees, sanctions, fines, and conditions.
 9. Grant, deny, renew, suspend or revoke gaming licenses of all kinds, including temporary gaming licenses.
 10. Investigate and report violations and compliance failures as required under the tribal gaming laws and regulations, IGRA, and other applicable law.
 11. Investigate and assure compliance with any requirements for tribal ownership, management, and control of the gaming facility and gaming operation, as established by applicable law.
 12. Investigate and assure compliance with age restrictions for patrons, including provisions prohibiting minors in the gaming facility.
 13. Investigate and assure compliance with applicable age limits on the service of alcoholic beverages.

14. Issue identification cards or badges to those persons required to be licensed and require the cards or badges to be worn at all times by those individuals while on duty in the gaming facility.
15. Oversee, in conjunction with the management of the gaming operation, any requirements under tribal or applicable law for the protection of the health and safety of gaming facility patrons, guests, and employees, including requirements that gaming facilities meet building and safety codes duly adopted by Big Sandy.
16. Monitor inspections by qualified building and safety experts to review and determine compliance with the requirements for gaming facility licensing and certification.
17. Attend all Tribal Council meetings through at least one Commissioner and prepare monthly reports for submission to the Tribal Council regarding all actions taken by the Commission.

ARTICLE X: REGULATION OF TRIBAL GAMING

- a. The Commission shall draft and submit for the Tribal Council's review and approval Tribal Gaming Regulations in compliance with this Ordinance, the Compact, and any other applicable laws and regulations.
- b. The Tribal Gaming Regulations shall establish reasonable standards for the operation of gaming and the activities of its employees, patrons, suppliers and vendors.

ARTICLE XI: TRIBAL GAMING LICENSES FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Section 1. License Application Forms

The following notices shall be placed on the Tribe's license application for a key employee or a primary management official before it is filled out by an applicant:

- a. 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 granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by 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 by the Tribe or the NIGC to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe being unable to license you for a primary management official or key employee position.
- b. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

- c. A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

Section 2. Background Investigations

- a. No person who fails to possess a primary management official or key employee license may work in a primary management official or key employee position in Big Sandy class II or class III tribal gaming.
- b. The Commission shall perform a background investigation before licensing any key employee and primary management official in a gaming operation according to a procedures that are at least as stringent as those contained in Parts 556 and 558 of Title 25 of the Code of Federal Regulations and, for class III employees only, any additional criteria in the approved sections of the Tribal/State Class III Gaming Compact in effect on the date the license was issued. The investigation must allow the Commission to make an eligibility determination under Section 5 of this Article.
- c. This background investigation shall include a fingerprint based check of criminal history records information maintained by the Federal Bureau of Investigation. The Tribe shall request fingerprints from each primary management official and key employee. Fingerprints used for this purpose shall be taken by the Commission or an approved law enforcement agency, scanned into the FBI-licensed Crossmatch software, and forwarded by the Commission to the NIGC and the FBI. The Commission then forwards the results to the NIGC and officials of the State of California as required by the Compact.
- d. Before conducting the background check, the Commission shall request from each primary management official and key employee 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 driver's license numbers;
 - 3. The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (d)(2) of this Section;
 - 4. Current business and residence telephone numbers and all mobile phone 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 is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
 9. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the charge, the name and address of the court involved, and the date and disposition, if any;
 10. For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph (d)(8) or (d)(9) of this Section, the criminal charge, the name and address of the court involved, and the date and disposition, if any;
 11. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 12. A current photograph;
 13. Fingerprints obtained in accordance with procedures adopted by the Tribe; and
 14. For class III licenses only, any additional information agreed to in the Class III Tribal/State Gaming Compact in effect on the date the license was applied for.
 15. Any other information the Commission deems relevant.
- e. When a primary management official or key employee is employed by the Tribe, a complete application file, containing all of the information listed in the foregoing paragraph (d), shall be maintained by the Commission.
- f. The Commission and its investigators shall keep confidential the identity of each person interviewed in the course of conducting a background investigation.

Section 3. Investigative Reports

- a. The Commission shall create and maintain an investigative report for each background investigation it conducts of a primary management official or key employee.
- b. These investigative reports shall include: (a) the steps taken in conducting the background investigation; (b) the results obtained; (c) the conclusions reached; and (d) the basis for those conclusions.

Section 4. Notice of Results of Background Investigations to NIGC

- a. Before issuing a permanent license to a primary management official or key employee, the Commission shall prepare a notice of results of the applicant's background investigation and submit it to the NIGC. Notices of licensing decisions must be submitted to NIGC within 60 days of the issuance of the license or the date the employee begins work in that position, whichever is earlier.
- b. The notice of results shall include the following information:
 - 1. The applicant's name, date of birth and Social Security number;
 - 2. The date on which the applicant began, or will begin, working as a primary management official or key employee;
 - 3. A summary of the information presented in the investigative report, including: (a) if a gaming license has been previously denied; (b) gaming licenses that have been revoked, even if subsequently reinstated; (c) every known criminal charge brought against the applicant within the last ten (10) years of the date of the application; and (d) every felony offence of which the applicant has been convicted and (e) any ongoing prosecution(s); and
 - 4. A copy of the Commission's eligibility determination made in accordance with Section 5 of this Article.
- c. Under no circumstances shall the Tribe employ an individual in a primary management official's or key employee's position who does not have a permanent license after 90 days of beginning work at the gaming operation.

Section 5. Eligibility Determinations

- a. Before a permanent license is issued to a primary management official or key employee, an authorized Tribal official from the Commission shall make a finding concerning the eligibility of that person to receive a gaming license by reviewing the applicant's prior activities, criminal record, if any, and reputation, habits and associations.
- b. If the authorized Tribal official from the Commission, in applying the standards adopted in this Ordinance, the Tribal Gaming Regulations and applicable law, determines that licensing the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming, they shall not license that person for a key employee's or primary management official's position.
- c. Copies of the eligibility determination shall be included with the notice of results that must be submitted to the NIGC before the licensing of a primary management official or key employee. Within 30 days after the issuance of a license, the Commission shall notify the NIGC that a license has been issued to that individual or entity. Notices of license denial, and the reason for that denial, shall also be sent to the NIGC immediately after the decision is made, for inclusion in its Indian Gaming Individuals Record System.

- d. The Commission shall also submit a complete copy of the primary management official/key employee's license application and eligibility determination to the Tribe, which shall place it in the individual's employment file, when it employs the individual in a gaming position. The Tribe shall maintain those tribal records for not less than ten years.

Section 6. Reconsideration of License When NIGC Objects

- a. The Commission must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within 30 days of the NIGC receiving a notice of results of the applicant's background investigation.
- b. The Commission shall take the NIGC's objections into account when reconsidering a license application.
- c. The Commission will make the final decision whether to issue or revoke a license to an applicant.
- d. If, after the Commission has issued a license, not including a temporary license, to a primary management official or key employee, the Commission receives notice from the NIGC that the primary management official or key employee is not eligible for employment, notice and a hearing shall be provided to the licensee in accordance with the Tribal Gaming Regulations and the following procedures shall be followed:
 - (1) The licensee shall immediately be given written notice of the immediate suspension of his/her license and immediate suspension from employment, as well as notice of the proposed revocation of his/her license.
 - (2) That Notice shall also advise the licensee that they are not to work at any tribal gaming facility.
 - (3) The Notice shall also advise the employee of the time and place that a Tribal hearing will be held on their license revocation and that the Commission will act immediately following that hearing to revoke or reinstate that license.
 - (4) Copies of this Notice as well as copies of the Commission's decision following that hearing, along with a brief explanation of the Commission's decision, shall be provided to the NIGC and the license applicant immediately following the Commission's decision, and no later than 45 days after the Commission's receipt of the NIGC's notification that the primary management official or key employee is not eligible for employment.
- e. The right to a hearing vests only upon receipt of a primary management official or key employee license granted under this NIGC approved ordinance and a formal NIGC objection to that license, or as otherwise provided in the Tribal Gaming Regulations.

Section 7. Denying Primary Management Official and Key Employee Gaming Licenses

- a. The Commission shall not license a primary management official or key employee if an authorized Commissioner, the Commission by majority vote, or the Tribal Council

determines, in applying the standards in Section 5 of this Article, that licensing the person: (1) poses a threat to the public interest; (2) poses a threat to the effective regulation of gaming; or (3) creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.

- b. When the Commission does not issue a license to an applicant for a primary management official or key employee position, or revokes a previously issued license after reconsideration, it shall: (1) notify the NIGC; and (2) forward copies of its eligibility determination and notice of results of the applicant's background investigation to the NIGC for inclusion in the Indian Gaming Individuals Record System.

Section 8. Employee Records Retention

- a. The Commission shall retain, for no less than three years from the date a primary management official or key employee is terminated from employment with the Tribe, the following documentation:
 1. The complete application for licensing;
 2. The complete investigative reports; and
 3. The commission's eligibility determinations; and
 4. Any NIGC objection to the license; and all related notices to the employee
 5. Any Commission decision following the required hearing.

ARTICLE XII: AMENDMENTS

This Gaming Ordinance may be amended by a majority vote of the Tribal Council at a duly called and held meeting where a quorum is present.

ARTICLE XIII: SEVERABILITY

If any provision of this Gaming Ordinance shall be declared invalid or illegal under applicable federal or tribal law by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XIV: REPEAL

Any Gaming Ordinance which came before this Gaming Ordinance or amendments to any prior Gaming Ordinance are repealed and replaced by the enactment of this Gaming Ordinance.