THE SECRETARY OF THE INTERIOR

WASHINGTON

AUG 20 2004

The Honorable Anthony Pico
Chairman, Viejas Band of Kumeyaay Indians
PO Box 908
Alpine, California 991903

Dear Chairman Pico:

On July 7, 2004, we received amendments to the Class III gaming compacts, executed on June 21, 2004, between the State of California and five California Indian tribes: Rumsey Band of Wintun Indians, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, United Auburn Indian Community, and Viejas Band of Kumeyaay Indians.

On July 28, 2004, we sent a letter to the Governor of the State of California and to representatives of each of the Tribes, seeking clarification of a provision of the amendments. By letter dated August 4, 2004, the State and the Tribes jointly addressed the concerns raised in our July 28 letter. Accordingly, we have completed our review of the amendments, along with the submission of additional documentation. We conclude that the amendments do not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust obligations. Therefore, pursuant to Section 11 of IGRA, we approve the amendments. These amendments shall take effect when the notice of our approval, pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the Federal Register.

The amendments to all five compacts contain similar provisions and modify the five Tribes' 1999 compacts as described below.

Non Revenue-Sharing Provisions

The 1999 compacts are amended to offer additional consumer protections and to facilitate arrangements to mitigate, to the extent practicable, the off-reservation environmental and direct fiscal impacts on local communities and local governments. Specifically, a new section is added to require testing of gaming devices; a provision of the existing compacts regarding applicable building codes is expanded; the provision relating to patron disputes is enhanced to facilitate the resolution of patron complaints; the provision related to third-party injuries is modified to enhance the protection of patrons; and the provision relating to off-reservation impacts is amended to require the development and processing of a Tribal Environmental Impact Report. There are also minor amendments to sections relating to the licensure of financial sources, and labor relations. Finally, the term of the existing compacts is extended until December 31, 2030 (a ten-year extension over the previous term). None of these amendments raise any notable concern, and all come within the ambit of 25 U.S.C. § 2710(d)(3)(C)(vii) as subjects that are directly related to the operation of gaming activities.

Revenue-Sharing Provisions

The amendments substantially modify the revenue-sharing payments and exclusivity provisions of the 1999 compacts. The amendments require annual payments to the State of a fixed amount (based on 10% of existing net win) for 18 years. The State intends to assign the payments to a third party for the purpose of securitizing the 18-year revenue stream in the form of bonds that can be issued to investors. After the end of the 18-year period, the tribes are required to continue making the fixed amount payments to the State, or 10% of net win, whichever is less. The Tribes' current payment of between 7% and 13% of net win to the Special Distribution Fund will cease. The compacts' provisions relating to payments into the Revenue Sharing Trust Fund (RSTF) are modified to require a $500,000 payment per quarter. Finally, the compacts are amended to authorize the Tribes to exceed the 2,000 cap on gaming devices each Tribe can operate. A graduated licensing payment per gaming device for additional gaming devices above 2,000 devices starts at $12,000 for each machine between 2,001 and 2,500, up to $25,000 for each machine over 4,500.

The State, in turn, agrees to grant the Tribes geographical exclusivity for the operation of gaming devices and banking card games in the Tribes' "core geographic markets." In the event the State authorizes any person or entity other than another Indian tribe to engage in these Class III gaming activities within these core geographic markets, the Tribes have a right to enjoin such gaming as a substantial impairment of their exclusivity rights under the compact. The State agrees that such impairment of exclusivity will cause irreparable harm to the Tribes that cannot adequately be remedied by damages. In addition, the Tribes have the right to cease all payments to the State, except for the graduated licensing payments for the operation of over 2,500 devices, should the State authorize any person or entity other than an Indian tribe to engage in gaming activities in violation of the exclusivity provision.

To date, the Department has approved more than 200 tribal-State compacts. Only a few have included tribal payments to States other than for direct expenses to defray the costs of regulating a gaming activity under the compact. This is because IGRA prohibits states from imposing a tax fee, charge or other assessment to engage in Class III gaming.

To enforce this statutory prohibition, the Department has sharply limited the circumstances under which Indian tribes can make direct payments to a State for purposes other than defraying the costs of regulating gaming activities. The Department does permit revenue-sharing payments in exchange for quantifiable economic benefits over which the State is not required to negotiate, such as substantial exclusive rights to engage in Class III gaming activities. The amount of the payment to the State must be appropriate in light of the exclusivity right conferred on the tribe.

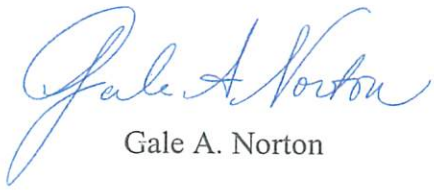
The payment of the equivalent of 10% of net win in exchange for meaningful geographical exclusivity over certain forms of Class III games is consistent with the Department's long-standing policy of authorizing revenue-sharing payments to the State in exchange for a substantial economic benefit. The amendments offer the Tribes much stronger protection should there be a breach of the exclusivity provision than under the 1999 compacts: injunctive relief and the right to stop making payments. Although it is true that licensing payments for gaming devices over 2,500 continue notwithstanding the loss of exclusivity, the Tribes will not have to make any licensing fee

payments if they, in that circumstance, choose to operate fewer than 2,500 gaming devices. We are persuaded by the Tribes' and the State's arguments articulated in their August 4, 2004, letter that, in the overall context of these compacts, these payments should not be considered to be a tax, fee, charge, or assessment.

It is our determination that the revenue-sharing provisions described above are lawful under IGRA because the value of the exclusive gaming rights conferred on the Tribes is significant, and thus cannot be characterized as a prohibited tax pursuant to 25 U.S.C. § 2710(d)(4). *See In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003).

We wish the Tribes and the State success in their economic ventures. Identical letters are being sent to the Governor of the State of California and to representatives of the four other Tribes.

Sincerely,



Gale A. Norton

AMENDMENT TO TRIBAL-STATE COMPACT BETWEEN THE STATE OF CALIFORNIA AND THE VIEJAS BAND OF KUMEYAAY INDIANS

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WHEREAS, the State of California (hereinafter "the State") and the Viejas Band of Kumeyaay Indians (hereinafter "the Tribe") entered into a compact in 1999 (hereinafter the "1999 Compact"); and

WHEREAS, the State and the Tribe have agreed to revise the 1999 Compact to promote good relations between tribal, state, and local governments and to enhance tribal economic development and self-sufficiency; and

WHEREAS, the Tribe agrees to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off-reservation environmental and direct fiscal impacts on local communities and local governments, and to offer additional consumer protections; and

WHEREAS, in recognition of the fair revenue contribution and the measures enhancing protections for local governments and the public and to provide a sound basis for the Tribe's decisions with respect to investment in, and operation of, its Gaming Activities, the State agrees to amend the 1999 Compact to enhance the Tribe's exclusive right to operate slot machines and banked and percentage card games in California, to extend the term of the Compact, and to afford the opportunity to operate additional Gaming Devices; and

WHEREAS, the Tribe wishes to reaffirm its pledge to share revenues with Non-Compact Tribes; and

WHEREAS, the State and the Tribe have concluded that this amendment to the 1999 Compact provides for a fair contribution to the State from the Tribe's Gaming Operation, enhances the Tribe's exclusivity over its Gaming Activities, protects the interests of the Tribe and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe recognize that this amendment is authorized and negotiated and shall take effect pursuant to the Indian Gaming Regulatory Act ("IGRA"); and

WHEREAS, the State and the Tribe agree that all terms of this amendment to the 1999 Compact (collectively the "Amended Compact") are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State hereby amend the 1999 Compact as follows:

I. *REVENUE CONTRIBUTION*

A. **Section 4.3.1** is repealed and replaced by the following:

Section 4.3.1.

(a) The Tribe is entitled to operate the following number of Gaming Devices pursuant to the conditions set forth in Section 4.3.3:

(i) 1132 Gaming Devices, which were operated on September 1999; and

(ii) 868 Gaming Devices operated pursuant to licenses issued in accordance with former Section 4.3.2.2 of the 1999 Compact, which licenses shall be maintained during the term of this Amended Compact pursuant to Section 4.3.2.2 herein.

(b) The Tribe may operate Gaming Devices additional to those specified in subparagraphs (i) and (ii) of subdivision (a) only by paying, in addition to the fees specified in Section 4.3.3, subdivision (a), within 30 days of the end of each calendar quarter to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the fees specified below for each additional Gaming Device:

Additional Gaming Devices in Operation				Annual Fee Per Gaming Device
(i)	2,001	to	2,500	$12,000
(ii)	2,501	to	3,000	$13,200
(iii)	3,001	to	3,500	$17,000
(iv)	3,501	to	4,000	$20,000
(v)	4,001	to	4,500	$22,500
(vi)	4,500 and above			$25,000

The number of additional Gaming Devices operated each quarter will be calculated based upon the maximum number of Gaming Devices operated during that quarter. If this amendment becomes effective during a calendar quarter, payment shall be prorated for the number of the days remaining in that quarter.

(c) Fee payments pursuant to subdivision (b) shall be accompanied by a written certification of the maximum number of Gaming Devices operated during that calendar quarter. Such certification shall confirm the number of Gaming Devices operated pursuant to subparagraphs (i) and (ii) of subdivision (a), shall specify the number operated during that quarter pursuant to subdivision (b), and shall show the computation for the quarterly fees due for the additional Gaming Devices operated pursuant to subdivision (b), by adding the annual fee due per each additional Gaming Device pursuant to the incremental level applicable to the Gaming Device, as set forth in subparagraphs (i)-(vi) of subdivision (b), and dividing that sum by 4 (to calculate the quarterly amount).

(d) If any portion of the fee payments under subdivision (b) herein, Section 4.3.2.2, subdivision (a), or Section 4.3.3, subdivision (c) is overdue, the Tribe shall pay to the State Gaming Agency for purposes of deposit into the appropriate fund, the amount overdue plus interest accrued thereon at the rate of 1.0% per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less.

(e) If any portion of the fee payments under subdivision (b) herein is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least 15 business days, and if more than 60 days has passed from the due date, then the Tribe shall cease operating the additional Gaming Devices under subdivision (b) until full payment is made; provided further that if any

portion of the fee payments under subdivision (b) is overdue as specified above on more than two occasions, the Tribe shall be required to cease operating the additional Gaming Devices under subdivision (b) for an additional 30 days after full payment of all outstanding amounts has been made. For purposes of this subdivision, the notice herein shall be provided by certified mail to the address provided pursuant to Section 13.0 as well as to the Tribal Gaming Agency at the last address provided to the State Gaming Agency.

B. **Sections 2.15, 4.3.2(a)(iii), 4.3.2.3**, and **5.0** are repealed.

C. **Section 4.3.2.2** is repealed and replaced by the following:

Section 4.3.2.2.

(a) The Tribe shall maintain its existing licenses to operate Gaming Devices by paying to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund the following fee within 30 days of the end of each calendar quarter: $500,000.00. If this amendment becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that quarter.

(b) The Tribe has determined in consultation with other tribes that are parties to amended compacts having the provisions in Sections 4.3.1 and 4.3.3 herein that their contributions to the Revenue Sharing Trust Fund pursuant to this Amended Compact will collectively exceed the aggregate amount they were paying under the 1999 Compact.

D. **Section 4.3.3** is repealed and replaced by the following:

Section 4.3.3.

(a) The Tribe shall make annual payments to the State of $17.4 million (seventeen million four hundred thousand dollars) for 18 years, in the manner provided in subdivisions (b) and (c) below, commencing on January 1, 2005. The Tribe understands that it is the State's intention to assign these and other tribes' revenue contributions totalling at least $100 million annually to a third party for purposes of securitizing the 18-year revenue stream in the form of bonds that can be issued to investors. The payment specified herein has been negotiated between the parties as a fair

contribution to be made on an annual basis without reduction for 18 years, based upon market conditions at the location of the Tribe's existing land specified in Section 4.3.5, as of year end 2003, in light of the obligations undertaken in Section 4.3.3, and represents at least 10% of the Tribe's net win in 2003.

(b) The Tribe and the State will use their reasonable efforts and cooperate in good faith to aid the issuance of the bonds referenced in subdivision (a) in accordance with Exhibit B. Commencing January 1, 2005, the Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, its fixed annual payment referenced in subdivision (a) in four equal quarterly payments due on the first business day of each January, April, July and October.

(c) Notwithstanding subdivision (b), if the State Director of Finance determines that the bonds cannot be issued successfully, then after providing notice of such determination to the Tribe, the Tribe's payments specified in subdivision (a) shall be made semiannually to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, in two equal semiannual payments, due January 1 and July 1 of each year.

(d) Following the conclusion of the Tribe's annual payments for the 18-year period specified in subdivision (a) and for each year during the remaining Compact term as defined in Section 11.2.1 herein, the Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the annual payment set forth in subdivision (a), or if it is less, 10% of the annual net win attributable to the Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii). For purposes of this subdivision (d):

(i) The Tribe shall remit two equal semiannual payments to the State Gaming Agency within 30 days of January 1 and July 1 of each year.

(ii) "Net win" means the gross revenue ("drop") less all prizes and payouts, fills, hopper adjustments and participation fees, and each semiannual payment shall be calculated by multiplying the average net win per

Gaming Device for the preceding semiannual period specified in subparagraph (i) by the number of Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii). Participation fees shall be defined as payments made to Gaming Resource Suppliers on a periodic basis by the Gaming Operation for the right to lease or otherwise offer for play Gaming Devices.

(iii) The semiannual payments based upon 10% of the net win attributable to the number of Gaming Devices specified in Section 4.3.1, subdivision (a)(i) and (ii) shall be accompanied by a certification of the net win calculation prepared by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits, and has no financial interest in any of these entities. The State Gaming Agency may audit the net win calculation, and if it determines that the net win is understated, will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of 1.0% per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under Section 9.0. The parties expressly acknowledge that the certifications and information related to payments herein are subject to subdivision (c) of Section 7.4.3.

(e) Notwithstanding anything to the contrary in Section 9.0, in the event the bonds specified in subdivision (a) are issued, any failure of the Tribe to remit its fixed annual payment referenced in subdivision (a)

pursuant to subdivision (b) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of 1.0% per month or the maximum rate permitted by State law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and waives its right to assert sovereign immunity against the State in any such proceeding to enforce said payment obligations. Failure to make timely payment shall be deemed a material breach of this Amended Compact.

F. A new **Section 4.3.4** is added as follows:

Section 4.3.4. For purposes of Sections 4.3.1, 4.3.2.2, and 4.3.3, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

G. A new **Section 4.3.5** is added as follows:

Section 4.3.5. Except pursuant to the express concurrence of the Governor required by Section 20(b)(1)(A) of IGRA, the Tribe may operate the Gaming Devices specified in Section 4.3.1, subdivisions (a) and (b) only on its Indian lands existing as of July 1, 2004, at the location of the Tribe's existing Gaming Operation located in San Diego County. Notwithstanding anything to the contrary in this Amended Compact, however, any independent structures or other improvements ancillary to the Gaming Activities, in which no Class III gaming is conducted, including any roads, parking lots, or walkways, may be on contiguous land to the aforesaid Indian lands (i) which is held by the Tribe in fee where the Tribe's activities thereon are subject to the jurisdiction of State law and the State courts, or (ii) which is Indian lands within the meaning of IGRA.

II. *EXCLUSIVITY*

Section 3.0 is repealed and replaced with the following:

Section 3.0. Authorization and Exclusivity of Class III Gaming.

Section 3.1. The Tribe is hereby authorized and permitted to engage in only the Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

Section 3.2. In recognition of the Tribe's agreement to make the payments specified in Section 4.3.1, subdivision (b), and Section 4.3.3, subdivisions (a) and (d), the Tribe shall have the following rights:

(a) In the event the bonds referenced in Section 4.3.3, subdivision (a) are issued securitized by the Tribe's annual payments referenced therein, during the life of said bonds and in order to protect the Tribe's ability to make the payments underlying said bonds, the State shall not authorize any person or entity other than an Indian tribe with a federally authorized compact to engage in any Gaming Activities specified in subdivisions (a) and (b) of Section 4.1 of this Amended Compact within the Tribe's core geographic market, as defined below. Nothing herein is intended to preclude the State Lottery from offering any lottery games or devices that are authorized by the California Constitution as it exists as of July 1, 2004.

(b) For purposes of this Section, the Tribe's core geographic market, as specified in subdivision (a), comprises all of the County of San Diego, where collectively over 60% of the patrons of the Tribe's Gaming Facility reside.

(c) In the event that the State authorizes any person or entity other than an Indian tribe with a federally authorized compact to engage in Gaming Activities in violation of subdivision (a), the Tribe shall have the right to enjoin such gaming or the authorization of said gaming as a substantial impairment of the right specified in subdivision (a), which is necessary to assure the marketability of the bonds referenced in Section 4.3.3, subdivision (a), to protect the bondholders of said bonds, and to afford the Tribe the stability in its Gaming Operation bargained for in return for the issuance of the bonds; provided, however, that no remedy other than an

injunction is available against the State or any of its political subdivisions for a violation of subdivision (a), and the parties agree that such substantial impairment of the right specified in subdivision (a) will cause irreparable harm that cannot be adequately remedied by damages.

(d) Where the bond referenced in Section 4.3.3 subdivision (a) has been issued securitized by the Tribe's annual payments, in the event that the State authorizes any person or entity other than an Indian tribe with a federally authorized compact to engage in Gaming Activities in violation of subdivision (a) and said person or entity commences within the Tribe's core geographic market said prohibited Gaming Activities, the Tribe shall have the right to cease the payments specified in Section 4.3.1, subdivision (b), Section 4.3.2.2, subdivision (a), and Section 4.3.3, subdivision (a), until said person or entity ceases said Gaming Activities or reaches an agreement with the Tribe to share revenues with it in an effort to mitigate the irreparable harm.

(e) In the event the bonds securitized in part by the Tribe's annual payments referenced in Section 4.3.3, subdivision (a) are not issued or following the conclusion of the Tribe's annual payments securitizing the issued bonds, the Tribe shall be relieved of its obligation to make the payments specified in Section 4.3.1, subdivision (b), Section 4.3.2.2, and Section 4.3.3, subdivisions (c) and (d), if and only if any person or entity other than an Indian tribe with a federally authorized compact engages in any Gaming Activities specified in subdivision (a) of Section 4.1 of this Amended Compact within the Tribe's core geographic market, until such time that such gaming ceases.

(f) Notwithstanding the Tribe's cessation of payments under Section 4.3.1, subdivision (b), Section 4.3.2.2, or Section 4.3.3, subdivisions (a),(c), and (d), where the Tribe nonetheless operates more than 2,500 Gaming Devices, it shall pay the amounts set forth in Section 4.3.1, subdivision (b), with respect to Gaming Devices above 2,500.

Section 3.3. While the Tribe is making annual payments to the State under Section 4.3.3, subdivision (a), the Tribe shall not revoke its ordinance authorizing Class III gaming on its Indian lands, shall not unilaterally terminate this Amended Compact pursuant to either Section 12.4 or any other law, and shall continue making said annual payments even if it invokes Section 15.4.

III. *TESTING OF GAMING DEVICES*

A. The following new Section is added after Section 7.4.5 of the 1999 Compact:

Section 7.5. Testing of Gaming Devices.

(a) No Gaming Device may be offered for play unless:

(i) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (A) has applied for a finding of suitability by the State Gaming Agency at least 15 days before it is offered for play, (B) has not been found to be unsuitable by the State Gaming Agency, and (C) has been licensed by the Tribal Gaming Agency;

(ii) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with either the standards of Gaming Laboratories International, Inc. known as GLI-11 and GLI-12, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld, and a copy of said certification is provided to the State Gaming Agency by electronic transmission or by mail unless the State Gaming Agency waives receipt of copies of certification;

(iii) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure that each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device; and

(iv) The hardware and associated equipment for the Gaming Device has been tested by the Gaming Test Laboratory to

ensure operation in accordance with the manufacturer's specifications.

(b) The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein within thirty (30) days of the effective date of this Amended Compact, or if such use follows such effective date, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of such Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that such Gaming Test Laboratory discontinues its responsibilities under this Section.

(c) The Tribal Gaming Agency shall ensure that compliance with subdivisions (a) and (b) is audited annually by an independent auditor and shall provide the results of such audits to the State Gaming Agency within five (5) business days of completion. For purposes of this subdivision, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, has no financial interest in any of these entities, and is only otherwise retained by any of these entities to conduct regulatory audits or audits under Section 8.1.8.

(d) The State Gaming Agency may inspect the Gaming Devices in operation at the Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to the manufacturer's technical standards. Said random inspections conducted pursuant to this subdivision shall occur during normal business hours from 7 a.m. to 5 p.m. outside of Fridays, weekends, and holidays and shall not remove from play more than 5% of the Gaming Devices operating at the Gaming Facility. The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection prior to the commencement of the

random inspection, and the Tribal Gaming Agency may accompany the State Gaming Agency inspector(s). The State Gaming Agency may conduct additional inspections only upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.

(e) The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices upon the effective date of this Amendment and at least thirty (30) days before the effective date of any revisions to the regulations.

(f) For purposes of this Section 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

IV. *BUILDING CODES*

Subdivision (d) of Section 6.4.2 is repealed and subdivisions 6.4.2(d)-(k) are added as follows:

Section 6.4.2.

(d) Section 6.4.2, subdivision (b), of the 1999 Compact shall apply to any Gaming Facility constructed prior to the effective date of this amendment and subdivisions (e) through (k) herein shall apply to the construction of any Gaming Facility after the effective date of this Amendment, and to any reconstruction, alteration of, or addition to, any existing Gaming Facility occurring after said effective date ("Covered Gaming Facility Construction").

(e) In order to assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any Covered Gaming Facility Construction to meet or exceed the California Building Code and the Public Safety Code applicable to the city or county in which the Gaming Facility is located as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety ("the Applicable Codes"). Notwithstanding the foregoing,

the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this Section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions. For purposes of this Section, the terms "building official" and "code enforcement agency" as used in Title 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other Tribal government agency or official as may be designated by the Tribe's law.

(f) In order to assure compliance with the Applicable Codes, in all cases where said codes would otherwise require a permit, the Tribe shall employ for any Covered Gaming Facility Construction appropriate plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the city or county in which the Gaming Facility is located, and employ project inspectors that have been either approved as Class 1 certified inspectors by the Division of the State Architect or approved as Class A certified inspectors by the Office of Statewide Health Planning and Development or their successors. The Tribe shall require said inspectors to report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and an agency designated by the State (the "State Designated Agency"). The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)."

(g) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall require those responsible for any Covered Gaming Facility Construction to provide the documentation set forth below:

(i) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the planned Covered Gaming Facility Construction (the "Design and Building Plans") to be provided to the State Designated Agency within fifteen (15) days of their completion;

(ii) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, the Tribe shall provide such change

orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval;

(iii) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Designated Agency upon its request;

(iv) The Tribe shall maintain the Design and Building Plans for the term of this Amended Compact.

(h) The State Designated Agency may designate an agent or agents to be given reasonable notice of each inspection by an Inspector required by Section 108 of the California Building Code, and said State agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in said inspection required by Section 108 that does not meet the Applicable Codes (hereinafter "deficiency"). Upon not fewer than three (3) business days' notice to the Tribal Gaming Agency, except in circumstances posing an immediate threat to the life or safety of any person, in which case no advance notice is required, the State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however that prior to any exercise by the State of its right to inspect without notice based upon alleged circumstances posing an immediate threat to the life or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.

(i) Upon final certification by the Inspector that a Gaming Facility meets Applicable Codes, the Tribal Gaming Agency shall forward the Inspector's certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

(j) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of the

Compact unless the State has acted unreasonably in reporting the deficiency to the Tribe, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

(k) The Tribe shall also take all necessary steps to (i) reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility and (ii) reasonably ensure that the Gaming Facility satisfies all requirements of Title 19 of the California Code of Regulations applicable to similar facilities in the city or county in which the Gaming Facility is located. Not more than sixty (60) days after the effective date of the Amendment, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a Tribal official, if any, who is responsible for fire protection on the Tribe's lands, or by an independent expert, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety. The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the Tribal official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety. Within fifteen (15) days of the inspection, the Tribal official or independent expert shall issue a report on the inspection, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility. Within fifteen (15) days after the issuance of the report, the Tribal official or independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State's representative(s). A copy of the report shall be served on the State Designated Agency, upon delivery of the report to the Tribe. Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the State Designated Agency that all previously identified deficiencies have been corrected. Any failure to correct all deficiencies identified in the report within a reasonable period

of time shall be deemed a violation of the Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

V. *PATRON DISPUTES*

A. **Section 8.1.10(d)** of the 1999 Compact is repealed and replaced by the following:

Section 8.1.10(d). The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play or operation of any game, including any refusal to pay a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

(i) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within seven (7) days of said play or operation shall be advised in writing of his or her right to request, within fifteen (15) days of the date of said dispute, resolution of the complaint by the Tribal Gaming Agency, and if dissatisfied with the resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subparagraph (iii).

(ii) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision consistent with federal gaming standards. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.

(iii) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that any such complaint over any claimed prizes or winnings and the amount thereof, be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). Upon such request, the Tribe shall consent to such arbitration and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure, which is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure. To effectuate such consent, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (A) enforce the parties' obligation to arbitrate, (B) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (C) enforce or execute a judgment based upon said award. The cost and expenses of such arbitration shall be initially borne by the Tribe but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome.

VI. *THIRD PARTY INJURIES*

A. **Section 10.2(d)** of the 1999 Compact is repealed and replaced by the following:

Section 10.2(d)

(i) The Tribe shall obtain and maintain a commercial general liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher ("Policy") which provides coverage of no less than $10 million per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall waive its right to assert sovereign immunity up to the limits of the Policy for purposes of arbitration and enforcement of any ensuing award or judgment in accordance with the tribal ordinance referenced in subparagraph (ii) below, in connection with any claim for bodily injury, property damage, or personal injury, or any judgment resulting therefrom, arising out of, connected with, or relating to the operation of the Gaming Facility, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge that the Tribe has waived its right to assert sovereign immunity for the purpose of arbitration of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to said limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or

otherwise limit the Tribe's sovereign immunity beyond the policy limits.

(ii) Prior to the effective date of this Amendment, the Tribe shall adopt, and at all times hereafter shall maintain in continuous force, an ordinance that provides for the following:

(A) The ordinance shall provide that California tort law shall govern all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that California law governing punitive damages need not be a part of the ordinance.

(B) Said ordinance shall also expressly provide for waiver of the Tribe's right to assert sovereign immunity with respect to the arbitration of such claims but only up to the limits of the Policy; provided, however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the policy limits.

(C) Said ordinance shall provide for the Tribe's consent to binding arbitration before a single arbitrator who shall be a retired judge in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party

not to exceed those allowable in a suit in California Superior Court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon said award.

(D) The ordinance may also require that the claimant first exhaust the Tribe's administrative remedies for resolving the claim (hereinafter the "Tribal Dispute Process") in accordance the following standards: The claimant must bring his or her claim within 180 days of receipt of written notice of the Tribal Dispute Process as long as notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the 180-day limitation period is prominently displayed on the front page of said notice. The ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Process or 180 days from the date the claim is filed, whichever first occurs, unless the parties mutually agree to a longer period.

(iii) Upon notice that a claimant claims to have suffered an injury or damage covered by this Section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required

within the specified limitation period to first exhaust the Tribal Dispute Resolution Process, if any, and if dissatisfied with the resolution, entitled to arbitrate his or her claim.

(iv) Failure to comply with this Section 10.2, subdivision (d), shall be deemed a material breach of the Compact.

VII. *MITIGATION OF OFF-RESERVATION IMPACTS*

Section 10.8 is repealed and replaced by the following:

A. **Section 10.8.** Off-Reservation Impact(s).

Section 10.8.1. Tribal Environmental Impact Report. (a) Before the commencement of the Project as defined in Section 10.8.7 herein, the Tribe shall cause to be prepared a tribal environmental impact report, which is hereinafter referred to as a TEIR, analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this Section 10.8; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in such TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off-Reservation Environment which the Project is likely to have, including each of the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(i) All Significant Effects on the Environment of the proposed Project;

(ii) In a separate Section:

(A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;

(B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;

(iii) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;

(iv) Alternatives to the Project; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands;

(v) Whether any proposed mitigation would be feasible;

(vi) Any direct growth-inducing impacts of the Project; and

(vii) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.

(b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address

alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Environment with proposed measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The Tribe shall consider any recommendations from the Board of Supervisors of the San Diego County ("County") concerning the person or entity to prepare the TEIR.

Section 10.8.2. Notice of Preparation of Draft TEIR.

(a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research ("State Clearinghouse") and to the County for distribution to the public. The Notice shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:

(i) A description of the Project;

(ii) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and

(iii) The probable off-reservation environmental effects of the Project.

(b) The Notice shall also inform Interested Persons of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the Notice by the State Clearinghouse and the County. The Notice shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

Section 10.8.3. Notice of Completion of the Draft TEIR.

(a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the County, and the California Department of Justice. The Notice of Completion shall include all of the following information:

(i) A brief description of the Project;

(ii) The proposed location of the Project;

(iii) An address where copies of the draft TEIR are available; and

(iv) Notice of a period of forty-five (45) days during which the Tribe may receive comments on the draft TEIR.

(b) The Tribe will submit forty-five (45) copies of the draft TEIR and Notice of Completion to the County, which will be asked to serve in a timely manner the Notice of Completion to all Interested Persons and asked to post public notice of the draft TEIR at the office of the County Board of Supervisors and to furnish the public notice at the public libraries serving the County. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

(i) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;

(ii) Posting of notice by the Tribe in the area adjacent to, but outside, the Indian lands on which the Project is to be located; or

(iii) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Indian lands on

which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

Section 10.8.4. Issuance of Final TEIR. The Tribe shall prepare, certify and make available to the County at least fifty-five (55) days before the completion of negotiations pursuant to Section 10.8.8 a Final TEIR, which shall consist of:

(i) The draft TEIR or a revision of the draft;

(ii) Comments and recommendations received on the draft TEIR either verbatim or in summary;

(iii) A list of persons, organizations, and public agencies commenting on the draft TEIR;

(iv) The responses of the Tribe to significant environmental points raised in the review and consultation process; and

(v) Any other information added by the Tribe.

Section 10.8.5. The Tribe shall reimburse the County for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this Section 10.8.

Section 10.8.6. The Tribe's failure to prepare a TEIR when required may warrant an injunction where appropriate.

Section 10.8.7. Definitions. For purposes of this Section 10.8, the following terms shall be defined as set forth in this subdivision.

(a) "Project" is defined as any activity occurring on Indian lands after the effective date of this Amendment, a principal purpose of which is to serve the Tribe's Gaming Activities or Gaming Operation and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any construction or planned expansion, a principal purpose of which is to

serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment.

(b) "Significant Effect(s) on the Environment" is the same as "Significant Effect(s) on the Off-Reservation Environment" and occur(s) if any of the following conditions exist:

(i) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.

(iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, reservation refers to Indian lands within the meaning of IGRA or lands otherwise held for the Tribe in trust by the United States.

(c) "Interested Persons" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the project or would exercise authority over the natural resources that may be affected by the project, or (ii) persons, groups, or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe or the County.

Section 10.8.8. Intergovernmental Agreement. Before the commencement of a Project, and no later than the issuance of the Final TEIR to the County, the Tribe shall offer to commence negotiations with the County, and upon the County's acceptance of the Tribe's offer, shall negotiate with the County and shall enter into an enforceable written agreement with the County with respect to the matters set forth below:

(i) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

(ii) Provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.

(iii) Provisions providing for reasonable compensation for programs designed to address gambling addiction.

(iv) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.

Section 10.8.9. Arbitration. In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an agreement with the County is not entered within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe or the County (for purposes of this Section "the parties") may mutually agree in writing, any party may demand binding arbitration before a single arbitrator

pursuant to the Commercial Arbitration Rules of the American Arbitration Association as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation. The arbitration shall be conducted as follows: Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to Section 10.8.8. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment. The arbitrator shall be limited to awarding only one or the other of the two offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Off-Reservation Environment and on public services pursuant to Section 10.8.8, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor. Review of the resulting arbitration award is waived. In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction or in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

VIII. *LICENSURE OF FINANCIAL SOURCES*

Section 6.4.6 is repealed and replaced by the following:

Section 6.4.6. Financial Sources.

(a) Subject to subdivision (e) of this Section 6.4.6, any person or entity extending financing, directly or indirectly, to a Tribe for a Gaming Facility or a Gaming Operation (a "Financial Source") shall be licensed by the Tribal Gaming Agency prior to extending that financing.

(b) A license issued under this Section shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal.

(c) Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal.

(d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.

(e) (1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, the following Financial Sources under the circumstances stated.

(A) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.

(B) An entity identified by Regulation CGCC-2, subdivision (f) (as in effect on July 1, 2004), of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (e)(1)(A) is the creditor.

(C) An investor who, alone or together with any person controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation.

(D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.

(2) The following are not Financial Sources for purposes of this Section.

(A) An entity identified by Regulation CGCC-2, subdivision (h) (as in effect on July 1, 2004), of the California Gambling Control Commission.

(B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

(f) In recognition of changing financial circumstances, this Section shall be subject to good faith renegotiation by both parties in or after five (5) years from the effective date of this Amended Compact upon request of either party; provided such renegotiation shall not retroactively affect

transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

IX. *LABOR*

Section 10.7 is repealed and replaced by:

Section 10.7. Labor Relations. In light of the fact that the Tribe entered into a collective bargaining agreement with a labor organization before the enactment of its Tribal Labor Relations Ordinance ("TLRO"), which governs the organizational and representational rights of the employees at the Tribal Casino and Related Facility, and in light of the fact that the Tribe has renewed said collective bargaining agreement, the parties agree that no change in the TRLO is necessary to address employee rights.

X. *AUTHORITY AND OPTION TO TERMINATE*

A. A new **Section 15.7** is hereby added as follows:

Section 15.7. The Tribe expressly represents that, as of the date of the Tribe's execution of this Amended Compact, the undersigned has the authority to execute this Amendment on behalf of the Tribe, including any waivers of the right to immunity therein, and will provide written proof of such authority and of the ratification of this Amendment by the tribal governing body to the Governor no later than July 1, 2004. In entering into this Amendment, the State expressly relies upon the foregoing representations by the Tribe and the State's entry into this Amendment is expressly made contingent upon the truth of those representations. If the Tribe fails to provide written proof of authority to execute this Amendment or written proof of ratification by the Tribe's governing body by July 1, 2004, the Governor may declare this Compact null and void by written notice filed with the California Secretary of State by July 15, 2004.

B. A new **Section 15.8** is hereby added as follows:

Section 15.8. If any initiative is adopted in California at the general election in November 2004 that becomes effective and binding and that authorizes anyone other than an Indian tribe with a federally authorized compact to conduct the Gaming Activities specified in subdivisions (a) and (b) of Section 4.1 of this Amended Compact anywhere in this State, the Tribe shall

have the right within ninety (90) days of the initiative taking effect and becoming binding to declare this Amendment null and void by written notice filed with the California Secretary of State.

XI. *TERM*

A. Section 11.1 is amended to read in its entirety as follows:

Section 11.1. Effective Date. This Amended Compact shall not be effective unless and until all of the following have occurred: (a) The amendment herein is ratified by statute in accordance with state law; and (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. Section 2710 (d)(3)(B).

B. Section 11.2.1 is repealed and replaced by the following:

Section 11.2.1. Term. Once effective, this Amended Compact shall be in full force and effective until December 31, 2030.

Subdivision (b) is repealed.

IN WITNESS WHEREOF, the undersigned sign this Amendment on behalf of the State of California and the Viejas Band of Kumeyaay Indians.

STATE OF CALIFORNIA

By Arnold Schwarzenegger
Governor of the State of California

Executed this 21st day of June, 2004, at Sacramento, California

VIEJAS BAND OF KUMEYAAY INDIANS

By Anthony R. Pico
Chairperson of the Viejas Band of Kumeyaay Indians

Executed this 21st day of June, 2004, at Sacramento, California

DEPARTMENT OF THE INTERIOR

Consistent with 25 U.S.C. § 2710(d)(8) this Amendment to the Tribal - State Gaming Compact between the State of California and the Viejas Band of Kumeyaay Indians, executed on June 21, 2004, is approved on this 20th day of August, 2004. ~~by the Principal Deputy Assistant Secretary - Indian Affairs of the United States Department of the Interior.~~

~~**By:**~~ _____

~~**Aurene M. Martin**~~
~~**Principal Deputy Assistant Secretary - Indian Affairs**~~

By: _____

George T. Skibine
Director, Office of Indian Gaming Management

EXHIBIT A

EXHIBIT A

OFF-RESERVATION ENVIRONMENTAL IMPACT ANALYSIS CHECKLIST

I. AESTHETICS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage off-reservation scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?	☐	☐	☐	☐

II. AGRICULTURAL RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use?	☐	☐	☐	☐

III. AIR QUALITY

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people off-reservation?	☐	☐	☐	☐

IV. BIOLOGICAL RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have a substantial adverse impact, either directly or through habitat modifications, on any species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

V. CULTURAL RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?	☐	☐	☐	☐
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?	☐	☐	☐	☐
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐

VI. GEOLOGY AND SOILS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Expose off-reservation people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial off-reservation soil erosion or the loss of topsoil?	☐	☐	☐	☐

VII. HAZARDS AND HAZARDOUS MATERIALS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐

b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?	☐	☐	☐	☐
d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires.	☐	☐	☐	☐

VIII. WATER RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion of siltation off-site?	☐	☐	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff off-reservation?	☐	☐	☐	☐
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?	☐	☐	☐	☐
g) Expose off-reservation people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐

IX. LAND USE

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?	☐	☐	☐	☐

X. MINERAL RESOURCES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	☐	☐	☐	☐

XI. NOISE

Would the project result in:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐

Would the project result in:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐

XII. POPULATION AND HOUSING

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Induce substantial off-reservation population growth?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?	☐	☐	☐	☐

XIII. PUBLIC SERVICES

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the off-reservation public services:				
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐

XIV. RECREATION

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐

XV. TRANSPORTATION / TRAFFIC

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Cause an increase in off-reservation traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated off-reservation roads or highways?	☐	☐	☐	☐
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
d) Result in inadequate emergency access for off-reservation responders?	☐	☐	☐	☐

XVI. UTILITIES AND SERVICE SYSTEMS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	☐	☐	☐	☐

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
d) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐

XVII. CUMULATIVE EFFECTS

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.	☐	☐	☐	☐

EXHIBIT B

EXHIBIT B

The following provisions are included in this agreement in order to facilitate the securitization of the annual payments to be received by the State pursuant to Section 4.3.3.

1. The Tribe and the State agree that the intended form of the financing will include a structure that does not require public disclosure of tribal or tribal business enterprise financial information or business information not currently in the public domain.

2. In order to assist the State in the securitization of the annual payments described herein, the Tribe agrees to consider in good faith all arrangements designed to comply with requests by insurers, letter of credit providers or other financial institutions in connection with the provision of credit enhancement by such parties on any such securitization. In connection therewith, the Tribe will provide relevant requested information to the rating agencies, credit enhancers, and involved investment bankers (subject to confidentiality agreements), including information relating to its financial and operating data (including any market studies or management analysis), its legal organization, any service or management contracts, and any outstanding indebtedness; provided, however, that the Tribe is not required to consider any agreement in which the Tribe guarantees the obligations of any other Tribe or entity.

3. The Tribe agrees to use its reasonable best efforts to obtain such approvals as are necessary to provide that payments required to be made pursuant to this Amended Compact shall constitute an operating expense of the Tribe and shall be senior in priority to any payment of any bank loans or other obligations for borrowed money currently existing or incurred hereafter during the term of this Amended Compact.

4. The Tribe will provide a limited waiver of sovereign immunity as necessary to provide for the enforcement of any arrangements agreed to in Section 2 above.

5. The Tribe will provide customary legal opinions affirming the validity and enforceability of this Amended Compact and any arrangements agreed to in Section 2 above, the priority of the payment of the amounts required to be paid by the Tribe hereunder, and the Tribe's waiver of sovereign immunity.

6. The covenant of the State to maintain the exclusivity set forth in Section 3.2, subdivision (a), in the event that bonds are issued constitutes an important inducement to the Tribe to make the payments described in Section 4.3.3 subdivision (a), of this Amended Compact, and granting such exclusivity in return for such payments is purely a financial matter, and has been negotiated by the parties pursuant to articulated federal policy pursuant to the IGRA. Nothing herein shall preclude the State from exercising the police power in the event that the health, welfare or well-being of the citizens of the State shall require such exercise; provided, however, that the State acknowledges and recognizes that expansion of gaming within the exclusive geographic core market described in Section 3.2, subdivision (b), in a manner violative of this Amended Compact is not an exercise of such police power and is purely a financial matter.