

# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



March 18, 2008

Honorable Robert Pinto, Sr.  
Chairman, Ewiiapaayp Band of  
Kumeyaay Indians  
4054 Willows Road  
P.O. Box 2250  
Alpine, California 91903-2250

Dear Chairman Pinto:

On March 17, 2008, we received an amendment to the Tribal-State Compact for the regulation of Class III Gaming between the Ewiiapaayp Band of Kumeyaay Indians (Tribe) and the State of California (State), executed on April 6, 2005 (Amendment). Under the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Amendment within forty-five days of its submission. Under IGRA, the Secretary can disapprove the Amendment if he determines that the Amendment violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians.

We have completed our review of the Amendment. For the following reason, the Amendment is hereby disapproved. The Amendment adds a new Section 4.3.5. to the existing compact which would require the Tribe to operate gaming devices only “within the boundaries of the Indian lands of the Viejas Band existing as of July 1, 2004, in San Diego County.” The Amendment must be disapproved because it violates Section 11(8)(A) of IGRA, 25 U.S.C. 2710(8)(A), which authorizes the Secretary of the Interior to approve a class III gaming compact entered into between an Indian tribe and a state governing gaming “on Indian lands of such Indian tribe.” Indian lands described in the Amendment are not now Indian lands of the Tribe, and thus cannot be the subject of a compact between the Tribe and the State.

We regret that our decision could not be more favorable at this time. A similar letter is being sent to the Honorable Arnold Schwarzenegger, Governor, State of California.

Sincerely,

George T. Skibine  
Acting Deputy Assistant Secretary -  
Policy and Economic Development

DISAPPROVED



# Ewiiapaayp Tribal Office

## Ewiiapaayp Band of Kumeyaay Indians

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### TRIBAL RESOLUTION

#### No. 04-13

**WHEREAS:** the Ewiiapaayp Band of Kumeyaay Indians, otherwise known as the Cuyapaipe Band of Mission Indians, hereinafter referred to as the "Tribe", is a federally recognized Indian Tribe and Ewiiapaayp (Cuyapaipe) Indian Reservation established on December 29, 1891, following the executive order of January 12, 1891, and Act of the U.S. Congress (26 Stat. 712 - 714 c.65) with Trust Patents issued February 10, 1893 (880 acres), June 10, 1910 (3,200 acres), April 1, 1986 (8.6 acres), October 29, 1997 (1.42 acres), and Public Law 106-569 approved December 27, 2000 (1,320 acres); and

**WHEREAS:** the Constitution of the Tribe provides that the governing body of the Tribe shall be the General Council; and

**WHEREAS:** the Constitution of the Tribe provides that the General Council has the power (i) to exercise the powers of self-government and self-determination; (ii) to exercise jurisdiction extending to lands now and hereafter comprising the Cuyapaipe Indian Reservation, California, (iii) to manage, lease, contract or otherwise deal with Tribal assets and community resources of the Tribe; (iv) to propose amendments to the Tribe's Constitution; and (v) to exercise other powers as provided in the Tribe's Constitution; and

**WHEREAS:** The Tribe did on September 28, 1973, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs, ratified by Act of Congress, and by tribal law, which was amended by the Tribe in a duly authorized election on August 5, 2002 and approved pursuant to authority delegated to the Secretary of the Interior on September 6, 2002, the sovereign authority of the Tribe over the matter described herein is delegated to the Cuyapaipe Band General Council, acting by law, and

**WHEREAS:** Article VI of the Constitution authorizes the General Council to enter agreements to further the Tribe's interests.

**WHEREAS:** The Tribe does not currently operate a gaming facility that offers Class III gaming activities. Pursuant to tribal resolution, the Tribe entered into a Compact with the State of California by signature of the Tribal Chairman and the Governor of the State of California on September 10, 1999 that was approved by the Secretary of the Interior by notice in the Federal Register on May 15, 2000; and

**WHEREAS:** The entered into an amended Compact by signature of the Tribal Chairman on August 18, 2004 and the Governor of the State of California on August 23, 2004, that was ratified by the California Legislature as SB 1117 on August 27, 2004; and

**WHEREAS:** the Tribe reviewed and approves of the amended Compact and the execution of the amended Compact by signature of the Tribal Chairman.

**NOW THEREFORE BE IT RESOLVED THAT,**

A.e The Chairman is hereby further authorized, empowered and directed to take such additional steps on behalf of the Tribe with respect to this Tribal Resolution No. 04-11 as may be required to: (i) perform, implement and give effect to the activities requiring the consent of the General Council; and (ii) to perform, implement, give effect to and administer such consent.

B.e The General Council, after review of the amended Compact, ratifies and approves the amended Compact and the execution of the amended Compact by the Tribal Chairman, and directs the Chairman to submit the amended Compact to the Bureau of Indian Affairs for review and approval by the Secretary.

**THEREFORE BE IT FURTHER RESOLVED THAT,** the General Council hereby requests the Secretary of the Interior to review and approve the amended tribal-state compact attached hereto as Exhibit A.


**BE IT ORDAINED BY THE GENERAL COUNCIL:**

The General Council hereby adopts and approves this Resolution No. 04-13 as the law of the Tribe until rescinded.

**CERTIFICATION**

I, the undersigned, as Chairman of the Ewiiapaayp Band of Kumeyaay Indians, do hereby certify that the General Council is composed of seven (7) members of which six (6) are voting members and of which six (4) were present, constituting a quorum at a Regular Meeting thereof, duly and regularly called, noticed, convened and held this 17<sup>th</sup> day of September, 2004; and that this Resolution was duly adopted by a vote of six (6) in favor, zero (0) opposed, and zero (0) abstaining, and that said Resolution has not been rescinded, amended or modified in any way.

Dated this 17<sup>th</sup> day of September, 2004.

  
Harlan Pinto Sr., Chairman  
Ewiiapaayp Band of Kumeyaay Indians

ATTEST:   
Robert Pinto Sr., Secretary  
Ewiiapaayp Band of Kumeyaay Indians

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

**WHEREAS, the State of California (hereinafter “the State”) and the Ewiiapaayp Band of Kumeyaay Indians (hereinafter “the Tribe”) entered into a compact in 1999 (hereinafter the “1999 Compact”); and**

**WHEREAS, the Tribe has entered into an arrangement with the Viejas Band of Kumeyaay Indians (the "Viejas Band") that would permit the Tribe to conduct Gaming Activities on the Viejas Band's Indian lands;**

**WHEREAS, the State and the Tribe have agreed to revise the 1999 Compact to accommodate this opportunity, 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 of its Gaming Facility 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 the operation of, its Gaming Activities, the State agrees to amend the 1999 Compact to afford the opportunity to operate additional Gaming Devices and to extend the term of the Compact; 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 exclusive right to operate slot machines, 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.**

Except as set forth in Section 3.2, the Tribe shall not be limited with respect to the number of Gaming Devices that it may operate, but its right to operate any Gaming Devices shall be subject to its making the payments set forth under Section 4.3.2.2 and Section 4.3.3 herein in accordance with the terms set forth therein.

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 has decided, in the exercise of its sovereignty, to fund an endowment for the benefit of the Southern Indian Health Council, an inter-tribal organization comprised of seven Compact and Non-Compact Tribes and to make additional payments to five of those tribes, a majority of which are presently Non-Compact Tribes, during the term of this Amended Compact. In recognition of, and reliance on, said payments for the benefit of various Non-Compact Tribes and to allow expeditious funding of the endowment, the Tribe and the State have agreed that the Tribe's payments to the Revenue Sharing Trust Fund shall be as set forth in subdivision (b).

(b) Commencing on January 1 of the sixth calendar year of the Tribe's Gaming Activities, the Tribe shall pay on a quarterly basis to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund the following annual fees in accordance with the following schedule within 30 days of the end of each calendar quarter (on January 30, April 30, July 30, and October 30):

| <b>Year of the Tribe's Gaming Activities</b>                 | <b>Annual Payment</b> |
|--------------------------------------------------------------|-----------------------|
| <b>Year 6</b>                                                | <b>\$200,000</b>      |
| <b>Year 7</b>                                                | <b>\$300,000</b>      |
| <b>Year 8</b>                                                | <b>\$400,000</b>      |
| <b>Year 9</b>                                                | <b>\$500,000</b>      |
| <b>Year 10</b>                                               | <b>\$750,000</b>      |
| <b>Year 11 and each succeeding year to December 31, 2030</b> | <b>\$1,500,000</b>    |

(c) Payments pursuant to subdivision (b) shall be accompanied by a written certification that sets forth the payment schedule in subdivision (b) and specifies the date on which the Tribe's Gaming Activities commenced, the year of the present Gaming Activities, and the annual payment that applies to said year (of which the accompanying payment is for one quarter.)

(d) If the Tribe operates its Gaming Activities for at least two quarters during the first calendar year of its Gaming Activities under this Amended Compact, that year will be considered the first year of the Tribe's Gaming Activities for purposes of this section. Otherwise, the next calendar year of the Tribe's Gaming Activities will be considered the first year.

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

**Section 4.3.3.**

(a) The Tribe agrees that in consideration of the exclusive right to operate Gaming Devices within the geographic region specified in Section 3.2 and to do so outside the licensing system established by the 1999 Compact, it shall pay to the State the following percentages of its Net Win (as defined in subdivision (c)) generated from the operation of its Gaming Devices:

| <b>Annual Net Win</b>     | <b>Percentage Paid To State</b> |
|---------------------------|---------------------------------|
| <b>\$0-200 million</b>    | <b>15%</b>                      |
| <b>Over \$200 million</b> | <b>25%</b>                      |

The payment specified herein has been negotiated between the parties as a fair contribution to be made on an annual basis, based upon the Tribe's limited membership, market conditions, and the circumstances arising out of this opportunity.

(b) 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 payment referenced in subdivision (a) in quarterly payments, which quarterly payments shall be based on the Net Win generated from the Gaming Devices during the immediately preceding quarter, due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter). If the Gaming Activities authorized by the Amended Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Operation and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter. Said quarterly payments shall be accompanied by the certification specified in subdivision (d).

(c) For purposes of this subdivision (a),

(i) "Net Win" means the gross revenue ("drop") less all prizes and payouts, fills, hopper adjustments and participation fees. 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 license for play Gaming Devices.

(ii) "Gaming Device," as defined in Section 2.6 of the Amended Compact, includes instant lottery game devices and video poker devices.

(d) The quarterly payments 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. A copy of the certification shall also be sent to the State Gaming Agency. 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, any failure of the Tribe to remit its payments referenced in subdivision (a) pursuant to subdivisions (b) and (d) 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) If the State Director of Finance decides, in his or her discretion, to assign, in whole or in part, the Tribe's payments referenced in subdivision (a) to a third party for purposes of securitizing the income stream in the form of bonds that can be issued to investors, the Tribe will use reasonable efforts and cooperate in good faith to aid the issuance of said bonds in accordance with Exhibit B.

(g) This Section constitutes a "Section 4.3.3" within the meaning of article 6.5 (commencing with Section 63048.6) of Chapter 2 of Division 1 of Title 6.7 of the California Government Code.

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

**Section 4.3.4.** For purposes of Sections 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 any and all

Gaming Devices only within the boundaries of the Indian lands of the Viejas Band existing as of July 1, 2004, in San Diego County to the extent permitted under the Indian Gaming Regulatory Act.

## **II. *AUTHORIZATION AND 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 4.1 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 Sections 4.3.2.2 and Section 4.3.3, the Tribe shall have the following rights:

(a) In the event the bonds referenced in Section 4.3.3, subdivision (f), are issued, securitized by the Tribe's payments, 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 thereafter 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. 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.

(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 (f), to protect the bondholders of said bonds, and to afford the Tribe the stability in its Gaming Operation during the life of the bonds; provided 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 (f), 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 4.3.2.2 and Section 4.3.3, 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) If the bonds referenced in Section 4.3.3, subdivision (f) are not issued or following the life of said bonds, the Tribe shall be relieved of its obligation to make the payments specified in Section 4.3.2.2 and Section 4.3.3, if and only if any person or entity other than an Indian tribe with a federally authorized compact engages in the Gaming Activities specified in subdivision (a) of Section 4.1 of the 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 4.3.2.2 or Section 4.3.3, the Tribe shall compensate the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance, or failing agreement on that amount, as determined by arbitration pursuant to Section 9.2 of the Amended Compact, and furthermore, where the Tribe nonetheless operates more than 2,000 Gaming Devices, it shall pay 15% of the Net Win attributable to all Gaming Devices above 2,000 pursuant to subdivisions (b), (c), (d), and (e) of Section 4.3.3.

### **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 said 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 at least thirty (30) days before offering the Gaming Devices for play 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**

**Subdivisions (b), (c), and (d) of Section 6.4.2 are repealed and subdivisions (b)-(j) of Section 6.4.2 are added as follows:**

##### **Section 6.4.2.**

(b) For purposes of this section, “Covered Gaming Facility Construction” constitutes any construction, reconstruction, alteration, or expansion of any Gaming Facility.

(c) 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 Amended 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 Amended 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.

(d) 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).”

(e) 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.

(f) 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 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.

(g) 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.

(h) Any Gaming Facility shall be issued a certificate of occupancy by the Tribal Gaming Agency based on the final certification specified in subdivision (g). The certificate of occupancy shall be reviewed for continuing compliance on a biennial basis. Inspections by Inspectors (as defined herein) shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any renewals biennially of the certificate of occupancy.

(i) 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.

(j) 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 less than thirty (30) days before the commencement of Gaming Activities, 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 its consent to arbitration, 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, 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 waiver 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 before a retired judge.
- (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 any 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 San Diego County concerning the person or entity to prepare the TEIR.

(c) In light of the fact that the Tribe's Gaming Facility will be on the Indian lands of the Viejas Band, the Tribe's TEIR may be combined in a single document with any TEIR prepared by the Viejas Band in connection with any other Project contemporaneously planned within the Indian lands of the Viejas Band of Kumeyaay Indians.

### **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 of San Diego (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; or
- (ii) 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, 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.

(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) any other 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.

(d) For purposes of these definitions, reservation refers to the Viejas Band's Indian lands within the meaning of IGRA or lands otherwise held for the Viejas Band in trust by the United States.

**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 hereby repealed and replaced by the following:

**Section 10.7. Labor Relations.** Within 30 days of the effective date of this amendment, the Tribe shall amend its Tribal Labor Relations Ordinance (“TLRO”) to incorporate the provisions set forth in Exhibit C, and such amended ordinance shall remain in effect during the term of this Amended Compact.

## **X. AUTHORITY AND OPTION TO TERMINATE**

**A. Section 15.4** is hereby repealed.

**B.** 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 October 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 October 1, 2004, the Governor may declare this Compact null and void by written notice filed with the California Secretary of State by December 1, 2004.

**C. 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 or the State 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.** In order to allow the term of this Amended Compact to run concurrently with that of the Viejas Band, this Amended Compact, once effective, 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 Ewiiapaayp Band of Kumeyaay Indians.

**STATE OF CALIFORNIA**

**EWIIAPAAYP BAND OF  
KUMEYAAY INDIANS**

By Arnold Schwarzenegger  
Governor of the State of California

By Harlan Pinto, Sr.  
Chairman of the Ewiiapaayp Band of  
Kumeyaay Indians

Executed this \_\_ day of \_\_\_\_\_,  
2004, at \_\_\_\_\_, California

Executed this \_\_ day of \_\_\_\_\_,  
2004, at \_\_\_\_\_, California