United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 2 4 2018

The Honorable Virgil Moorehead
Chairman, Big Lagoon Rancheria
Big Lagoon Rancheria
Trinidad, California 95570

Dear Chairman Moorehead:

In July 2015, the Department of the Interior (Department) received a letter, order, and proposed class III gaming compact from the court-appointed mediator (Mediator) in *Big Lagoon Rancheria v. California,* No. CV-09-01471 CW (N.D. Cal. 2015). The Mediator took this action because the State of California (State) failed to comply with the Indian Gaming Regulatory Act (IGRA).[1] After review by the Department of the Mediator's submission and thorough consultation with the Big Lagoon Rancheria (Tribe), I am issuing the enclosed procedures under which the Tribe may conduct class III gaming in accordance with IGRA.

It is important to note that the issuance of these procedures flows from the Court's ruling that the State failed to negotiate a class III gaming compact in good faith as required by IGRA.[2] Second, the State further refused to consent to a class III gaming compact selected by the Mediator.[3] Only the State's consistent failure to comply with the law triggered the Secretary of the Interior's (Secretary) duty under IGRA to prescribe class III gaming procedures.[4]

The Secretary's duty to issue procedures is one of IGRA's fundamental safeguards of Tribal sovereignty. In IGRA, Congress expressly reaffirmed that Tribes maintain their pre-existing sovereign reserved right to conduct gaming. This reserved Tribal right, confirmed by the Supreme Court in *Cabazon*,[5] endures throughout IGRA's framework. While Congress provided states a limited role to negotiate a Tribal-State compact governing class III gaming activities, Congress did not eviscerate Tribal sovereignty. Recognizing the underlying Tribal reserved right, Congress expressly provided that when a State does not negotiate a Tribal-State gaming compact in good faith and does not agree with a Federal court-appointed mediator's gaming compact, Tribes retain the sovereign right to conduct class III gaming pursuant to Federal procedures issued by the Secretary.[6] The Department's action here upholds that Tribal sovereign right.

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[1] This is not the first time that a court-appointed mediator has taken such action because the State failed to negotiate a compact in good faith. In 2013, the Department issued procedures governing class III gaming by the Rincon Band of Luiseno Indians. Similarly in 2016 the Department issued procedures governing class III gaming by the North Fork Band of Mono Indians and the Enterprise Rancheria.

[2] *Big Lagoon Rancheria v. California*, 759 F.Supp. 1149 (N.D. Cal. 2010).

[3] 25 U.S.C. § 2710(d)(7)(B)(vi-vii).

[4] 25 U.S.C. § 2710(d)(7)(B)(vii).

[5] *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987).

[6] 25 U.S.C. § 2710(d)(7)(B)(vii)(II).

Background

Under IGRA, States are required to negotiate class III gaming compacts "in good faith" with Tribes and address issues that are specific to each individual Tribe.[7] Tribes may enforce this good faith obligation by filing suit in Federal court.[8]

On April 3, 2009, the Tribe initiated an action against the State for failing to negotiate in good faith for a class III Tribal-State gaming compact as required by IGRA. On November 22, 2010, the Federal District Court for the Northern District of California (District Court) ruled that the State failed to negotiate in good faith and directed the parties to conclude a class III gaming compact within 60 days.[9] The parties failed to reach an agreement so the District Court ordered the parties to submit a proposed class III gaming compact along with proposals for a court-appointed mediator as envisaged by IGRA.[10] Under the District Court's supervision, the mediator would then select the proposed compact that "best comports with the terms of [IGRA] and any other applicable Federal law, and with the findings and order of the court."[11]

Rather than submit the required class III gaming compact proposal, on December 9, 2010, the State appealed the District Court's November 22, 2010, order to the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). The Tribe filed a notice of cross-appeal with the Ninth Circuit. On January 27, 2011, the District Court denied the State's motion for a stay pending appeal, extended until March 28, 2011, the date by which the parties were to conclude a class III gaming compact, and similarly extended the date by which the parties were to submit proposed compacts and proposed IGRA mediators.

On February 22, 2011, the Ninth Circuit denied the State's emergency motion to stay further proceedings in the District Court pending appeal. The State and the Tribe conducted further negotiations during the IGRA-mandated 60-day period, attempting to agree upon terms for a Tribal-State class III gaming compact. On April 27, 2011, the State and the Tribe each submitted to the District Court a proposed compact and a separate proposal for an IGRA mediator.

On May 5, 2011, the District Court selected a mediator, and the parties thereafter submitted to the Mediator their respective "last best offer" for a class III Tribal-State gaming compact in accordance with IGRA.[12] On September 23, 2011, the Mediator, acting in accordance with IGRA, selected the class III gaming compact proposed by the Tribe as "the one which best comports with the terms of this Act [IGRA] and any other applicable Federal law" and

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[7] 25 U.S.C. § 2710(d)(3)(A).
[8] 25 U.S.C. § 2710(d)(7)(A).
[9] *Big Lagoon Rancheria v. California*, 759 F. Supp. 1149 (N.D. Cal. 2010).
[10] *Id.*
[11] 25 U.S.C. § 2710(d)(7)(B)(iv).
[12] *Id.*

submitted the selected class III gaming compact to the State for its consent as required by IGRA.[13] The 60-day period provided in IGRA for the State to consent to the Mediator-selected class III gaming compact expired on November 22, 2011, without the State consenting to the selected class III gaming compact.[14] On February 1, 2012, the District Court ordered a stay of its November 22, 2010, order pending final resolution of the parties' cross-appeals pending before the Ninth Circuit.

On June 4, 2015, an *en banc* panel of the Ninth Circuit affirmed the judgment of the District Court.[15] In response to the Ninth Circuit's ruling, on July 22, 2015, the District Court lifted its February 1, 2012, stay and authorized the Mediator to inform the Secretary of his selection of a class III gaming compact in accordance with IGRA.[16] Accordingly, on July 29, 2015, the Mediator forwarded to the Secretary the class III gaming compact she selected for issuance as class III gaming procedures in accordance with IGRA.[17]

We note that the compact selected by the Mediator contemplated that, in addition to the Big Lagoon Rancheria's role as the primary regulator of its gaming activities, the State would also have regulatory responsibilities largely consistent with the State's regulatory role in class III gaming under numerous existing compacts with Tribes in the State. Since the State did not consent to the Mediator-selected compact within the 60-day period set forth in IGRA, the State may not be willing to fulfill such regulatory responsibilities. Accordingly, we have included language in Section 8.2 of the procedures establishing a 60 day "opt-in" period for the State to provide written notice to the Secretary that it agrees to perform the State Gaming Agency's (SGA) regulatory responsibilities set forth in the procedures. We also included language providing that if the State does not opt-in, the National Indian Gaming Commission (NIGC) has agreed to perform such responsibilities pursuant to a Memorandum of Understanding with the Tribe. To ensure adequate regulation, Section 8.2(e) also provides that the Tribe may not operate class III gaming activities without either the SGA or NIGC assuming the regulatory responsibilities described in the procedures.

The IGRA requires that after receiving notice that a State has not consented to the Mediator-selected class III gaming compact, the Secretary shall prescribe, in consultation with the Indian Tribe, procedures under which class III gaming may be conducted on the Indian lands over which the Tribe has jurisdiction. The procedures are to be consistent with the Mediator-selected compact, IGRA, and the relevant provisions of state law.[18] We find that the procedures meet those requirements.

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[13] 25 U.S.C. § 2710(d)(7)(B)(v).
[14] 25 U.S.C. § 2710(d)(7)(B)(vi) and (vii).
[15] *Big Lagoon Rancheria v. California*, 789 F.3d 947 (9th Cir. 2015).
[16] 25 U.S.C. § 2710(d)(7)(B)(vii)
[17] *Id.*
[18] 25 U.S.C. § 2710(d)(7)(B)(vii).

Conclusion

By this letter we hereby notify the Tribe and the State that the attached Secretarial Procedures for the conduct of class III gaming on the Tribe's Indian lands are prescribed and in effect.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs

cc: Governor, State of California
National Indian Gaming Commission

CLASS III GAMING

SECRETARIAL PROCEDURES FOR

THE

BIG LAGOON RANCHERIA

Contents

CLASS III GAMING SECRETARIAL PROCEDURES
FOR THE BIG LAGOON RANCHERIA

PREAMBLE

A. The Big Lagoon Rancheria, a Federally-recognized Indian Tribe ("Tribe"), seeks to establish a casino and hotel on lands that constitute the Big Lagoon Rancheria, and for more than a decade has been requesting the State to enter into a tribal-state compact for class III gaming.

B. On April 3, 2009, in accordance with the statutory scheme set forth in IGRA, 25 U.S.C. § 2710(d)(7)(A)(i) and (d)(7)(B)(i), the Tribe initiated an action against the State in *Big Lagoon Rancheria v. State of California*, United States District Court, Northern District of California, Case No. 09-1471 CW, for failing to negotiate in good faith for a class III tribal-state gaming compact as required by IGRA.

C. On November 22, 2010, the United States District Court found pursuant to IGRA, 25 U.S.C. § 2710(d)(7)(B)(ii) and (iii), that the State had failed to negotiate in good faith for a compact with the Tribe, granted the Tribe's motion for summary judgment, and directed the parties to conclude a compact within sixty (60) days from the date of the Court's order, absent which they were within thirty (30) days thereafter each to submit a proposed compact to the Court, along with a joint or separate proposals for a court-appointed mediator as envisaged by IGRA, 25 U.S.C. § 2710(d)(7)(B)(iv), who shall select from the parties' last best offered compacts the proposed compact which "best comports with the terms of [IGRA] and any other applicable Federal law and with the findings and order of the court."

D. On December 9, 2010, the State filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit in *Big Lagoon Rancheria v. State of California*, No. 10-17803, challenging the United States District Court's November 22, 2010 Order.

E. On December 21, 2010, the Tribe filed a notice of cross-appeal to the United States Court of Appeals for the Ninth Circuit in *Big Lagoon Rancheria v. State of California*, No. 10-17878, challenging part of the United States District Court's November 22, 2010 Order.

F. On January 27, 2011, the United States District Court denied the State's motion for a stay pending appeal, extended until March 28, 2011 the date by which the parties were to conclude a compact, and similarly extended the date by which the parties were to submit proposed compacts and proposed IGRA mediators.

G. On February 22, 2011, the United States Court of Appeals for the Ninth Circuit denied the State's emergency motion to stay further proceedings in the District Court pending appeal.

H. The State and the Tribe conducted further negotiations during the mandatory IGRA sixty-day period for the purpose of agreeing upon terms for a tribal-state class III gaming compact.

I. On April 27, 2011, the State and the Tribe each submitted to the United States District Court a proposed compact and separate proposals for an IGRA mediator.

J. On May 5, 2011, the District Court selected an IGRA mediator (the "Mediator"), and the parties thereafter submitted to the Mediator their respective "last best offer" for a Class III Tribal-State gaming compact in accordance with IGRA, 25 U.S.C. § 2710(d)(7)(B)(iv).

K. On September 23, 2011, the Mediator, acting in accordance with IGRA, 25 U.S.C. § 2710(d)(7)(B)(iv), selected the compact proposed by the Tribe as "the one which best comports with the terms of this Act [IGRA] and any other applicable Federal law" and submitted the selected compact to the State for the State's consent in accordance with IGRA, 25 U.S.C. § 2710(d)(7)(B)(v).

L. On November 22, 2011, the sixty day period contemplated by IGRA, 25 U.S.C. § 2710(d)(7)(B)(vi) and (vii) for the State to consent to the compact selected by the Mediator expired without the State having notified the Mediator that it consented to the selected compact.

M. On February 1, 2012, the District Court ordered a stay of its November 22,

2010, order pending final resolution of the parties' cross-appeals of that order to the Ninth Circuit Court of Appeals.

N. On June 4, 2015, an en banc panel of the Ninth Circuit Court of Appeals in *Big Lagoon Rancheria v. State of California,* Nos 10-17803 and 10-17878, affirmed the judgment of the District Court.

O. On July 22, 2015, the District Court lifted the stay issued on February 1, 2012, and authorized the Mediator to inform the Secretary of his selection of a compact in accordance with IGRA, 25 U.S.C. § 2710(d)(7)(B)(vii).

P. In July 2015, the Mediator notified the Secretary of the compact selected by the Mediator in accordance with IGRA, 25 U.S.C. § 2710(d)(7)(B)(vii).

Q. 25 U.S.C. § 2710(d)(7)(B)(vii) provides that, after the Mediator has notified the Secretary of the proposed compact selected by the Mediator, "the Secretary shall prescribe, in consultation with the Indian tribe, procedures - (I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act [IGRA], and the relevant provisions of the laws of the State, and (II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction."

R. The Secretary has determined that, because 25 U.S.C. § 2710(d)(B)(vii) states that the Secretary "shall" prescribe secretarial procedures once the other conditions set forth in 25 U.S.C. § 2710(d)(B) have been satisfied, the Secretary has no discretion on the question of whether to prescribe secretarial procedures for the Tribe and the Secretary has a mandatory duty to proscribe secretarial procedures for the Tribe.

S. The Secretary has consulted with the Tribe regarding the prescription of these Procedures.

T. The Secretary has determined that the Procedures set forth below are consistent with the compact selected by the Mediator, the provisions of IGRA and the relevant provisions of the laws of the State within the meaning of IGRA, 25 U.S.C. § 2710(d)(B)(vii)(I).

U. The State and the Tribe recognize that the exclusive rights that the Tribe will enjoy under these Secretarial Procedures create a unique opportunity for the Tribe to operate a Gaming Facility in an economic environment free of competition from class III gaming on non-Indian lands in California and that this unique economic environment is of value to the Tribe; and

V. In consideration of the exclusive rights enjoyed by the Tribe to engage in certain Gaming Activities and to operate the number of Gaming Devices specified herein, the Tribe will make revenue contributions to the SDF and RSTF as prescribed by the Secretary, after consultation with the Tribe.

W. The Secretary has an interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements.

X. These Procedures will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance tribal economic development and self- sufficiency.

Y. These Procedures protect the interests of the Tribe and its members, as well as the interests of patrons of the Tribe's gaming facility.

Therefore, the Secretary, as requested by the mediator appointed by the United States District Court for the Northern District of California in *Big Lagoon Rancheria v. State of California,* and as mandated by IGRA, 25 U.S.C. § 2710 (d)(7)(B)(vii), and in consultation with the Tribe, hereby promulgates these Class III Gaming Secretarial Procedures ("Procedures").

SECTION 1.0. PURPOSES AND OBJECTIVES.

The terms of these Procedures are designed to:

(a) Develop and implement a means of regulating the Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the citizens of the State of California, and local communities in accordance with IGRA, and through that regulated Class III Gaming, enable the Tribe to develop self-sufficiency, promote

tribal economic development, and generate jobs and revenues to support the Tribe's government and its governmental services and programs.

(b) Promote ethical practices in conjunction with that Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation, protect against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming, and protect the patrons and employees of the Gaming Operation and the local communities.

SECTION 2.0. DEFINITIONS.

Sec. 2.1. "Applicable Codes" means the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of these Procedures, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety. Nothing in this Section 2.1 shall be interpreted to grant the State or any of its political subdivisions, their agents, employees, or assigns, any authority to enforce the California Code of Regulations on the Indian lands of the Tribe. Additionally, nothing in this Section shall be interpreted as waiver of the Tribe's sovereign immunity as to the State or any other person, organization, or entity, for purposes of any claims whatsoever against the Tribe.

Sec. 2.2. "Applicant" means an individual or entity that applies for a tribal gaming license or for a State Gaming Agency determination of suitability.

Sec. 2.3. "Class III Gaming" means the forms of class III gaming defined in25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

Sec. 2.4. "County" means the County of Humboldt, California, a political subdivision of the State.

Sec. 2.5. "Financial Source" means any person or entity who, directly or

indirectly, extends financing to the Gaming Facility or Gaming Operation.

Sec. 2.6. "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under these Procedures in section 3.1.

Sec. 2.7. "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations. "Gaming Device" includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

Sec. 2.8. "Gaming Employee" means any natural person who (a) conducts, operates, maintains, repairs, accounts for, or assists in any Class III Gaming Activities, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.9. "Gaming Facility" or "Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the gaming equipment, Gaming Devices, business records, receipts, or other funds of the Gaming Operation are maintained (excluding data centers and other facilities dedicated to computer operations or storage of those records and financial institutions), and all rooms, buildings, and areas regularly occupied by Gaming Employees acting within the scope of their employment duties for the Gaming Operation.

Sec. 2.10. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities.

Sec. 2.11. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe's Indian lands in California and approved under IGRA.

Sec. 2.12. "Gaming Resources" means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming consulting services. "Gaming Resources" does not include professional accounting or legal services.

Sec. 2.13. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Tribe's Gaming Operation or Facility at least twenty-five thousand dollars ($25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Tribe's Gaming Operation or Facility, at least twenty-five thousand dollars ($25,000) in any consecutive twelve (12)-month period, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

Sec. 2.14. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

Sec. 2.15. "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, (ii) any city with a nexus to the Project, and (iii) persons, groups, or agencies that request in writing a notice of preparation of a draft Tribal Environmental Impact Report ("TEIR") or have commented on the Project in writing to the Tribe or the County.

Sec. 2.16. "Management Contractor" means any Gaming Resource Supplier

with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.17. "Net Win" is drop, plus the redemption value of expired tickets, less fills, less payouts, less that portion of the Gaming Operation's payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.

Sec. 2.18. "NIGC" means the National Indian Gaming Commission.

Sec. 2.19. "Project" means any activity occurring on Indian lands which is directly related to the Tribe's Gaming Activities or Gaming Operation, and which may cause a Significant Effect on the Off-Reservation Environment, including (a) the construction of a new Gaming Facility, or (b) the renovation, expansion, or modification of an existing Gaming Facility. For purposes of this definition, "Indian lands" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States as identified on Exhibit A.

Sec. 2.20. "Public Agency" means one or more entities that is a "public agency" as defined in Government Code section 6252, subdivision (d).

Sec. 2.21. "Procedures" or "Secretarial Procedures" means these Class III Gaming Secretarial Procedures.

Sec. 2.22. "Significant Effect(s) on the Off-Reservation Environment" is the same as "Significant Effect(s) on the Environment" and occur(s) if any of the following conditions exist:

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

(b) The possible effects of a Project on the off-reservation environment 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 effects of probable future projects.

(c) 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 the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

Sec. 2.23. "State" means the State of California or an authorized official or agency thereof designated by these Procedures or by the Governor.

Sec. 2.24. "State Gaming Agency" means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

Sec. 2.25. "State Designated Agency" means the Secretary or any person or entity designated by the Secretary to exercise certain rights or fulfill certain duties or responsibilities of the "State Designated Agency" under these Procedures, including, if and to the extent designated by the Secretary, the NIGC and any Office, Bureau or employee of the United States Department of the Interior; provided, however, that the "State Designated Agency" shall not include the State, the State Gaming Agency or any other agency, instrumentality, department or subdivision of the State without the prior consent of the Tribe.

Sec. 2.26. "Tribe" means the Big Lagoon Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Big Lagoon Rancheria, California, or an authorized official or agency thereof.

Sec. 2.27. "Tribal Chairperson" means the person duly elected under the Tribe's Constitution to perform the duties specified therein, including serving as the Tribe's official representative.

Sec. 2.28. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.

Sec. 3.1. Authorized and Permitted Class III Gaming.

(a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in these Procedures:

(1) Gaming Devices.

(2) Any banking or percentage card games.

(3) Any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the State are permitted to do so under state and federal law.

(b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

(c) Nothing herein shall be construed to authorize the operation of the game known as roulette, whether or not played with or on a mechanical, electro-mechanical, electrical, or video device, or cards, or any combination of such devices, or the operation of any game that incorporates the physical use of dice.

(d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this section.

SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, AND REVENUE CONTRIBUTION.

Sec. 4.1. Authorized Number of Gaming Devices.

Subject to section 3.1, subdivision (b), section 4.2 and section 4.3.1, the Tribe is entitled to operate up to a total of 600 Gaming Devices.

Sec. 4.2. Authorized Gaming Facility.

The Tribe may engage in Class III Gaming only at a single Gaming Facility located within the boundaries of the Tribe's eligible Indian lands within the meaning of IGRA, as those boundaries exist as of the execution date of these Procedures, and the Tribe agrees not to engage in any Gaming Activities on any other Indian lands in California.

Sec. 4.3.1. Revenue Contribution.

(a) The Tribe shall pay quarterly to the Special Distribution Fund created by the Legislature, in accordance with the following schedule:

Number of Gaming Devices In Quarterly Device Base	**Percentage of Average Gaming Device Net Win**
1-201	1%
201-400	3%
401-600	5%

The payment specified is considered to be a fair contribution, based upon the State's costs of regulating class III gaming activities, as well as the Tribe's market conditions, its circumstances, and the rights afforded under these Procedures.

(b) (1) 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 payments referenced in subdivision (a) in quarterly payments. The quarterly payments shall be based on the Net Win generated during that quarter from the Gaming Devices, which payments shall be 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).

(2) If the Gaming Activities authorized by these Procedures 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 Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.

(3) All quarterly payments shall be accompanied by the certification specified in subdivision (d).

(c) The quarterly payments due under section 4.3.1 shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all Gaming Devices during the quarter by the Quarterly Device Base. The Quarterly Device Base is equal to the sum total of the number of Gaming Devices in operation for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

(d) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State a certification (the "Quarterly Net Win Contribution Report") that specifies the following

(1) calculation of the Quarterly Device Base;

(2) the Net Win calculation reflecting the quarterly Net Win from the operation of all Gaming Devices (broken down by Gaming Device);

(3) the Average Device Net Win;

(4) the percentage(s) applied to the Average Device Net Win pursuant to subdivision (a); and

(5) the total amount of the quarterly payment paid to the State.

The Quarterly Net Win Payment Report shall be prepared by the chief financial officer of the Gaming Operation and shall also be sent to the State Gaming Agency.

(e) (1) At any time after the fourth quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the State Gaming Agency and the agency, trust, fund, or entity to which quarterly payments are made pursuant to subdivision (b) an audited annual certification of its Net Win calculation from the operation of Gaming Devices. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. The auditor used by the Tribe for this purpose shall be approved by the California Gambling Control Commission, or other State Designated Agency, but the State shall not unreasonably withhold its consent.

(3) If the audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount owing. The State Gaming Agency shall be authorized to confer with the auditor at the conclusion of the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the audit. The Tribal Gaming Agency shall be notified of and provided the opportunity to participate in and attend any such conference or document review.

(f) The State Gaming Agency may audit the Quarterly Device Base and Net Win

calculations specified in subdivision (c). The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the Quarterly Device Base and Net Win calculations, including access to the Gaming Device accounting systems and server-based systems and software and to the data contained therein. If the State Gaming Agency determines that the Net Win is understated or the deductions overstated, it 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 reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide 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 one percent (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 accept the difference but does not provide reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications provided for in subdivision (d) are subject to section 8.4 subdivision (h).

(g) Notwithstanding anything to the contrary in section 13, any failure of the Tribe to remit the payments referenced in subdivision (a) pursuant to subdivisions (b), (c), (d), (e) and (f) 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 one percent (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. Failure to make timely payment shall be deemed a material breach of these Procedures.

(h) Use of funds. The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes:

(1) Grants, including any administrative costs, for programs designed to address gambling addiction;

(2) Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming;

(3) Compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of these Procedures;

(4) Payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and

(5) Any other purposes specified by the Legislature, provided that such purposes are directly related to the operation of gaming activities and consistent with the purposes of IGRA.

Sec. 4.4. Exclusivity.

In recognition of the Tribe's agreement to make the payments specified in section 4.3.1, the Tribe shall have the following rights:

(1) In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of these Procedures, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact or class III gaming procedures issued by the Secretary) within California, the Tribe shall have the right to exercise one of the following options:

(2) Terminate these Procedures, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by these Procedures; or

(1) Continue under these Procedures with an entitlement to a reduction of the rate specified in section 4.3.1, subdivision (a), following conclusion of negotiations, to provide for (i) compensation to the State for the

actual and reasonable costs of regulation as determined by the State Director of Finance; (ii) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any Intergovernmental Agreement entered into pursuant to section 11.8.7, if such Intergovernmental Agreement is in effect; (iii) grants for programs designed to address gambling addiction; and (iv) such assessments as may be permissible at such time under federal law. Such negotiations shall commence within fifteen (15) days after receipt of a written request by a party to enter into the negotiations, unless both parties agree in writing to an extension of time. If the Tribe and State fail to reach agreement on the amount of reduction of the rate of payments within sixty (60) days following commencement of the negotiations specified in this section, the amount shall be determined by the Secretary.

(b) Nothing in this section is intended to preclude the State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by state law.

SECTION 5.0. REVENUE SHARING TRUST FUND.

(a) The "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the California Gambling Control Commission, as trustee, with no duties or obligations except as set forth in certain class III tribal-state gaming compacts, for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of certain tribes as defined in other class III tribal-state gaming compacts.

(b) In consideration for the number of Gaming Devices specified in section 4.1 and the conditions set forth in section 3.1, subdivision (b) of these Procedures:

(1) The Tribe will pay into the Revenue Sharing Trust Fund on January 30 of the following year for distribution on an equal basis to Non-Gaming and Non-Compact Tribes the following amounts:

Number of Gaming Devices Operated	Annual Payment
0-349 Gaming Devices	$0
350-600 Gaming Devices	$900 per Gaming Device

(2) The Tribe shall remit the payments referenced in subdivision (b)(1) to the California Gambling Control Commission in quarterly payments, which payments shall be due thirty (30) days 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).

(3) For so long as it is operating fewer than 350 Gaming Devices, the Tribe will remain a Non-Compact Tribe, as defined in the 1999 Tribal-State Gaming Compacts, and shall be entitled to Revenue Sharing Trust Fund distributions pursuant to Section 4.3.2.1 of the 1999 Tribal-State Gaming Compact provided that the Tribe shall not use any monies it receives from the Revenue Sharing Trust Fund for payment of any costs arising out of, connected with or relating to any Gaming Activities.

(4) Beginning the first quarter after the Tribe commences Gaming Activities operating 350 or more Gaming Devices under these Procedures, the Tribe shall not be eligible to receive distributions from the Revenue Sharing Trust Fund under any other tribal-state gaming compact or State law.

SECTION 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations.

(a) All Gaming Activities conducted under these Procedures shall, at a minimum, comply (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all rules, regulations, procedures, specifications, and standards duly adopted by

the NIGC, the Tribal Gaming Agency, and the State Gaming Agency, and (iii) with the provisions of these Procedures.

(b) The Tribal Gaming Agency shall transmit a copy of the Tribal Gaming Ordinance, and all of its rules, regulations, procedures, specifications, ordinances, or standards applicable to the Gaming Activities and Gaming Operation, to the State Gaming Agency within twenty (20) days following execution of these Procedures, or within twenty (20) days following their adoption or amendment.

(c) The Tribe and the Tribal Gaming Agency shall make available an electronic or hard copy of the following documents to any member of the public upon request and in the manner requested: NIGC minimum internal control standards, the Tribal Gaming Ordinance, these Procedures, including exhibits and appendices hereto, the rules of each class III game operated by the Tribe, the tort ordinance specified in section 12.5, subdivision (b), the employment discrimination complaint ordinance specified in section 12.3, subdivision (f), and the regulations promulgated by the Tribal Gaming Agency concerning patron disputes.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.

The Gaming Operation authorized under these Procedures shall be owned solely by the Tribe.

Sec. 6.3. Prohibitions Regarding Minors.

The Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any room or area in which Gaming Activities are being conducted unless the person is en route to a non- gaming area of the Gaming Facility.

(a) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of twenty-one (21) years from purchasing, consuming, or possessing alcoholic beverages. The Tribe shall also prohibit persons under the age of twenty-one (21) years from being present in any room or area in which alcoholic beverages may be consumed, except to the extent

permitted by the State Department of Alcoholic Beverage Control for other commercial establishments serving alcoholic beverages.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles.

All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under these Procedures, including, but not limited to, all Gaming Employees, Gaming Resource Suppliers, Financial Sources, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal Gaming Agency. The licensing process provided for in these Procedures may involve coordination between the Tribal Gaming Agency and the State Designated Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility.

(a) The Gaming Facility authorized by these Procedures shall be licensed by the Tribal Gaming Agency in conformity with the requirements of these Procedures, the Tribal Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every year thereafter. Verification that this requirement has been met shall be provided by the Tribe sending a copy of the initial license and each renewal license to the State Designated Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall require the Gaming Facility, any expansion, improvement, modification, or maintenance of such Gaming Facility, and any other construction to meet or exceed the Applicable Codes. In order to determine compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a

permit, the Tribe shall require inspections and, in connection therewith, shall employ 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 County, and shall employ project inspectors that are currently either certified as Class 1 inspectors by the California Division of the State Architect or as Class A inspectors by the California Office of Statewide Health Planning and Development or their successors. The Tribe agrees to correct any Gaming Facility condition noted in the inspections that does not meet the Applicable Codes (hereinafter "deficiency"). The Tribe shall require all inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and the State Designated Agency. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)."

(c) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall arrange for the following:

(1) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the planned construction (the "Design and Building Plans") to be provided to the State Designated Agency within fifteen (15) days of their final plan check and approval;

(2) 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, and such changes shall be reviewed by the Inspectors for compliance with the Applicable Codes;

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

(4) The Tribe shall maintain the Design and Building Plans for the term

of these Procedures.

(d) In all events, the State Designated Agency may designate an agent or agents, who shall be given not fewer than three (3) business days' notice of each inspection required by Section 108 of the California Building Code, and the State Designated Agency agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility deficiency noted in the inspection. 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 review all records of the Inspectors and 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 concurrent with any exercise by the State Designated Agency of its right to inspect without advance 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. Upon final certification by the Inspector that a Gaming Facility meets the 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 Designated Agency'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 13.0.

(e) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of these Procedures, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupant 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. The Tribe shall not allow occupancy of any portion of a Gaming Facility that is constructed or maintained in a manner that endangers the health or

safety of the occupants.

(f) Nothing herein shall prohibit the Tribe and the County from negotiating, or having negotiated, additional or more stringent standards in connection with any construction at or modifications to, or improvements to the Gaming Facility.

(g) The Tribe shall also take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and to reasonably ensure that the Gaming Facility satisfies all requirements of Title 19 of the California Code of Regulations applicable to similar facilities in the County as set forth below:

(1) Not less than thirty (30) days before the commencement of the 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 an independent expert for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.

(2) 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 Designated Agency's representative(s) shall specify to the independent expert any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire and life safety.

(3) The independent expert shall issue to the Tribal Gaming Agency and the State Designated Agency a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire 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.

(4) Within twenty-one (21) days after the issuance of the report, the

independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire or life 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 Designated Agency's representatives. A copy of the report shall be served on the State Designated Agency and the Tribal Gaming Agency.

(5) Immediately upon correction of all deficiencies identified in the report, the independent expert shall certify in writing to the Tribal Gaming Agency and the State Designated Agency that all deficiencies have been corrected.

(6) Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of these Procedures, 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 these Procedures and grounds for the State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.

Sec. 6.4.3. Gaming Employees.

(a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, and except as provided in subdivision (b), shall obtain, and thereafter maintain current, a State Gaming Agency determination of suitability, which license and determination shall be subject to biennial renewal; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process and the State Gaming Agency determination of suitability.

(b) A Gaming Employee who is required to obtain and maintain current a valid tribal gaming license under subdivision (a) is not required to obtain or maintain a State Gaming Agency determination of suitability if any of the following applies:

(1) The employee is subject to the licensing requirement of subdivision (a) solely because he or she is a person who conducts, operates, maintains, repairs, or assists in Class III Gaming, provided that this exception does not apply if he or she supervises Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct of the Gaming Operation.

(2) The employee is subject to the licensing requirement of subdivision (a) solely because he or she is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public, provided that this exception shall not apply if he or she supervises Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct of the Gaming Operation.

(3) The State Gaming Agency, in consultation with the Tribal Gaming Agency, exempts the Gaming Employee from the requirement to obtain or maintain current a State Gaming Agency determination of suitability.

(c) Notwithstanding subdivision (b), the State Gaming Agency is authorized to review the tribal license application, and all materials and information received by the Tribal Gaming Agency in connection therewith, for any person whom the Tribal Gaming Agency has licensed, or proposes to license, as a Gaming Employee. If the State Gaming Agency determines that the person would be unsuitable for the issuance of a license or permit for a similar level of employment in a gambling establishment subject to the jurisdiction of the State, it shall notify the Tribal Gaming Agency of that determination. Upon receipt of such notification, the Tribal Gaming Agency, in accordance with section 6.5.1, subdivision (d), shall deny that person a tribal gaming license and shall promptly revoke any tribal gaming license theretofore issued to that person, provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person

following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in State court conducted pursuant to section 1085 of the California Code of Civil Procedure.

(d) The Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability or for a renewal of such a determination has been denied, or whose determination of suitability has expired without renewal.

(e) At any time after one (1) year following the effective date of these Procedures, the Tribe may request modifications of the scope of coverage of subdivision (b).

(f) This section shall not apply to members of the Tribal Gaming Agency.

Sec. 6.4.4. Gaming Resource Suppliers.

(a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Unless the Tribal Gaming Agency licenses the Gaming Resource Supplier pursuant to subdivision (d), the Gaming Resource Supplier shall also apply to, and the Tribe shall require it to apply to, the State Gaming Agency for a determination of suitability at least thirty (30) days prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, except that for Gaming Devices the period specified under section 7.1, subdivision (a), shall govern. The period during which a determination of suitability as a Gaming Resource Supplier is valid expires on the earlier of (i) the date two (2) years following the date on which the determination is issued, unless a different expiration date is specified by the State Gaming Agency, or (ii) the date of its revocation by the State Gaming Agency. If the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an

application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Gaming Resource Supplier to update all information provided in the previous application.

(b) Any agreement between the Tribe and a Gaming Resource Supplier shall include a provision for its termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Gaming Resource Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. Except as set forth above, the Tribe shall not enter into, or continue to make payments to a Gaming Resource Supplier pursuant to, any contract or agreement for the provision of Gaming Resources with any person or entity whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.

(c) Notwithstanding subdivision (a), the Tribal Gaming Agency may license a Management Contractor for a period of no more than seven years, but the Management Contractor must still apply for renewal of a determination of suitability by the State Gaming Agency at least every two (2) years and where the State Gaming Agency denies or revokes a determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. Nothing in this subdivision shall be construed to bar the Tribal Gaming Agency from issuing additional new licenses to the same Management Contractor following the expiration of a seven (7) year license.

(d) The Tribal Gaming Agency may elect to license a person or entity as a Gaming Resource Supplier without requiring it to apply to the State Gaming Agency for a determination of suitability under subdivision if the Gaming Resource Supplier has already been issued a determination of suitability that is then valid. In that case, the Tribal Gaming Agency shall immediately notify the State Gaming Agency of its licensure of the person or entity as a Gaming Resource Supplier, and shall identify in its notification the State Gaming Agency determination of suitability on which

the Tribal Gaming Agency has relied in proceeding under this subdivision (d). Subject to the Tribal Gaming Agency's compliance with the requirements of this subdivision, a Gaming Resource Supplier licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in the sale, lease, or distribution of Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. The issuance of a license under this subdivision is in all cases subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming Agency is valid. A license issued under this subdivision expires upon the revocation or expiration of the determination of suitability relied on by the Tribal Gaming Agency. Nothing in this subdivision affects the obligations of the Tribal Gaming Agency, or of the Gaming Resource Supplier, under section 6.5.2 and section 6.5.6 of these Procedures.

(e) Except where subdivision (d) applies, within ten (10) days of the issuance of a license to a Gaming Resource Supplier, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license application materials and information received by it from the Applicant.

Sec. 6.4.5. Financial Sources.

(a) Every Financial Source shall be licensed by the Tribal Gaming Agency prior to extending any financing in connection with the Tribe's Gaming Operation or Facility. Except as provided in subdivision (e)(4) or section 6.5.6, subdivision (i), every Financial Source shall also apply to, and the Tribe shall require it to apply to, the State Gaming Agency for a determination of suitability pursuant to the following timetable: (i) at least ninety (90) days prior to extending any financing in connection with the Tribe's Gaming Operation or Facility, provided that any Financial Source that applies for such a determination within ten (10) days of the effective date of these Procedures is not in violation of this section; and (ii) in the

event of a purchase or acceptance of an assignment or participation interest in any financing in connection with the Tribe's Gaming Operation or Facility, at least five (5) days prior to the Financial Source's purchase or acceptance of the assignment or participation interest. Where the State Gaming Agency denies the determination of suitability, the Tribal Gaming Agency shall deny or revoke the license. In each instance where licensure or an application for a determination of suitability is required as set forth above, the license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application.

(b) Any agreement between the Tribe and a Financial Source shall include a provision for its termination without further liability on the part of the Tribe, except for the payment of all bona fide obligations (including accrued interest) which remain unpaid 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. Except as provided above, the Tribe shall not enter into, or continue to make payments to a Financial Source 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 revoked or whose determination of suitability has expired without renewal.

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

(d) Within ten (10) days of the issuance of a license to a Financial Source, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license application materials and

information received by it from the Applicant.

(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) Any federally-regulated or state-regulated bank, savings and loan association, or other federally- or state- regulated lender and any fund or other investment vehicle which is administered or managed by any such entity.

(B) Any entity described in Uniform Tribal Gaming Regulation CGCC-2, subdivision (f) (as in effect on January 1, 2011) 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 or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for 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), or any fund or other investment vehicle which is administered or managed by any such Financial Source, is the creditor.

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

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

(2) Except as provided in subdivision (e)(4), the Tribal Gaming Agency's exclusion of any Financial Source from the licensing requirements of this section does not relieve the Financial Source from the requirement of applying to the State Gaming Agency for a determination of

suitability pursuant to subdivision (a).

(3) In any case where the Tribal Gaming Agency elects to exclude a Financial Source from the licensing requirements of this section, the Tribal Gaming Agency shall give immediate notice thereof to the State Gaming Agency, shall give reasonable advance notice of any extension of financing by the Financial Source in connection with the Tribe's Gaming Operation or Facility, and upon request of the State Gaming Agency, shall provide it with all documentation supporting the Tribal Gaming Agency's exclusion of the Financial Source from the licensing requirements of this section.

(4) (A) Where the Tribal Gaming Agency elects to exclude a Financial Source from the licensing requirements of this section, that Financial Source need not apply to the State Gaming Agency for a determination of suitability if:

(i) It is a Financial Source specified in subdivision (e)(1)(A), or

(ii) It is a Financial Source specified in paragraph (2) or (3) of subdivision (f) of Uniform Tribal Gaming Regulation CGCC-2, which falls within the description of subdivision (e)(1)(B) of section 6.4.5, and the California Gambling Control Commission has by resolution found that the interest of the State does not require an application for a determination of suitability to be made by such Financial Source prior to the extension of financing covered by subdivision (e)(1)(B).

(B) Notwithstanding subdivision (e)(4)(A), the State Gaming Agency continues to have the right to find the Financial Source unsuitable, and if the State Gaming Agency finds that an investigation of any Financial Source is warranted, the Financial Source shall be required to submit an application for a determination of suitability to the State Gaming Agency and shall pay the costs and charges incurred in the investigation and processing of the application, in accordance with the provisions set forth in Business and Professions Code

sections 19867 and 19951.

(5) In the event that any Financial Source excluded from the licensing requirements of this section is found unsuitable by the State Gaming Agency, the Tribe must not enter into, or continue to make payments (except for payment of all bona fide obligations (including accrued interest) which remain unpaid as of the date of the finding of unsuitability) to the Financial Source pursuant to, any contract or agreement for the provision of financing.

(6) The following are not Financial Sources for purposes of this section.

(A) An entity identified by Uniform Tribal Gaming Regulation CGCC-2, subdivision (h) (as in effect on January 1, 2011) 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 modification after twelve (12) months from the effective date of these Procedures upon the request of the Tribe; provided such modification shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

Sec. 6.4.6. Processing Tribal Gaming License Applications.

Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency.

(a) At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Part 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.

(b) For Applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or gaming authorized under these Procedures, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12)-month period. For purposes of this subdivision, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity.

(c) Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.

(a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's Gaming Operations are free from criminal and dishonest elements and would be conducted honestly.

(b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the Applicant, and in the case of an entity, each individual identified in section 6.4.6, meets all the following requirements:

(1) The person is of good character, honesty, and integrity.

(2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, or in the carrying on of business and financial arrangements incidental thereto.

(3) The person is in all other respects qualified to be licensed as provided, and meets the criteria established in these Procedures, IGRA, NIGC regulations, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe; provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of a tribal gaming operation in California that was conducted prior to May 16, 2000.

Sec. 6.4.8. Background Investigations of Applicants.

(a) The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in section 6.4.7, and to fulfill all requirements for licensing under IGRA, NIGC regulations, the Tribal Gaming Ordinance, and these Procedures. The Tribal Gaming Agency shall not issue a gaming license, other than a temporary license pursuant to section 6.4.9, until a determination is made that those qualifications have been met.

(b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously issued under a Class III Gaming compact involving another tribe and the State, or may rely on a State Gaming Agency license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.

(c) An Applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the Applicant. The State Gaming Agency may cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate state or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.

(d) If the Tribe adopts an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Agency may be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. In that case, the California Department of Justice may provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

Sec. 6.4.9. Temporary Licensing of Gaming Employees.

(a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the Applicant is otherwise unsuitable for licensing,

the Tribal Gaming Agency may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine.

(b) Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary tribal gaming license.

(c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination is made on the application, or for a period of up to one (1) year, whichever comes first.

(d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Agency shall or may, as the case may be, suspend or revoke it in accordance with the provisions of sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation before making a determination of unsuitability.

(e) Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5.0. Tribal Gaming License Issuance.

Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.

(a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.

(b) Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with section 6.5.5.

(c) All rights to notice and hearing shall be governed by tribal law and comport with federal procedural due process. The Applicant shall be notified in writing of the hearing and given notice of any intent to suspend or revoke the tribal gaming license.

(d) Notwithstanding anything to the contrary herein, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in State court conducted pursuant to section 1085 of the California Code of Civil Procedure.

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.

(a) Except as provided in section 6.4.4, subdivision (c), the term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material, as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or which is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the Applicant's continuing suitability or eligibility for a license.

(b) Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in

connection with the application for renewal of the tribal gaming license for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.

(c) At the discretion of the State Gaming Agency, an additional background investigation may be required if the State Gaming Agency determines the need for further information concerning the Applicant's continuing suitability for a license.

Sec. 6.5.3. Identification Cards.

(a) The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at chest height at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information, including, but not limited to, a photograph and the person's name, which is adequate to enable members of the public and agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

(b) The Tribe shall monthly provide the State Gaming Agency with the name, badge identification number (if any), and job title of all Gaming Employees.

Sec. 6.5.4. Fees for Tribal Gaming License.

The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal Gaming License.

The Tribal Gaming Agency shall summarily suspend the tribal gaming license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person could constitute a threat to the public health or safety or may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard

thereto shall be governed by tribal law and comport with federal procedural due process.

Sec. 6.5.6. State Determination of Suitability Process.

(a) The State Gaming Agency and the Tribal Gaming Agency (together with other tribal gaming agencies) shall cooperate in developing standard licensing forms for tribal Gaming Employee license applications, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof. To facilitate the State Gaming Agency's ability to obtain any criminal information that may relate to the Applicant, each application form shall be printed showing the State Gaming Agency's approval of its use, but the approval shall not be unreasonably withheld.

(b) With respect to Gaming Employees, upon receipt of an Applicant's completed license application and a determination to issue either a temporary or permanent license, the Tribal Gaming Agency shall transmit within ten (10) days to the State Gaming Agency for a determination of suitability for licensure under the California Gambling Control Act a notice of intent to license the Applicant, together with all of the following:

(1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant.

(2) A complete set of fingerprint impressions, rolled by a certified fingerprint roller, transmitted electronically.

(3) A current photograph.

(4) Except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency.

(c) Upon receipt of a written request from a Gaming Resource Supplier or a Financial Source for a determination of suitability, the State Gaming Agency may transmit an application package to the Applicant to be completed and returned to the State Gaming Agency for purposes of

allowing it to make a determination of suitability for licensure.

(d) Investigation and disposition of applications for a State determination of suitability shall be governed entirely by State law, and the State Gaming Agency shall determine whether the Applicant would be found suitable for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, to the extent permitted under State law for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction.

(e) The Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability by the State Gaming Agency at such time as the licensee applies for renewal of a tribal gaming license.

(f) Upon receipt of completed license or license renewal application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the Applicant is suitable to be licensed for association with Class III Gaming operations. While the Tribal Gaming Agency shall ordinarily be the primary source of information, the State Gaming Agency is authorized to directly seek application information from the Applicant. The Tribal Gaming Agency shall provide to the State Gaming Agency reports of the background investigations conducted by the Tribal Gaming Agency and the NIGC, and related applications, if any, for Gaming Employees, Gaming Resource Suppliers, and Financial Sources. The Tribal Gaming Agency and State Gaming Agency may also meet and confer from time-to-time to discuss the Tribal Gaming Agency's licensing determinations. If further investigation by the State Gaming Agency is required to supplement the investigation conducted by the Tribal Gaming Agency, the Applicant will be required to pay the application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951, subdivision (a), but any deposit requested by the State Gaming Agency pursuant to section 19867 of that Code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to provide information reasonably required by the State Gaming Agency to complete its investigation under State law or

failure to pay the application fee or deposit can constitute grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs.

(g) Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State Gaming Agency has determined that the Applicant is suitable or that the Applicant is unsuitable, for licensure in a Gaming Operation and, if unsuitable, stating the reasons therefor. Issuance of a determination of suitability does not preclude the State Gaming Agency from a subsequent determination based on newly discovered information that a person or entity is unsuitable for the purpose for which the person or entity is licensed. Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, the Tribal Gaming Agency shall deny that person or entity a license and promptly revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Code of Civil Procedure.

(h) Prior to denying an application for a determination of suitability, or to issuing notice to the Tribal Gaming Agency that a person or entity previously determined to be suitable had been determined unsuitable for licensure, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, or issues notice that a person or entity previously determined suitable has been determined unsuitable for licensure, the State Gaming Agency shall provide that person or entity with written notice of all appeal rights available under state law.

(i) The California Gambling Control Commission ("Commission"), or its

successor, shall maintain a roster of Gaming Resource Suppliers and Financial Sources that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the Commission. Upon application to the Tribal Gaming Agency for a tribal gaming license, a Gaming Resource Supplier or Financial Source that appears on the Commission's suitability roster may be licensed by the Tribal Gaming Agency in the same manner as a Gaming Resource Supplier under subdivision (d) of section 6.4.4, subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier or Financial Source is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1; provided that nothing in this subdivision exempts the Gaming Resource Supplier or Financial Source from applying for a renewal of a State determination of suitability.

Sec. 6.6. Submission of New Application.

Nothing in section 6.0 shall be construed to preclude an Applicant who has been determined to be unsuitable for licensure by the State Gaming Agency, or the Tribe on behalf of such Applicant, from later submitting a new application for a determination of suitability by the State Gaming Agency in accordance with section 6.0.

SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.

Sec. 7.1. Gaming Device Approval.

(a) No Gaming Device may be offered for play unless all the following occurs:

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

(2) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with the standards of Gaming Laboratories International, Inc. known as GLI-11, GLI-12, GLI-13, GLI-21, and GLI-26, or the technical standards approved by the State of Nevada, or such other technical standards as the State Designated Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld;

(3) A copy of the certification by the Gaming Test Laboratory, specified in subdivision (2) above, is provided to the State Designated Agency by electronic transmission or by mail, unless the State Designated Agency waives receipt of copies of the certification;

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

(5) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory prior to operation by the public to ensure operation in accordance with the applicable Gaming Test Laboratory standards;

(6) The hardware and associated equipment for the Gaming Device has been tested by the Tribal Gaming Agency to ensure operation in accordance with the manufacturer's specifications; and

(7) The Tribal Gaming Agency shall maintain adequate records that demonstrate compliance with this subdivision (a).

(b) Where either the Tribe or the State Designated Agency requests new standards for testing, approval, and certification of the software for the game authorized for play on the Gaming Device pursuant to subdivision (a)(2), and the Tribe and the State Designated Agency fail to specify new standards within 120 days of the request, the technical standards shall be

those approved by the State of Nevada.

Sec. 7.2. Gaming Test Laboratory Selection.

(a) The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (1) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (2) 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 Designated Agency documentation that demonstrates the Gaming Test Laboratory satisfies (1) and (2) herein at least thirty (30) days before the commencement of Gaming Activities pursuant to these Procedures, or if such use follows the commencement of Gaming Activities, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (2) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Designated Agency, then the State Designated 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.

(b) The Tribe and the State Designated Agency shall inform the Gaming Test Laboratory in writing that irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State Designated Agency and the Tribe.

Sec. 7.3. Independent Audits.

The Tribal Gaming Agency shall ensure that compliance with section 7.1 is audited annually by an independent auditor and shall provide the results of such audits to the State Designated Agency within five (5) business days of completion. For purposes of this section, an independent auditor shall be a certified public accountant licensed in the state of California to practice as an independent certified accountant or hold a California Practice Privilege, as provided in the California

Accountancy Act, who is not employed by the Tribe, the Tribal Gaming Agency, the Management Contractor, 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, independent audits of the Gaming Operation, or audits under this section. Prior to the first independent audit, the Tribal Gaming Agency and the State Designated Agency shall develop agreed upon procedures to be employed by the independent auditor when the audit is conducted. The independent audit report, along with all working papers, shall be provided to the State Designated Agency within thirty (30) days of the receipt of the final audit report, upon request by the State Designated Agency.

Sec. 7.4. State Designated Agency Inspections.

(a) The State Designated Agency, utilizing such consultants, if any, it deems appropriate, 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. The inspections may include all Gaming Device software, hardware, associated equipment, software maintenance records and systems that support the operation of the Gaming Device. The random inspections conducted pursuant to this subdivision shall occur during normal business hours outside of weekends and holidays. Whenever practicable, the State Designated Agency shall not require removal from play any Gaming Device that the State Designated Agency determines may be fully and adequately tested while still in play.

(b) The State Designated Agency shall provide notice to the Tribal Gaming Agency of such inspection at or prior to the commencement of the random inspection, and the Tribal Gaming Agency may accompany the State Designated Agency inspector(s).

(c) The State Designated Agency, utilizing such consultants, if any, it deems appropriate, may conduct additional inspections at additional times upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.

Sec. 7.5. Technical Standards.

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

Sec. 7.6. Transportation of Gaming Devices.

(a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by agreement between the State Designated Agency, and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriff's Department for the County.

(b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:

(1) The final destination of the Gaming Device is a gaming facility of any tribe in California that has a compact with the State or Class III Gaming Secretarial Procedures which makes lawful the receipt of such Gaming Device;

(2) The final destination of the Gaming Device is any other state in which possession of the Gaming Device is made lawful by state law or by tribal-state compact;

(3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of the Gaming Device is lawful; or

(4) The final destination is a location within California for testing,

repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Designated Agency.

(c) Any Gaming Device transported from or to the Tribe's land in violation of this section 7.7, or in violation of any permit issued pursuant thereto, shall be considered a violation of these Procedures and subject to seizure by California peace officers in accordance with California law.

SECTION. 8.0. INSPECTIONS.

Sec. 8.1. Investigation and Sanctions.

(a) The Tribal Gaming Agency shall investigate any reported violation of these Procedures and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary.

(b) The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, NIGC gaming regulations, the Tribal Gaming Ordinance, or these Procedures as long as the fines or sanctions comport with federal due process.

(c) The Tribal Gaming Agency shall report violations of these Procedures and any failures to comply with its orders to the State Designated Agency within ten (10) days of discovery.

Sec. 8.2. Assistance by State Gaming Agency.

(a) The mediator's selected compact provides the State Gaming Agency with authority to regulate the Tribe's class III gaming activities. The Secretary, however, cannot unilaterally obligate the State to carry out those regulatory responsibilities under these Secretarial Procedures.

(b) The State may, within sixty (60) days of issuance of these Procedures,

provide written notice to the Tribe, with copies to the Secretary and the NIGC, that the State Gaming Agency will assume the regulatory responsibilities vested by these Secretarial Procedures in the State Gaming Agency.

(c) If the State provides the notice referenced in subdivision (b) within sixty (60) days of the date of these Procedures, the Tribe shall acknowledge and consent to the State's notice of the State Gaming Agency's assumption of the State's regulatory responsibilities by resolution of the Tribe's governing body. The Tribe shall provide a copy of its resolution to the State, the Secretary, and the NIGC.

(d) The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in section 8.1, or otherwise to protect public health, safety, or welfare. If the State does not consent to carrying out the regulatory responsibilities identified in these Secretarial Procedures, or withdraws its consent, the Tribe shall enter into a Memorandum of Understanding (MOU) with the Chairman of the NIGC authorizing the NIGC to regulate the class III gaming authorized by these Secretarial Procedures.

(e) The Tribe shall not operate any class III gaming under these Secretarial Procedures in the absence of either State Gaming Agency regulatory participation or an MOU with the Chairman of the NIGC or the Chairman's designee assuming the gaming regulatory responsibilities of the State Designated Agency as described in the Procedures.

Sec. 8.3. Access to Premises by State Designated Agency; Notification; Inspections.

(a) Notwithstanding that the Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of these Procedures, if the State agrees to regulate, the State Designated Agency, including but not limited to any consultants retained by it, shall have the right to inspect the Tribe's Gaming Facility, and all Gaming Operation or Facility records relating to Class III Gaming, including such records located in off-site facilities dedicated to their storage subject to the conditions in subdivisions (b), (c), and (d).

(b) Except as provided in section 7.4, the State Designated Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours.

(c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time the Gaming Facility is open to the public, immediately after the State Designated Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Designated Agency inspector at all times that the State Designated Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility.

(d) Nothing in these Procedures shall be construed to limit the State Designated Agency to one inspector during inspections.

Sec. 8.4. Inspection, Copying and Confidentiality of Documents.

(a) If the State agrees to regulate, inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after the State Designated Agency gives notice to the Tribal Gaming Agency, during the hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, and at any other time that a Tribal Gaming Agency employee, a Gaming Facility employee, or a Gaming Operation employee is available onsite with physical access to offices, including off-site facilities, where the papers, books, and records are kept. The Tribe shall cooperate with, and cannot refuse, the inspection and copying, provided that the State Designated Agency inspectors cannot require copies of papers, books, or records in such volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Facility.

(b) In lieu of onsite inspection and copying of Gaming Operation papers, books, and records by its inspectors, the State Designated Agency may request in writing that the Tribal Gaming Agency provide copies of such

papers, books, and records as the State Designated Agency deems necessary to ensure compliance with the terms of these Procedures. The State Designated Agency's written request shall describe those papers, books, and records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the State Designated Agency may agree in writing, the Tribal Gaming Agency shall provide one copy of the requested papers, books, and records to the requesting State Designated Agency. An electronic version of the requested papers, books, and records may be submitted to the State Designated Agency in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the State Designated Agency and the State Designated Agency does not object. Notwithstanding any other provision of California law, any confidential information and records, as defined in subdivision (d), that the State Designated Agency obtains or copies pursuant to these Procedures shall be, and remain, the property solely of the Tribe; provided that such confidential information and records and copies may be retained by the State Designated Agency as is reasonably necessary to assure the Tribe's compliance with these Procedures or to complete any investigation of suspected criminal activity; and provided further that the State Designated Agency may provide such confidential information and records and copies to federal law enforcement and other state agencies or consultants that the State Designated Agency deems reasonably necessary in order to assure the Tribe's compliance with these Procedures, in order to renegotiate any provision thereof, or in order to conduct or complete any investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.

(c) "Confidential information and records" means information and records treated as confidential or protected from disclosure under federal or California state law, including, but not limited to, trade secrets, non-public financial data, player tracking data, video recordings, internal controls, and internal reports related to security and prevention of theft. The Tribe shall designate as confidential each page of each record it believes to be confidential under federal or California state law, and in all such cases the State Designated Agency shall treat the record as confidential until such

time that the designation is removed. If the State Designated Agency objects to such designation with respect to any record or page(s) of a record, the matter will be resolved in accordance with the arbitration procedures under section 13.2. The State Designated Agency need not treat as confidential any page or record not so designated.

(d) The State Designated Agency and all other agencies and consultants to which it provides information and records obtained pursuant to subdivisions (a) or (b) of this section, which are deemed confidential pursuant to subdivision (d), will exercise care in the preservation of the confidentiality of such information and records and will apply the highest standards of confidentiality provided under federal or California state law, as applicable, to preserve such information and records from disclosure until such time as the confidential designation may be removed by the Tribe. Before the State Designated Agency provides confidential information and records to a consultant as authorized under subdivision (c), it shall enter a confidentiality agreement with that consultant that meets the standards of this subdivision.

(e) The Tribe may avail itself of any and all remedies under federal or State law, as applicable, for the improper disclosure of confidential information and records. In the case of any disclosure of confidential information and records compelled by judicial process, the State Designated Agency will endeavor to give the Tribe prompt notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(f) The Tribal Gaming Agency and the State Designated Agency shall confer regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.

(g) Confidential information and records received by the State Designated Agency from the Tribe in compliance with these Procedures, or information compiled by the State Designated Agency from those confidential records, shall be exempt from disclosure under the California Public Records Act.

(h) Notwithstanding any other provision of these Procedures, the State Designated Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with these Procedures or to conduct or complete an investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.

Sec. 8.5. NIGC Audit Reports.

The Tribe shall provide to the State Designated Agency, within twenty (20) days of their submission to the NIGC, copies of the audited financial statements of class III gaming and management letter(s), if any, provided to the NIGC. All submissions to the State Designated Agency made pursuant to this section 8.5 shall be subject to the confidentiality protections and assurances set forth in section 8.4 of these Procedures.

Sec. 8.6. Cooperation with Tribal Gaming Agency.

If the State agrees to regulate, the State Designated Agency shall meet periodically with the Tribal Gaming Agency and cooperate in all matters relating to the enforcement of the provisions of these Procedures and its Appendix.

Sec. 8.7. Procedures Compliance Review.

If the State agrees to regulate, the State Designated Agency is authorized to conduct an annual comprehensive Procedures compliance review of the Gaming Operation, Gaming Facilities, and Gaming Activities to ensure compliance with all provisions of these Procedures, any exhibits and appendices hereto, including, without limitation, minimum internal control standards set forth in Appendix A, and with all laws, ordinances, codes, rules, regulations, policies, internal controls, standards, and procedures that are required to be adopted, implemented, or complied with pursuant to these Procedures. The State Designated Agency may conduct additional periodic reviews of any part of the Gaming Operation, Gaming Facility, and Gaming Activities and other activities subject to these Procedures in order to ensure compliance with all provisions of these Procedures and its appendix. Nothing in this section shall be construed to supersede any other audits, inspections, investigations, and monitoring authorized by these Procedures.

SEC. 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.

Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of these Procedures, of IGRA, of NIGC gaming regulations, of State Designated Agency regulations, and of the Tribal Gaming Ordinance, to protect the integrity of the Gaming Activities and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

(a) The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the conduct of investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

(b) The physical safety of Gaming Facility patrons and employees, and any other person while in the Gaming Facility. Except as provided in section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe any State laws, regulations, or standards governing the use of tobacco.

(c) The physical safeguarding of assets transported to, within, and from the Gaming Facility.

(d) The prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided in subdivision (e).

(e) Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated

by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times.

(f) The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter "incidents"). The regulations shall provide that the Tribal Gaming Agency shall transmit copies of incident reports to the State Designated Agency forthwith. The procedure for recording incidents pursuant to the regulations shall also do all of the following:

(1) Specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing).

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

(3) Provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page or in electronic form, provided the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Designated Agency pursuant to sections 8.3 and 8.4.

(4) Require that each report include, at a minimum, all of the following:

(A) The record number.
(B) The date.
(C) The time.
(D) The location of the incident.
(E) A detailed description of the incident.
(F) The persons involved in the incident.
(G) The security department employee assigned to the incident.

(g) The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry

practice.

(h) Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gaming within the State. The Tribal Gaming Agency shall transmit a copy of the list to the State Designated Agency quarterly and shall make a copy of the current list available to the State Designated Agency upon request. Notwithstanding anything in these Procedures to the contrary, the State Designated Agency is authorized to make the copies of the list available to other tribal gaming agencies, to licensees of the California Gambling Control Commission, the California Horse Racing Board, and other law enforcement agencies.

(i) The conduct of an audit, at the Tribe's expense, of the annual financial statements of the Tribe's Gaming Activities.

(j) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each class III game to be operated by the Tribe, and of any changes in those rules and regulations. No class III game may be played that has not received Tribal Gaming Agency approval.

(k) The obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.

(l) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to ensure that betting limits applicable to any gaming station is displayed at that gaming station.

(m) Maintenance of a cashier's cage in accordance with industry standards for such facilities.

(n) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

(o) Technical standards and specifications in conformity with the requirements of these Procedures for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe.

Sec. 9.1.1. Minimum Internal Control Standards (MICS).

(a) The Tribe shall conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the NIGC (25 C.F.R. Part 542), as they existed on October 19, 2006, and as they may be amended from time to time, without regard to the NIGC's authority to promulgate, enforce, or audit the standards. This requirement is met through compliance with the provisions set forth in this section and in section 9.1.

(b) Before commencement of Class III Gaming Operations, the Tribal Gaming Agency shall, in accordance with the Tribal Gaming Ordinance, establish written internal control standards for the Gaming Facility that shall: (i) provide a level of control that equals or exceeds the minimum internal control standards set forth in Appendix A to these Procedures, as it exists currently and as it may be revised; (ii) contain standards for currency transaction reporting that comply with 31 C.F.R. Part 103, as it exists currently and as it may be amended; (iii) satisfy the requirements of section 9.1; (iv) be consistent with these Procedures; and (v) require the Gaming Operation to comply with the internal control standards.

(c) The Gaming Operation shall operate the Gaming Facility pursuant to a written internal control system. The internal control system shall comply with and implement the internal control standards established by the Tribal Gaming Agency pursuant to subdivision (b) of this section 9.1.1. The internal control system, and any proposed changes to the system, must be approved by the Tribal Gaming Agency prior to implementation. The internal control system shall be designed to reasonably assure that: (i)

assets are safeguarded and accountability over assets is maintained; (ii) liabilities are properly recorded and contingent liabilities are properly disclosed; (iii) financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable; (iv) transactions are performed in accordance with the Tribal Gaming Agency's general or specific authorization; (v) access to assets is permitted only in accordance with the Tribal Gaming Agency's specific authorization; (vi) recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and (vii) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.

(d) The Tribal Gaming Agency shall provide a copy of its written internal control standards and any changes to those control standards to the State Designated Agency within thirty (30) days of approval by the Tribal Gaming Agency. The State Designated Agency will review and submit to the Tribal Gaming Agency written comments or objections, if any, to the internal control standards and any changes to the standards, within thirty (30) days of receiving them, or by another date agreed upon by the Tribal Gaming Agency and the State Designated Agency. The State Designated Agency's review shall be for the purpose of determining whether the internal control standards and any changes to the standards provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix A, as it exists currently and as it may be revised, and are consistent with these Procedures.

(e) The minimum internal control standards set forth in Appendix A to these Procedures shall apply to all Tribal Gaming Activities, Gaming Facilities and Gaming Operations; however, Appendix A is not applicable to any activities not expressly permitted in these Procedures. Should the terms in Appendix A be inconsistent with these Procedures, the terms in these Procedures shall prevail. The Tribal Gaming Agency and the State Designated Agency shall, every three (3) years after the Tribe commences Class III Gaming Operations, and not later than thirty (30) days after the three (3)-year period, promptly commence consultations to propose to the Secretary amendments to Appendix A to these Procedures to continue

efficient regulation, foster statewide uniformity of regulation of class III gaming operations, and address future circumstances, including, without limitation, technological advancements and changes in industry standards. The Tribal Gaming Agency or the State Designated Agency may, at any time, request consultations to modify Appendix A to these Procedures for the purposes described in this section. 9.1.1. Such revisions to Appendix A shall not be considered to be an amendment to these Procedures. Any disputes regarding the contents of future amendments to Appendix A shall be resolved in the manner set forth in section 13.0 of these Procedures.

(f) The Tribe shall cause, at its own expense and not less than annually at the Tribe's fiscal year end, an independent certified public accountant to be engaged to perform "Agreed-Upon Procedures" to verify that the Gaming Operation is in compliance with the internal control standards at each Gaming Facility operated by the Tribe. The independent certified public accountant shall perform the Agreed-Upon Procedures in accordance with Part 542.3, subdivision (f), in Appendix A, as it may be revised. The independent certified public accountant shall issue a report of its findings to the Tribal Gaming Agency within one hundred twenty (120) days after the Gaming Operation's fiscal year end. Promptly upon receipt of the Agreed-Upon Procedures report, and in no event later than fifteen (15) days after receipt of the report, the Tribal Gaming Agency shall provide a complete copy of the Agreed-Upon Procedures report to the State Designated Agency, along with a copy of any supporting reports or documents the independent certified public accountant has prepared, and any replies the Tribe has prepared in response to the independent certified public accountant's report.

Sec. 9.2. Program to Mitigate Problem Gambling.

The Tribal Gaming Agency shall establish a program to mitigate pathological and problem gambling by implementing the following measures:

(a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.

(b) It shall make available to patrons at conspicuous locations and ATMs

in the Gaming Facility educational and informational materials which aim at the prevention of problem gambling and that specify where to find assistance.

(c) It shall establish self-exclusion programs whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the Gaming Facility.

(d) It shall establish an involuntary exclusion program that allows the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and cash checking services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.

(e) It shall display at conspicuous locations and at ATMs within the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.

(f) It shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place. It shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that it make no false or misleading claims.

(g) It shall adopt a code of conduct, derived, inter alia, from that of the American Gaming Association, that addresses responsible gambling and responsible advertising.

Nothing herein is intended to grant any third party the right to sue based on a perceived violation of these standards.

Sec. 9.3. Enforcement of Regulations.

The Tribal Gaming Agency shall ensure the enforcement of the rules,

regulations, and specifications promulgated under these Procedures, including under section 9.1.

Sec. 9.4. State Civil and Criminal Jurisdiction.

Nothing in these Procedures impairs the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all State and local law enforcement agencies and State courts shall exercise jurisdiction to enforce the State's criminal laws on the Tribe's Indian lands, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by State and local law enforcement agencies and State courts elsewhere in the State, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The Tribe hereby consents to such criminal jurisdiction. No Gaming Activity conducted by the Tribe pursuant to these Procedures may be deemed to be a criminal violation of any law of the State. Except for such Gaming Activity conducted pursuant to these Procedures, criminal jurisdiction to enforce State gambling laws on the Tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166 (d).

Sec. 9.5. Tribal Gaming Agency Members.

(a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under these Procedures; shall adopt a conflict-of-interest code to that end and shall ensure its enforcement; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner or to have a conflict of interest.

(b) The Tribe shall conduct a background investigation on each prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Agency matters under these

Procedures unless a background investigation has been concluded and the member has been found to be suitable. If requested by the Tribe or the Tribal Gaming Agency, the State Designated Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the Tribal Gaming Agency.

(c) In the event that the Tribe requests the assistance of the State Designed Agency pursuant to subdivision (b) of this section and the State Designated Agency determines that a member of the Tribal Gaming Agency is unsuitable or otherwise objects to the licensing of such person, the State Designated Agency shall serve upon the Tribe a written notice of its finding of unsuitability or objection and may request the removal of the member. Upon receipt of notice that the State Designated Agency has determined the member to be unsuitable or otherwise objects to the licensing of such individual, the Tribe shall either remove that member from the Tribal Gaming Agency or demand an expedited arbitration pursuant to section 13.2. If the Tribe demands an expedited arbitration of the State Designated Agency's determination of unsuitability, the arbitrator shall make a de novo determination as to whether the State Designated Agency's determination of unsuitability or objection to licensing is justified using the following bases for such determination.

(1) To be found suitable, the member must be all of the following:

(A) A person of good character, honesty, and integrity.

(B) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of the State, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(C) A person that is in all other respects qualified to be licensed

as provided in section 6.4.7 of these Procedures.

(2) A member is deemed unsuitable if any of the following apply:

(A) The person, any partner, or any officer, director, or shareholder of any corporation in which the person has a controlling interest, has any financial interest in any business or organization that is engaged in any form of gambling prohibited by section 330 of the California Penal Code, whether within or without the State of California, unless such gambling is lawful within the jurisdiction in which it is being conducted.

(B) The person fails to clearly establish eligibility and qualification in accordance with section 6.4.7 of these Procedures. The person fails to provide information, documentation, and assurances required by sections 6.4.7, 6.4.8, subdivision (c), or 6.5.6 of these Procedures or requested by the Tribal Gaming Agency, or fails to reveal any fact material to qualification, or supplies information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(C) The person has been convicted of a felony, including a conviction by a federal court or by a court in another state for a crime that would constitute a felony if committed in California.

(D) The person has been convicted of any misdemeanor involving dishonesty or moral turpitude within the ten (10) year period immediately preceding the beginning of his or her service on the Tribal Gaming Agency, unless the applicant has been granted relief pursuant to section 1203.4, 1203.4a, or 1203.45 of the California Penal Code; provided, however, that the granting of relief pursuant to section 1203.4, 1203.4a, or 1203.45 of the California Penal Code shall not constitute a limitation on the discretion of the arbitrator to determine the

person's compliance with the requirements of sections 6.4.7 and 9.5, subdivision (d)(1), of these Procedures.

(E) The person has been associated with criminal profiteering activity or organized crime, as defined by section 186.2 of the California Penal Code.

(F) The person has exhibited contumacious defiance of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling, official corruption related to gambling activities, or criminal profiteering activity or organized crime, as defined by section 186.2 of the California Penal Code.

(G) The person is less than twenty-one (21) years of age.

(d) In all cases, in coming to a decision, the arbitrator must give due consideration for the proper protection of the health, safety and welfare of the residents of the State, and must take into account whether membership on the Tribal Gaming Agency would undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.

Sec. 9.6. State Gaming Agency Regulations.

(a) If the State Gaming Agency assumes gaming regulatory responsibilities pursuant to Section 8.2, the State Gaming Agency may, pursuant to the procedures set forth in section 9.7, adopt regulations governing matters encompassed in sections 6.0, 7.0, and 9.1 under the following circumstances:

(1) The State Gaming Agency may adopt regulations that apply to any aspect of the Gaming Operation that is not addressed by a regulation of the Tribal Gaming Agency, as long as the regulations are not inconsistent with the terms of these Procedures.

(2) The State Gaming Agency may adopt regulations that apply to any subjects covered by sections 6.0, 7.0, and 9.1 when it deems that the regulations adopted by the Tribal Gaming Agency in connection with the subject are ineffective in addressing it, as long as they are not inconsistent with the terms of these Procedures.

(3) In circumstances that present an imminent threat to public health or safety, the State Gaming Agency may adopt a regulation that becomes effective immediately, regardless of whether the Tribe or Tribal Gaming Agency has enacted a regulation on the subject and regardless of whether the tribal regulation is deemed ineffective. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Tribal Gaming Agency. A regulation adopted by the State Gaming Agency pursuant to this subdivision shall be subject to the provisions governing arbitration under subdivision (d) of section 9.7.

(b) Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency under this section.

Sec. 9.7. Limitations on Adoption of State Gaming Agency Regulations.

(a) Except as provided in section 9.6, subdivision (a)(3), no regulation of the State Gaming Agency adopted under section 9.6, subdivisions (a)(1) and (2), shall be effective with respect to the Tribe's Gaming Operation until all of the following procedures have been exhausted:

(1) When the State Gaming Agency suspects, with respect to an aspect of the Gaming Operation, that no such regulation exists, or that an existing regulation is ineffective in addressing a subject, it may so notify the Tribal Gaming Agency, set forth the reasons for its position, and request a meeting for the purpose of considering the adoption of a regulation by the Tribal Gaming Agency or the State Gaming Agency. The notification shall propose a date for the

meeting, which shall not be less than ten (10) days following the date the notification is made.

(2) Representatives of the Tribal Gaming Agency shall meet with the representatives of the State Gaming Agency (for purposes of this section, the "parties") on the date proposed in the notification, or such other date as may be mutually agreed. In the absence of agreement upon a different date, the date proposed in the notification shall control. The parties at the meeting shall confer in good faith over the necessity for the adoption of a regulation and ways in which effective regulation may be achieved. Any proposal of a regulation by the Tribal Gaming Agency, either at or prior to the meeting shall be without prejudice to its right to dispute either the necessity of a regulation or the effectiveness of a regulation in existence.

(3) Within thirty (30) days following the meeting, the Tribal Gaming Agency may propose a regulation for the purpose of addressing the subject as to which the State Gaming Agency provided notification. The Tribal Gaming Agency may adopt the regulation only after inviting comment or objection by the State Gaming Agency, and the Tribal Gaming Agency must provide at least thirty (30) days for the State Gaming Agency to comment or object by providing a copy of the proposed regulation to the State Gaming Agency at least thirty (30) days prior to the date of its intended adoption. Prior to adoption of any regulation under this paragraph, the Tribal Gaming Agency shall respond in writing to each comment and objection of the State Gaming Agency.

(4) If the Tribal Gaming Agency adopts a regulation as provided in subdivision (a)(3), the State Gaming Agency may, if dissatisfied with the regulation, make a demand for binding arbitration upon the Tribal Gaming Agency, in which case arbitration shall proceed as provided in subdivision (d).

(b) If the Tribal Gaming Agency does not propose a regulation within thirty (30) days following the meeting specified in subdivision (a)(2) and adopt a regulation as provided in subdivision (a)(3) within seventy (70) days of

the meeting specified in subdivision (a)(2), the State Gaming Agency may adopt a regulation for the purpose of addressing the subject as to which it provided the Tribal Gaming Agency notification pursuant to subdivision (a)(1). Except as provided in section 9.6, subdivision (a)(3), the State Gaming Agency shall adopt no regulation under this subdivision without first providing the proposed regulation to, and inviting comment or objection by, the Tribal Gaming Agency at least thirty (30) days prior to the date of the intended adoption of the regulation. The Tribal Gaming Agency shall provide its comments or objections, if any, to the State Gaming Agency at least ten (10) days prior to the date of the intended adoption of the regulation. Prior to adoption of any regulation under this subdivision, the State Gaming Agency shall respond in writing to each comment and objection of the Tribal Gaming Agency.

(c) If the State Gaming Agency adopts a regulation as provided in subdivision (b), the Tribal Gaming Agency may, if dissatisfied with the regulation, make a demand upon the State Gaming Agency for binding arbitration, in which case the arbitration shall proceed as provided in subdivision (d).

(d) Neither a demand for arbitration nor the pendency of arbitration shall impair the effect of a regulation adopted by the Tribal Gaming Agency under subdivision (a)(3) or by the State Gaming Agency under subdivision (b) of this section or subdivision (a)(3) of section 9.6. Arbitration, when demanded, shall proceed before a single arbitrator, who shall be a retired judge, pursuant to the Comprehensive Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent). Each party shall exchange with the other within fifteen (15) days of the demand for arbitration a single proposal in the form of a regulation that the party proposes to adopt. If either party has adopted a regulation pursuant to subdivisions (a) or (b) of this section or subdivision (a)(3) of section 9.6, that regulation shall constitute the proposal of that party. The arbitrator shall be limited to determining whether these Procedures authorize a regulation to be adopted with respect to the aspect of the Gaming Operation at issue, and if so, which of the proposals before the arbitrator most effectively addresses the subject in light of the purposes and objectives of sections 6.0, 7.0, and 9.1 of these Procedures. Unless the arbitrator determines that no regulation is required by these Procedures, the arbitrator

shall issue an order, effective upon issuance, which shall identify which of the two (2) proposals is to be given effect as a regulation. If requested by a party at the hearing, a reasoned statement of the arbitrator's decision shall be included in the order. Review of the arbitrator's order is waived. In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive, and does hereby waive, its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, or (ii) enforce or confirm any arbitral order rendered in the arbitration.

(e) The proposal identified by the arbitrator's order as the proposal to be given effect shall be effective as follows: If the proposal so identified is in effect on the date the arbitrator's order is issued, it need not be readopted and shall be effective from the date of adoption. If the proposal so identified is not in effect on the date the arbitrator's order is issued, it shall be adopted as a regulation by the party that proposed it not earlier than thirty (30) days after the date of the arbitrator's order. Any proposal adopted as a regulation pursuant to sections 9.6 and 9.7 prior to the arbitrator's order, which is not adopted by the arbitrator pursuant to subdivision (d), shall cease to be effective upon adoption of the proposal identified by the arbitrator's order.

(f) Nothing in this section 9.7 shall be deemed to preclude either the State or the Tribe from seeking, under section 13.1, a resolution of the question whether a regulation adopted under section 9.0 conflicts with a final published regulation of the NIGC.

Sec. 9.8. Existing State Gaming Agency Regulations

Notwithstanding section 9.6 and section 9.7, Uniform Tribal Gaming Regulations CGCC-1, CGCC-2, and CGCC-7, (as in effect on January 1, 2011), adopted by the State Gaming Agency and approved by the Association of Tribal and State Gaming Regulators, shall apply to the Gaming Operation until amended or repealed, without further action by the Secretary, the State Gaming Agency, the Tribe, the Tribal Gaming Agency or the Association of Tribal and State Gaming Regulators.

SECTION 10.0. PATRON DISPUTES.

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

(a) 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 the play or operation shall be notified in writing of his or her right to request, within fifteen (15) days of the written notification, resolution of the dispute 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 subdivision (c). If the patron is not provided with the aforesaid notification within thirty (30) days of the patron's complaint, the deadlines herein shall be removed, leaving only the relevant statutes of limitations under California law that would otherwise apply.

(b) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an appropriate investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice extant in Nevada and New Jersey. 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.

(c) 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 the dispute 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 and 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 the 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 (i) enforce the Tribe's or the patron's (for purposes of this section, the "parties") obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon the 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 that 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 the costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome.

SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL AND ECONOMIC IMPACTS.

Sec. 11.8.1.[1] Tribal Environmental Impact Report.

(a) Before the commencement of any Project as defined in section 2 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 11.0; 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

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[1] Sections 11.1 through 11.7 have been deliberately omitted.

public need not be repeated in its entirety in the 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:

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

(2) 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;

(3) 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;

(4) 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 these Procedures on its Indian lands;

(5) Whether any proposed mitigation would be feasible;

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

(7) 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 these Procedures 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 County concerning the person or entity to prepare the TEIR.

Sec. 11.8.2. 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, as defined in section 2, 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:

(1) A description of the Project;

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

(3) 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.

Sec. 11.8.3. 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 State Designated Agency, the County, the local city (if any) within which the Project is located, and the California Department of Justice, Office of the Attorney General. The Notice of Completion shall include all of the following information:

(1) A brief description of the Project;

(2) The proposed location of the Project;

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

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

(b) The Tribe will submit ten (10) copies each of the draft TEIR and Notice of Completion to the County, which will be asked to post public notice of the draft TEIR at the office of the County Board of Supervisors and to furnish the public notice to the public libraries serving the County. The County shall also be asked to serve in a timely manner the Notice of Completion to all Interested Persons, which Interested Persons shall be identified by the Tribe for the County, to the extent it can identify them. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

(1) 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

(2) 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.

Sec. 11.8.4. Issuance of Final TEIR.

The Tribe shall prepare, certify and make available to the County, the local city (if any) within which the Project is located, the State Clearinghouse, the State Designated Agency, and the California Department of Justice, Office of the Attorney General, at least fifty-five (55) days before the completion of good faith efforts pursuant to section 11.8.7 a Final TEIR, which shall consist of:

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

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

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

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

(e) Any other information added by the Tribe.

Sec. 11.8.5. Costs.

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 11.0.

Sec. 11.8.6. Failure to Prepare TEIR.

The Tribe's failure to prepare a TEIR when required shall be deemed a material breach of these Procedures and furthermore shall be grounds for issuance of an injunction or other appropriate equitable relief or a notice of violation of these Procedures that prevents commencement of construction or Gaming Activity.

Sec. 11.8.7. Intergovernmental Agreement.

(a) Before the commencement of a Project, and no later than the issuance of the Final TEIR, the Tribe shall offer to commence negotiations with one or more Public Agencies, or entities with an existing or previous written service agreement with a Public Agency for no less than five (5) years that is in good standing with the Public Agency, and upon such Public Agency or entity's acceptance of the Tribe's offer, shall negotiate with the Public Agency(ies) or entity(ies) and make good faith efforts toward entering into enforceable written agreements with the Public Agency(ies) or entity(ies) (the "Intergovernmental Agreements"), with respect to the matters set forth below:

(1) 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.

(2) The provision of law enforcement, fire protection, emergency medical services and any other public safety services to be provided by the Public Agency to the Tribe for the purposes of the Tribe's Gaming Operation, including the Gaming Facility, as a consequence of the Project.

(3) The provision of programs designed to address gambling addiction.

(4) Mitigation of any effect on public safety attributable to the Project, including any compensation to the Public Agency as a consequence thereof.

(b) The Tribe shall not commence a Project until it has made good faith efforts to enter into the Intergovernmental Agreements specified in subdivision (a).

(c) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the State Designated Agency, the Tribe shall negotiate with the State Department of Transportation or the State Designated Agency (if one is designated) and shall make good faith efforts to enter into an enforceable written agreement with the State Department of Transportation or the State Designated Agency to provide for timely mitigation of all direct traffic impacts of the Project on the State highway system and facilities and to pay the Tribe's fair share of cumulative traffic impacts of the Project on the State highway system and facilities where such impacts are Significant Effects on the Off-Reservation Environment attributable, in whole or in part, to the Project. The objective is to reach, if

possible, an agreement that shall provide that any mitigation for direct impacts shall be completed prior to commencement of operations of any Gaming Facility or Gaming Facility expansion. An Encroachment Permit issued by the State Department of Transportation shall be required for any work performed within the State highway right-of-way, for any required access to the State highway system, or for any change-in-use to an existing access or Encroachment Permit.

(d) Nothing in this section 11.8.7 requires the Tribe to enter into any Intergovernmental Agreements with a Public Agency or entity as set forth in subdivision (a) or otherwise.

SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 12.1. General Requirements.

The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare, provided, however, that nothing herein shall be construed to make applicable to the Tribe any State laws or regulations governing the use of tobacco.

Sec. 12.2. Tobacco Smoke.

Notwithstanding section 12.1, the Tribe agrees to provide a non-smoking area in the Gaming Facility and to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology, and further agrees not to offer or sell tobacco to anyone under eighteen (18) years of age.

Sec. 12.3. Health and Safety Standards.

For the purposes of these Procedures, the Tribe shall:

(a) Adopt and comply with a tribal ordinance which adopts federal public

health standards for food and beverage handling. The Tribe will allow, during normal hours of operation, inspection of food and beverage services in the Gaming Facility by federal health inspectors in order to assess compliance with these standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of State, County, or city health inspectors.

(b) Adopt and comply with a tribal ordinance which adopts federal water quality and safe drinking water standards applicable in California

(c) Comply with the building and safety standards set forth in section 6.4.2. Adopt and comply with a tribal ordinance which adopts federal workplace and occupational health and safety standards. The Tribe will allow inspection of Gaming Facility workplaces by federal inspectors during normal hours of operation, to assess compliance with these standards,

(d) Adopt and comply with tribal codes to the extent consistent with the provisions of these Procedures and other applicable federal law regarding public health and safety.

(e) Adopt and comply with a tribal ordinance which adopts standards no less stringent than federal laws forbidding harassment, including sexual harassment, in the workplace, forbidding employers from discrimination in connection with the employment of persons to work or working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings (hereinafter "harassment, retaliation, or employment discrimination"); provided that nothing herein shall preclude the Tribe from giving a preference in employment to members of federally-recognized Indian tribes pursuant to a duly adopted tribal ordinance.

(1) The Tribe shall obtain and maintain an employment practices 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 which provides coverage of at least three million dollars ($3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe, in the exercise of its sovereignty by adopting the tribal ordinance referenced in subdivision (f)(2) below, shall expressly waive, and also waive its right to assert, sovereign immunity and any and all defenses based thereon up to the greater of three million dollars ($3,000,000) or the limits of the employment practices insurance policy, in accordance with the tribal ordinance referenced in subdivision (f)(2) below, in connection with any claim for harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; 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 employment practices liability insurance policy shall acknowledge in writing that the Tribe has expressly waived, and also waived its right to assert, sovereign immunity and any and all defenses based thereon for the purpose of arbitration of those claims for harassment, retaliation, or employment discrimination up to the limits of such policy 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 the limits of such policy; however, such ordinance, endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds such policy limits or three million dollars ($3,000,000), whichever is greater. Nothing in this provision shall be interpreted to supersede any requirement in the Tribe's employment discrimination complaint ordinance that a claimant must exhaust administrative remedies as a prerequisite to arbitration.

(2) The standards shall be subject to enforcement pursuant to an employment discrimination complaint ordinance which shall be adopted by the Tribe prior to the first solicitation for employment of the first Gaming Employee and which shall continuously provide at least the following:

(A) That California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; provided that California law governing punitive damages need not be a part of the ordinance. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission.

(B) That a claimant shall have one year from the date that an alleged discriminatory act occurred to file a written notice with the Tribe that he or she has suffered prohibited harassment, retaliation, or employment discrimination.

(C) That, in the exercise of its sovereignty by adopting the tribal ordinance referenced in subdivision (f)(2) below, the Tribe expressly waives, and also waives its right to assert, sovereign immunity with respect to the binding arbitration of claims for harassment, retaliation, or employment discrimination, but only up to the greater of three million dollars ($3,000,000) or the limits of the employment practices insurance policy referenced in subdivision (f)(1) above; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds three million dollars ($3,000,000) or the insurance policy limits, whichever is greater.

(D) In the Tribal ordinance referenced in Section (f)(2) below, the Tribe shall 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), 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. The arbitration shall take place within seventy-five (75) miles of the Tribe's Indian lands, or as otherwise mutually agreed by the parties. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty by adopting the tribal ordinance referenced in subdivision (f)(2) below, waive, and also waive its right to assert, sovereign immunity in connection with the arbitrator's jurisdiction and in any state or federal court action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. In the Tribal ordinance referenced in Section (f)(2) below, he Tribe shall agree not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Northern District of California in any such action brought with respect to the arbitration award.

(3) The employment discrimination complaint ordinance required under subdivision (f)(2) may require, as a prerequisite to binding arbitration under subdivision (f)(2)(D), that the claimant exhaust the Tribe's administrative remedies, if any exist, in the form of a tribal discrimination complaint resolution process, for resolving the claim in accordance with the following standards:

(A) Upon notice that the claimant alleges that he or she has suffered prohibited harassment, retaliation, or employment discrimination, the Tribe or its designee shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required to proceed with the Tribe's employment discrimination complaint resolution process in the event that the claimant wishes to pursue his or her claim.

(B) The claimant must bring his or her claim within one hundred eighty (180) days of receipt of the written notice ("limitation period") of the Tribe's employment discrimination complaint resolution process as long as the notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice.

(C) The arbitration may be stayed until the completion of the Tribe's employment discrimination complaint resolution process or one hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.

(D) The decision of the Tribe's employment discrimination complaint resolution process shall be in writing, shall be based on the facts surrounding the dispute, shall be a reasoned decision, and shall be rendered within one

hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree upon a longer period.

(4) Within fourteen (14) days following notification that a claimant claims that he or she has suffered harassment, retaliation, or employment discrimination, 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 Tribe's employment discrimination complaint resolution process, if any exists, and if dissatisfied with the resolution, is entitled to arbitrate his or her claim before a retired judge in a binding arbitration proceeding.

(5) In the event the Tribe fails to adopt the ordinance specified in subdivision (f)(2), the Tribe may not solicit for employment any Gaming Employee.

(6) The Tribe shall provide written notice of the employment discrimination complaint ordinance and the procedures for bringing a complaint in its employee handbook. The Tribe also shall post and keep posted in prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of the employment discrimination complaint ordinance and information pertinent to the filing of a complaint.

(f) Adopt and comply with a tribal ordinance which adopts State laws prohibiting a gambling enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(g) Adopt and comply with a tribal ordinance which adopts State laws, if any, prohibiting a gambling or other enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging, for no charge or at reduced prices at a gambling establishment, lodging facility, or other enterprise as an incentive or enticement.

(h) Adopt and comply with a tribal ordinance which adopts State laws, if any, prohibiting extensions of credit insofar as such provisions are applicable to gambling establishments.

(i) Adopt and comply with a tribal ordinance which adopts the provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gambling establishments.

(j) Adopt and comply with a tribal ordinance with standards no less stringent than the standards of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and the United States Department of Labor regulations implementing the Fair Labor Standards Act (29 C.F.R. § 500, et seq.).

Sec. 12.4. Tribal Gaming Facility Standards Ordinance.

The Tribe shall adopt in the form of an ordinance the standards described in subdivisions (a) through (j) of section 12.3 to which the Gaming Operation is held, and shall transmit the ordinance to the State Designated Agency not later than thirty days after the effective date of these Procedures. In the absence of a promulgated tribal ordinance adopting a standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal and/or State statute or regulation, as the case may be, in respect of any such matter, the Tribe shall not commence Gaming Operations.

Sec. 12.5. Insurance Coverage and Claims.

(a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher which provides coverage of no less than ten million dollars ($10,000,000) per occurrence for bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities ("Policy"). In order to effectuate the

insurance coverage, the Tribe may adopt an ordinance which waives, and also waives its right to assert, sovereign immunity up to the greater of ten million dollars ($10,000,000) or the limits of the Policy, in accordance with the tribal ordinance referenced in subdivision (b) below, in connection with any claim for bodily injury, personal injury, or property damage, 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, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive, and also waive its right to assert, sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has waived, and also waived its right to assert, sovereign immunity for the purpose of arbitration of those claims up to the greater of ten million dollars ($10,000,000) or 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 the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds ten million dollars ($10,000,000) or the Policy limits, whichever is greater.

(b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that provides for all of the following:

(1) The ordinance shall provide that California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, personal injury, or property damage 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.

(2) The ordinance shall expressly waive the Tribe's sovereign immunity

and its right to assert sovereign immunity with respect to the arbitration of such claims but only up to the greater of ten million dollars ($10,000,000) or the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds ten million dollars ($10,000,000) or the Policy limits, whichever is greater.

(3) The 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 by adopting a trial ordinance, waive, and also waive its right to assert, sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon the award. 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 with the following standards: The claimant must bring his or her claim within one hundred eighty (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 one hundred eighty (180) day

limitation period is prominently displayed on the front page of the notice. The ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Process or one hundred eighty (180) days from the date the claim is filed in the Tribal Dispute Process, whichever first occurs, unless the parties mutually agree to a longer period.

(c) 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 Process, if any, and if dissatisfied with the resolution, entitled to arbitrate his or her claim de novo before a retired judge.

(d) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), the Tribe shall not conduct Gaming Operations.

(e) Employees or authorized agents of the Tribe may not invoke, and the Tribe shall not invoke on behalf of any employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or authorized agent, without regard to the Tribe's liability insurance limits. Nothing in this subdivision prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.

Sec. 12.6. Participation in State Statutory Programs Related to Employment.

(a) The Tribe will participate in the State's workers' compensation program with respect to employees employed at the Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this State or through self-insurance as permitted under the State's workers' compensation laws. All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe shall

adopt an ordinance consenting to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement. The ordinance shall state that independent contractors doing business with the Tribe are bound by all State workers' compensation laws and obligations.

(b) The Tribe will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, which participation shall include compliance with the provisions of the California Unemployment Insurance Code, and the Tribe shall adopt an ordinance which consents to the jurisdiction of the State agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

(c) With respect to persons, including nonresidents of California, employed at the Gaming Facility or paid items of income by the Tribe or Gaming Operation for work or services conducted at the Gaming Facility, the Tribe shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and, except for Tribal members living on any lands held in trust by the United States for the benefit of the Tribe, the Revenue and Taxation Code, and the regulations thereunder, and shall forward such amounts as provided in such Codes to the State. The Tribe shall file with the Franchise Tax Board a copy of any information return filed with the Secretary of the Treasury, as provided in the Revenue and Taxation Code and the regulations thereunder, except those pertaining to Tribal members living any lands held in trust by the United States for the benefit of the Tribe.

(d) The Tribe shall, with respect to the earnings of any person employed at the Gaming Facility, comply with all earnings withholding orders for support of a child, or spouse or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to Chapter 5 (commencing with section 706.010) of Division 1 of Title 9 of Part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to

Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the California Family Code or section 3088 of the Probate Code.

Sec. 12.7. Emergency Services Accessibility.

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Sec. 12.8. Alcoholic Beverage Service.

Purchase, sale and service of alcoholic beverages shall be subject to state law.

Sec. 12.9. Possession of Firearms.

The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, State, or local law enforcement personnel, or tribal law enforcement or security personnel authorized by tribal law and federal or State law to possess firearms at the Gaming Facility.

Sec. 12.10. Labor Relations.

The Gaming Activities authorized by these Procedures may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Exhibit B, and the Gaming Activities may only continue as long as the Tribe maintains the ordinance. The Tribe shall provide written notice to the State Designated Agency that it has adopted the ordinance, along with a copy of the ordinance, before commencing the Gaming Activities authorized by these Procedures.

SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 13.1. Voluntary Resolution.

The Tribe and the State Designated Agency shall make their best efforts to resolve disputes that arise under these Procedures by good faith consultations whenever possible. Therefore, the Tribe and the State Designated Agency (for the purposes of this section 13.0, a "party") shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance and compliance of the terms, provisions, and conditions of these Procedures, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.

(b) The other party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.

(c) The parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subdivision (a), unless both parties agree in writing to an extension of time.

(d) If the dispute is not resolved to the satisfaction of the parties after the first meeting, either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration. Disagreements that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court in the judicial district where the Tribe's Gaming Facility is located, or in any State court of competent jurisdiction in or over the County. The disputes to be submitted to court action include, but are not limited to, claims of breach of these Procedures. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(e) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State Designated Agency on the ground that the Tribe has failed to exhaust its administrative remedies, and in

no event may the State Designated Agency be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the State Designated Agency has failed to exhaust any tribal administrative remedies.

Sec. 13.2. Arbitration Rules.

Unless otherwise specified in these Procedures, arbitration shall be conducted before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and shall be held in the federal judicial district in which the Tribe's Gaming Facility is located at a location selected by the arbitrator. Each side shall initially bear one-half the costs and expenses of the American Arbitration Association and the arbitrator, but the arbitrator shall award the prevailing party its costs, including the costs of the American Arbitration Association and the arbitrator; however, the parties shall bear their own attorney fees. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, shall give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or State court having jurisdiction thereof.

Sec. 13.3. No Waiver or Preclusion of Other Means of Dispute Resolution.

This section 13.0 may not be construed to waive, limit, or restrict any non- judicial remedy that is otherwise available to either party, nor may this section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation.

SECTION 14.0. EFFECTIVE DATE AND TERM OF CLASS III GAMING SECRETARIAL PROCEDURES.

Sec. 14.1. Effective Date.

These Procedures shall be effective immediately when signed by the Assistant Secretary – Indian Affairs.

Sec. 14.2. Term of Class III Gaming Secretarial Procedures Extension;

Termination.

(a) Once effective, these Procedures shall be in full force and effect until December 31, 2031.

(b) No earlier than six years from the effective date of these Procedures, and no earlier than every six years thereafter, the Tribe may request that the Secretary extend the expiration date of these Procedures for up to an additional 15 years.

(c) The Tribe, acting under a duly adopted resolution or ordinance of its governing body, may at any time request that the Secretary withdraw these Procedures, whereupon the Tribe would no longer be authorized to operate Class III gaming under IGRA on its Indian lands unless or until the Tribe and the State enter into a Class III gaming compact approved by the Secretary and published in the Federal Register.

SECTION 15.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 15.1. Effect of Publication of New Tribal-State Compact

The terms and conditions of these Procedures may be superseded at any time by a Class III gaming compact entered into by the mutual and written agreement of the Tribe and the State and which becomes effective pursuant to IGRA. Any such Class III gaming compact shall provide that these Procedures be withdrawn and shall have no further force or effect upon the publication of approval of the Class III gaming compact in the Federal Register.

Sec. 15.2 Amendments

(a) In addition to the provisions above, these Procedures are subject to amendment in the event the Tribe wishes to engage in forms of Class III gaming authorized in the State, the State declines to opt-in to undertake regulatory activities under these Procedures, or any other reason, provided that no such amendment may be sought for 12 months following the effective date of these Procedures.

(b) Nothing herein shall be construed to constitute a waiver of the Tribe's rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in State law.

Sec. 15.3. Requests to Negotiate a New Compact.

All requests to negotiate a tribal-state Class III gaming compact shall be in writing, addressed to the Tribal Chair or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this section the parties are encouraged to confer promptly and determine a schedule for negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations for a new Class III gaming compact shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in Federal court.

SECTION 16.0. NOTICES.

Unless otherwise indicated by these Procedures, all notices required or authorized to be served shall be served by first-class mail or facsimile transmission to the following addresses, as applicable, or to such other address as either party may designate by written notice to the other:

Governor
Governor's Office
State Capitol
Sacramento, California 95814

Tribal Chairperson
Big Lagoon Rancheria
P.O. Box 3060
Trinidad, California 95570

For purposes of, but not limited to, amending, extending or otherwise modifying these Secretarial Procedures:

DIRECTOR, OFFICE OF INDIAN GAMING
1849 C Street, N.W, MS 3657-MIB
Washington, DC 20240

For all other purposes involving regulatory issues in the event the State declines to undertake or cede regulatory responsibilities under these Procedures:

NATIONAL INDIAN GAMING COMMISSION
c/o United States Department of the Interior
1849 C Street, N.W. – MS 1621
Washington, D.C. 20249

SECTION 17.0. CHANGES TO IGRA.

These Procedures are intended to meet the requirements of IGRA as it reads on the effective date of these Procedures, and when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into these Procedures as if set out in full. Subsequent changes to IGRA that diminish the rights of the Tribe may not be applied retroactively to alter the terms of these Procedures, except to the extent that federal law validly mandates retroactive application without the Tribe's consent.

SECTION 18.0. MISCELLANEOUS.

Sec. 18.1. Third Party Beneficiaries.

These Procedures are not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of these terms.

Sec. 18.2. Complete Agreement.

These Procedures, together with all exhibits, appendices, and approved amendments, sets forth the full and complete Procedures and supersedes any prior consultations, agreements or understandings with respect to the subject matter hereof.

Sec. 18.3. Construction.

Neither the presence in another tribal-state compact of language that is not included in these Procedures, nor the absence in another tribal-state compact of language that is present in these Procedures shall be a factor in construing the terms of these Procedures.

Sec. 18.4. Successor Provisions.

Wherever these Procedures make reference to a specific statutory provision, regulation, or set of rules, it also applies to the provision or rules, as they may be amended from time to time, and any successor provision or set of rules.

Sec. 18.5. Ordinances and Regulations.

Whenever the Tribe adopts or amends any ordinance or regulations required to be adopted and/or maintained under these Procedures, the Tribe shall provide a copy of such adopted or amended ordinance or regulations to the Director of the Office of Indian Gaming and the State Designated Agency within thirty (30) days of the effective date of such ordinance or regulations.

Sec. 18.6. Calculation of Time.

In computing any period of time prescribed by these Procedures, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

Sec. 18.7. Compliance with Mediator's Choice of Compact

These Procedures are promulgated in compliance with the requirements of IGRA's remedial provisions, 25 U.S.C. § 2710 (d) (7), and are consistent with the essential terms of the last best offer Class III gaming compact selected by mediator appointed by the court in *Big Lagoon Rancheria v. State of California,* Case No. 09-1471-CW. Under IGRA, these Procedures are properly viewed as a full substitute for a Class III gaming compact that would be in effect had a voluntary agreement been reached between the Tribe and the State, or if the State had consented to the

court-appointed mediator's selection. Therefore, these Procedures qualify for the exemption to the criminal prohibitions on gaming provided by Section 23 of IGRA.

Sec. 18.8. Most Favored Tribe

If, at least 12 months after the effective date of these Procedures, the State enters into a class III gaming compact with any other tribe that contains more favorable provisions with respect to any provisions of these Procedures, at the Tribe's request, the Secretary, or his designee, shall meet and confer with the Tribe regarding modifying these Procedures, provided that the duration of any modification shall not exceed the duration of these Procedures. The Secretary's agreement to modify these Procedures as provided in this section shall not be unreasonably withheld or delayed.

Sec. 18.9. Severability

Each provision of these Procedures shall stand separate and independent of every other provision. If a United States Court of competent jurisdiction finds any provision, section, or subsection of these Procedures to be invalid, the remaining provisions, sections, and subsections of these Procedures shall remain in full force and effect to the fullest extent possible.

The undersigned executes these Class III Gaming Secretarial Procedures on behalf of the United States Department of the Interior, Office of the Assistant Secretary – Indian Affairs.

Done this 24 day of Aug 2018.

Tara Sweeney
Assistant Secretary – Indian Affairs

EXHIBITS

Off-Reservation Environmental Impact Analysis Checklist

Tribal Labor Relations Ordinance

APPENDICES

A. Minimum Internal Control Standards