



VIA FACSIMILE & REGULAR MAIL

JUN - 1 2007

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RE: Pokagon Band of Potawatomi Indians Amended Gaming Ordinance

Dear Chairman Miller and Mr. Phelan:

This letter responds to your request on behalf of the Pokagon Band of Potawatomi Indians for the Chairman of the National Indian Gaming Commission (NIGC) to review and approve the Band's comprehensive rewrite of its Gaming Regulatory Act of 2003. This rewritten ordinance was adopted by the Band via Resolution No. 07-02-07-01 and 07-05-12-04.

The ordinance is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and this agency's regulations, and it is therefore approved. It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Tribe has jurisdiction

Thank you for submitting the ordinance for review and approval. The NIGC staff and I look forward to working with you and the Pokagon Band of Potawatomi Indians on future gaming issues. If you have any questions, please contact Staff Attorney Jennifer Ward at (202) 418-9814.

Sincerely,

A handwritten signature in black ink, appearing to read "PHILIP N. HOGEN", is written over the word "Sincerely,".

Philip N. Hogen
Chairman

POKAGON BAND OF POTAWATOMI INDIANS

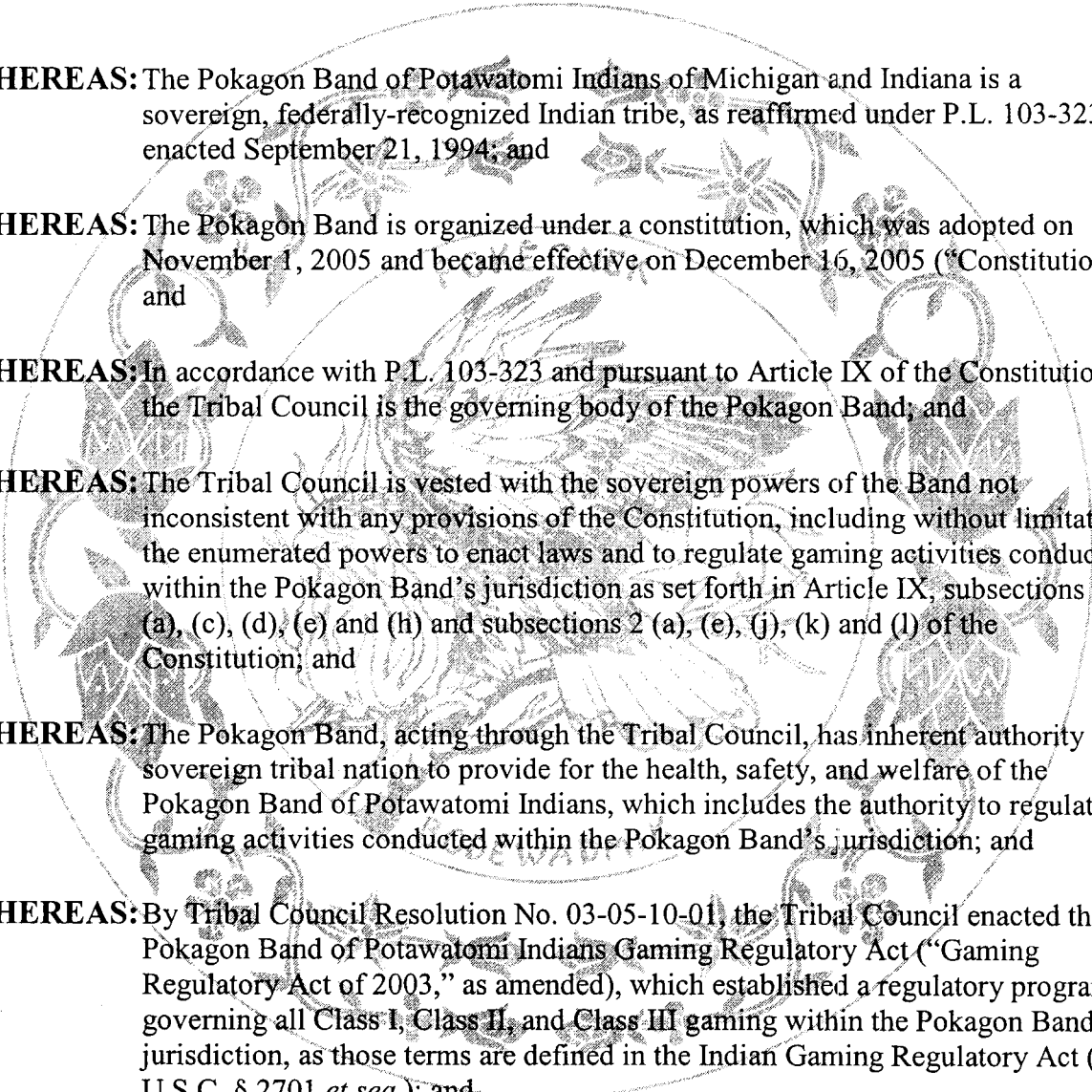
TRIBAL COUNCIL

P.O. Box 180, 58620 Sink Road, Dowagiac, MI 49047

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TRIBAL COUNCIL

RESOLUTION No. 07-05-12-04

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- WHEREAS:** The Pokagon Band of Potawatomi Indians of Michigan and Indiana is a sovereign, federally-recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994; and
- WHEREAS:** The Pokagon Band is organized under a constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005 ("Constitution"); and
- WHEREAS:** In accordance with P.L. 103-323 and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Pokagon Band; and
- WHEREAS:** The Tribal Council is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution, including without limitation the enumerated powers to enact laws and to regulate gaming activities conducted within the Pokagon Band's jurisdiction as set forth in Article IX, subsections 1 (a), (c), (d), (e) and (h) and subsections 2 (a), (e), (j), (k) and (l) of the Constitution; and
- WHEREAS:** The Pokagon Band, acting through the Tribal Council, has inherent authority as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band of Potawatomi Indians, which includes the authority to regulate all gaming activities conducted within the Pokagon Band's jurisdiction; and
- WHEREAS:** By Tribal Council Resolution No. 03-05-10-01, the Tribal Council enacted the Pokagon Band of Potawatomi Indians Gaming Regulatory Act ("Gaming Regulatory Act of 2003," as amended), which established a regulatory program governing all Class I, Class II, and Class III gaming within the Pokagon Band's jurisdiction, as those terms are defined in the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*); and
- WHEREAS:** By Tribal Council Resolution No. 03-10-11-12, the Tribal Council amended Section II and Section IX of the Gaming Regulatory Act of 2003; and
- WHEREAS:** By letter dated December 5, 2003, the National Indian Gaming Commission ("NIGC") notified the Pokagon Band that the NIGC had approved the Gaming Regulatory Act of 2003; and

WHEREAS: The Tribal Council determined that substantial further development of several aspects of the Pokagon Band's gaming regulatory program were needed and, therefore, by Tribal Council Resolution No. 07-02-07-01 enacted a comprehensive rewrite of the Gaming Regulatory Act of 2003 (the "Gaming Regulatory Act"); and

WHEREAS: The Tribal Council has determined that certain technical corrections the Gaming Regulatory Act are necessary and desirable.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts the amendments to the Gaming Regulatory Act set forth hereunder with all language to be struck from the Act shown with a strikethrough and all language to be added to the Act shown with a double-underline.

Chapter II, Definitions, shall be amended as follows:

"Control Person" means any person who has the power to direct or cause direction of the management and policies of the business operations of a Gaming Supplier ~~or a Non-Gaming Supplier~~ as verified by the Gaming Supplier's ~~or Non-Gaming Supplier's~~ ownership and organization structure described in the documents establishing the existence of the Gaming Supplier ~~or Non-Gaming Supplier~~ and the designation of persons authorized to act on behalf of the Gaming Supplier ~~or Non-Gaming Supplier~~. A person shall be presumed to have control when such person owns shares of any corporation that is not a publicly traded corporation and such person owns, controls or holds the power to vote ten percent (10%) or more of the voting securities of the corporation. Control Persons include members of the board of directors, chief executive officer, chief operating officer, and any person with the responsibility and authority to manage the contract on behalf of the Gaming Supplier ~~or Non-Gaming Supplier~~ with respect to the ~~Gaming Goods~~ or ~~Services~~ being provided to a Gaming Operation.

"Gaming Device" means any mechanical, electromechanical or electronic equipment, contrivance, component, or machine, whether used remotely or directly in connection with any Gaming that affects the result of a wager by determining or predicting the outcome of a Game or the odds of winning or losing a Game. This term shall be broadly construed to promote the purposes of this Act and shall also include any devices, machines, components, or contrivances which do affect, or are capable of affecting, in any way, the playing of any Game, provided that this term shall not be construed to expand the meaning of "electronic games of chance" set forth in paragraph (5), subsection 3(A) of the Compact for the purpose of affecting the calculation ~~ing~~ of net win under Sections 17 and 18 of the Compact.

"Primary Management Official" means:

- (a) The person having management responsibility for a Management Contract;

- (b) Any person who has authority:
 - (1) to hire and fire employees of a Gaming Operation; or
 - (2) to establish working policy for a Gaming Operation;
- (c) The chief financial officer or other person who has financial management responsibility for any Gaming Operation;
- (d) The Manager or any person having management responsibility over all or any part of any Gaming Operation;
- (e) Any person the Commission designates by Commission Regulations as a Primary Management Official.

~~For purposes of this definition, the term Primary Management Official shall not include any employee of a Management Contractor that, on average over any six-month period, devotes less than twenty (20) hours per week of such employee's work time to the Gaming Operation.~~

“Rehabilitation Hearing” means a hearing conducted by and before the Commission under the requirements of Chapter XI and the Regulations concerning any Applicant for a Level 2 or Level 3 Gaming Employee License who is a Tribal member and who was convicted of or entered a plea of guilty or no contest to Any Offense within the preceding five (5) years in order to determine whether the Applicant is not eligible for a Level 2 or Level 3 Gaming Employee License under the standards set forth in Section 11.03.

Chapter III, Establishment, Administration, and Powers of Commission, Section 3.07, Qualifications; Appointment of Commissioners, and Section 3.15, Powers and Duties of the Commission, and 3.20, Commission Record-Keeping, shall be amended as follows:

Section 3.07 Qualifications; Appointment of Commissioners.

- (a) – (d) [unaffected]
- (e) Notice to Rejected Appointees; Right to Hearing. The Tribal Council shall provide written notice to any person that has been preliminarily determined does not meet the qualifications or applicable licensing standards for appointment to the Commission. The notice shall fully describe the basis upon which the preliminary determination was made and shall inform such person of his/her right to request a hearing before the Tribal Council to contest with new evidence and testimony the Tribal Council's preliminary determination. The hearing under this subsection shall be conducted as provided in Chapter XI of this Act and the person contesting the preliminary determination shall have all of the rights given to a Licensee or Applicant therein, except that such hearing shall be

conducted by and before the Tribal Council in closed session, unless the nominee elects, in writing, to have the hearing open to the public.

Section 3.15 Powers and Duties of the Commission.

(a) – (g) [unaffected]

(h) Enforcement Authority. When information received by the Commission through inspections, audits or investigations indicates a violation of this Act, the Regulations, the terms or conditions of any License, or any other applicable Tribal or federal laws, the Commission may, as warranted under the circumstances:

(1) – (4) [unaffected].

Any enforcement action taken by the Commission shall be fair and reasonable under the circumstances, shall be proportionate to the violation, and shall be designed to promote the goals of correction and improvement, unless the nature or severity of the violation is such that the goals of correction and improvement would be unrealistic. Any enforcement action taken by the Commission must be within its powers, related to its gaming regulatory responsibilities, and shall be conducted in accordance with the Hearing Procedures described in Chapter XI and is subject to appeal pursuant to Chapter XII of this Act.

(i) and (j) [unaffected]

Section 3.20 Commission Record-Keeping.

(a) [unaffected].

(b) Requirements Regarding Files. The Commission shall create a separate file, which may be in electronic form, for each Applicant that includes all forms, documents, and information submitted by the Applicant and all background information compiled by the Commission. All reports obtained from the fingerprint processing shall be incorporated into the Applicant's file. The Commission shall retain such files for no less than three (3) years from the date each such Applicant ceased employment with the Gaming Operation, the date any contract between the Applicant and the Gaming Operation ceased to be valid and in effect, or the date the Applicant ceased to hold a valid License, whichever event occurs last. To the extent required by federal law, the Commission shall make such files available for inspection by the NIGC upon request.

Chapter IV, Organization of the Commission; Executive Director, Section 4.02, Executive Director: Appointment; Qualifications; Removal and Suspension, shall be amended and new Section 4.04, Background Investigations of the Executive Director and Commission Staff, shall be added as follows:

Section 4.02 Executive Director: Appointment; Qualifications; Removal and Suspension.

- (a) [unaffected]
- (b) Qualifications. The Executive Director shall possess the following qualifications:
 - (1) and (2) [unaffected]
 - (3) Ineligibility of Commissioners. Must not have served as a Commissioner for two years prior to the date of appointment as Executive Director.
 - (4) Commitment. Must devote his or her entire time and attention to the duties of the Executive Director and the business of the Commission.
- (c) – (e) [unaffected]

Section 4.04 Background Investigations of the Executive Director and Commission Staff. Before any person may take office as an Executive Director of the Commission or commence work as an employee of the Commission, the Commission shall cause a background investigation to be conducted by the Tribal Police on each such person. All such persons shall consent to, and fully cooperate with the background investigation as provided hereunder and as required by the Commission. The Commission may, in its discretion and subject to such requirements as the Commission may deem warranted, permit a prospective Commission employee to commence work prior to the completion of a background investigation.

- (a) Applicable Standards. Persons selected for appointment as Executive Director shall be subject to the same background investigation process and licensing standards that apply to Level 1 Licenses under Chapter VII of this Act. Commission staff shall be subject to such standards as the Commission may determine. The submission of documents and other records or information to the NIGC is not required for the Executive Director position or for Commission staff positions.
- (b) Nature of Background Investigation. Background investigations conducted under this Section are intended to serve the purpose of assisting the Commission in maintaining a high level of integrity among the Commission staff. Such investigations are not intended to fulfill a regulatory purpose and, consequently, persons selected to serve in the position of Executive Director or Commission staff positions shall not be entitled to any of the rights afforded to License Applicants under this Act.
- (c) Investigator's Report. The investigator shall create an investigative report for the Commission that describes the investigative process and applicable

- standards and includes factual findings regarding each standard to the extent that there is clear and convincing evidence to support a finding.
- (d) Investigator's File. The Tribal Police shall create a separate file for each person that was subjected to a background investigation, which shall include all forms, documents, reports and other information related to the investigation that is in the possession of the Tribal Police. The Tribal Police shall retain such files for no less than three (3) years from the date each such person ceases to be employed by the Commission.
 - (e) Final Determination Regarding Executive Director. Following review of the investigative report and findings, the Commission shall, in closed session, make a final determination as to whether or not the person selected for appointment as Executive Director meets the applicable standards. Regarding the first appointment to the position of Executive Director, the Commission shall report its final determination to the Tribal Council and, based on the Commission's determination, the Council shall either appoint such person as Executive Director or decline to make the appointment.

Chapter V, Licensing; General Provisions, Section 5.04, Gaming Employees, and Section 5.06, General Rights and Duties of Applicants, are amended as follows:

Section 5.04. Gaming Employees. No Person shall be employed as a Gaming Employee at any Gaming Operation within the Reservation unless such Person is licensed by the Commission as set forth in Chapter VII.

Section 5.06 General Rights and Duties of Applicants.

- (a) [unaffected]
- (b) Duties of Applicants and Licensees. Applicants are required to provide or perform the following:
 - (1) – (3) [unaffected].
 - (4) *Authority to seize, revoke and suspend License.* The Commission may seize, revoke, restrict, condition, or suspend any License issued under this Act in accordance with the procedures prescribed in ~~Sections 7.12 and Chapter X~~ of this Act and any applicable Regulations.
 - (5) – (8) [unaffected].

Chapter VI, Licensing of Gaming Establishments, Section 6.03, Gaming Establishment Application Procedures, is amended as follows:

Section 6.03 Gaming Establishment Application Procedures. In order to obtain a Gaming Establishment License, the Gaming Operation requesting such License shall submit an Application on the form provided by the Commission. The Applicant shall

include all of the following information regarding the period for which the License is sought:

- (a) Proposed Gaming. A description of the proposed Gaming, including, but not limited to:
 - (1) The type of proposed Gaming, along with all instructions, policies, procedures, ~~internal controls~~, and other documents related to the proposed Gaming;
 - (2) and (3) [unaffected].
- (b) – (e) [unaffected].
- (f)(g) Emergency Operation Plan. The Emergency Operation Plan for the Gaming Establishment required by the Health, Environmental Protection, and Building Codes Ordinance; and
- (g)(h) Schedule. Schedule of all permits and approvals required under the Health, Environmental Protection and Building Codes Act, including documents verifying the current status of such permits and approvals.

Chapter VII, Licensing of Gaming Employees, Section 7.01, Application for a Gaming Employee License, 7.02, Provisional License, and Section 7.03, Background Investigation, shall be amended as follows:

Section 7.01 Application for a Gaming Employee License. The Commission shall require each prospective Gaming Employee to submit a sworn Application to the Commission on the forms and in the manner required by the Commission. The Application for Level 1 and ~~Level 2~~ Licenses shall include, at a minimum, the forms, information, other requirements described hereunder.

- (a) – (d) [unaffected].
- (e) Current Photographs. The Applicant shall ~~provide a submit with the Application two~~ provide a submit with the Application two current photographs in such form as the Commission may require.
- (f) Personal Financial Questionnaire. The Personal Financial Questionnaire shall include a statement of assets and liabilities and shall include, at a minimum, the following information:
 - (1) Complete financial statement, along with income tax returns for the previous three (3) years, showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the Application; and
 - (2) A list of all professional or business licenses the Applicant has applied for, whether or not those licenses were granted and the

name, address and phone number of the regulatory agency involved.

The Personal Financial Questionnaire shall also include a sworn statement to be signed by the Applicant stating that neither the Applicant nor any member of the Applicant's immediate family has a past or current financial interest, other than a salary interest, in any gaming-related activity or business anywhere. If the Applicant has any relative who has such a relationship, the Applicant shall fully disclose his name and the nature of the relationship.

(g) Fingerprints Cards. All Applicants for a Gaming Employee License shall submit one or more complete sets of ~~submit two original fingerprints cards~~ to be taken by the Commission in such manner and form as the Commission may require, which shall be processed in accordance with this Act and the Regulations. The Gaming Commission is the Tribal agency that is authorized to take all fingerprints required to be taken under this Act and the IGRA. The Commission may also require the submission of one or more additional sets of fingerprints cards, which the Commission may submit to be processed by any governmental tribal, local, or state agency's criminal history check system as the Commission deems necessary.

(h) and (i) [unaffected].

Section 7.02 Provisional License.

(a) [unaffected]

(b) Submission of Application and Fingerprints Card to NIGC. Upon the issuance of a Provisional License to an Applicant for a Level 1 or a Level 2 License, the Commission shall promptly submit to the NIGC the Applicant's completed Application and fingerprints card to the NIGC and any other materials required by the NIGC under applicable federal law.

(c) Period a Provisional License May Remain Valid. The Provisional License may be valid for such period of time as the Commission may determine in its sole discretion, but in no event shall it be valid for more than ninety (90) days from the date of issuance.

(d) Conditions Applicable to All Provisional Licenses. An Applicant may commence employment under a Provisional License, however, upon the occurrence of any of the following such employment shall terminate immediately and the Provisional License shall be summarily revoked pending any hearing requested by the Applicant as provided under this Act:

- (1) denial of a License by the Commission upon receipt of any information, including when applicable objections and supporting information from the NIGC regarding the issuance of a Level 1 or a Level 2 License, that indicates the Applicant does not meet the standards for a License set forth in Section 7.04; or
- (2) a violation of any other conditions the Commission placed on all or certain Provisional Licenses pursuant to this Act or a violation of any condition the Commission placed on a particular Provisional License.

Section 7.03 Background Investigation. The Commission shall conduct, or cause to be conducted, an investigation sufficient to make the determinations required under Sections 7.06 and 7.08. In conducting background investigations, the Commission shall seek to ensure that Gaming Operations shall not employ persons whose prior activities, reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of such Gaming. Such investigations shall be conducted according to requirements at least as stringent as those set forth at 25 C.F.R. Parts 556 and 558, the Compact, and this Chapter. The Commission shall establish procedures to protect confidential information generated by the investigation or submitted by the Applicants from any unauthorized disclosure. The background investigation shall, at a minimum, consist of at least the following:

- (a) and (b) [unaffected];
- (c) Financial Information. Review the Applicant's credit history and, when the Application is for a Level 1 License or when required by the Regulations or otherwise warranted, verify the financial information provided by the Applicant by contacting financial institutions and other sources and investigate the Applicant's financial background based on the Applicant's Personal Financial Questionnaire;
- (e) Criminal History. Conduct a criminal history check.
 - (1) Applicant for a Level 1 or a Level 2.- Submit the Application and fingerprints to the NIGC, which will forward the fingerprints to the Federal Bureau of Investigation and the NCIC to search and report on the Applicant's criminal history, if any, and
 - (2) [unaffected];
- (f) and (g) [unaffected].

The investigator shall create an investigative report that describes the investigative process, information gained, applicable licensing standards, and any disqualifying information. In the absence of disqualifying information, the investigator shall propose in a separate report factual findings regarding each licensing standard to the extent that there is clear and convincing evidence to support a finding. The Gaming Commission

shall keep confidential the identity of each person interviewed in the course of the investigation, except to the extent that disclosure is permitted under applicable federal or Tribal law or the Compact.

Section 7.05 Eligibility Determinations.

(a) and (b) [unaffected].

(c) Level 3 License; Final Determination. If the Application is for a Level 3 License, the Applicant may challenge a determination that the Applicant is ineligible for a Level 3 License, or is only eligible with conditions, in accordance with the procedures and requirements of Chapter XI. If the Commission determines that the Applicant is eligible for a Level 3 License, the Commission shall promptly notify the Applicant and shall issue the License.

Section 7.06 Approval of a Level 1 or a Level 2 Gaming Employee License.

(a) Preliminary Eligibility Determination. If the Commission makes a preliminary eligibility determination that the Applicant for a Level 1 or a Level 2 Gaming Employee License qualifies for the issuance of a License, the Commission shall, within seven (7) business days of the date such determination is made, prepare and forward to the NIGC, in such form and to the extent the NIGC may require, an investigative report, a preliminary eligibility determination, and a notice of intent to issue the Applicant a License. For Commission purposes, the investigative report shall, at a minimum, include the following:

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

~~The Commission shall submit, with the investigative report, a copy of the Commission's preliminary eligibility determination and shall notify the NIGC of the Commission's intention to issue the Applicant a License. The Commission shall request that the NIGC review the Application and investigative report pursuant to the IGRA and issue within thirty (30) days any objections it determines are warranted to the issuance of a License.~~

(b) Requirements for Final Determination. A final determination regarding the eligibility of an Applicant for a Level 1 or a Level 2 Gaming Employee License may only be made after the Commission provides the NIGC with the Applicant's Application, fingerprints, cards, an investigative report, a preliminary determination regarding the Applicant's eligibility, and any other materials required under this Act and by the

NIGC under applicable federal law and after one of the following has occurred:

(1) and (2) **[unaffected]**

- (c) Final Determination of Eligibility. Upon compliance with the requirements of subsection (b), the Commission may proceed with a final determination regarding the Applicant's eligibility. An Applicant may challenge a determination that the Applicant is ineligible for a Level 1 or a Level 2 License, or is only eligible with conditions, in accordance with the procedures and requirements of Chapter XI. If the Commission determines that the Applicant is eligible for a Level 1 or a Level 2 License, the Commission shall promptly notify the Applicant and shall issue the License.

Chapter VIII, Licensing of Gaming Suppliers, Section 8.06, Action on Applications for Gaming Supplier's License; Preliminary Determinations, shall be amended as follows:

Section 8.06 Action on Applications for Gaming Supplier's License; Preliminary Determinations.

(a) and (b) **[unaffected]**.

- (c) If the Commission determines, pursuant to Sections 8.05, that an Applicant does not, or may not, qualify for the issuance of a License, or may qualify for a License only with certain conditions, because:
- (1) **[unaffected]**; or
- (2) The Applicant may have knowingly and willfully provided materially false and misleading statements or information to the Commission or refused to respond to questions material to the suitability determination that have been asked by the Commission; the Commission shall notify the Applicant that its Application may be denied and, upon the Applicant's request, shall schedule a hearing in accordance with the procedures described in Chapter XI. If following such hearing, the Commission determines that the Applicant qualifies for the issuance of a License, with or without conditions, the Commission shall approve the Application.

Chapter X, Regulation of Gaming-Related Activities, Section 10.05, Complimentary Items, Section 10.12, Unclaimed Winnings, and Section 10.15, Voluntary Exclusion, shall be amended as follows:

Section 10.05 Complimentary Items.

(a) **[unaffected]**.

- (b) No Tribal Council member, Commissioner, or any person who shares a residence with or is an Immediate Family Member of such person, shall ~~not~~ be given or accept complimentary items from any Gaming Operation, with the following exceptions:
 - (1) food and beverages with a retail cost of not more than \$200.00; or
 - (2) the free food and beverages offered to the general public at any public event held at a Gaming Establishment.
- (c) **[unaffected]**.

Section 10.12 Unclaimed Winnings.

- (a) **[unaffected]**.
- (b) Unknown Patron. In the event the identity of a Patron entitled to unclaimed winnings in excess of \$~~100.00~~^{20.00} is unknown, the Commission shall use, or require the Gaming Operation to use, its best efforts to learn the identity of the Patron. If the identify of the Patron entitled to the winnings can be determined with reasonable certainty, the Commission shall use, or require the Gaming Operation to use, its best efforts to deliver such winnings to the Patron. However, if after three (3) months from the time the winnings were payable, the Commission has been unable to identify the Patron, such winnings shall revert to the ownership of the Gaming Operation.

Section 10.15 Voluntary Exclusion. A compulsive gambler or Aany other person, upon providing the Commission or a Gaming Operation with a written and signed request to be designated an Excluded Person that includes sufficient information to allow positive identification of such person, shall be excluded from all Gaming Establishments and from participation in any Class II or Class III Gaming. Such person's name shall be added to the Exclusion List and the requirements of subsections ~~9~~¹⁰.14(e) and (f) shall apply.

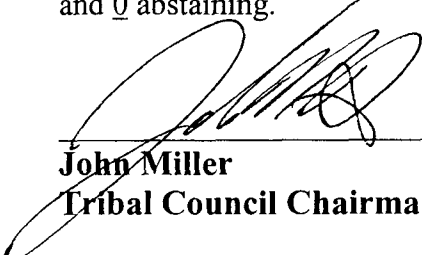
End of Amendments

AND BE IT FURTHER RESOLVED that the Tribal Council directs the Tribal Chairman to submit the amendments to the Gaming Regulatory Act of 2007 to the Chairman of the National Indian Gaming Commission for approval in accordance with the requirements of Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. § 2710).

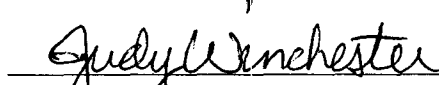
AND BE IT FURTHER RESOLVED that all requirements, directives, and determinations set forth in Tribal Council Resolution No. 07-02-07-01 that are not inconsistent with this resolution shall not be effected by this resolution and shall remain in effect.

CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened Special meeting of the Tribal Council held on the 12th day of May, 2007 by a vote of 10 in favor, 0 opposed, 1 absent, and 0 abstaining.



John Miller
Tribal Council Chairman



Judy Winchester
Tribal Council Secretary