

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

April 18, 2000

Christopher A. Karns  
Dorsey & Whitney LLP  
1001 Pennsylvania Ave., N.W.  
Suite 300 South  
Washington, DC 20005

Dear Mr. Karns:

This letter responds to the submission of the Organized Village of Kake's ("OVK") Class II Gaming Ordinance received by the National Indian Gaming Commission ("NIGC") on January 19, 2000. The Gaming Ordinance was adopted by OVK Resolution No. 99-08. Under the Indian Gaming Regulatory Act ("IGRA") and NIGC regulations, the Chairman has 90 days to review a new ordinance and either approve the ordinance or notify the tribe of specific areas of noncompliance with the requirements of 25 C.F.R. Part 522. This letter shall serve as formal notification that the OVK's Gaming Ordinance submission is hereby approved.

IGRA and NIGC regulations require that gaming be conducted on "Indian lands." The OVK has identified 14.81 acres of land, which the United States holds in trust for its benefit, as the site on which it will conduct class II gaming activities. A letter dated July 2, 1998, from the Associate Solicitor, Division of Indian Affairs, Department of the Interior, Derril Jordan confirms that the identified tract of land is "held in trust by the United States for the benefit of the Organized Village of Kake." In analyzing the trust parcel, the Associate Solicitor noted that the Secretary of the Interior acquired the parcel in trust for OVK on February 15, 1950, pursuant to the Indian Reorganization Act; that the deed states on its face "to the United States of America in trust for the Organized Village of Kake, Alaska;" and that the trust deed was recorded in Petersburg, Alaska, on April 19, 1950. The 14.81 acres of lands were originally taken into trust in support of the OVK's fish processing enterprise.<sup>1</sup>

After careful review and consideration, we conclude that the OVK trust land qualifies as Indian lands as defined by IGRA and NIGC regulations. Therefore, the OVK's Gaming Ordinance submission is hereby approved and the OVK may lawfully conduct class II gaming on its trust lands pursuant to the IGRA.

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<sup>1</sup>The Secretary of the Interior originally acquired 15.9 acres of trust land for the Organized Village of Kake. However, 1.09 acres was subsequently conveyed by the United States to the Organized Village of Kake in fee.

Thank you for submitting the Class II Gaming Ordinance of the OVK for review and approval. The NIGC staff and I look forward to working with you and the OVK in implementing the IGRA and NIGC regulations. If you have any questions or wish to discuss this matter further, please contact Todd J. Araujo, Staff Attorney at (202) 632-7003.

Sincerely yours,,



Montie R. Deer  
Chairman

Cc: Executive Director  
Organized Village of Kake  
P.O. Box 316  
Kake, Alaska 99830-0316

Derril Jordan, Associate Solicitor  
U.S. Department of the Interior  
Office of the Solicitor  
Division of Indian Affairs  
1849 C Street, NW  
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**(Federally Recognized Tribal Government serving the Kake, Alaska area)**



JAN 19 2000

**Resolution No. 99-08 – Adoption of Class II Gaming Ordinance**

WHEREAS, the Organized Village of Kake (hereinafter OVK) is a federally recognized Indian Tribe under federal law and is empowered under its *Constitution and By-Laws* to adopt ordinances to govern its members and its activities on behalf of its members; and,

WHEREAS, OVK is organized pursuant to the authority of the Federal Indian Reorganization Acts (hereinafter IRA) of 1934 and 1936 with the IRA Council as the duly-elected governing body formed under its *Constitution and By-Laws*; and,

WHEREAS, the OVK IRA Council desires to explore the establishment of lawful Indian “class II” gaming activities under the Indian Gaming Regulatory Act of 1988 on tribal lands in Kake, Alaska held in trust for OVK by the United States; and,

WHEREAS, one of the preliminary requirements for establishing such gaming is the adoption of a tribal ordinance in compliance with the Indian Gaming Regulatory Act of 1988 and securing its approval by the National Indian Gaming Commission; and

WHEREAS, the OVK IRA Council has caused to be developed, and has given due consideration to, a draft class II Indian gaming tribal ordinance designed to comply with the requirements of the Indian Gaming Regulatory Act of 1988 and the specifications for approval by the National Indian Gaming Commission.

THEREFORE BE IT RESOLVED, that the OVK IRA Council hereby adopts as Tribal law the attached ordinance captioned as the “Organized Village of Kake Class II Gaming Ordinance” and hereby requests that the National Indian Gaming Commission approve said ordinance; and

BE IT FURTHER RESOLVED, that the OVK IRA Council directs its Executive Director to cause said ordinance to be forwarded to the National Indian Gaming Commission for approval, along with related submissions required by the Commission.

CERTIFICATION

This resolution was duly adopted at an IRA Council meeting held this 20<sup>th</sup> day of JANUARY, 1999 by a quorum of 6 (includes president as non-voting chairperson except in case of tie vote) with 5 yes votes, 0 no votes, and 0 abstaining.

Edna Jackson Vice President  
for Samuel Jackson, President

Dellbert S. Kudluk L  
Attested by

ORGANIZED VILLAGE OF KAKE  
CLASS II GAMING ORDINANCE

Ordinance #: 1999-01

Adopted by Tribe: JANUARY 20, 1999

JAN 19 2000

Approved by NIGC: \_\_\_\_\_

I. Purpose.

The Tribal Council of the Organized Village of Kake, a federally-recognized tribal government under the Indian Reorganization Acts of 1934 and 1936, (hereinafter "Tribe"), empowered by the Tribe's Constitution and By-Laws to enact ordinances, hereby enacts this ordinance in order to set the terms for class II gaming operations on tribal trust lands.

II. Gaming Authorized.

Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703(7)(A) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992) is hereby authorized.

III. Ownership of Gaming.

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

IV. Use of Gaming Revenue.

A. Net revenues from class II gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. Per capita payments to tribal members, if ever authorized by the Tribal Council, shall be made only upon approval of a plan submitted by the Tribal Council to the Secretary of the Interior under 25 U.S.C. §2710(b)(3).

V. Audit.

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and

accounting services, shall be specifically included within the scope of the audit that is described in subsection A, above.

VI. Protection of the Environment and Public Health and Safety.

Class II gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

VII. Licenses for Key Employees and Primary Management Officials.

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class II gaming enterprise operated on Indian lands:

A. Definitions.

For the purpose of this section, the following definitions apply:

1. Key employee means:
  - a. A person who performs one or more of the following functions:
    - (1) bingo caller;
    - (2) counting room supervisor;
    - (3) chief of security;
    - (4) custodian of gaming supplies or cash;
    - (5) floor manager;
    - (6) pit boss;
    - (7) dealer;
    - (8) croupier;
    - (9) approver of credit; or
    - (10) custodian of gambling devices including persons with access to cash and accounting records within such devices;
  - b. if not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
  - c. if not otherwise included, the four most highly compensated persons in the gaming operation.
2. 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; or

(2) to set up working policy for the gaming operation; or

c. The chief financial officer or other person who has financial management responsibility.

B. Application Forms.

1. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

- a. complete a new application form that contains a Privacy Act notice; or
- b. sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, Section 1001.)

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

- a. complete a new application form that contains a notice regarding false statements; or
- b. sign a statement that contains the notice regarding false statements.

C. Background Investigations.

1. The Tribe shall request from each primary management official and from each key employee all of the following information:

- a. full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- b. currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
- c. the names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1)(b) of this section;
- d. current business and residence telephone numbers;
- e. a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- f. a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- g. the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- i. for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition;
- j. for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- k. the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

- i. a current photograph;
- m. any other information the Tribe deems relevant; and
- n. fingerprints consistent with proceedings adopted by the Tribe according to 25 C.F.R. § 522.2(h).

2. The Tribe shall conduct an investigation sufficient to make a determination under subsection D, below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of investigation.

D. Eligibility Determination.

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

E. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission.

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section to the National Indian Gaming Commission within sixty (60) days after an employee begins work or within sixty (60) days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

F. Report to the National Indian Gaming Commission.

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- a. steps taken in conducting a background investigation;



- b. results obtained;
  - c. conclusions reached; and
  - d. the basis for those conclusions.
2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.
3. If a license is not issued to an applicant, the Tribe:
  - a. shall notify the National Indian Gaming Commission; and
  - b. may forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.
4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

G. Granting a Gaming License.

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.
2. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30) day period under paragraph G. 1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.
3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

H. License Suspension.

1. If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection D, above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.
3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

VIII. License Locations.

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where class II gaming is conducted under this ordinance.

IX. Repeal.

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances of the Tribe are hereby repealed.

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ORGANIZED VILLAGE OF KAKE  
BACKGROUND INVESTIGATION PROCEDURES

The Organized Village of Kake (OVK) has the authority and is responsible for conducting background investigations and making suitability determinations for licensing key employees and primary management officials for any class II gaming activities on tribal lands. Effective regulatory oversight for such gaming activities requires that there be a separation between the regulation and operation of tribal gaming activities. OVK is solely responsible for conducting background investigations, making suitability determinations and issues licenses. However, because the scope of background investigations will vary depending upon the information gathered, OVK has no “boilerplate” background investigation program. Therefore, OVK has determined that the following general procedures shall be used in the course of background investigations and licensing.

1. The OVK Executive Director shall be responsible for obtaining and soliciting the information necessary to perform background investigations of and issuing licenses for key employees and primary management officials, consistent with the Organized Village of Kake Class II Gaming Ordinance, the Indian Gaming Regulatory Act, and the applicable National Indian Gaming Commission (NIGC) regulations.
  
2. Applications for key employee or primary management official positions shall not be processed unless the applicant executes a “National Indian Gaming Commission Authorization For Release of Information” and provides all of the information required under Section VII(C)(1) of the Organized Village of Kake Class II Gaming Ordinance, as well as all supporting documentation to the extent available. All such applicants must provide copies of and make available for inspection a birth certificate, social security card, and valid drivers license. OVK shall use the NIGC to process applicant fingerprint cards.
  
3. The information an applicant provides in accordance with Section VII(C)(1) shall be verified. The major areas of focus for each background investigation shall include criminal history information, personal character information, financial history information, and gaming experience. The reviewer shall take the following steps:
  - a. Verify such applicant's name, place of birth, date of birth, and citizenship by requiring the applicant to provide items such as a birth certificate, social security card, or passport.
  
  - b. Confirm the applicant's business and employment positions held and ownership interests in those businesses currently and for the past 5 years by attempting to contact through written letter,

telephone calls or personal visits to past employers listed in the application and through ownership documentation such as copies of partnership agreements, stock certificates, or IRS tax returns.

c. Obtain the applicant's driving record by using the applicant's driver's license number to contact the Department of Motor Vehicle in the state where the license is issued.

d. Ascertain character information about the applicant by contacting the personal references identified in the application.

e. Inquire into any existing or previous business relationships the applicant has had with Indian tribes, including the scope of those relationships, by contacting those tribes identified in the application. Also, the investigator should contact other state and federal entities that have contact with Indian tribes to obtain other information available.

f. Gather information about any existing or previous business relationships the applicant has had in the gaming industry, including the scope of those relationships, by contacting those entities identified in the application. Also, when appropriate, the investigator should contact other state gaming agencies or the NIGC to obtain other information available.

g. Verify the applicant's history and status with any licensing agency identified by the applicant with which the applicant has applied for an occupational license or permit by contacting those agencies.

h. Obtain information regarding any past felonies, misdemeanor convictions, or criminal charges within the last 10 years by contacting state, city, county and tribal courts, and state, local, and tribal police departments in the applicant's areas of residence, including any court documents pertaining to the applicant's civil or criminal history. In all cases, Federal Bureau of Investigation (FBI) criminal history record information (CHRI) shall be obtained in conjunction with the information verification process. OVK authorizes only the following people to have access to FBI CHRI: OVK Executive Director. No individual who is authorized to have access to FBI CHRI shall be employed at OVK's class II gaming operation.

i. Obtain and verify any other information the tribe deems relevant to complete a thorough background investigation, such as a report from a credit reporting agency.

j. Appropriately broaden the scope of the investigation after the information provided has been verified and analyzed.

4. The identity of each person interviewed in the course of the investigation shall be kept confidential. No individual who performs or assists in performing background investigations of key employee and primary management officials shall be employed at OVK's class II gaming operation.

5. The OVK Executive Director shall be responsible for reviewing and approving the background investigation work, and making suitability determinations on behalf of OVK, consistent with the Organized Village of Kake Class II Gaming Ordinance, the Indian Gaming Regulatory Act, and the applicable NIGC regulations. No applicant who poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall be employed as a key employee or primary management official. OVK's class II gaming operation shall not employ as a key employee or primary management official a person who does not have a license after ninety (90) days.

6. The OVK Executive Director shall be responsible for reporting the results of key employee applicant and primary management official applicant background investigations and suitability determinations to the NIGC no later than sixty (60) days after such an employee begins work, and shall also be responsible for compiling and submitting any additional information the Chairman might request. Each investigative report shall contain the information required under Section VII(F)(1)-(2) of the Organized Village of Kake Class II Gaming Ordinance. No license shall be issued prior to submission of the investigation report to the NIGC.

7. Upon successful completion of the required background investigation and determination of suitability, and upon receipt of notice from NIGC that it has no objections to issuance of a license to the applicant, the OVK Executive Director shall issue a license to such individual. However, if NIGC provides OVK with an itemized statement of objections, OVK shall reconsider the applicant, taking into account NIGC's itemized objections.

8. OVK makes the final decision whether to issue a license to an applicant.



# Organized Village of Kake

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(Federally Recognized Tribal Government serving the Kake, Alaska area)



## Resolution No. 2000-14 -- Amendment of Class II Gaming Ordinance

WHEREAS, the Organized Village of Kake (hereinafter OVK) is a federally recognized Indian Tribe under federal law and is empowered under its *Constitution and By-Laws* to adopt ordinances to govern its members and its activities on behalf of its members; and,

WHEREAS, OVK is organized pursuant to the authority of the Federal Indian Reorganization Acts (hereinafter IRA) of 1934 and 1936 with the IRA Council as the duly-elected governing body formed under its *Constitution and By-Laws*; and,

WHEREAS, the OVK IRA Council adopted the "Organized Village of Kake Class II Gaming Ordinance" on January 20, 1999 pursuant to Resolution No. 99-08, to govern the operation of "class II" gaming activities under the Indian Gaming Regulatory Act of 1988 on tribal lands in Kake, Alaska held in trust for OVK by the United States; and,

WHEREAS, the OVK IRA Council has determined that the Class II Gaming Ordinance should contain provisions which identify the process for resolving patron disputes and which identify the agent for service by the National Indian Gaming Commission of any official determination, order or notice of violation; and

WHEREAS, the OVK IRA Council has caused to be developed, and has given due consideration to, a draft amendment to the class II Indian gaming tribal ordinance which describes the patron dispute process and identifies the agent for service by the National Indian Gaming Commission of an official determination, order or notice of violation.

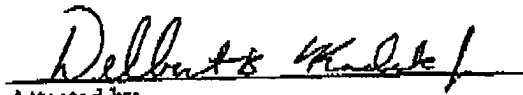
THEREFORE BE IT RESOLVED, that the OVK IRA Council hereby adopts as Tribal law the attached amendments to the "Organized Village of Kake Class II Gaming Ordinance" and hereby requests that the National Indian Gaming Commission approve said ordinance, as amended; and,

BE IT FURTHER RESOLVED, that the OVK IRA Council directs its Executive Director to cause said ordinance amendments to be forwarded to the National Indian Gaming Commission for approval, along with any other related submissions that may be required by the Commission.

### CERTIFICATION

This resolution was duly adopted at an IRA Council meeting held this 22<sup>nd</sup> day of MARCH, 2000 by a quorum of 5 (includes president as non-voting chairperson except in case of tie vote) with 4 yes votes, 0 no votes, and 0 abstaining.

  
Samuel Jackson, President

  
Attested by

OVK Resolution No. 2000-14

Page 2 of 2

Attachment:

Ordinance 1999-01 -- Organized Village of Kake Class II Gaming Ordinance, is amended as follows:

1. Section IX is re-designated as Section XI, to read as follows:

"XI. Repeal

" To the extent that they are inconsistent with this ordinance, all prior gaming ordinances of the Tribe are hereby repealed."

2. A new Section IX is added to read as follows:

"IX. Patron Disputes

" Any Class II gaming facility patron with a dispute over gaming operations and procedures may file a written complaint concerning such dispute with the Executive Director within 10 calendar days of the incident at issue, either in hand or by mailing, return receipt requested, to the address identified in Section X, below. Untimely complaints will not be considered. The Tribal Council of the Organized Village of Kake, with the assistance of the Executive Director, will review and resolve patron complaints as quickly as practicable. All decisions of the Tribal Council concerning patron complaints are final."

3. A new Section X is added at the end, to read as follows:

"X. Agent for NIGC Service

" The agent of the Organized Village of Kake for service of any official determination, order, or notice of violation from the National Indian Gaming Commission is the Executive Director. The National Indian Gaming Commission may serve an official determination, order or notice of violation to the Executive Director at the following address:

"Executive Director  
"Organized Village of Kake  
"P.O. Box 316  
"Kake, Alaska 99830-0316"