DRUG AND ALCOHOL POLICIES ORDINANCE

TITLE 21

of the

HOOPA VALLEY TRIBAL CODE

Hoopa Valley Indian Reservation

(amended February 22, 1996)

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DRUG AND ALCOHOL POLICIES ORDINANCE

TITLE 21
of the
HOOPA VALLEY TRIBAL CODE
Hoopa Valley Indian Reservation
[amended February 22, 1996]

ORDINANCE NO: 3 - 96

DATE APPROVED: February 22, 1996

SUBJECT: Drug and Alcohol Policies of the Hoopa Valley Tribe.

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws (Tribal Constitution) on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified and confirmed by Congress on October 31, 1988, § 8 of Pub. L. 100-580, and amended on June 19, 1990;

WHEREAS Article V of the Hoopa Tribal Constitution establishes the Hoopa Valley Tribal Council as the governing body of the Tribe;

WHEREAS Article IX of the Hoopa Constitution grants to the Tribal Council the power and the duty: to administer tribal property [Section 1(a)]; and to safeguard and promote the peace, safety, morals and general welfare of enrolled members of the Hoopa Valley Tribe [Section 1(l)];

WHEREAS The Hoopa Valley Tribal Council has the inherent authority to assure that the Hoopa Valley Indian Reservation and the operations of Tribal government are free of the destructive effects of the improper and illicit use of alcohol and drugs;

THEREFORE BE IT RESOLVED that the Hoopa Valley Tribal Council hereby ordains the following Tribal Drug and Alcohol Policies, amended February 22, 1996.

DRUG AND ALCOHOL POLICIES

Title 21

21.0 SHORT TITLE

The short title of this Ordinance shall be the **Drug and Alcohol Policies** of the Hoopa Valley Tribe.

21.1 GENERAL POLICY STATEMENT

21.1.1 Purposes

We are committed to achieving and maintaining a safe and productive workplace free from persons drug or alcohol affected in their ability to do their jobs. We are also committed to providing safe, reliable, and courteous service to Tribal members and the public. Employees, Council members and delegates who are affected in their ability to perform their jobs safely and productively, due to physical and emotional problems or inappropriate use or abuse of alcohol and other drug substances, jeopardize the integrity of the workplace and the achievement of our Tribal objectives.

21.1.2 Overview

Employees, Council members and delegates have the primary individual responsibility for managing their own behavior, and, if an impairment issue exists, for successfully resolving that issue. Being Fit for Duty addresses two issues--an employee's, Council member's or delegate's condition and his or her conduct.

Condition. When an employee's, Council member's or delegate's condition (physical illness, emotional distress, chemical dependency) interferes with safe and productive work, the employee, Council member or delegate needs to take whatever measures necessary to correct the condition. We recognize the valuable resource we have in our employees, Council members and delegates, and are committed to helping them maintain their health and well being. Therefore, we strongly encourage employees, Council members and delegates to take advantage of the many opportunities of assistance through the employee health benefits and employee assistance programs to help make work a positive, healthy and mutually beneficial opportunity.

Conduct. The second part of being Fit for Duty is conduct. Employees, Council members and delegates are accountable for unsafe and unproductive work and the consequences of that work. Irresponsible behavior due to physical, emotional, or substance abuse impairments will not be tolerated. An employee engaging in such misconduct may be disciplined up to and including dismissal. (see Section 21.5) A Council member engaging in such misconduct may be removed from office. (see Constitution, Article VII, Section 2, Removal for neglect of duty or gross misconduct.) A board, commission or committee member engaging in such misconduct may be removed from the board, commission or committee.

We recognize the need for safety, efficiency and productivity. Therefore, the Hoopa Valley Tribe affirms that:

use,	sale,
possession	transfer, or

distribution, manufacture, being under the influence

of alcohol in any form, illegal drugs, or unauthorized substances, by employees, Council members or delegates while on duty, or otherwise affecting employment, Council or delegate duties, or by independent contractors or their employees while engaged in performance of a contract for the Tribe or a Tribal entity, is strictly prohibited.

Employees, and independent contractors and their employees, who violate the prohibitions of this policy will be subject to disciplinary action up to and including termination of their employment or recision of their contract. Council members who violate the prohibitions of this policy may be subject to removal from office pursuant to Article VII, Section 2 of the Tribal Constitution. Delegates who violate the prohibitions of this policy may be subject to removal from the board, commission or committee pursuant to the removal procedure in the governing document of the board, commission or committee.

All prospective employees, Council members and delegates will be subject to the following categories of drug and alcohol testing: pre-employment, reasonable cause, post accident/incident, and return to duty (after a positive drug and alcohol test or return from treatment resulting from a management intervention).

Specified employees, Council members and delegates will be subject to the followiing category of drug and alcohol testing: random.

Drug and alcohol testing will be conducted with accuracy and reliability. We uphold a high regard for privacy and dignity in specimen collection, testing, assessment and notification process. Employees, Council members and delegates found to have present a prohibited substance in the body (breath, blood or urine), and without adequate medical explanation, will be regarded as having violated the provisions of this policy.

The Tribal Chairman shall appoint a Fit for Duty Officer who will be responsible for implementation of this policy. Notwithstanding any provision to the contrary in any Tribally issued charter, governing document, or personnel policy, the Fit for Duty Officer shall have authority to enforce this Policy against any employees of the Tribe and its entities, by imposing penalties up to and including termination, in the case of employees, or recision of the contract, in the case of independent contractors. The Tribal Council shall have the authority to enforce the policy against any of its members, and against any delegate, by imposing penalties up to and including removal from office, as provided in the Tribal Constitution and the governing documents of the boards, commissions and committees.

Employees, Council members and delegates are individually responsible to assure that all employees, Council members and delegates are impairment free while at work. Any concerns regarding fitness for duty of employees, Council members and delegates should be reported to the Department Manager or Chairman or the Fit for Duty Officer.

The Drug Free Workplace Act of 1988 requires the establishment of a policy, employee education and reporting of workplace drug conditions. This policy meets the requirements of that Act.

21.2 DEFINITIONS

21.2.1 "Employee" means any person employed by the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating pursuant to or under a governing document established under the authority contained in the Constitution of the Hoopa Valley Tribe.

21.2.2 "Tribal premises" means the locations at which the Tribe and its entities conduct governmental and business operations.

21.2.3 "Tribal entity" means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating pursuant to or under a governing document established under authority contained in the constitution of the Hoopa Valley Tribe.

21.2.4 "Conducting Tribal business" means performing duties for which the employee is employed or for which the council member or delegate is elected and being in a situation where decisions are made or information is communicated or obtained that commit the Tribe or a Tribal entity to some action, or being in a position where actions could injure or adversely affect coworkers, the Tribe, or a Tribal entity.

21.2.5 "Council member" means the Chairman, Vice Chairman, or any other member of the Hoopa Valley Tribal Council.

21.2.6 "Board, commission or committee member" means any member of a board, commission or committee that governs or advises any Tribal entity. For the purposes of this policy, board, commission or committee members shall be referred to as "delegates."

21.3 APPLICATION OF THE POLICY

21.3.1 Council Members, Delegates and Employees of the Tribe and Its Entities. This policy applies to all Council members, delegates, and employees of the Tribe and its entities during employment, service, or duty hours, or while conducting Tribal business. This includes pre-shift periods, lunch breaks, or other break periods when the employee is scheduled to return to work.

21.3.2 Independent Contractor and Vendor Employees. Independent contractors and their employees and vendor employees are expected to be free from the effects of drug or alcohol use or abuse while conducting business for or in the name of the Tribe or a Tribal entity. Contractors and their employees will be covered under this Policy from the date of contract. As a consequence, contractor or vendor employees found to be violating this policy will not be allowed to continue to conduct business and their supervisor, if appropriate, will be notified. All employees, including safety sensitive employees, of independent contractors and vendors working for Tribal entities or on Tribal property are subject to this alcohol and drug policy. If independent contractors and vendors use Tribal facilities for drug and alcohol screens, then the Tribe shall be reimbursed by the independent contractor or vendor; if independent contractors or vendors use non Tribal facilities, their facilities selection must be from a Tribally approved list of laboratories and doctors.

21.4 COVERED SUBSTANCES - DEFINED

21.4.1 Legal Drugs. Legally obtained drugs (prescription and non prescription remedies) are those used according to directions to alleviate a specific condition.

21.4.2 Illegal Drugs. Illegal drugs covered by this Policy include:

(a) Drugs which are not legally obtainable, and;
Examples: Marijuana, LSD, heroin

(b) Drugs which are legally obtainable but have not been obtained legally, and;
Examples: Darvon, Percodan, Valium

(c) Drugs which are legally obtained, but are knowingly used for other than the prescribed purpose or in other than the prescribed manner, and;

(d) So-called "designer drugs" or drug substances not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
Examples: MDMA or "Ecstasy"

21.4.3 Unauthorized Substances and Alcohol. Unauthorized substances, including alcohol, mean any substance that can cause impairment of physical and/or mental functioning.

21.5 PROHIBITED CONDUCT

21.5.1 Any employee refusing to comply with a request, made pursuant to this Policy, for a drug or alcohol test, with the exception of a random selection, will be regarded as being insubordinate and will be terminated. Any Council member or delegate refusing to comply with a request, made pursuant to this Policy, for a drug or alcohol test, with the exception of a random selection, shall be guilty of gross misconduct, and shall be subject to removal from office. (See 21.16.4 --Random Testing, Refusal to Be Tested)

21.5.2 Providing False Information and/or Attempting to Contaminate or Alter a Urine Specimen. Any employee providing false information about a urine specimen and/or attempting to contaminate a urine specimen will be terminated. Any Council member or delegate providing false information about a urine specimen and/or attempting to contaminate a urine specimen shall be guilty of gross misconduct, and shall be subject to removal from office.

21.5.3 Refusal or Failure Comply With Treatment Recommendations. Any employee refusing or failing to comply with treatment and after-care recommendations made pursuant to this Policy will be terminated. Any Council member or delegate refusing or failing to comply with treatment and after-care recommendations made pursuant to this Policy shall be guilty of gross misconduct, and shall be subject to removal from office.

21.5.4 Testing Positive For a Prohibited Drug, Alcohol or an Unauthorized Substance On a Second or Subsequent Occasion. Any employee testing positive for a prohibited drug, alcohol, or unauthorized substance on a second or subsequent occasion within five years of a prior positive test will be terminated. Any Council member or delegate testing positive for a prohibited drug, alcohol, or unauthorized substance on a second or subsequent occasion within five years of a prior positive test shall be guilty of gross misconduct, and shall be subject to removal from office.

21.5.5 Sale or Transfer. Any employee engaging in the sale or attempted sale, purchase, or transfer of a prohibited drug, an unauthorized substance, or alcohol on Tribal premises, in Tribal vehicles, or while conducting Tribal business will be terminated. Any Council member or delegate engaging in the sale or attempted sale, purchase, or transfer of a prohibited drug, an unauthorized substance, or alcohol on Tribal premises, in Tribal vehicles, or while on Tribal

business shall be guilty of gross misconduct, and shall be subject to removal from office. Law enforcement authorities will be notified if criminal conduct is involved.

The prohibitions on the sale, purchase, and transfer of alcohol shall not apply to:

(a) Tribal businesses that are authorized to sell alcoholic beverages under a license issued pursuant to the Tribal Liquor Licensing Ordinance;

(b) Tribally sponsored social events that comply with Section 21.22.3 of this Policy; or

(c) private social events held on Tribal premises, if the Tribal Council has expressly authorized alcohol consumption.

21.5.6 Possession or Use. Any employee found in possession of, or using, an illegal drug, unauthorized substance, or alcohol, in a Tribal vehicle or while conducting Tribal business, is subject to disciplinary action, up to and including termination. Any Council member or delegate found in possession of, or using, an illegal drug, unauthorized substance, or alcohol, in a Tribal vehicle or while conducting Tribal business, is subject to removal from office. Law enforcement authorities may be notified if criminal conduct is involved.

21.5.7 Under the Influence. Any employee or Council member or delegate reasonably believed to be under the influence of an illegal drug, alcohol, or an unauthorized substance, during work hours or while conducting Tribal business, will not be allowed to perform his or her job or Council duties while in that condition, and will be subject to drug and alcohol testing. Employees under the influence operating a vehicle or mechanical equipment capable of injuring another person or injuring another person during work hours or while conducting Tribal business, will be terminated. Council members or delegates under the influence operating a vehicle or mechanical equipment capable of injuring another person or injuring another person, while conducting Tribal business or representing the Tribe, shall be guilty of gross misconduct, and shall be subject to removal from office. Employees under the influence not engaged in the operation of a vehicle or of a vehicle or equipment during work hours or while conducting Tribal business, will be subject to disciplinary action up to and including termination. Council members or delegates under the influence, not engaged in the operation of equipment during work hours or while conducting Tribal business, are guilty of gross misconduct and may be subject to removal from office.

21.6 USE OF LEGALLY OBTAINED DRUGS

21.6.1 Protection From Work. Employees and Council members or delegates adversely affected by their use of any legally obtained drug (prescription or non-prescription) cannot be allowed to perform their regular job or Council duties in such a condition.

21.6.2 Notification Required. It is the responsibility of the employee to advise his or her supervisor, and it is the responsibility of the Council member or delegate to advise the other members of the Council, board, commission or committee of the need to take any medication containing a cautionary label regarding the operation of machinery or vehicles, and of any resulting impairment. The supervisor or the Council member or delegate shall refer the matter to the Fit for Duty Officer, who shall consult with appropriate medical personnel before the employee is allowed to return to his or her regular job and before the Council member or delegate is allowed to return to his or her duties.

21.7 POLICY COMMUNICATION

21.7.1 Current Employees and Council Members or Delegates. All current employees and Council members or delegates will receive a copy of this Drug and Alcohol Policy and will acknowledge receipt by signature.

21.7.2 New Employees and Council Members or Delegates. All new employees hired after the effective date of this policy will be given a copy of this policy as a part of new employee orientation. All Council members or delegates elected after the effective date of this policy will be given a copy of this policy prior to taking their oath of office. New employees and Council members or delegates will acknowledge in writing that they have read the policy, and such acknowledgment will be retained in employee personnel and Council files.

21.8 TRAINING

21.8.1 Current Employees and Council Members or Delegates. All employees or Council members or delegates will receive information and training on the:

21.8.1.1 Effects and consequences of drug and alcohol use on personal health, safety, and the work environment.

21.8.1.2 Manifestations and behavioral clues indicative of drug and alcohol use and abuse.

21.8.2 Supervisors and Council Members or Delegates. All supervisors and Council members or delegates who make reasonable cause determinations will receive eight hours training, addition to § 21.8.1, on the physical, behavioral and performance indicators of probable drug and alcohol use.

21.8.3 New Hires, New Supervisors, and New Council Members or Delegates.

21.8.3.1 All newly hired employees and newly elected Council members or delegates will participate in a drug and alcohol abuse policy and awareness session. The session will be held for new employees at the time of new employee orientation, and for new Council members or delegates within thirty days of taking the oath of office.

21.8.3.2 New Supervisors and new Council members or delegates will not make reasonable cause determinations until they participate in a supervisory training process to acquaint them with the physical behavioral and performance indicators of probable drug and alcohol use.

21.8.4 Refresher Training. All supervisors and Council members or delegates who make reasonable cause determinations will receive refresher training on the effects, signs and symptoms of substance abuse at least every 36 months.

21.9 ROLE OF THE CONSULTING PHYSICIAN

21.9.1 Duties

21.9.1.1 **Recipient of Drug and Alcohol Testing Results.** The Consulting Physician will be the sole recipient of drug and alcohol testing results from the laboratory.

21.9.1.2 **Verification of Positives.** The Consulting Physician will verify that the laboratory report of a positive result is reasonable. When a positive test result is received, the Consulting Physician will:

(a) Notify the Fit for Duty Officer that the employee or Council member or delegate is medically unqualified to continue work or to continue Council duties pending evaluation of results.
(b) Notify the employee or Council member or delegate of the positive result and afford the employee or Council member or delegate an opportunity to discuss the test results with the Consulting Physician. The Consulting Physician may verify a test as positive without having communicated directly with the employee or Council member or delegate about the test in two circumstances:

(1) The employee or Council member or delegate expressly declines the opportunity to discuss the test.
(2) The Fit for Duty Officer has successfully made and documented a contact with the employee or Council member or delegate and instructed the employee or Council member or delegate to contact the Consulting Physician and more than 24 hours has passed since the time the employee or Council member or delegate was successfully contacted by the Fit for Duty Officer.

(c) If the employee or Council member or delegate chooses, review the employee's or Council member or delegate's medical history, including any medical records and biomedical information provided.

(d) Determine whether there is a legitimate medical explanation for the result, including legally prescribed medication.

(e) Request, as needed, pertinent analytical records or require re-analysis of any specimen to verify results.

(f) Determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative if the laboratory does not confirm the presence of 6-monoacetylmorphine.

21.9.1.3 **Post-Accident Specimen Collection Facilitation.** The Consulting Physician can assist in facilitating the collection of post-accident specimens at hospitals.

21.9.1.4 **Fit for Duty Consultation.** The Consulting Physician will be available for consultation to determine the ability of an employee to report to work or continue work, or the ability of a Council member or delegate to reassume or continue Council duties, when under the influence of over-the-counter medication and/or prescription medication.

21.9.1.5 **Return to Work Consultation.** The Consulting Physician will review the records and examine, when appropriate, all employees and Council members or delegates returning to duty after a positive drug urine test or breath or blood alcohol test, or wanting to return to duty after having refused to take a drug or alcohol test. The Consulting Physician will consult with treatment counselors, employee assistance staff and Tribal staff when making the evaluation.

21.9.2 **Test Results**

21.9.2.1 **Positive Test Results.** The Consulting Physician will be the exclusive recipient of positive test results from the laboratory. The results will be released only under the following circumstances:

(a) The Consulting Physician will report each test result (after review) to the Fit for Duty Officer designated to receive the results.
(b) The Consulting Physician may release the results to a third party other than the Fit for Duty Officer only when the person test signs an authorization for the release to an identified person.
(c) The Consulting Physician may release the results of a drug and alcohol test to the person who was tested.

21.9.2.2 **Negative Test Results.** The Consulting Physician will review negative test results if:

(a) Specifically requested by the Fit for Duty Officer; or
(b) There was a questioned collection having the appearance or fact of adulteration or specimen tampering.

21.9.3 **Reporting.** The Consulting Physician will only report to the Fit for Duty Officer or alternate. Positive test of Council members or delegates shall be reported to the Tribal Council Chairman or Vice Chairman by the Fit for Duty Officer.

21.9.4 **Relationships**

21.9.4.1 **Collection Site Staff.** The Consulting Physician will assure that all collection site persons are properly trained and, if required, are licensed to draw blood.

21.9.4.2 **Testing Laboratories.** The Consulting Physician will be the primary contact for technical inquiries to the testing laboratory.

21.9.4.3 **Treatment and Rehabilitation Facilities.** The Consulting Physician, in conjunction with the Tribal Human Services Director, may provide advice regarding any substance abuse treatment facility.

21.9.4.4 **Employee Assistance Counselors.** The Consulting Physician will confer with the Tribal Human Services Director when evaluating a return to duty status.

21.9.4.5 **Employee and Council member or delegate Consultation.** The Consulting Physician, or another licensed physician acting on behalf of the Consulting Physician, will consult with an employee or Council member or delegate who has tested drug positive in a urine specimen or alcohol positive in a breath or blood test. The Consulting Physician, when requested, will review the medical history, including any medical records and biomedical information that indicates a legitimate explanation for the result, including legally prescribed medication.

21.9.5 **Reports**

21.9.5.1 The Consulting Physician will retain for five years reports of individuals who do not pass a drug and alcohol test. Reports of individuals who do pass a drug and alcohol test will be retained for one year.

21.9.5.2 The Consulting Physician will assist the Tribe in the preparation of any required Federal reports.

21.10 ROLE OF THE FIT FOR DUTY OFFICER

21.10.1 **Appointment.** The Fit for Duty Officer and an alternate will be appointed by the Tribal Council.

21.10.2 **Reporting Authority.** The Fit for Duty Officer and alternate will be solely responsible to the Tribal Council.

21.10.3 **Reports.** The Fit for Duty Officer will provide the following reports to the Tribal Council on a regular basis:

(a) General status of the Fit for Duty program.
(b) General statistics and information regarding the effectiveness of the program, such as: number of positive tests by testing category, number of referrals to Mental Health, number of employees in re-entry contracts, budget utilization, and legal issues.

21.10.4 **Relationships.** As it relates to Fit for Duty issues, the Fit for Duty Officer will be the principal liaison with Tribal Department of Human Services, Legal Department and the Consulting Physician.

21.10.5 **Duties and Responsibilities.**

21.10.5.1 **Custodian of the Fit for Duty Policy.** The Fit for Duty Officer will be responsible to assure the policy is being uniformly enforced and will suggest to the Tribal Council from time to time, additions and deletions to the policy or special emphasis to assure the policy is being uniformly enforced.

21.10.5.2 **Drug Testing Review.** The Fit for Duty Officer will be consulted before a reasonable cause, post accident/incident test is administered or before an employee or Council member or delegate refusing a drug test is suspended.

21.10.5.3 **Random Selection Administration.** The Fit for Duty Officer shall administer the random selection process using methods and programs to assure that random selection of employees and Council members or delegates is scientifically valid, confidential and free from manipulation.

21.10.5.4 **Maintenance of Records.** The Fit for Duty Officer shall be the exclusive custodian of:

(a) Drug testing results and related documentation communicated by the Consulting Physician.
(b) Periodic random drug testing procedures and selections.

21.10.5.5 **Administration of Program.** The Fit for Duty Officer shall be responsible for the development and administration of the budget as it relates to Fit for Duty issues, including but not limited to:

(a) Drug tests,
(b) Consulting Physician fees,
(c) Random selection fees,
(d) Maintenance of records, and
(e) Utilization of consultants for policy implementation, training and maintenance.

21.11 TESTING FOR DRUGS AND ALCOHOL

21.11.1 **Urine, Blood, and Breath Specimens.** When tests are required pursuant to this policy, employees and Council members or delegates will have one urine specimen and possibly a breath and/or blood specimen collected for the examination of drugs and alcohol.

21.11.2 Drugs to be Tested. Applicants/employees and Council members or delegates may request a split specimen be collected. All costs of storage and testing of the second split specimen will be paid for by the employee or Council member or delegate. Employees, Council members or delegates testing positive may request a reconfirmation of the originally collected specimen or a split specimen.

21.12 PRE-EMPLOYMENT TESTING

21.12.1 Pre-employment Testing Defined. Applicants being considered for employment and scheduled for a pre-employment evaluation will have their urine tested for drug substances as part of the pre-employment evaluation process. Drug testing clearance will be completed before an offer of employment is considered final and before a work assignment is given. Newly elected Council members or delegates will be urine tested within 10 working days of election.

21.12.2 Notification of Testing Requirement. Applicants will be notified of the requirement to pass a urine drug test at the time of application.

21.12.3 Reapplication After a Positive Test. Applicants who test positive without adequate explanation of the results will not be considered for an available position for 180 days. Proof of wellness will be required for future consideration.

21.13 REASONABLE CAUSE TESTING

21.13.1 Reasonable Cause Testing Generally. All employees and Council members or delegates will be subject to a fit for duty evaluation, including drug and alcohol testing if appropriate, if there is reasonable cause to believe that drug and alcohol/substance use, emotional distress, or personal health problems are adversely affecting job performance or performance of Council duties, or are endangering the safety of employees or the public.

21.13.2 Reasonable Cause Defined. Reasonable cause for drug and alcohol testing means job-related facts, circumstances, physical evidence, physical signs and symptoms or a pattern of job-related performance and/or behavior that would cause a trained supervisor or trained Council member or delegate to reasonably conclude an employee or Council member or delegate may have engaged in on the job drug or alcohol use, or may, while on the job or performing Council duties, be under the influence of some drug/substance including alcohol.

21.14 POST-ACCIDENT/INCIDENT TESTING

21.14.1 Post-Accident/Incident Testing Defined. An Accident/incident is defined as the occurrence of a serious or potentially serious event that may have been caused by human error and/or violations of established safety, security, or other operating procedures and an employee or Council member or delegate, in the course of his or her employment or representation of the Tribe or a Tribal entity, or while conducting Tribal business, either contributed to the occurance or cannot be completely discounted as a contributing factor. An accident/incident for testing purposes is further defined as:

(a) One in which a person dies; or
(b) A person is taken to a medical treatment facility; or
(c) An injury, accident, near miss incident or property damage incident occurring during the course of employment or representation of the Tribe or a Tribal entity, or while conducting Tribal business; or
(d) A vehicle accident occurs and a hazardous substance requiring placarding was being transported by a vehicle of the Tribe or Tribal entity and the employee or Council member or delegate either contributed to the accident/incident or cannot be completely discounted as a contributing factor.

21.14.2 Referral to Employee Assistance. Any employee experiencing a time loss injury in excess of 30 days will be encouraged to meet with a mental health coordinator upon returning to work.

21.14.3 Initiating a Request for Post-Accident/Incident Testing. A request for post-accident drug and alcohol testing may be initiated only by an employee's supervisor, or in the case of a Council member or delegate, only by the Council board, commission or committee Chairman. In deciding whether to initiate a request for post-accident/ incident testing, the supervisor or Council board commission or committee Chairman shall determine, based on eye witness reports, facts of the event or observed physical and behavioral characteristics of the employee or Council member or delegate involved in the accident, whether the accident meets one or more of the criteria set forth in Section 21.13.1.

21.14.4 Next Level Authorization Required. An employee or Council member or delegate will not be requested to submit to post-accident/incident testing unless the Fit for Duty Officer, after conferring with the supervisor or Council Chairman who initiated the request and after reviewing the grounds on which the request was initiated, agrees that the accident meets one or more of the criteria set forth in Section 21.14.1.

21.15 RETURN TO DUTY TESTING

21.15.1 Return to Duty Testing Defined. An employee or Council member or delegate will be required to pass drug and alcohol tests before being returned to duty if that employee or Council member or delegate had previously failed a urine, blood, or breath test for drugs or alcohol.

21.15.2 Role of Consulting Physician and Fit for Duty Officer in Return to Duty. In addition to the employee or Council member or delegate passing the drug and alcohol tests, approval must be received from the Consulting Physician and the Fit for Duty Officer before the employee or Council member or delegate may return to duty.

21.15.3 Unannounced Drug Tests. An employee or Council member or delegate requiring return to duty drug and alcohol testing may be subject to unannounced drug and alcohol tests for up to 60 months after returning to work or returning to Council duties.

21.16 RANDOM TESTING

21.16.1 Random Testing Defined. Random testing means that:

(a) Persons described in section 21.16.6 infra, which the Hoopa Valley Tribe finds are in safety sensitive occupations, will be subject to a scientifically supportable random selection process for drug and alcohol testing;
(b) Subject to §§ 21.16.1(a) and 21.16.7, all safety sensitive employees will have an equal chance to be selected at all times;
(c) The drug tests are unannounced.

21.16.2 Selection Rate. Selections will be made at a rate of 100% per year. This means that the total number of random tests shall be equal to the total number of employees, Council member or delegates in the random selection pool. Employees in a seasonal stand-by status will be tested at a rate of 200% per year.

21.16.3 Notification. Employees, Council member or delegates notified of a random selection will have no more than two hours to report to the designated specimen collection site. Failure to report in the required time frame will be regarded as a refusal to be tested.

21.16.4 Refusal To Be Tested. An employee or Council member or delegate refusing to be random tested shall be immediately suspended from work or duties without pay for a period of up to 60 days. The employee or Council

member or delegate shall not be permitted to resume their normal duties until cleared by Tribal Human Services, which clearance shall include a negative urine screen. After 60 days the employee, Council member or delegate again refusing to be random tested will be terminated or removed from office.

21.16.5 **Urinalysis or Assessment** Solely in respect to random testing, employees, contractors, board members and Council members subject to random testing, as set forth in § 21.16.6, and selected for random testing, shall have the choice either:

(a) to supply a urine specimen; or

(b) to attend an assessment carried out by personnel qualified to assess whether or not a person is presently under the influence of drugs or alcohol; the assessment may consist of observation, standard questions, completion by the assessee of a certification that she or he is not under the influence of drugs or alcohol, and physical acuity tests; but an assessment shall not, except as set forth in this paragraph infra., call for supplying a urine, blood, or breath specimen; if the assessor certifies that an assessee is under the influence of drugs or alcohol, then the assessee shall be deemed subject to reasonable cause testing, requiring the assessee to then supply a urine sample; or

21.16.6 **Safety Sensitive Defined.** Random testing shall be required of employees, contractors, board members and Council members who:

(a) during the preceding year of their Tribal employment, to be updated annually in January of each year, operated a Tribal vehicle or their own private vehicle on Tribal business; or
(b) operate or oversee the operation of equipment that poses a substantial risk of serious injury to staff, colleagues or the public; or
(c) medical personnel; or
(d) occupy jobs requiring representation of the Tribe or components of the Tribe to the public, including but not limited to children and students; or
(e) law enforcement personnel.

21.16.7 **Random Testing Intervals.** Subject to § 21.16.1(a) and (b), each person subject to random drug testing shall be tested, by urinalysis or by assessment, at least once each two years.

21.16.8 **Written Confirmation of Random Selection.** Persons subject to random drug screens shall, if they so request, receive independent confirmation, by documentation, that their name was randomly selected.

21.17 SPECIMEN COLLECTION

21.17.1 Specimen Collection Sites. Urine, blood, and/or breath specimens will be selected at sites approved by the Tribal Fit for Duty Officer.

21.17.2 Specimen Collection Persons. The only persons authorized to collect specimens are as follows:

(a) Urine - Persons trained in the NIDA collection protocol.

(b) Blood - Persons authorized by state or federal law to draw blood specimens

(c) Breath Alcohol - Persons trained to administer the test.

21.17.3 Specimen Collection Protocol. Breath, blood and urine specimens will be collected strictly in accordance with established collection protocols and, in the case of urine, will strictly adhere to the urine collection requirements specified in 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs." All collection sites will have a breath, blood and urine collection protocol on file.

21.18 LABORATORY PROCEDURES

21.18.1 Approved Laboratory Defined. Only laboratories systems approved for the testing of urine specimens by the U.S. Department of Health and Human Services, National Institute on Drug Abuse, will be used. Examination of blood should be conducted at the same laboratory whenever practical and technically feasible.

21.18.2 Testing Procedures. The laboratory shall conduct urine tests in conformance with CAP and/or NIDA protocols and standards. Blood and breath alcohol tests shall be in conformance with the standards of the California Highway Patrol.

21.18.3 Request for Reexamination. Within three days of notification of a positive test, an employee, Council member or delegate may request in writing to the Fit for Duty Officer the reexamination of any positive urine drug test. The remaining portion of the originally collected specimen will be reconfirmed at the original testing laboratory or at a laboratory acceptable to the Consulting Physician and the employee, Council member or delegate. All costs associated with the reconfirmation will be paid by the employee, Council member or delegate.

21.19 SUPERVISOR RESPONSIBILITIES

21.19.1 Reasonable Cause and Post Accident Testing. Supervisors and Council Chairman (with respect to the testing of other Council members or delegates) are

expected to base the initiation of testing requests on objective observations and to thoroughly document all steps.

21.19.2 **Confidentiality.** Supervisors, Managers, and Council, board, commission or committee Chairman will communicate information regarding a fit for duty incident strictly on a need to know basis. (See Section 21.21.1.3 -- Penalties for Breach of Confidentiality.)

21.19.3 **Random Selection Notification.** Supervisors, Managers and Council, board, commission or committee Chairman who fail to promptly arrange and notify employees of random selection will be regarded as neglecting their responsibilities.

21.19.4 **Accountability.** Supervisors/managers who knowingly disregard the requirement of this policy with respect to fit for duty concerns will be subject to termination. Council members or delegates who knowingly disregard the requirements of this policy with respect to fit for duty concerns shall be guilty of neglect of duty or gross misconduct, and shall be subject to removal from office.

21.20 EMPLOYEE ASSISTANCE AND REHABILITATION

21.20.1 **Intent.** Employees and Council members or delegates who voluntarily seek assistance in dealing with emotional distress, personal health problems or problems relating to alcohol or illegal drug and alcohol abuse will be immediately referred to the Tribal mental health program. Employees, Council members or delegates, or members of their immediate family may also self-refer to the Tribal mental health program.

21.20.2 **Employee Assistance Defined.** Employee Assistance is defined as diagnostic, referral and short-term mental health counseling and drug and alcohol dependency assessment.

21.20.3 **Drug and Alcohol Assessment Defined.** Assessments will be conducted in a manner consistent with the DSM-111-R diagnostic manual.

21.20.4 **Voluntary Self-Referrals.** Council members or delegates, employees, and family members who self-refer are assured of confidentiality, and unless specific personnel policies direct otherwise, no job jeopardy or removal from office will result.

21.20.5 **Management Referrals.** Employees who are referred as part of supervisory performance counseling or intervention are assured of confidentiality. Only those in the chain of responsibility may be aware of a treatment request.

21.20.6 **Employee and Council member or delegate Accountability for Conduct.** Employees and Council members or delegates are still accountable for performance problems. If an employee or Council member or delegate is

experiencing performance problems or disciplinary action is pending, a request for help will be treated as a separate but related issue. In no case will disciplinary amnesty be granted to employees or Council members or delegates asking for assistance and referral. However, disciplinary action may be deferred pending successful completion of a treatment process.

21.20.7 **Fit for Duty Referrals.** Employees and Council members or delegates who are required to be assessed for possible emotional and/or substance abuse problems before returning to work or resuming Council or delegate duties are assured that the content of any communication is confidential. The Human Services Director will communicate with the Fit for Duty Officer (or in the case of a Council member or delegate, with the Council, board, commission or committee Chairman) the following information:

(a) Date and times of attendance;
(b) Prognosis and good faith progress;
(c) Specific work limitations.

21.20.8 **Return to Duty Evaluation.** The Mental Health Coordinator and Consulting Physician will evaluate the return to duty status of all employees and Council member or delegates referred to treatment (other than self referrals) and employees and Council member or delegates testing positive to a urine, blood, or breath test. The Mental Health Coordinator will also participate in the execution subject to confidentiality requirements, a re-entry contract.

21.20.9 **Reporting.** The Fit for Duty Officer will provide the Tribal Council with a quarterly report indicating the number of Council member or delegate/ employee/family member contacts, a breakdown by counseling issue, and disposition of the cases.

21.20.10 **Confidentiality and Conduct.** A direct request by the employee or Council member or delegate for assistance will not be made a part of the employee's personnel file or the Council member or delegate's file. However, any related performance issues or disciplinary action cannot be held confidential.

21.20.11 **Freedom From Discrimination.** Employees will not have job security or promotional opportunities jeopardized solely because of a request for help.

21.20.12 **Re-entry to work or Council Duties**

21.20.12.1 **After Mandatory Referral.** Employees re-entering the work force and Council members or delegates resuming Council, or delegate duties after a mandatory referral for a fit for duty issue will agree to a re-entry contract. That contract may include, but is not limited to:

(a) A release to work statement from an approved treatment specialist.

(b) Evidence of a plan setting out after care and follow-up treatment procedures with the mental health coordinator or a treatment specialist or Consulting Physician for a minimum of one year. Longer periods of follow-up may be specified by the mental health coordinator.
(c) A review and release for work by the Fit for Duty Officer, Human Services Director and the Consulting Physician.
(d) A negative test for drugs, unauthorized substances, and alcohol.
(e) An agreement to unannounced drug and alcohol testing.
(f) A statement of expected work-related behaviors.
(g) Specific agreement by the employee or Council member or delegate that violation of the agreement will be grounds for dismissal or removal from office.

21.20.12.2 **After Voluntary Self-Referral.** Employees and Council members or delegates self-referring to a substance abuse treatment program with the prior knowledge of their supervisor or the (or in the case of Council members or delegate, with the prior knowledge of the Council), and who utilize Tribal benefits, must agree to a re-entry contract. The contract will include:

(a) A release to work statement from an approved treatment specialist.
(b) An evaluation from the mental health coordinator.
(c) An evaluation and release to work by the Personnel Director.

21.21 CONFIDENTIALITY, RECORD KEEPING AND REPORTS

21.21.1 Confidentiality

21.21.1.1 **Test Results.** All written reports and test results will be regarded as confidential personnel records and medical data and will not be filed in an employee's general performance file or in a Council file that is open to the public. The fact that a request for a test has been made, all information leading up and used in making a decision to test, the contents of any such report, and the results of a test shall be confidential and shall be communicated on a strict need-to-know basis.

21.21.1.2 **Mental Health Referrals.** Any knowledge of an employee's or Council member or delegate's attendance at mental health or a substance abuse treatment program will be treated the same as medical data and will not be filed in an employee's general performance file or in a Council file that is open to the public. The status of an employee's or Council member or delegate's involvement with mental health and/or substance abuse treatment shall be confidential and shall be communicated on a strict need-to-know basis.

21.21.1.3 **Penalties for Breach of Confidentiality.** Negligent violation by an employee of any confidentiality standard in this Policy will result in disciplinary action up to and including termination. Subsequent negligent violation or any willful violation by the employee will result in immediate termination. Negligent or willful violation by a Council member or delegate of any confidentiality standard in this Policy shall constitute neglect of duty and/or gross misconduct, and shall subject the Council member or delegate to removal from office.

21.21.2 **Record Keeping**

21.21.2.1 **Test Results.** Original laboratory test results will be maintained by the Consulting Physician. Results reported to the Tribe will be kept by the Fit for Duty Officer. Records of positive results will be retained for five years. Records of negative results will be retained for one year.

21.21.2.2 **Collection Records.** All records relating to the urine collection process will be maintained in cooperation with the Consulting Physician and the collection site (if other than the Consulting Physician and/or on-site collection). The records of employees, applicants, and Council members or delegates testing positive will be retained for five years. Records of applicants, employees, and Council members or delegates testing negative will be retained for one year.

21.21.2.3 **Administrative Records.** All records relating to the administration of the Fit for Duty policy including policy and program development, employee awareness and supervisory training, collection site training, and program administration will be retained for ten years.

21.22 BUSINESS USE OF ALCOHOL

21.22.1 **Never a Business Obligation.** The consumption of alcohol should never be considered a business obligation.

21.22.2 **Separation of Business and Business Entertainment.** Employees shall not consume beverages containing alcohol whole conducting business. Conducting business is defined as any event where the interest of the Tribe or a Tribal entity are being obligated and/or represented. Business entertainment can be defined as events where the primary purpose is friendship and socialization. When in doubt, the best advice is don't drink. Lunch, with the expectation of returning to business or the workplace, is not considered business entertainment.

21.22.3 **Tribal Sponsored Social Events.** The following steps will be adhered to at events sponsored by the Tribe and Tribal entities (e.g. Christmas party, Tribal dances):

21.22.3.1 Alcohol shall not be served or used unless prior approval has been received from the Tribal Council.

21.22.3.2 At any event where alcohol is served, food and non-alcoholic beverages will be served also.

21.22.3.3 A management level person shall see that any overserved or intoxicated attendees are provided transportation home.

22.23 PROCEDURAL EFFECT

This amendment to the Tribal Drug and Alcohol Policy is intended to supersede any preceding Tribal Drug and Alcohol Policy and to nullify conflicting or inconsistent Tribal law; this amendment shall, insofar as lawful under Tribal law and insofar as not detrimental to the interests of the Hoopa Valley Tribe and the Hoopa Valley Tribal Council, be retroactive in effect.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council is composed of eight (8) members, of which six (6), constituting a quorum, participated in and signed a Special Consent on the 22 day of February, 1996; that this Ordinance was thereby duly adopted by a vote of five (5) in favor, zero (0) opposed, and zero (0) abstaining; the Chairman not voting; and that since its approval this Ordinance has not been rescinded, amended, or modified in any way.

Dated this 22nd day of February 1996.

Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

Hoopa Valley Tribal Council

P.O. Box 1348 • Hoopa, California 95546 • (916) 625-4211

Dale Risling, Sr.
Chairman

Rec'd 7/30/96 RC

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

MEMORANDUM

DATE: July 29, 1996

TO: All Departments
Hoopa Valley Tribe

FROM: Robert D. Hostler
Chief Of Staff

SUBJECT: Authority: Fit For Duty Officer

This memorandum will serve to clarify the authority vested in the Fit For Duty Officer and clear any misunderstanding thereof. Your attention is drawn to Section 21.1.2 GENERAL POLICY STATEMENT of the Hoopa Valley Tribe Drug and Alcohol Policies, Overview (the penultimate paragraph):

> "The Tribal Chairman shall appoint a Fit For Duty Officer who will be responsible for implementation of this policy. Notwithstanding any provision to the contrary in any Tribal issued charter, governing document, or personnel policy, **the Fit for Duty Officer shall have authority to enforce this Policy against any employees of the Tribe and its entities, by imposing penalties up to and including termination, in the case of employees, or recision of the contract, in the case of independent contractors...".**

Be advised that there is no provision for waiving any requirement contained in the Tribal Drug and Alcohol Policies.

Inform the employees under your supervision and the contractors and vendors doing business with your department of the contents of this memorandum and the requirements of the Tribe Drug and Alcohol Policy.