Hoopa Valley Tribe

Hoopa Tribal Codes

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CONSTITUTION AND BY LAWS

OF THE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

(Amended June 18, 1996)

PREAMBLE

We, the members of the Hoopa Valley Tribe in California, in order to exercise our tribal rights and promote our common welfare do hereby ordain and establish this Constitution and Bylaws.

ARTICLE I – PURPOSE

The purpose of this Constitution and Bylaws shall be to protect and promote the interests of the Hoopa Valley Indians, to develop cooperative relations with the agencies of the Federal Government and to cooperate with State and local governments. Upon its effective date this revised Constitution and Bylaws shall supersede the Tribe's initial governing document, approved September 4, 1952. All existing ordinances, resolutions or any other enactment or policies of the Tribe, which are not in conflict with the provisions of this revised constitution and bylaws shall remain in effect.

ARTICLE II – NAME

The Tribal organization shall be called "The Hoopa Valley Tribe."

ARTICLE III – TERRITORY

The jurisdiction of the Hoopa Valley Tribe shall extend to all lands within the confines of the Hoopa Valley Indian Reservation boundaries as established by Executive Order of June 23, 1876, and to such other lands as may hereafter be acquired by or for the Hoopa Valley Indians.

ARTICLE IV – MEMBERSHIP

Section 1. The membership of the Hoopa Valley Tribe shall consist as follows:

(a) All persons of Hoopa Indian blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1, 1949; provided that corrections may be made in the said roll by the Tribal Council within five years from the adoption and approval of this Constitution, subject to the approval of the Secretary of Interior or his authorized representative.

(b) All children, born to members of the Hoopa Valley Tribe, who are at least one-quarter (1/4) Indian blood, after the effective date of this statement. Degree or quantum of blood to be determined by adding one-half (1/2) the degree of Indian blood of each parent as shown on the approved Roll Schedules of the Hoopa Valley Tribe.

Section 2. The Tribal Council shall have the power to make rules governing the adoption of new members or the termination of membership in the Tribe.

Section 3. ENROLLMENT ORDINANCE. The Tribal Council shall draft an ordinance setting forth the procedures governing tribal membership in accordance with this article. This ordinance shall be submitted to a referendum within one year from the effective date of this revised constitution and bylaws and shall be in effect only when ratified by the tribal referendum and approved by the Commissioner of Indian Affairs. Changes to such ordinance shall require a further vote by the Tribe's general membership and approval by the Commissioner.

ARTICLE V – GOVERNING BODY

Section 1. Name. The governing body of the Hoopa Valley Tribe shall be a council known as the Hoopa Valley Tribal Council.

Section 2. COMPOSITION. The Council shall consist of a chairman, and seven (7) other members. A vice-chairman shall be elected by the Council from within its own membership. A secretary, treasurer, and such other employees, committees as are deemed necessary shall be either appointed or employed by the Council from the outside the membership of the Council.

Section 3. DISTRICTS. The Tribal Council and (7) other Council members shall be elected at large as hereinafter specified in Article VI. The Chairman shall represent the membership as a whole and one Councilman shall be elected to represent each of the following districts:

1. Hostler – Matilton
2. Soctish – Chenone
3. Agency
4. Norton
5. Campbell
6. Bald Hill
7. Mesket

ARTICLE VI – NOMINATIONS AND ELECTIONS

Section 1. Starting with the June 1972 election the Chairman shall be elected for a term of 2 years. The other Tribal Council members shall be elected for terms of two years which shall be staggered. At the June 1973 election four Council members shall be elected to fill the positions on the present Council which are presently due to expire in June 1973. Three Councilmembers shall be elected in 1974 to fill the Council positions on the Council which expire in June 1974.

All Councilmembers including those presently serving shall remain in office until their successors are duly elected and installed in office.

Section 2. ELECTION DAY: An election shall be held on the third Tuesday of June of each year. In the event a holiday falls on that date, or for some other reason it is not advisable to hold the election at the specified time, the election board shall designate an alternate time to conduct the election no later than the last day of June.

Section 3. ELECTION BOARD: The membership shall elect an election board composed of 5 members which shall enact an ordinance as set forth in Section 4. The terms shall expire as follows: one in one year, two in two years, to in three years and their successor shall serve three year terms. The candidates in each instance receiving the second highest vote total serve as alternates for the corresponding terms of election board members.

The election board shall be responsible for screening candidates calling and conducting elections, settling any election disputes, certifying election results and installing successful candidates. The election board chairman shall administer oaths of office. The board shall establish its own rules of procedure. Members of the board shall receive fair payment to be set by the Council for the performance of their duties. The board may levy and collect filing fees from candidates to help defray costs of elections. It may also require that a fee accompany protests of elections for Tribal Council members to help defray any costs of recounts or such actions as the protest may require. Such fee may be refunded if the aggrieved party's protest is sustained. Members of the board shall be subject to the recall provisions of Article VII, Section 3.

Section 4. ELECTION ORDINANCE: The election board shall enact an ordinance governing elections and setting forth the procedures to be followed in conducting each of the various types of elections. Such ordinance shall include provisions for secret ballots, absentee voting, registration of voters, screening of candidates, and settling election disputes. A separate section of the ordinance shall spell out the procedure and format to be used whenever it is necessary to submit petitions for any purpose to the Tribal Council or any office or board of the Tribe. Whenever practical such ordinance shall include provisions of the State or local election regulations. The ordinance shall also include provisions for run-off elections in case of tie votes.

Section 5. NOMINATION PROCEDURES: Candidates shall file for a specific position by submitting to the election board a nominating petition signed by not less than five (5) registered voters. A voter may sign only one petition. Petitions for nomination shall be filed with the clerk of the election board at least forty-five (45) days prior to the election in which the candidate intends to compete.

It shall be the duty of the election board to screen all candidates and post in public places on the reservation the names of all candidates who have met the above qualifications and the position for which they have filed. Such lists shall be posted at least forty (40) days prior to the election. Copies of the sample ballot shall be mailed to all registered voters.

Section 6. QUALIFICATIONS OF CANDIDATES: Any member of the Tribe may announce his or her candidacy for a specific position of the Tribal Council provided the following qualifications are met:

(a) Must be at least twenty-one (21) years of age by the date of the election in which he desires to compete.

(b) Must have physically resided within the area shown by a circle drawn on a map representing a one hundred (100) mile radius from the tribal office building. The election board shall rule on whether any prospective candidate meets residence and any other qualifications specified in this article.

(c) Must not have been convicted of a felony or misdemeanor involving moral turpitude such as, but not limited to, fraud, embezzlement, theft. Provided, that person who have completed their sentence for such conviction at least ten (10) years prior to the date of the election in which the intend to run for office, may file as candidates.

(d) Must be bondable.

(e) Each prospective candidate must disclose to the election board any personal, financial and business interests that may create a conflict if that person is elected. Once elected each Council member shall report to the Tribal Council and election board any situation that may create a conflict while in office.

Section 7. QUALIFICATIONS OF VOTER: Any member of the Tribe who will be at least eighteen (18) years of age on election day shall be eligible to vote, provided he has duly registered.

Section 8. ABSENTEE BALLOTS: Absentee ballots shall be provided upon request to all non-resident registered voters and other registered voters who advise the election board that they will be away from the reservation on election day.

Section 9. OATH OF OFFICE: Each successful candidate elected to the Tribal Council shall take an oath of office prior to assuming the duties of such position, by which oath he shall pledge himself to support and defend the Tribe's constitution and bylaws. The following form of oath of office shall be administered by the chairman of the election board:

> I _____, do solemnly swear (or affirm) that I will carry out faithfully and impartially the duties of my office to the best of my ability, that I will promote and protect the best interest of my Tribe, in accordance with its constitution and bylaws.

Section 10. INSTALLATION: Successful candidate shall be installed in office within ten (10) days after the general election following certification of election results. Installation of any candidate for a particular position may be postponed, however, until such time as there is a determination of any dispute or election for that position.

ARTICLE VII – VACANCIES, REMOVAL, RECALL AND REFERENDUM

Section 1. If any member of the Tribal Council or other elected official shall die, resign, be removed from office or shall be found guilty while in office of a felony or misdemeanor involving moral turpitude in any Indian, State or Federal court, or if he shall miss three (3) consecutive regularly scheduled meetings of the Council without being excused by that body, the Council shall declare that position vacant. If more that six (6) months remains in the term of the position the election board shall conduct a special election of the voting membership for the purpose of filling the vacancy. If less than six (6) months remains in the unexpired term, the Council shall appoint a representative to serve the remainder of the unexpired term.

Section 2. REMOVAL: The Tribal Council may by five (5) affirmative votes, expel any member for neglect of duty or gross misconduct. Before any vote for expulsion is taken on the matter, such member or official shall be provided a written statement of the charges against him at least five (5) days before the meeting of the Tribal Council before which he is to appear, and an opportunity to answer any and all charges at such designated Council meeting. The decision of the Tribal Council shall be final.

Section 3. RECALL: Upon receipt of a petition signed by one-third (1/3) of the number of voters, who were registered to vote in the last election, calling for the recall of any member of the Council or election board, it shall be the duty of the election board to call and conduct within forty-five (45) days an election on such recall. Recall shall be effective only if a majority of the Tribe's registered voters shall vote in favor of such recall. Once a member has faced a recall attempt, no further recall action may be brought against him until at least one (1) year has passed. No member of the Council shall be subject to recall action within the first six (6) months of his term.

Section 4. REFERENDUM: Upon receipt of a petition signed by one-third (1/3) of the voters who participated in the last election or upon receipt of a resolution of the Council, the election board shall call and conduct within forty-five (45) days an election on any enacted or proposed enactment of the Council, or any proposal initiated by the voters. Should that measure fail, it cannot be reconsidered until at least one (1) year has passed. Should it pass, the Council is bound by that decision. Any ordinance submitted to referendum for ratification can only be amended by like action.

ARTICLE VIII – RIGHTS OF MEMBERS

Section 1. The Hoopa Valley Tribe, in exercising its powers of self-government, shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(b) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(c) Subject any person for the same offense to be twice put in jeopardy;

(d) Compel any person in any criminal case to be a witness against himself;

(e) Take any private property for public use without just compensation.

(f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of five thousand dollars ($5,000) or both unless greater penalty or punishment is permitted by federal law;

(h) Deny to any person within it jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; or

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE IX – POWERS AND DUTIES OF TRIBAL COUNCIL

Section 1. The Tribal Council shall have the following powers subject to any limitations imposed by the federal statutes or by the Constitution of the United States.

(a) To administer all tribal property. Toward this end a land assignment ordinance shall be submitted for ratification to a referendum vote within one year of the effective date of this revised constitution and bylaws.

(b) To borrow money from the Indian credit fund or from any other federal or state agency, and to pledge or assign future tribal income as security for such loans.

(c) To collect and expend any Hoopa Valley Tribal funds within the exclusive control of the Tribe and to recommend the expenditure of any other Tribal funds.

(d) To purchase in the name of the Hoopa Valley Tribe any land or other property the Council may deem beneficial to said Hoopa Valley Indians.

(e) To enforce the protection of Tribal property, wildlife and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance which shall be enacted within one year from the effective date of this revised constitution.

(f) (1) To provide assessments or license fees upon non-members doing business or obtaining special privileges within the reservation, subject to the approval of the Commissioner of Indian Affairs or his authorized representative.

(2) To promulgate and enforce assessments or license fees upon member exercising special privileges or profiting from the general resources of the reservation.

(g) To negotiate with the federal, state and local governments on behalf of the Tribe.

(h) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Commissioner of Indian Affairs.

(i) To prevent the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or other Tribal assets.

(j) To exclude from the restricted land of the Hoopa Valley Indian persons not legally entitled to reside therein, under ordinances which shall be subject to the approval of the Commissioner of Indian Affairs or his authorized representative.

(k) To promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Indian Tribe.

(l) To safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians by regulating the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs or his authorized representative.

(m) To confer with Commissioner of Indian Affairs and heads of other Federal agencies, regarding all appropriation estimates and budgets for the benefit of the Tribe prior to their submission to the Office of Management and Budget and Congress.

(n) To establish a tribal court through the necessary ordinances and resolutions.

(o) To establish a Housing Authority.

(p) To create subordinate bodies for the operation of economic enterprises to benefit the Tribe.

(q) To negotiate and conclude contracts for economic purposes except where Tribal assets are involved outside of the approved annual budget, in excess of $100,000, during any budget and year. Contracts in excess of such amount shall be submitted to the Tribal membership for approval by referendum vote.

Section 2. Any rights and powers heretofore vested in the Hoopa Valley Tribe but not express referred to in this constitution shall not be abridged, but may be exercised by the members of the Hoopa Valley Tribe through the adoption of appropriate amendments to this Constitution and Bylaws.

ARTICLE X – AMENDMENTS

Amendments to this Constitution and Bylaws may be proposed by either the following documents being submitted to the Tribal Election Board along with the desire modification:
(a) A resolution in which at least six (6) of the Tribal Council members have voted in favor of the proposal.

(b) A petition signed by at least twenty percent (20%) of the Tribe's registered voters.

Upon receipt of the resolution provided for in (a) above or a valid petition referred to in (b) above, the Election Board shall call and conduct a special amendment in accordance with this Article and provisions set forth the Tribal Election Ordinance. The specific language which will become part of the Constitution and Bylaws, if such amendment is adopted and approved, shall appear on the ballot including language changes of any other parts of the governing document that will be affected by such modification. If at such election the proposed amendment is adopted by a majority of those voting in the election and if at least thirty percent (30%) of the registered voters shall vote, that amendment shall be submitted to the Commissioner of Indian Affairs and if approved by him, shall thereupon take effect.

BYLAWS OF THE HOOPA VALLEY TRIBE

ARTICLE XI – TRIBAL COUNCIL

Section 1. CHAIRMAN: The Chairman shall preside over all meeting of the Tribal Council and of the Tribe's general membership. He shall perform all duties of the Chairman and exercise any authority delegated to him by the Tribal Council. The specific duties and responsibilities of the Chairman and other members of the Tribal Council shall be spelled out in appropriate ordinance of the Tribal Council. The Chairman shall vote only in case of a tie.

Section 2. VICE-CHAIRMAN: The Vice-Chairman shall assist the Chairman when called upon to do so. In the absence of the Chairman, he shall preside, and when so presiding shall have all the rights, privileges and duties, as well as the responsibilities of the Chairman.

Section 3. SECRETARY: The Secretary shall conduct all correspondence and keep a complete and accurate record of all matters transacted at Council and Committee meetings. It shall be his duty to submit promptly to the Superintendent of the Hoopa Agency, copies of all minutes of regular and special meetings of the Tribal Council and Tribe's general membership. Other duties shall be spelled out in a job description.

Section 4. TREASURER: The Treasurer shall be the custodian of all monies which may come into the control of the Tribal Council. He shall pay out money in accordance with ordinances and resolutions of the Tribal Council. He shall keep an account of all receipts and disbursements, and shall report same to the Tribal Council monthly. He shall be bonded in such an amount as the Tribal Council may by resolution provide, approved by the Commissioner of Indian Affairs. The books of the Council Treasurer shall be subject to audit or inspection at the direction of the Tribal Council or the Commissioner of Indian Affairs.

The Hoopa Agency of the Bureau of Indian Affairs shall be responsible for the custody and disbursement of Tribal funds in the event the Treasurer does not possess an adequate bond. The Treasurer shall perform other duties as assigned in accordance with the ordinance mentioned in Section 1 of this Article.

Section 5. APPOINTIVE OFFICERS: The duties of all committees and officers appointed by the Tribal Council shall be clearly defined by resolution of the Tribal Council at the time of their creation or appointment. Such committees or officers shall report from time to time, as required, to the Tribal Council, and their activities and decision shall be subject to review by the Tribal Council upon the petition of any person aggrieved.

ARTICLE XII – TIME AND PLACE OF MEETINGS AND PROCEDURE

Section 1. Regular meetings of the Tribal Council shall be held on the first and third Thursday of each month in a hall designated by the Tribal Council. Special meetings may be called by written notice signed by the Chairman and shall be called by him upon receipt of a petition signed by at least five (5) Council members, and when so called, the Tribal Council shall have power to transact business as in regular meetings.

General Council meetings shall be called in like manner upon ten (10) days notice.

Section 2. QUORUM: No business shall be transacted unless a quorum is present. A quorum shall consist of any five (5) of the eight (8) Council members.

Section 3. ORDER OF BUSINESS: The following order of business is established for all meetings but may be changed if deemed necessary:

(a) Call to Order by Chairman
(b) Roll call
(c) Ascertainment of a quorum
(d) Reading of minutes of the last meeting
(e) Adoption of minutes by a vote or common consent
(f) Unfinished business
(g) New business
(h) Non-agenda items
(i) Adjournment

Section 4. TRIBAL LEGISLATION: Any enactment of the Tribal Council which is of a temporary nature or for a specific one-time use shall take the form of a RESOLUTION. Enactments of a permanent nature which are to be effective over an extended period of time shall be embodied in ORDINANCES.

Section 5. REPORT OF MEETINGS: It shall be the duty of each member of the Tribal Council to make reports concerning the proceedings of the Tribal Council to the members of his district.

Section 6. SALARIES: The Tribal Council may prescribe by resolution such salaries for officers, committees, Tribal employees, or members of the Council as it deems advisable from such funds as may be available. Provided any changes in the rates of per diem for attending Council or committee meetings shall not be effective until one (1) year from the date of such action.

ARTICLE XIII – RATIFICATION OF CONSTITUTION AND BYLAWS

This Constitution and Bylaws shall become effective upon approval by the Commissioner of Indian Affairs following its adoption by a majority of those who vote in an election called for that purpose. Provided at least thirty percent (30%) of those Hoopa Valley Tribal members entitled to vote shall cast ballots in such election. Upon the effective date of this Constitution and Bylaws, the original constitution and Bylaws adopted on May 13,1950, and approved by the Commissioner of Indian Affairs on September 4, 1952, **and any amendments since** is hereby expressly revoked.

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 seven (7) were present, constituting a quorum of regular meeting thereof; duly and regularly called, noticed, convened and held on this 3rd day of October, 1996; that this Ordinance was adopted by a vote of six (6) in favor, none (0) opposed and none (0) abstaining, and that said Ordinance has not been amended or modified in any way.

Dated this 3rd day of October 1996.

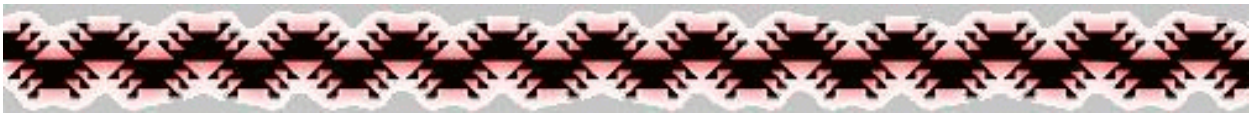
_____
Dale Risling Sr., Chairman
Hoopa Valley Tribal Council

Attest:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 1 OF THE HOOPA TRIBAL CODE

PURPOSE: JUDICIARY CODE

ADMINISTRATIVE RECORD: Referendum of March 1, 1983



JUDICIARY CODE

Title 1

(amended _____)

CHAPTER 1: AUTHORITY, ESTABLISHMENT

1.1.01 Authority

This Law and Order Code, Title 1, Judiciary, is adopted pursuant to the authority granted to the Hoopa Valley Tribal Council by the Hoopa Tribal membership through a referendum election held March 1, 1983. The short title of the Hoopa Valley Tribe's Law and Order Code shall be cited as the "Hoopa Valley Tribal Code" and shall be referred to in court documents by title and section number, e.g., 1 Hoopa Valley Tribal Code § 1.1.01.

1.1.02 Establishment of the Tribal Court and Appellate Court

Through the authority of Section 1.1.01 of this Code, the Hoopa Valley Tribal Council does hereby establish and adopt this Law and Order Code of the Hoopa Valley Tribe and does establish the Hoopa Tribal Court and Appellate Court.

1.1.03 Establishment of the Judicial Committee

The Tribal Council shall appoint a five (5) member committee to review and comment on Tribal Codes and Legislation that will be enforced by the Tribal Court. The Council will develop policies and procedures regarding how the Judicial Committee will function. The Judicial Committee will have no authority in the areas of screening of Judges for elections.

1.1.04 Jurisdiction

(a) Territory. The jurisdiction of the Hoopa Valley Tribal Court and the effective area of this Code shall include all territory within the Hoopa Valley Indian Reservation, as defined by Article 1 of the Hoopa Tribal Constitution, including fee patents, allotments, assignments, roads, waters, bridges and lands used or maintained for Tribal [agency] purposes, and existing and future lands outside the boundaries of the Reservation owned or controlled by the Hoopa Valley Tribe for the benefit of its members.

(b) Personal; Subject Matter. The Hoopa Tribal Court shall have jurisdiction of all suits involving persons whose residence is within the jurisdictional territory defined by this code; all other suits in which the party has been deemed to have consented to submission to the jurisdiction of the Tribal Court, or in which the events giving rise to the action occurred within the territory so defined.

(1) Implied Consent. Any person entering the tribal lands of the Hoopa Valley Indian Reservation as defined in subsection (a) of this Rule, shall be automatically subject to the jurisdiction of the Hoopa Valley Tribal Court.

(c) Constitution; Civil Rights. The Court shall have exclusive jurisdiction to construe and enforce provisions of the Constitution and Bylaws of the Hoopa Valley Tribe, to deal with

alleged violations of the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C §§ 1301-1303, to enforce the ICRA where tribal agencies or officers act outside the scope of their authority, and to review actions of the Tribal Council for compliance with the ICRA. Such jurisdiction shall be found for the purposes of granting declaratory and injunctive relief.

(d) Sovereign Immunity; Waiver. The Court shall have no jurisdiction over any suit brought against the Tribe for money judgments without the consent of the Tribe. Nothing contained within this Code shall be deemed to constitute a waiver or renunciation of the sovereign immunity of the Tribe to suit. Such consent or waiver must be expressly made by the Hoopa Valley Tribal Council by majority vote through passage of an ordinance, by resolution, by entering into a written contract which provides for such waiver, or other means adopted by the Hoopa Valley Tribal Council.

(e) Limited Waiver of Sovereign Immunity for Employee Grievance Appeals and Equal Opportunity Appeals. The Hoopa Valley Tribe makes a limited waiver of sovereign immunity for actions brought pursuant to Sections 9.4 and 13.3 of Title 30 of this Code in Tribal Court by an employee of the Hoopa Valley Tribe. If the employee prevails in Tribal Court, the Court shall have the power and jurisdiction to award money damages against the Tribe for compensatory and prospective damages not to exceed $10,000 and to strike adverse commentary in an employee's personnel file. The Hoopa Valley Tribe does not waive its immunity with respect to attorneys fees, punitive damages, tort damages, orders of reinstatement, or any other form of relief not expressed above. This limited waiver of sovereign immunity extends only to the relief expressed in this waiver and does not include any waiver whatsoever for relief not stated in this waiver.

(f) Jurisdiction for Equal Employment Opportunity Appeals. The Hoopa Valley Tribal Court has jurisdiction to hear an equal employment opportunity charge only when a Notice of right to Administrative Hearing is issued by TERO and only with regard to the charges articulated in the Notice and only after the Administrative Law Judge (ALJ) has made a decision pursuant to Title 30, Section 13.3. The Tribal Court does not have jurisdiction to hear an appeal of a TERO decision to issue a Statement of No Cause or a TERO decision, action, or inaction resulting in the dismissal of an equal employment opportunity charge. The Tribal Court shall have no jurisdiction to award attorneys fees, punitive damages, reinstatement or any other form of relief not articulated in Title 30 for cases brought pursuant to Title 30, Section 13.3.

(g) Jurisdiction for Employee Grievance Appeals. The Hoopa Valley Tribal Court has jurisdiction to hear an employee grievance-related appeal only when the ALJ makes a final decision regarding the employee grievance. The Tribal Court does not have jurisdiction over any employee grievance-related appeal filed more than thirty (30) calendar days after the decision of the ALJ is final or any employee grievance-related claim that was not adjudicated by the ALJ pursuant to Title 30, Chapter 9. The Tribal Court shall have no jurisdiction to award attorneys fees, punitive damages, reinstatement or any other form of relief not articulated in Title 30 for cases brought pursuant to Title 30, Section 9.4.

1.1.05 Concurrent Jurisdiction

The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state,

or any political subdivision thereof; provided, however, this Code does not recognize or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

1.1.06 Prior Inconsistent Codes and Ordinances Repealed

Any and all codes and ordinances of the Hoopa Valley Tribe adopted prior to or which conflicts in any way with the provisions of the Law and Order Code, Titles 1, 2, and 3 as amended, are hereby repealed.

1.1.07 Amendment of Law and Order Code

This Law and Order Code, Titles 1, 2 and 3, may be amended with notice, but such changes shall not be interpreted so as to prejudice the rights of parties in pending cases. Amendments and additions to this Law and Order Code shall become a part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of the this Code.

(a) It shall be the duty of the Chief Judge of the Tribal Court enact or amend such rules as he/she believes to be necessary in the interests of improved judicial procedures. Any judge of the Court or any member of the Tribal Court Bar may recommend such a proposed enactment or amendment. The Chief Judge will first submit all recommended enactment's or amendments to the Tribal judiciary and the Tribal Court Bar for comment. The Chief Judge shall then submit the proposed enactment or amendment with comments to the Judicial Committee for 30 day review. The Judicial Committee will review the proposed enactment or amendment for the purposes of determining its constitutionality and fairness and to verify that the proposal does not conflict with any other section or rule in the Code. The Judicial Committee, after reviewing the proposed enactment or amendment and after reviewing all comments, shall submit any recommendations to the Chief Judge within 10 days after the 30 day review period has expired. The Chief Judge shall review the recommendations of the Judicial Committee and may, but is not required to, adopt the recommendations before enacting or amending such rules. The rules governing Tribal Court procedure, enacted in the manner described above, will be made a part of this Code. [See, Title 3, Rule 1]

(b) Rules Not Announced. Where the Law and Order Code does not expressly address a question, and it is necessary for the proper adjudication of an action before the Court, the Court may adopt a rule, giving prior notice to the parties, and may issue any order to accomplish substantial justice. Such a rule shall only apply to the hearing for which it was adopted.

1.1.08 C.F.R. No Longer Applicable

Any and all provisions of the Code of Federal Regulations, Title 25, as presently constituted or hereafter constituted which deal with subjects covered in this Law and Order Code or are otherwise inconsistent with or in conflict with the provisions of the Law and Order Code or the spirit of this Law and Order Code are declared to be no longer applicable to the Hoopa Valley Indian Reservation.

1.1.09 Codification

Any law, enactment, resolution, code, or ordinance duly approved and adopted by this Tribal Council which are intended to be included in the Hoopa Valley Tribal Codes and enforced by the Hoopa Tribal Court, shall be codified pursuant to the numbering and organization of this Law and Order Code. Failure to codify for inclusion of any law, enactment, resolution, code, or ordinances shall not effect its validity. Under no circumstances shall any duly approved and adopted measure remain uncodified for a period of more than six (6) months from date of adoption. It shall be the responsibility of the Hoopa Valley Tribal Council to assure the continued updating of this Hoopa Law and Order Code.

1.1.10 Court Evaluation

At the end of each fiscal year, the caseload of the Tribal Court for the previous year shall be evaluated. The evaluation shall include consistency with the Tribal Codes, acceptable court procedures, compliance with proper court authority, and any other proper consideration for court performance. The cost of the evaluation shall be borne by the Tribal Council by contract with an organization such as the National American Indian Judges Association.

1.1.11 Court Training Session

The Tribal Council will at least annually sponsor and pay for a Tribal Court Training session to be held on or near the Hoopa Valley Indian Reservation. The purpose of the training session will be to familiarize prospective spokespersons and prospective pro-tem judicial candidates of the rules of court, rules of civil procedure, rules of evidence, trial procedure, and tribal law. The training session will be open to any person wishing to attend and each person may be charged a registration fee to help off-set the costs to the Council.

CHAPTER 2: ELECTION, APPOINTMENT AND REMOVAL OF JUDGES

1.2.01 Number of Judges and Manner of Selection

The Hoopa Valley Tribal Court shall consist of one elected Chief Judge. One or more Judges Pro Tem may be appointed by the Chief Judge as provided in Section 1.2.04.

1.2.02 Bonding

Before taking office, each judge of the Tribal Court shall, at tribal expense, post bond in an amount determined by the Tribal Council, or shall be covered by the Tribe's blanket bond.

1.2.03 Term

The Chief Judge shall be elected by the Tribal membership for a 4 year term; provided that the first elected Chief Judge shall be elected for the period set out in section 1.2.8 below. Judges Pro Tem shall be appointed by the Chief Judge for terms that do not exceed six months. The terms of Judges Pro-Tem may be renewed by the Chief Judge.

1.2.04 Judges Pro-Tem

Whenever the need arises, the Chief Judge may make temporary appointments of persons who otherwise meet the qualifications in this Chapter, to serve as Trial or Appellate Judges Pro-Tem.

The Chief Judge may, in his/her sound discretion, appoint more than one judge pro tem thereby creating a pool of qualified judges pro tem from which one may from time to time be selected as circumstances dictate. All pro tem judges, except those persons who serve as judges for other Indian Reservations, shall meet the requirements of Section 1.2.7, subdivisions (1), (2), (3), (5) and (6).

1.2.05 Non-attorney Judge's Clerk

If the person elected as Chief Judge is not a licensed attorney, a law clerk shall be hired by the Chief Judge to assist in carrying out judicial responsibilities. Minimum qualifications for the Judge's clerk shall include: (a) a law degree; (b) at least two years full-time experience working as an attorney, law clerk or paralegal with strong background in legal research and writing; (c) excellent communications skills; (d) excellent working knowledge of court operations and civil procedure, and (e) must pass the same test as is required of judges. The law clerk's contract of employment shall be co-terminus with the term of the Chief Judge.

1.2.06 Compensation

Each judge shall be compensated pursuant to a written contract with the Hoopa Valley Tribal Council. Under no circumstances shall any judge's compensation be reduced during his or her current term of office. Compensation shall be according to the following schedule:

(a) The Chief Judge shall be compensated in an amount equal to the salary of the Tribal Chairman at the time of the Chief Judges' election; such salary shall be prorated on an hourly basis for less than full-time work, defined as forty (40) hours per week. An additional amount shall be appropriated annually and available for training of the Chief Judge and for a research assistant and consultative services for all tribal judges. The elected Chief Judge shall receive all fringe benefits accorded the Chairman. To the extent it is not inconsistent with his or her duties as a Tribal judge, the Chief Judge may engage in the practice of law or any other type of employment.

(b) Judges Pro-Tem shall be compensated at negotiated hourly rates.

1.2.07 Eligibility

To be eligible to serve as a judge of the Tribal Court, and in order to qualify as a candidate for Chief Judge, a person must:

(1) be at least 25 years of age;
(2) never have been convicted of a felony, or been convicted, within the ten years preceding his election, of a misdemeanor involving moral turpitude, corruption or dishonesty;
(3) agree to be subject to a background investigation which shall be conducted by the Tribal law enforcement agency;
(4) live within 100 miles of the Reservation while holding office;
(5) have successfully completed a Tribal Court orientation session conducted by a judge of the Tribal Court, the Office of Tribal Attorney, or an attorney knowledgeable in Indian law and familiar with practice before the Tribal Court, and
(6) have passed an examination demonstrating

(a) at least a minimal working knowledge of the operation and procedures of the Tribal Court and the sources of law applied by the Tribal Court,

(b) basic ability to communicate well in writing,

(c) a working knowledge of the Hoopa Valley Law and Order Code, and

(d) a familiarity with federal Indian law. The examination shall be created, administered, and evaluated by a qualified professional consultant and given in conjunction with the Tribal Court orientation session.

Each prospective candidate for Chief Judge is required to successfully pass the examination session to be eligible to run for the office of Chief Judge. An incumbent Chief Judge is not required to take the orientation or examination as required by subsections (5) and (6) above. In addition, non-attorney judges who have not previously served as a judge of the Tribal Court shall, after election or appointment and prior to assuming office, at the expense of the Tribal Court, successfully complete a special court or tribal court jurisdiction course.

1.2.08 Screening by Election Board and Conduct of Elections

The Election Board shall screen all candidates for elected judicial office and all applicants for appointed judicial office and shall certify for election or appointment only those candidates or applicants who meet the qualifications set forth in this chapter. The Election Board shall conduct elections for Chief Judge. The time of the primary and general election of the first judge's election in accordance with this revised Chapter 2.0 shall be held as soon as can be reasonably scheduled, but in no case later than the end of 1995; no person may be elected Chief Judge except upon receiving more than 50% of the votes cast in either the primary or a run-off in the general election. Thenafter, all judicial elections shall be held at the time of the tribal primary and general election commencing with said elections in 1998; provided that if necessitated by the resignation, death, or removal of an elected judge, a special election shall be called not less than ninety (90) days after said resignation, death or removal, unless it occurs within sixty (60) days of a previously scheduled tribal election, in which case the special election shall be held at that time; provided further that said Chief Judge shall serve out the remainder of the 4 year term of the resigned, deceased or removed Judge; provided further that until a new judge is elected and sworn into office, the Tribal Council shall appoint a Judge Pro-Tem.

1.2.09 Conflict of Interest; Nepotism

Any judge of the Tribal Court or Appellate Court shall be disqualified to act as such in any case in which he or she has any direct interest, and shall not take part in the deliberation or determination of any matter (1) affecting his or her spouse, son, daughter, sister, brother, mother, father, granddaughter, grandson, grandmother, grandfather, aunt, uncle, niece, or nephew or any of the following in-laws: son, daughter, brother, sister, mother, or father; or (2) where for any other reason the judge cannot be impartial; or (3) where the judge finds that a reasonable person would believe that the Judge could not be impartial.

1.2.10 Disqualification of Judge

Any party to a case may bring a motion for disqualification based upon any grounds set forth in the preceding section. The Court shall conduct a hearing on the motion. If the Court grants the motion, the matter shall be transferred to a Judge Pro-Tem. If no Judge Pro-Tem is currently appointed, the Tribal Council shall appoint one, upon notification from the Court. If the Court denies the motion, it shall do so by written order setting forth the reason for denial. The moving party may then appeal. See also, section 1.3.04.

1.2.11 Removal of Judges

Removal of any judge by the Tribal Chairman shall be automatic upon receipt of proof of a felony conviction at any time, or a misdemeanor conviction involving moral turpitude, corruption or dishonesty within ten years of election to office. Otherwise, the elected judge shall be subject to removal by recall election, or any other means provided for in the Tribal Law and Order Code.

1.2.12 Judicial Cooperation

Judges and personnel of the Tribal Court shall cooperate with federal and state courts and agencies to the extent such cooperation is consistent with Tribal law.

1.2.13 Administrative Responsibilities

The Chief Judge shall be responsible for administering the Hoopa Valley Tribal Court. The Chief Judge's responsibilities shall include, but not be limited to, the administration of the Tribal Court budget; entering into contracts for funding; contracting with judges Pro-Tem, and contracting with the parties or organizations necessary to provide the judicial services of a Court of Appeals.

1.2.14 Oath of Office

Before taking office, and in the presence of the Tribal Chairperson, all Tribal Judges shall be required to take the following oath of office:

Tribal Judge's Oath

I, _____, do solemnly swear:

1. I will respect and uphold the Constitution and by-laws and the Tribal Code of the Hoopa Valley Tribe;
2. I will, at all times, act in a professional manner and will promote the respect and integrity for the Constitution and by-laws and the Tribal Code of the Hoopa Valley Tribe;
3. I will protect and promote the intent and purpose of the Code of the Hoopa Valley Tribe;
4. I will be faithful and honest to the office of the Tribal Judge for as long as I hold that office; and,
5. I will uphold the Tribal Code of the Hoopa Valley Tribe fairly and equally to all persons who may come before the Tribal Court.

_____
Judge

Subscribed and sworn before me this __ day of _____, 2000.

_____
Tribal Chairperson

1.2.15 Intertribal Agreements

By written resolution, the Tribal Council may enter into agreements with other Indian tribes to establish and participate in an organization which makes court personnel and/or administrative services available to participating tribes. In the event of such an agreement, such personnel shall be appointed, compensated, and removed, or payment for such services shall be accomplished, as provided for in the intertribal agreements.

CHAPTER 3: GENERAL COURT PROCEDURES

1.3.01 Sessions of Court

Sessions of the Tribal Court for the trial of cases shall be held in open court by the Chief Judge, or in case of his/her disability, absence , or unavailability, by a Judge Pro-Tem, provided, however, that a Judge Pro-Tem may be called in to hear cases at any time for any reasonable cause by the Chief Judge.

1.3.02 Acting Chief judge

The Chief Judge of the Tribal Court shall designate, in writing, a Judge Pro Tem to act as Chief Judge whenever the Chief Judge is absent from the Reservation, is on vacation, ill, or otherwise unable to perform the duties of his/her office. The Acting Chief Judge may exercise all powers of the Chief Judge. The elected Chief Judge may at any time change his/her designation of the judge empowered to act as Chief Judge.

1.3.03 Rules of Court - Procedures

The time and place of court sessions, and all other details of judicial procedure shall be governed by Title 2, Civil Actions, and Title 3 Rules of Court, promulgated as herein provided. The rules of court are subject to change by the Court with notice, but such changes shall not be interpreted so as to prejudice the rights of parties in pending cases.

1.3.04 Disqualification of Judge

A defendant, or other party, to any proceedings may accomplish a change of assignment of his/her case from one judge to another upon filing an affidavit of prejudice with the Court, giving satisfactory reason for such change. Such affidavit shall be in written form and must be filed with the Court within twenty (20) days of assignment to the judge or in the case of the non-moving party, within twenty (20) days of re-assignment following disqualification of the first judge. The initial judge shall pass on the adequacy of the affidavit of prejudice and enter the appropriate order, either hearing the case or reassigning it to another judge. Such an order may be appealed immediately under the appellate procedures set out in this Code, and all further actions in such a case will be stayed pending the outcome of that appeal. Only one such change

shall be allowed. In no event shall the trial judge allow any action as set out in this section to influence his/her impartiality in any case or to any person.

1.3.05 Means to Carry Jurisdiction into Effect

When jurisdiction is vested in the Court, all the means necessary to carry into effect are also given, subject to the provisions of the Constitution and Bylaws of the Hoopa Valley Tribe and applicable federal law.

1.3.06 Annual Budget

The Tribal Court shall be funded by the Tribe through an annual appropriation. Additional funding may be obtained through the levy of fines or fees. Federal, State or private grants may also be used to fund Court operations. The Tribal Council shall establish a base funding amount which shall be the basis for each annual appropriation. The base funding level shall not be decreased unless there is a significant reduction in total funds available to the Tribe for budgetary purposes or if Federal, State or private grants provide for the funding of the Court. The Chief Judge may request additional funding from the Tribal Council. If the Tribal Council grants an increase, said increase shall not be considered a change in the base funding amount, unless specifically stated in the appropriation language.

The Chief Judge shall be responsible for the efficient operation of the Tribal Court. The Chief Judge may expend funds for salaries and fringe benefits, capital additions, and operational expenses as he/she deems appropriate to meet the goals and objectives of the Court. All costs associated with the operation of the Tribal Court must be within the limits of the funds appropriated annually by the Tribal Council.

CHAPTER 4: COURT OF APPEALS

1.4.01 Court of Appeals; Supreme Court

(a) A panel of three judges shall sit as a Court of Appeals to hear appeals from final judgments, sentences and other final orders of the Tribal Court.

(b) The Tribal Court shall act as the Court of Appeals to hear appeals of TERO Commission decisions. In the event that the Tribal Court acts as the Court of Appeals, the Court of Appeals will hear the appeal of the Court of Appeals as the Hoopa Tribal Supreme Court. The decision of the Hoopa Tribal Supreme Court shall be a final decision.

1.4.02 Appellate Panel

The appellate panel provided for herein shall consist of judges appointed by or contracted with by the Chief Judge. The Tribal Judge originally hearing the case shall not sit on the appellate panel.

1.4.03 Appellate Court Chief Judge

The Chief Judge of the Tribal Court shall serve as Chief Judge of the Appellate Court unless disqualified. In which case, the Chief Judge shall appoint or elect one of other appellate court members to serve as Acting Chief Judge. The Appellate Court Chief Judge shall preside over all appellate hearings and shall execute all documents related to the case, if of the majority view. In those cases where the Chief Judge is not the majority view, the judges who are of such view shall designate one of their number to execute all necessary documents. Any dissenting judges shall have an opportunity to present their written minority opinion of the case.

1.4.04 Conflict of Interest

No person shall be qualified to sit on a panel of the Court of Appeals in any case wherein he/she has any direct interest or as provided in Section 1.2.08 of this Code.

1.4.05 Decisions

The appellate panel may either affirm the judgment as entered, modify it, or reverse the judgment by the majority vote, and its decision shall be final.

CHAPTER 5: COURT PERSONNEL POLICIES

1.5.01 Tribal Personnel Policies Generally

The Personnel Policies of the Hoopa Valley Tribe shall apply to all Tribal Court personnel except where they may conflict with this Code.

1.5.02 Exempt Employees

Judges and Clerks of the Tribal Court shall be exempt from such provisions of the Tribal Personnel Policies to the extent such provisions are covered or intended to be covered in this Code.

1.5.03 Holidays

Except in unforeseeable situations, holidays to be honored by the Tribal Court will be those holidays observed by the Hoopa Valley Tribal Council included as part of the Tribal Personnel Policies.

1.5.04 Court Hours

Regular office hours for the Tribal Court office will be Monday through Friday of each week from 8:00 a.m. to 5:00 p.m. Any Trial Judge hearing a case shall have the discretion to designate a time most convenient to hear the case. The Tribal Court calendar scheduling shall have precedent over any request by either party in the case.

1.5.05 Implied Consent

Any person applying for an office within the Tribal Court must consent to any and all measures necessary to confirm that person's qualifications and criminal record as may be required in this Code.

CHAPTER 6: RELATIONS WITH COURT

1.6.01 BIA Employees

No employee of the Bureau of Indian Affairs shall obstruct, interfere with or control the functions of the Tribal Court, nor shall he/she influence such functions in any manner except as permitted by this Code or in response to a request for advice or information from the Court. Employees of the Bureau of Indian Affairs, particularly those who are engaged in social service, health and education work, may assist the court, upon its request, in the proper treatment of individual offenders.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council so certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which () members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this day of , 2000; and that this Ordinance was adopted by a vote of () for, () opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED THIS _ DAY OF __ , 2000.

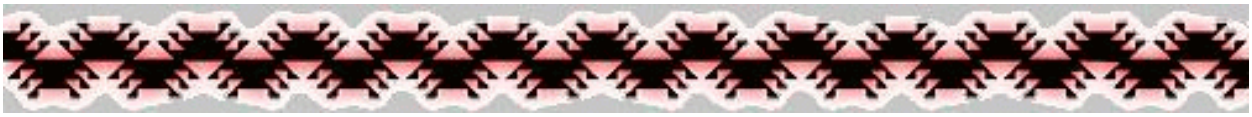
_____
Duane J. Sherman, Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 2 OF THE HOOPA TRIBAL CODE

PURPOSE: Tribal Court Proceedings

ADMINISTRATIVE RECORD: Adopted August 11, 1998.



TITLE 2
CIVIL ACTIONS
Chapter 1: General Provisions; Traditional Tribal Law

General Provisions

2.1.01 Procedure to Be Applied

Compliance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or the California Code of Civil Procedure is not required in Tribal Court proceedings. Federal or State rules and Federal or State caselaw may be cited to as persuasive argument for purposes of analysis in areas where Federal or State rules are analogous to Tribal rules and Tribal caselaw, but will not be relied upon as precedent requiring that the Court adopt additional rules that are not a part of this Code.

2.1.02 Standard of Proof

The complainant in a civil case shall have the burden of proving its case by the preponderance of the evidence, i.e., the greater weight of evidence, except in such cases where it is established by ordinance that the burden of proving his/her case is by clear and convincing evidence.

(a) In criminal or quasi-criminal actions, or if otherwise established by ordinance, the burden of proof shall be beyond reasonable doubt.

2.1.03 Course of Proceedings

(a) Tribal Law and Custom. The Tribal Court shall follow the Tribal Rules of Court unless the party's stipulate to resolving the complaint by tribal law and custom. The parties must first stipulate (1) to what they believe to be the traditional custom of settling disputes is, (2) what the traditional law governing the dispute is, and (3) must agree to abide by the decision rendered by the person or persons that they determine to be the traditional finder or finders of law and fact. The Tribal Court Judge may act as a mediator in such a proceeding if all the parties request that the Judge do so. The parties may also stipulate to a mediator of their choosing.

(b) Tribal Court Procedure. If the parties do not stipulate to a traditional custom for settling disputes but still agree that the dispute is governed by traditional law, the Court

will follow Tribal Court procedure as set forth in these Rules of Court.

Traditional Tribal Law

2.1.04 Traditional Tribal Law

The traditional law of the Hoopa Valley Tribe is the common law of the Tribe tantamount to the written law of the Tribe and will be applied in all situations where it is relevant to the issues raised in an action before the Court. The Court will first look to the laws adopted by the Tribe and to the Constitution and Bylaws of the Hoopa Valley Tribe. If no written Tribal law applies to a cause of action or the issues involved in an action, the Court will look to the Tribe's traditional law and if it finds the traditional law to be applicable in settling the dispute, will base it's decision on traditional Tribal law.

(a) The Tribal Court may be used to facilitate a traditional form of dispute resolution, akin to a mediated settlement. The parties may identify a [go-between], to mediate between the parties until a stipulated agreement is reached. The Court will then issue an order containing the stipulated agreement.

(b) Where the parties choose to follow the civil procedures of Title 2, in any dispute, claim, or action, in which a party asserts that traditional Tribal law governs the outcome, the Court must first determine what the traditional law is. If the traditional Tribal law has been acknowledged by a legal writing of the Tribe the Court will apply the written law.

(1) Evidence that a traditional law is written includes written reference to a traditional law, right, or custom in a Tribal resolution, motion, order, ordinance or other document acted upon by the Tribal Council. Anthropological writings or publications, and personal writings are not evidence that the traditional law is written, but may be presented as persuasive or supporting evidence that the traditional law or custom exists.

(c) In any dispute, claim, or action, in which a party asserts that traditional Tribal law governs the outcome, and the Court finds that the traditional law is unwritten, the Court will hold a hearing to determine what the traditional law is.

(1) The parties may stipulate to what the traditional law to be applied is. If the parties stipulate to the traditional Tribal law, the Court will then hold an evidentiary hearing to determine the facts of the case.

(2) If the parties do not stipulate to the traditional Tribal law, the parties may stipulate to a list of neutral Tribal members to act as expert witnesses, whose testimony will be relied upon to determine the traditional Tribal law.

(A) If the parties do not stipulate to such a list, each party shall be allowed to call their own expert witnesses. The Court will determine how many expert witnesses each party may call to testify except that each party shall be allowed to call the same number of expert witnesses.

(B) Each party shall submit a list of Tribal elders' names that they wish to call as expert witnesses. The opposing party will have the right to Voir Dire the witnesses to determine if they are, in fact, knowledgeable of traditional Tribal law.

(C) Each party shall also submit to the Court a list of Tribal members' names that the party believes to be neutral and impartial, and knowledgeable of traditional Tribal law. The Court shall select from the submitted list names of individuals to act as expert witnesses for the Court.

(3) The Court may, but is not required to, accept recommendations of the parties before determining the neutral and impartial expert witnesses that will testify before the Court. The Court will determine how many neutral and impartial witnesses may testify except that the number will not exceed the number of witnesses that each party will be allowed to call as expert witnesses. The parties will have the right to Voir Dire the witnesses to determine if they are, in fact, knowledgeable of traditional Tribal law.

(d) After the expert witnesses have been determined, the parties will submit to each other and the Court a list of questions to be asked of each of the witnesses. A party may object to any question submitted by an opposing party. The Court will then determine which questions will be asked of each of the expert witnesses. The Court shall have the discretion to ask its own questions of the expert witnesses.

(e) After hearing the expert witnesses testimony the Court will issue a Conclusion of Law in which the Court will state what it has found to be the traditional Tribal law. If either of the party's object to the Court's conclusion, the Court will meet in closed session with all of the expert witnesses. The Court will then call for a discussion of the Conclusion of Law by the expert witnesses. Following this discussion, the Court may re-issue or amend and re-issue the Conclusion of Law, or repeat the process as defined herein, selecting different neutral and impartial witnesses and/or a different set of questions to be asked of the expert witnesses.

(f) Once the Court has determined what the traditional law to be applied is, the Court will set a date for a conference hearing pursuant to Title 3, Rule 12 (b).

Chapter 2
Parties; Joinder of Claims; Persons

Parties

2.2.01 The Capacity to Sue and Be Sued

The capacity of an individual, a tribal entity, or a corporation, to sue and be sued shall be determined by the law of the Hoopa Valley Tribe and applicable federal law.

2.2.02 Real Party in Interest

Every action shall be prosecuted in the name of the real party in interest. A "Real Party in Interest" refers to (1) the plaintiff that has standing to bring the action, i.e., the person who has been, or will be, harmed by an act of the defendant; (2) the party that can provide the relief sought by the plaintiff; or (3) a party that can show that he will be harmed directly should the Court decide in favor of the plaintiff.

[See Tribal caselaw for precedent. FRCP 17 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Joinder of Claims, Persons

2.2.03 Joinder of Claims and Remedies

A party asserting a claim to relief may join, either as independent or as alternate claims, as many claims, legal, or equitable, as the party has against the opposing party.

[See Tribal caselaw for precedent. FRCP 18 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.2.04 Joinder of Persons Needed for Just Adjudication (Necessary Party)

A person shall be joined as a party in an action, if (1) complete relief cannot be accorded in his absence or, (2) if the person claims an interest that cannot be protected in his absence, or (3) if the persons already parties would be subject to incurring the obligations of a person not a party to the action.

[See Tribal caselaw for precedent. FRCP 19 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) All persons may join in one action as plaintiff's if they assert any right of relief jointly.

(b) Persons having claims against the plaintiff may be joined as defendants and required to interplead if their claims may expose the plaintiff to double or multiple liability. Such claims do not have to be of common origin or identical, they may be adverse to and independent of other parties' claims. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim.

[See Tribal caselaw for precedent. FRCP 22 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(c) Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

[See Tribal caselaw for precedent. FRCP 19 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(d) The Court may order substitution of parties if a party dies, or if a party becomes incompetent. In a case of any transfer of interest, the action may be continued by or against

the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted or joined with the original party. Service of the motion shall be made with this motion.

(e) Misjoinder is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion by any party or of its own initiative at any stage of the action and on such terms as are just.

[See Tribal caselaw for precedent. FRCP 21 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Chapter 3
Commencement of Action; Service of Process; Pleadings, Motions and Orders; Time

Commencement of Action; Service of Process

1.2.01 Commencement of Action

(a) A civil action is commenced by filing a complaint with the court.
(b) The filing fee for commencement of a civil action is $25.
(c) Upon request, the Chief Judge may waive court fees and costs for a party who is unable to pay court fees and costs.

2.3.02 Filing with the Court Defined

Filing of all Court documents shall be in the Clerk's office. Filing at any other location than the Hoopa Valley Tribal Court is of no force or effect.

(a) Filing shall be effective only upon presentation in the office of the Clerk of the Hoopa Valley Tribal Court~~.~~ Filing in any location other than those provided by this section is ineffective.

(b) Filing by Fax. Electronic transmission of a document via facsimile machine, i.e., by "fax," does not constitute filing. No documents may be transmitted directly to the clerk by fax for filing. Any documents so transmitted shall be rejected and not filed. Filing is complete when the document is filed with the Clerk.

(1) A third party may file fax-transmitted pleadings on behalf of the parties or their counsel. The third party acts as the agent of the filing party and not as an agent of the court. A document shall be deemed to be filed when it is submitted by the third party agent, received in the Clerk's office, and filed with the Clerk.

(2) All fax-transmitted pleadings presented for filing shall be on white opaque, 8-1/2 x 11" paper. The image of the original manual signature on the fax copy will constitute an original signature for all court purposes. The original shall not be substituted, except by court order. The original shall be maintained by the party originating the document, the spokesperson or attorney of record, for a period no less than the maximum allowable time to complete the appellate process.

(3) The sending party is required to maintain a transmission record in the event fax filing later becomes an issue.

(c) Late filing of material may be permitted by order of Court, providing good cause is shown.

2.3.03 Summons

Upon filing the complaint, the court clerk will issue a summons to the plaintiff for service to the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

2.3.04 Service

The plaintiff is responsible for service of a summons and complaint. The plaintiff shall cause to be personally served on the defendant(s) a copy of the summons and complaint, and shall instruct the person serving the summons and complaint on the defendant(s) to fill out a proper proof of service. The original of the proof of service shall be filed with the Court Clerk after service.

(a) Effective Service

The proof of service must be returned to the Court Clerk within sixty (60) days of its issuance or the action will be dismissed as a non-suit. The Court may extend that time an additional thirty (30) days upon a showing of good cause by the plaintiff.

(b) Such service may be made by means of certified mail, return receipt requested, only where personal service is not possible or where the defendant resides outside the exterior boundaries of the Hoopa Valley Indian Reservation.

(c) Publication

Upon a showing by the complainant to the Tribal Court that diligent efforts were made to serve the complaint on the defendant and that for sufficient reasons service could not be made, the Judge may allow service to be made by posting copies of the notice and complaint in two public places on the Reservation for three weeks and by publication of a copy of the notice and complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Reservation. In such case the return date shall be not less than 30 days from the date of first publication.

2.3.05 Actions Initiated by the Hoopa Valley Tribe

(a) Where a citation is used, it shall include information which will accurately notify the defendant of the facts which allegedly constitute the offense(s) and the Rule(s) allegedly violated. Where the Tribe uses a complaint to initiate an action, the complaint shall conform to the requirements of section 2.3.01.

(b) Service of Citations

Citations shall be served on the defendant preferably in person; by mail only where personal service is not practical. In either event the original proof of service shall be filed with the Court along with the citation or a copy thereof.

2.3.06 Service of Subsequent Papers

Defendants may serve papers on plaintiffs at the address shown by the plaintiffs on the summons and complaint. After such service by defendant, plaintiffs may serve defendants at the address the defendant provides on the defendant's filings. Where the defendant fails to provide a written response to the complaint within thirty (30) days, then plaintiff shall serve subsequent papers by serving defendant at his or her last known address, and to the extent possible, at the place of physical service.

2.3.07 Pleadings Allowed

There shall be a complaint and an answer; if there is a counterclaim, a reply to the counterclaim; if a cross-claim, an answer to the cross-claim. If a third party who is not an original party is summoned, then a third party complaint and if the third party is served a third party answer. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

2.3.08 Format and Contents

All papers presented for filing shall be on white opaque, 8-1/2 x 11" paper. Typewriting is preferred, but handwritten filings will be accepted provided they are clear and legible and of such quality that legible photocopies can be made. The clerk shall accept all papers presented for filing, but papers not in substantial compliance with these rules may be rejected by the Judge of the Court.

(a) Every pleading will have a caption stating the name of the court, the title of the action, the file number, and a designation, i.e., complaint, petition, answer, motion, counterclaim, cross-claim, third party complaint, etc. The original complaint should name all the parties. Subsequent pleadings need only name the first party on each side with the appropriate indication of the other parties.

(b) Each averment made in a pleading shall be simple, concise, and direct. No technical forms of pleading or motions, however, are required.

(c) Each claim founded upon a separate transaction or occurrence and each defense shall be stated by the pleader in a separate numbered paragraph whenever a separation facilitates the clear presentation of the matters set forth. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

(1) Averments in a pleading to which a responsive pleading is required, are admitted when not denied in the responsive pleading. Responsive pleadings include an answer, a

reply, a brief in opposition to a motion, a respondents brief, etc.

[See Tribal caselaw for precedent. FRCP 8(d) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.09 Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with Hoopa Valley Tribal Law.

(e) Judgment. In pleading a judgment or decision of a foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

[See Tribal caselaw for precedent. FRCP 9 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.10 Discretion to Strike

The Court may, upon motion, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.
(b) Strike out all or any part of any pleading not drawn or filed in conformity with these rules.

[See Tribal caselaw for precedent. CCPC § 436 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.11 Address; Signature Required

All papers presented for filing shall also contain the name, address, and telephone number of the responsible attorney, spokesperson, or person appearing on his or her own behalf.

(a) All papers must be signed by the party or spokesperson or attorney representing the party. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. Such signature certifies that the signer has read the pleading, motion, or paper submitted, that the contents are true to the best of his or her knowledge, and that the pleading, motion, or paper is not being submitted for an improper purpose. The pleadings need not be verified by affidavit.

[See Tribal caselaw for precedent. FRCP 7,8 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.12 Complaint

A pleading which sets forth a claim for relief shall contain:

(a) a short and plain statement of the grounds upon which the Court's jurisdiction depends, a short and plain statement of the claim showing that the pleader is entitled to relief, and, a demand for judgment for relief the pleader seeks.

(b) or be accompanied by, a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.

2.3.13 Limitations

No Complaint shall be filed in a civil action unless the events shall have occurred within a three year period prior to the date of the complaint.

2.3.14 Answer

An answer to a complaint shall be filed with the Court within thirty (30) days after service of the summons and complaint. The answer shall contain:

(a) a general or specific denial of each material allegation of the complaint or petition denied by the defendant; and;

(b) a statement of any new matter constituting a defense, counterclaim, or setoff, in ordinary and concise language and without repetition.

2.3.15 Counter Claim and Cross-Claim

A party may counterclaim any claim the party has against an opposing party arising out of the same transaction or occurrence that is the subject of the opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original claim, counterclaim or any property that is the subject matter of the transaction.

[See Tribal caselaw for precedent. FRCP 13 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) When a pleader fails to make a counter-claim or cross-claim, the pleader may by leave of court set up the counter-claim or cross-claim by amendment.

2.3.16 Third Party Practice

At any time after commencement of the action a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party plaintiff (i.e., the defending party) for all or part of the plaintiff's claim against the third party plaintiff (defending party).

[See Tribal caselaw for precedent. FRCP 14 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) The person served with the summons and third party complaint shall assert any defenses, counterclaims and cross-claims as provided in subsection 2.4.13.

(b) Leave of court to make service on a third party is not required if the third party files the third party complaint within ten days of filing the original answer; otherwise the third party plaintiff must obtain leave of court by noticed motion and must notice all parties to the action.

(c) A third party defendant may proceed against any person not a party to the action who is or may be liable to the third party defendant for all or part of the claim made against him. A plaintiff may bring in a third party when a counter-claim is asserted against him.

2.3.17 Amended & Supplemental Pleadings

A party may amend his or her pleading at any time before a responsive pleading is served or, where no responsive pleading is permitted and the action has not been placed on the calendar the party may amend at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the opposing party; and leave may be given when justice so requires.

[See Tribal caselaw for precedent. FRCP 15 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.3.18 Motions and Other Papers

A motion is a request for an order. A request to the Court for an order shall be by motion which, unless made during a hearing

or trial, shall be made in writing, shall state with particularity the grounds for the motion, and state the relief or order sought. The requirement of writing is fulfilled if the motion is stated in the written notice of the hearing of the motion. Motions must be in the proper form as provided for by subsection 2.4.08, and must be signed in accordance with subsection 2.4.09.

2.3.19 RESERVED

[former §2.3.19 deleted]

Time

2.3.20 Time

Whenever a Rule or an order of the Court requires that an action be taken within a certain number of days, the time computation does not include the day the order is given, but begins as of the next following day and runs until the last day specified, unless the last day falls on a weekend or a Tribal Holiday, in which event the due date is the next Court work day.

[See Tribal caselaw for precedent. FRCP 6 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) "Days" means *calendar* days unless a rule specifically states otherwise.

2.3.21 Response to Complaint

An answer or other response to a complaint or cross-complaint is to be filed, and copies served on all other parties, with thirty (30) days of service.

2.3.22 Response to a Motion

Any response to a motion is to be filed, and copies served on all other parties, within fourteen (14) days of service.

2.3.23 Notice of Hearings and Trials

Notice of hearings and trials is to be provided at least five (5) days in advance if the parties are personally served, and ten days if notice is delivered by mail.

(a) When a time limit is counted from the time that notice is delivered to a person by mail, it shall be presumed that delivery takes place five days after notice is mailed.

2.3.24.1 The Court's Discretion

The Court may change time periods for good cause shown.

2.3.24.2 Ex Parte Application

In the absence of an emergency or exigent circumstances, an application for an order shall not be made ex parte unless it appears by affidavit or declaration that:

(a) No less than 24 hours before the application, the party informed the opposing party or the opposing party's spokesperson when and where the application would be made; and

(b) Good cause exists to grant the requested order.

Chapter 4: Motion Practice; Pretrial Proceedings; Discovery; Witnesses; Subpoenas

Motion Practice

2.4.01 Motion Defined

A motion is a request to the Court for an order, which shall be made by written motion before trial wherever possible. A motion made verbally may be allowed at trial, at the discretion of the court if the court finds that in the interest of justice it is proper to do so.

(a) The motion shall specifically state what order is sought, and the reasons why the Court should grant the request. A written memorandum of legal authority in support of the motion is encouraged but is not required.

2.4.02 Service

A Proof of Service must be filed with the notice of motion stating that copies of the same were mailed or delivered to the opposing party.

2.4.03 Opposition

The opposing party shall have fourteen (14) days from service in which to respond to the motion, plus five additional days if service is by mail.

2.4.04 Motion for Summary Judgment

(a) Any party may move for Summary Judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after sixty (60) days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance at the Court with or without notice and upon good cause shown may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least twenty-eight (28) days before the time appointed for hearing. However, if the notice is served by the mail the required twenty-eight day period of notice shall be increased by five days if the place of address is within the Hoopa Valley Indian Reservation or the State of California. The required twenty-eight day period shall be increased by ten (10) days if the place of the address is outside of the State of California but within the United States.

(b) Any motion for Summary Judgment shall be heard no later than thirty (30) days before the date of trial, unless the Court for good cause shown orders otherwise.

(c) Opposition to the motion shall be served and filed not less than fourteen (14) days preceding the noticed or continued date of hearing, unless the Court for good cause, orders otherwise. The opposition where appropriate shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. Opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the Court's discretion, for granting the motion. The motion for summary judgment shall

be supported by affidavits, declaration, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement, may in the Court's discretion constitute a sufficient ground for denial of the motion.

(d) Reply. In a reply to the opposition shall be served and filed by the moving party not less than five (5) days preceding the noticed or continued date of hearing, unless the Court for good cause orders otherwise.

(e) The motion for Summary Judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact, the Court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the Court, and all inferences reasonable deducible from the evidence, except summary judgment shall not be granted by the Court based on inferences reasonable deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material facts.

(f) Supporting and opposing Affidavits or Declarations shall be made by any person on personal knowledge, shall set forth admissible evidence and shall show affirmatively that the affiant is competent to testify to the matter stated in the affidavits or declarations. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(g) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defenses thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or there is no merit to a claim for damages as specified in this Title, or that one or more defense either owed or did not owe a duty to a Plaintiff or Plaintiffs. A motion for summary adjudication shall be granted only if it completely

disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(h) Upon the denial of a motion for summary judgment or summary adjudication, on the ground there is a triable issue as to one or more material facts, the Court shall, by written order, specify one or more material facts raised by the motion as to which the Court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the Court shall, by written or oral order specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to the motion which indicates that no triable issue exists. The Court shall also state its reasons for any other determination. The Court shall record this determination by written order.

(i) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the Defendant was without fault, no other Defendant during trial, over Plaintiff's objection may attempt to attribute fault to or comment on the absence or involvement of the Defendant who was granted the motion.

(j) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section except the entry of summary judgment, a party may within ten (10) days after service upon him or her of a written notice of entry of the order, petition the Hoopa Valley Tribal Court of Appeal for a preemptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five (5) days if the place of address is within the Hoopa Valley Indian Reservation or the State of California. If the notice is served by mail, the initial period within which to file the petition shall be increase by ten (10) days if the place of address is outside the State of California. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two (2) calendar days. The Tribal Court may, for good cause shown, and prior to the expiration of the initial period, extend the time for one additional period not to exceed ten (10) days.

(k) Case not fully adjudicated on motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts are actually and in good faith converted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specific shall be deemed established, and the trial shall be conducted accordingly.

(l) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(m) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(n) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable attorney’s fees, and any offending party or attorney may be adjudged guilty of contempt.

[See Tribal caselaw for precedent. FRCP 56, CCP § 437c, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.05 Motion Hearings Defined

A motion hearing is a pretrial proceeding and takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motions are not automatic. See subsection 2.4.4. Hearings will be set when oral argument would be helpful to the Court and on request of a party or parties or the Court's own motion. Motions may be filed to add or eliminate parties, to amend pleadings, to request a jury trial, to prepare or simplify a case for trial, or to request judgment as a matter of law in the absence of material disputed issues of fact pursuant to subsection 2.4.4.

2.4.06 Motion Hearing

Unless requested by either party or ordered by the Court, a hearing on the motion will not be held. In the event a hearing is desired, a hearing date can be requested in writing or by contacting the Court prior to filing the notice. Hearings will be set as soon as practicable.

Pretrial Proceedings; Disclosure

2.4.07 Pretrial Conference Hearings Defined

The purpose of a conference hearing is to simplify the issues, eliminate frivolous claims or defenses, to discourage wasteful pretrial activities, and to improve the quality of trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, appropriate witnesses, and jury trial requests. Pretrial conferences are also necessary for planning for discovery. To encourage honest discussion, nothing said at a conference hearing shall be admitted in evidence. Conference hearings may, in the exercise of the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

2.4.08 Pretrial Conference Hearing; Discovery Plan

Conference hearings may be scheduled on a written request of one or more parties, or on the Court's own initiative. If discovery is sought by any party, a pretrial conference is required for the purpose of developing a discovery plan. If such a hearing is

scheduled, the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, as soon as practicable and at least 14 days before a scheduling conference is held.

(a) No formal discovery, including discovery from non-parties, shall be initiated by any party until after the meet and confer session pursuant to section 2.4.08, except by stipulation by all named plaintiffs and all named defendants who have been served, or upon order of the court.

(b) Unless otherwise ordered, no later than 75 days after service of the summons and complaint upon all named defendants, lead trial counsel shall meet n person and confer for the purposes specified in this section.

[See Tribal caselaw for precedent. FRCP 16; 26(f), may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.09 Required Disclosures

(a) Initial Disclosure. A party shall, without awaiting a discovery request, provide to the other parties

(1) the name, address and telephone number of each individual likely to have discoverable information relevant to the disputed facts;

(2) a copy of, or a description and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the disputed facts alleged with particularity in the pleadings;

(3) a computation of any damages claimed and making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based.

(4) any insurance agreement which may be used to satisfy part or all of a judgment which may be entered in the action.

(b) Disclosure of Expert Testimony. A party shall disclose to other parties the identity of any person who may be used at trial to present expert testimony, and;

(1) With respect to a witness who is retained or specially employed to provide expert testimony, this disclosure shall be accompanied by a written report prepared and signed by

the witness, containing a complete statement of all opinions to be expressed and the basis and reasons therefor the data and other information considered by the witness in forming the opinions; any exhibits to be used to summarize or in support of the opinions; the qualifications of the witness; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness testified as an expert.

(2) These disclosures shall be made at the times and in the sequence directed by the court.

[See Tribal caselaw for precedent. FRCP 26(b) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(c) Pretrial Disclosure. a party shall provide to the other parties the following information regarding the evidence that it may present at trial:

(1) the name, address, and telephone number of each witness; separately identifying those which the party expects to present and those which the party may call if the need arises;

(2) the designation of those witnesses whose testimony is expected to be presented by means of a deposition, and a transcript of the pertinent portions of the deposition testimony;

(3) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(d) Form of disclosure; filing. All disclosures under this subsection shall be made in writing, signed, served and promptly filed with the court.

(e) Signing. Every initial or pretrial disclosure made pursuant to (a)(1) or (a)(3) shall be signed by the party, spokesperson or attorney of record. The signature constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

Discovery

2.4.10 Discovery Defined

In general, parties may obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the pending action, including the existence, description, nature,

custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2.4.11 Methods to Discover Additional Matter

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission.

2.4.12 Timing and Sequence of Discovery

A party may not seek discovery from any source before the parties have met and conferred as required by subsection 2.4.7 Unless the court upon motion, for the convenience of the parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay another party's discovery.

2.4.13 Depositions Upon Oral Examination

A person who desires to perpetuate testimony regarding any matter within the scope of subsection 2.4.8 may take the testimony of any person, including a party:

(a) Without Leave of Court. A person may take testimony without leave of court. The party desiring to take the deposition upon any person shall give at least 10 days notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined.

(1) Content of Notice. The deposition of notice shall state all of the following:

(a) the address where the deposition will be taken;

(b) the date of the deposition, and the time it will commence;

(c) the name of each deponent, and the address and telephone number if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs;

(d) the specification with reasonable particularity of any materials or category of materials to be produced by the deponent; and

(e) any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by this section.

(2) Scheduling of Deposition. An oral deposition shall be scheduled for a date at least ten (10) days after service of the deposition notice. If, the parties giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least twenty (20) days after issuance of that subpoena.

(b) By Order of Court. A person may file a motion seeking an order authorizing the petitioner to take the depositions of the persons to be examined. The petition shall contain the names of the persons to be examined, the facts that the petitioner desires to establish, and the substance of the testimony that the petitioner expects to elicit.

(1) The moving party shall then serve a notice upon each person named in the motion and all other parties to the action, along with a copy of the motion for the order described in the motion. A notice by a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall state the method by which the testimony shall be recorded. The notice shall be served in the manner provided in subsection 2.3.04, for service of summons.

(c) A deposition shall be conducted by an officer of the court designated under subsection 2.4.16, and shall begin with the statement on the record (a) the officer's name and address; (b) the date, time, and place of the deposition; (c) the name of the deponent; (d) the administration of the oath or affirmation

of the deponent; and (e) an identification of all persons present. The appearance or demeanor of deponents shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

[See Tribal caselaw for precedent. FRCP 30 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(d) A party may in the party's notice and subpoena name as the deponent a public or private corporation, or a partnership or association, or a Tribal agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

(e) Examination and Cross-examination; Record and Oath; Objections. Examination and cross-examination of witnesses are to be in accordance with Chapter 5, Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall record the testimony of the witness. All objections made at the time of the examination shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope to the party taking the deposition and the party shall transmit them to the officer who shall propound them to the witness and record the answers verbatim.

(f) Any party may arrange for a transcription to be made from the recording of a deposition. The additional record or transcript shall be made at that party's expense unless the court orders otherwise.

(g) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by

the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(h) Certification and filing by officer; exhibits; copies; notice of filing; preservation of notes and tapes of depositions.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Tribal Court.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(4) The officer shall preserve and retain for period of 10 years all original notes and stenographic tapes taken or recorded by him during deposition, which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request.

2.4.14 Depositions Upon Written Questions

A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court, or by leave of court. The attendance of witnesses may be compelled by the use if subpoena provided in subsection 2.4.22. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them. Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. The court may for cause shown enlarge the time.

[See Tribal caselaw for precedent. FRCP 31 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attached thereto the copy of the notice and the questions received by the officer.

(b) When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

2.4.15 Use of Depositions in Court Proceedings

Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any purpose permitted under Chapter 5, Rules of Evidence.

(a) The deposition may be used by any party for any purpose if the court finds:

(1) that the witness is dead; or

(2) that the witness is not residing or domiciled within the exterior boundaries of the Hoopa Valley Indian

Reservation and cannot be compelled to appear, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the party is unable to testify because of age, illness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) upon application and notice that such exceptional circumstance exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

[See Tribal caselaw for precedent. FRCP 32 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.16 Persons Before Whom Depositions May Be Taken

Depositions shall be taken before a person appointed by the court. A person so appointed shall be an officer of the court having power to administer oaths and take testimony. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

[See Tribal caselaw for precedent. FRCP 28 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.17 Stipulations Regarding Discovery Procedure

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

[See Tribal caselaw for precedent. FRCP 29 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.18 Interrogatories

Any party may serve upon any other party written interrogatories not exceeding 25 in number to be answered by the party served, or if the party served is a tribal entity, or a public or private corporation or a partnership or association, by officer or agent, who shall furnish such information as is available to the party.

[See Tribal caselaw for precedent. FRCP 33 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.19 Supplementation of Disclosures and Responses

A party who has made a disclosure or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response if the party learns that in some material respect the information disclosed is incomplete or incorrect and if such information has not otherwise been made known to the other parties during the discovery process.

[See Tribal caselaw for precedent. FRCP 26(e) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.20 Limits to Discovery

The court may limit the number of depositions and interrogatories and the number of requests if it determines that the discovery sought is unreasonably cumulative, or duplicative, or is obtainable from some other source that is more convenient, less burdensome or less expensive; the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or the burden or expense of the proposed discovery outweighs its likely benefit. The court may act on its own initiative after reasonable notice or pursuant to a motion.

[See Tribal caselaw for precedent. FRCP 26(b)(2) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) Trial Preparation; Materials. A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable

(b) Trial Preparation: Experts. A party may depose any person identified as an expert whose opinions may be presented at trial.

(1) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness or upon showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(2) Unless manifest injustice would result the court shall require that a party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection and pay to the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Claims of Privilege. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(d) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court on matters relating to a deposition may make an order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. The order shall include one or more of the following: (1) that the disclosure or discovery not be had, (2) that the disclosure or discovery may be had under specified terms and conditions including a designation of time and place, (3) that the disclosure or discovery be limited to a certain method and/or to certain matters.

[See Tribal caselaw for precedent. FRCP 26(c) may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.21 Production of Documents/Entry Upon Land for Inspection

Any party may serve on any other party a request:

(a) to produce or to permit inspection of any designated documents which contain matters within the scope of subsection 2.4.8, and which are in the custody or control of the party upon whom the request is served;

(b) to permit entry upon designated land or other property in the possession or control of the party being served for the purpose of inspection .

[See Tribal caselaw for precedent. FRCP 34 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) the request shall set forth the items or property to be inspected. The request shall specify a reasonable time, place, and manner of making the inspection.

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, production and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection or production as requested.

2.4.22 Physical and Mental Examination

When the mental or physical condition of a party or person is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner.

[See Tribal caselaw for precedent. FRCP 35 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.23 Request for Admission

A party may serve upon any other party a written request for the admission of the truth of any matters of the pending action [that relate to statements or opinions of fact or of the application of law to fact,] including the genuineness of any documents described in the request.

(a) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of this title regarding sanctions, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objection. Unless the court determines that an objection is justifies, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 2.4.24 apply to the award of expenses incurred in relation to the motion.

(b) Failure to Respond. Should the responding party fail to respond within the time periods specified in Section A above, all

requested information is deemed admitted and the requesting party is not required to move the Court for an order deeming the requested material admitted.

(c) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be promoted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

[See Tribal caselaw for precedent. FRCP 36 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.24 Failure to Cooperate in Discovery: Sanctions

If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court.

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Motion. If a deponent fails to answer a question propounded or submitted pursuant to this Title or a corporation or other entity fails to make a designation under this Title or a party fails to answer an interrogatory submitted under this Title, or if a party, in response to a request for inspection submitted under this Title, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to this Title.

(2) Evasive or incomplete answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(3) Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or counsel advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including counsel fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the counsel advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including counsel fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(2) Sanctions by court. If a party or an officer, director, or managing agent of party or a person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision A of this rule the court may make such orders in regard to the failure as are just, and among others the following:

(a) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing matters in evidence.

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(e) Where a party has failed to comply with an order under this Title requiring him to produce another for examination, such orders as are listed in paragraph (a), (b), and (c) of this subdivision, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable counsel fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to section __, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under this Title, after proper service

of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision B(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the counsel advising him or both to pay the reasonable expenses, including counsel fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provide by section.

[See Tribal caselaw for precedent. FRCP 37 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.4.25 Enforcement Proceedings

In enforcement proceedings initiated by the Hoopa Valley Tribe, the defendant is entitled to be given copies of all relevant police reports at least five (5) days prior to the date of first court appearance by mailing of such documents to said defendant from the Tribe. The Tribe's representative may request a protective order. The defendant and Tribe's representative shall exhaust all settlement possibilities prior to invoking the participation of the Court in discovery matters.

(a) In enforcement proceedings initiated by the Hoopa Valley Tribe, at least five (5) days prior to trial, the prosecutor shall notify the defendant of the names of persons who will testify. Others may testify at the date of the trial only upon a showing of good cause.

Witnesses; Subpoenas

2.4.26 Compelling Witnesses to Appear

Any party shall have the right to compel witnesses to appear in Court to testify on his or her behalf.

2.4.27 Subpoenas to Compel Appearance of Witnesses

A judge of the Tribal Court shall issue subpoenas for the attendance of witnesses at a trial or hearing, or at a deposition, for good cause shown, either on his/her own motion or on the request of the police chief or officer or any of the parties. The subpoena shall bear the signature of the issuing judge. Failure to obey such subpoena shall be deemed an offense as provided in this Code. Service of such subpoena shall be by a regularly acting member of the Tribal Police or by a person duly authorized by the Court for that purpose.

(a) Contents. Every subpoena shall state the name of the Hoopa Valley Tribal Court; the title of the action and it's civil action number; and command each person to whom it is directed to attend and give testimony or to produce and permit inspection an and copying of designated books. or documents or tangible things in the possession, custody or control of that person, or to permit the inspection of the premises, at a time and place therein specified. A command to produce evidence or permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(b) Service. All subpoenas shall be served by enforcement personnel except upon order of the Court. Personal service is preferred. In the event personal service is not possible, a copy shall be left at his/her residence or principal place of business in the care of a person of at least fourteen (14) years of age. The service fee is to be paid by the party requesting service and may be recovered as a cost of litigation.

(c) Proof of Service. A Proof of Service shall be filed with the Court specifying the person served, and the date, place, and manner of service.

(d) Failure to Appear; Contempt. Failure to appear after being properly served with a subpoena is punishable as a contempt of Court pursuant to Title 3, Rule 21.

(e) Fees. Each witness answering such subpoena shall be entitled to a fee of $15.00 a day for each day his/her services are required in Court, plus twenty (20) cents per mile for travel to and from the Court. The fees and expenses of witnesses in civil actions shall be paid by the party calling them. When expenses are to be paid by the Tribal Court, prior approval must be given before the expenses are incurred.

2.4.28 Subpoenas

A judge of the Tribal Court shall issue subpoenas for the attendance of witnesses wither on his/her own motion or on the request of the police chief or officer or any of the parties. The subpoena shall bear signature of the issuing Judge. Failure to obey such subpoena shall be deemed an offense as provided in this Code. Service of such subpoena shall be by a regularly acting member of the Tribal Police or by a person duly appointed by the Court for that purpose.

Chapter 5: Rules of Evidence
Hearsay; Witnesses Testimony; Presenting Evidence; Rulings on Evidence

2.5.01 Relevance

All evidence that is relevant is admissible. Evidence which is not relevant is not admissible. "Relevant evidence" means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence is relevant if it has a tendency to prove or disprove a material issue in dispute.

[See Tribal caselaw for precedent. FRE 401 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.02 Personal Knowledge

A witness is only permitted to testify to matters within his or her personal knowledge. This means that the witness must have personally observed the matter and must have a present recollection of his or her observation.

[See Tribal caselaw for precedent. FRE 602 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.03 Lay Opinion

Lay opinion s admissible only where it is based on the perception of the witness and where it is likely to help the finder of fact determine a fact in issue. In general, a lay witness may testify as to the general appearance and condition of a person.

[See Tribal caselaw for precedent. FRE 701 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.04 Unfair Prejudice

The Court has the discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. Evidence is excludable if it is inflammatory, will result in confusion of the issues, will result in misleading the finder of fact, is cumulative and an undue consumption of time.

[See Tribal caselaw for precedent. FRE 403 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.05 Character Evidence

Character evidence is inadmissible in a civil suit unless character is directly at issue (e.g., defamation). Character evidence may be offered as substantive evidence to prove character when it is the ultimate issue in the case, or serve as circumstantial evidence of how the person probably acted.

[See Tribal caselaw for precedent. FRE 404 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.06 Proof of Character

Proof of character is made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

[See Tribal caselaw for precedent. FRE 405 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.07 Evidence of Habit

Evidence of the habit of a person or the routine of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

[See Tribal caselaw for precedent. FRE 406 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.08 Subsequent Remedial Measures, Compromise, Offers, Liability Insurance

Evidence of subsequent remedial measures, of compromise and offers of compromise, of offers or promises to pay medical expenses occasioned by an injury, or liability insurance, is not admissible to prove liability or invalidity of the claim or its amount, or whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of such evidence if offered for another purpose.

[See Tribal caselaw for precedent. FRE 407; 408; 409, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.09 Inadmissibility of Pleas, Offers, and Related Statements

Evidence of a plea of guilty, or a plea of nolo contendre, or of an offer to plead guilty or nolo contendre to a crime charged or any other crime or any statements made in connection with, or relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

[See Tribal caselaw for precedent. FRE 410 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.10 Authentication and Identification

The requirement of authentication or identification of a document as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The testimony of a subscribing witness is not necessary to authenticate a writing. Extrinsic evidence of authenticity is not required with respect to:

(a) A document bearing the seal purporting to be that of the Hoopa Valley Tribe, the United States, or any other State, territory or possession of the United States, or any other political subdivision, department, or agency thereof, and a signature purporting to be an attestation or execution.

(b) A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a) hereof, having no seal, if a public officer having a seal and having official duties certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) A copy of an official record or report, or of a document authorized by law to be recorded and filed which has been actually recorded and filed.

(d) Books, pamphlets, or other publications purported to be issued by public authority; printed material purporting to be newspapers or periodicals; documents acknowledged

[See Tribal caselaw for precedent. FRE 902 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.11 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required.

(a) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

(b) The original is not required if the original is lost or destroyed, unless the proponent lost or destroyed them in bad

faith; or no original can be obtained by any available judicial process or proceeding; or the original is under the control of the party against whom offered and that party has been put on notice that the contents would be subject of proof at the hearing, and the party does not produce the original at the hearing.

(c) The contents of an official record or of a document authorized to be recorded of filed and actually recorded of filed, may be proved by copy, certified as correct or testified to be correct by a witness who has compared it with the original.

Hearsay

2.5.12 Hearsay

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing (an out of court statement), offered in evidence to prove the truth of the matter asserted. Hearsay is inadmissible unless there is an exception to the rule that allows the statement in.

[See Tribal caselaw for precedent. FRE 801 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) Non-hearsay; Admissions. The following statements are not hearsay and are admissible.

(1) Admissions by a Party Opponent: The statement offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or

(2) Judicial and Extrajudicial Admissions: The declarant testifies at the trial or hearing and is subject to cross-examination;

(3) Adoptive Admissions: a statement of which the party has manifested an adoption of belief or truth;

(4) Vicarious Admissions: a statement by a person authorized by the party to make a statement concerning the subject, or a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or a statement by

a coconspirator of a party during the course and in furtherance of the conspiracy.

(b) Reliability Exceptions. The Declarant need not be available at trial for admission of the following hearsay exceptions.

[See Tribal caselaw for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Present State of Mind: A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition. Except to certain facts concerning the declarant's will, however, statements of memory or belief are not admissible to prove the truth of the fact remembered of believed.

(2) Excited Utterance: A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Present Sense Impression: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(4) Then existing Mental, Emotional, or Physical Condition: A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(c) Unavailability Exceptions. The Declarant must be unavailable to testify at trial for the following exceptions to be admissible.

[See Tribal caselaw for precedent. FRE 804 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Declaration Against Interest: A statement which was at the time of its making so far contrary to the declarant's pecuniary to proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement

unless believing it to be true. A statement tending to expose the defendant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(2) Dying Declaration: A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause and circumstances of what the declarant believed to be impending death.

(3) Former Testimony: Testimony given by a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(4) Statements of Personal or Family History: A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was intimately associated with the other's family to be likely to have accurate information concerning the matter declared.

(d) Document Exceptions. The Declarant need not be available at trial for admission of the following hearsay exceptions.

[See Tribal caselaw for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(1) Recorded Recollection: A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(2) Business Records; Official Records; Ancient Documents; Learned Treatises: (A) A writing made in the regular course of business; (B) public records and reports of any form, of public or tribal offices or agencies, birth records, deaths, marriages; (C) statements in a document in existence twenty years or more the authenticity of which is established; (D) statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by expert testimony or judicial notice

[See Tribal caselaw for precedent. FRE 803 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(e) Other exceptions. A statement not specifically covered by any of the foregoing exceptions is admissible if it is necessary and has the requisite indices of trustworthiness such that it should be allowed in.

[See Tribal caselaw for precedent. FRE 803 (24; 804(5), may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Witnesses Testimony

2.5.13 Oath

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered by the Court

[See Tribal caselaw for precedent. FRE 603 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.14 Preliminary Questions:

(a) Questions of Admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination the court is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

[See Tribal caselaw for precedent. FRE 104 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the trier of fact evidence relevant to weight and credibility.

[See Tribal caselaw for precedent. FRE 104 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.15 Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and, if seated, instruct the jury accordingly.

[See Tribal caselaw for precedent. FRE 105 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(a) When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

[See Tribal caselaw for precedent. FRE 106 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.16 Judicial Notice of Adjudicative Facts

A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(a) The Court may take judicial notice of an adjudicative fact whether requested or not. The Court shall take judicial notice if requested by a party and supplied with the necessary information. Judicial notice may be taken at any stage of the proceeding. In a civil action or proceeding, the Court shall instruct a jury, if seated, to accept any fact judicially noticed.

(b) A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice of an adjudicative fact and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

[See Tribal caselaw for precedent. FRE 201 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.17 Competency of Judge; Juror as Witness

The judge presiding at the trial may not testify in that trial as a witness. A member of the jury may not testify as a witness, and may not testify as to any matter or statement during the course of the jury's deliberations or to any other juror's mind or emotions concerning the juror's mental processes in connection therewith, as influencing the juror to assent to or dissent from the verdict. A juror may testify on the question whether extraneous prejudicial information was properly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

[See Tribal caselaw for precedent. FRE 605; 606, may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.18 Mode and Order of Interrogation and Presentation

(a) Control of Court. The court shall exercise reasonable control over the mode and order of questioning witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

[See Tribal caselaw for precedent. FRE 611 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may in the exercise of discretion, permit inquiry into the additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of witnesses except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

2.5.19 Calling and Interrogation of Witnesses

(a) Calling by Court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when a jury if seated, is not present.

2.5.20 Writing Used to Refresh Memory

If a person uses a writing to refresh memory for the purpose of testifying, either while testifying or before testifying, if the

court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed the writing contains matters not related to the subject matter of the testimony, the court shall examine and excise any portions not so related and order delivery to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule the court shall make any order justice requires including striking the testimony of the witness.

[See Tribal caselaw for precedent. FRE 612 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.21 Prior Statements of Witnesses

(a) In examining a witness concerning a prior statement made by a witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

[See Tribal caselaw for precedent. FRE 613 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions by a party opponent.

[See Section 2.5.12 et seq. FRE 614 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.22 Who May Impeach. The credibility of a witness may be attacked by any party, including the party calling the witness.

[See Tribal caselaw for precedent. FRE 607 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.5.23 Evidence of Character and Conduct of Witness

(a) The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

[See Tribal caselaw for precedent. FRE 608 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

(b) Evidence that a person other than the accused has been convicted of a crime shall be admitted if the crime was punishable by death or imprisonment by more than one year and if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused, or if the crime involved dishonesty or false statement, regardless of the punishment. Evidence of a conviction is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from confinement imposed for that conviction, whichever is the later date, unless the court determines in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

2.5.24 Impeachment by Evidence of Conviction of a Crime

(a) General Rule. For the purpose of attacking the credibility of a witness (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted , and such evidence shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time limit. Evidence of conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of

justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. Such evidence is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult.

[See Tribal caselaw for precedent. FRE 609 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Rulings on Evidence

2.5.25 Rulings on Evidence

(a) Effect of Erroneous Ruling. Evidence may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it is offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions before the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

[See Tribal caselaw for precedent. FRE 103 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

Chapter 6
Appeals

1.5.01 Appeals

(a) Within twenty (20) days from the entry of judgment, a party dissatisfied with the judgment may file a notice of appeal with this court.

(b) The Tribal Court may require the Appellant to post a cost bond in an amount which will secure the cost of appeal

(1) Disposition of Bond. After the Court of Appeal has issued its opinion, it shall upon the motion of any party or upon its own motion order such disposition of any appeal bond which may have been posted as deemed just and consistent with these rules.

(2) If security is given in the form of a bond or stipulation or other undertaking with one or more sureties each surety submits itself to the jurisdiction of the Hoopa Valley Tribal Court of Appeal and irrevocably appoints the Clerk of the Court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The sureties' liability may be enforced on motion.

(c) Serving the Notice of Appeal. The Court Clerk shall serve notice of the filing of a notice of appeal by mailing a copy to each party. The Clerk shall send a copy of the notice to the Hoopa Valley Court of Appeals.

(d) Filing Fee. The filing fee for appeals of Tribal Court decisions shall be $150.00.

(e) Composition of the Hoopa Valley Tribal Court appellate panels

(1) The appellate panel shall be comprised of and appointed pursuant to Hoopa Valley Tribal Code section 1.4.04.

(2) The Chief Judge may order the matter heard by justices appointed and impaneled at the Hoopa Valley Tribal appellate courts in Hoopa or at the Northwest Intertribal Court System Office, 144 Railroad Ave., Suite 302, Edmonds Washington.

(A) If the Northwest Intertribal Court System is impaneled, all Appellate Court hearings shall be held at that location unless otherwise ordered by the Court.

(B) Upon motion by any party to the appeal, a hearing may be conducted by telephone conference call with the Court of Appeals impaneled in Edmonds, Washington, and the parties at the Hoopa Valley Tribal Court.

(f) All travel and per diem costs shall be borne by the litigants. All costs incurred, including court costs and legal fees, may be awarded to the prevailing party.

2.6.02 Content of Petition; Answer

The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which the appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within fourteen (14) days after service of the petition, an adverse party may file an answer in opposition. The application and order shall be submitted without oral argument unless otherwise ordered.

[See Tribal caselaw for precedent. Fed. R. App P. 3 may be looked to, and cases pertaining to this rule may be cited to as persuasive argument]

2.6.03 Administrative Appeals

Appeals of decisions of the TERO Commission are to be filed as appeals pursuant to the Tribal Employment Rights Ordinance, Title 13, et seq.

(a) Filing Fee. Filing fees for appeals of TERO decisions shall be $50.00 for appeals to the Hoopa Valley Tribal Court acting as the Court of Appeals, and $150.00 for appeals to the Hoopa Valley Supreme Court.

(b) Pursuant to this Chapter, neither the Hoopa Valley Indian Tribe, the Hoopa Valley Tribal Council or any public officer or body, acting in his official capacity on behalf of the Hoopa Valley Indian Tribe shall pay or deposit any fee for the filing of any document or paper, for the performance of any official service, or for the filing of any stipulation or agreement which may constitute an appearance in the Hoopa Valley Tribal Court by any other party to the stipulation or agreement.

(c) Whenever a judgment is recovered by the Hoopa Valley Tribe either as plaintiff or petitioner or as defendant or respondent, in any action to begin or to defend which, pursuant to this section, did not require the payment of any fee, the Court entering judgment shall include as a part of the judgment the amount of the filing fee and the amount of the fee for the service of process or notices which would have been paid but for this section.

Chapter 7
Miscellaneous

2.7.01 Rules Not Announced

Where this Title does not expressly address a question, the Court may issue any order to accomplish substantial justice.

2.7.02 Savings Clause

If any provision of this Title is declared to be invalid, the remaining provisions shall not be affected.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council so certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this 11th day of August, 1998; and that this Ordinance was adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED THIS 11th DAY OF AUGUST 1998.

_____
Merv George, Jr., Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

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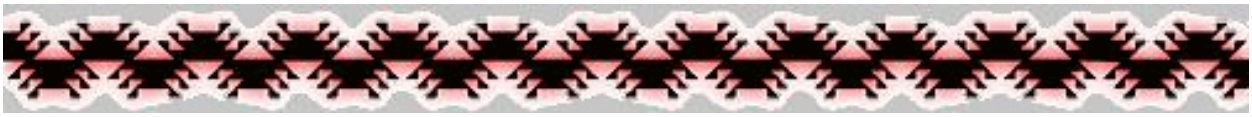
TITLE 3 OF THE HOOPA TRIBAL CODE

PURPOSE: RULES OF THE HOOPA TRIBAL COURT (SCANNED DOCUMENT)

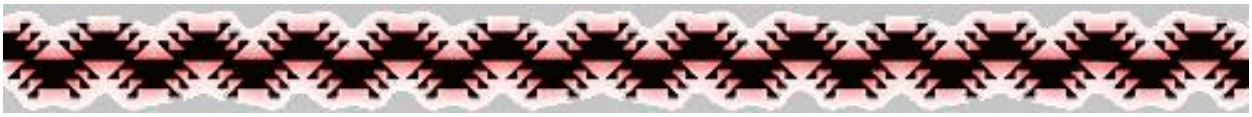
ADMINISTRATIVE RECORD:



TITLE 4 OF THE HOOPA TRIBAL CODE

PURPOSE: Law and Order Penalties

ADMINISTRATIVE RECORD: Adopted August 11, 1998



TITLE 4
PENALTIES

5.1.01 Application

The application of penalties for violations of the provisions of this Law and Order shall be based on the severity of the act on the rights and resources of the members of the Hoopa Valley Tribe.

CHAPTER 2.0
CLASSES

5.2.01 Class A

A person convicted of a Class A offense shall be sentenced to a fine not to exceed $25.

5.2.02 Class B

A person convicted of a Class B offense shall be sentenced to a fine not to exceed $50.

5.2.03 Class C

A person convicted of a Class C offense shall be sentenced to a fine not to exceed $100.

5.2.04 Class D

A person convicted of a Class D offense shall be sentenced to a fine not to exceed $200.

5.2.05 Class E

A person convicted of a Class E offense shall be sentenced to a fine not to exceed $500.

5.2.06 Probation

Except as otherwise provided in this Code, the Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense and to place him or her on probation. The court may attach to the order of probation such reasonable restrictions as it deems necessary. At any time before the end of the probation period, if the Court is satisfied that the person has inexcusably failed to comply with a substantial requirement imposed as a condition of the probation order, or if the person has been convicted of another

crime, the Court may revoke the probation and sentence or re-sentence the person as provided in this Code.

5.2.07 Other Penalties

Nothing in this Code shall prohibit such penalties as warnings, impoundment of gear and equipment and/or suspension from participation in activities for a time specified by the Court when, in the Court's discretion, such penalty appropriately applies to the violation.

CHAPTER 3
FINES AND FEES

5.3.01 Disposition of Fines and Fees

All fines and fees collected by the Court under the provisions of this Code shall be held in a special account of the Hoopa Valley Business Council to be used for maintenance of the Tribal Court and/or Law and Order Program.

CHAPTER 4
LEGAL PROPERTY

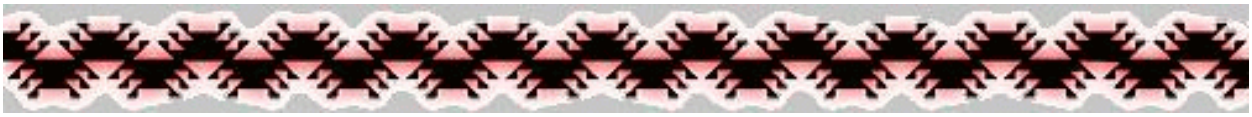
5.4.01 Property Seized as Evidence

Unless otherwise ordered by the Court, when any officer in the execution of a valid search shall seize any evidence material to the investigation or prosecution of any offense, such evidence shall be safely kept so long as shall be necessary for the purpose of being produced in evidence at any trial. After the trial, such evidence shall be restored to the owner thereof, if it would otherwise be lawful for the owner to possess the property involved. If it would not be lawful for the owner to possess the property involved, the Court shall release the property to the proper authorities.

TITLE 5 OF THE HOOPA TRIBAL CODE

PURPOSE: EXCLUSION OF PERSONS FROM THE HOOPA VALLEY INDIAN RESERVATION

ADMINISTRATIVE RECORD: Adopted September 23, 1986



TITLE 5
ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO.: 2-86

DATE APPROVED: September 23, 1986

SUBJECT: EXCLUSION OF PERSONS FROM THE HOOPA VALLEY INDIAN RESERVATION

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (1) of this Constitution and Bylaws authorized the Hoopa Valley Business Council " safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians by regulating the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs or his authorized representative; and

WHEREAS: It is the desire of the Hoopa Valley Business Council to enact an Ordinance governing exclusion of persons from the Hoopa Valley Indian Reservation for the purpose of enforcing laws to protect the territory and people within the jurisdiction of the Hoopa Valley Tribe; and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council does hereby adopt for implementation this Ordinance governing exclusion of persons from the Hoopa Valley Indian Reservation and approvals required by the Commissioner of Indian Affairs or his authorized representative is requested at the earliest possible time.

SECTION I: EXCLUSION FROM THE HOOPA VALLEY INDIAN RESERVATION

Any person may be excluded from the reservation and all areas under the jurisdiction of the Hoopa Valley Tribal Court for any of the following reasons:

(1) Repeated commission of a crime or breach of peace as defined by Tribal, State and Federal laws.

(2) Repeated willful failure to adhere to Tribal laws and regulations or failure to correct a violation of such laws and regulations after Hoopa Valley Court orders to do so.

(3) Repeated invasion of the privacy of the residents of the Reservation.

(4) Unauthorized entry into Tribal or individual land for any purpose, including but not limited to camping, hunting, fishing, trapping, timber cutting (including Christmas trees), or other property of the Tribe or of any resident of the Reservation.

(5) Any other misconduct or objectionable condition found by the Tribal Court to be sufficient cause for expulsion, provided that the person is first advised of the objection and given notice to desist but nevertheless continues the misconduct or condition.

(6) Improper and willful interference of businesses authorized by the Hoopa Valley Business Council under the provisions of this Code.

SECTION II: RULES OF EXCLUSION PROCEDURE

The procedure for exclusion for any person shall be as follows:

(1) The Chairman of the Hoopa Valley Business Council, or his/her authorized representative, shall serve notice, either by an officer of the Council or by registered mail, upon any person the Chairman has reason to believe cause may exist for exclusion of such person. Such notice shall state the reason for the order and shall name a time not less than five (5) days, unless an emergency exists, when the person may appear before the Hoopa Valley Tribal Court to show cause why he should not be excluded from the Hoopa Valley Indian Reservation.

(2) After notice to the person proposed for exclusion, the Hoopa Valley Tribal Court shall hold a hearing under the Rules of Civil Procedure of the Hoopa Law and Order Code to decide whether or not that person shall be excluded from the Hoopa Valley Indian Reservation.

(3) If the person does not appear at the hearing at the time and place scheduled, or if found at the hearing that cause does exist to exclude that person from the Hoopa Valley Indian Reservation or permitting such person to remain on the Hoopa Valley Indian Reservation under such conditions specified in the order. The order shall be effective unless revoked or modified by the Tribal Appellate Court.

(4) If the final judgment of the Hoopa Valley Tribal Court is that the person shall be excluded from the Hoopa Valley Indian Reservation, then the Court shall deliver an order of removal to any Law Enforcement Officer who shall thereupon order the person to obey the order. If, after the required time specified in the order, the person does not comply with the order, he may be removed bodily from the

Hoopa Valley Indian Reservation by the Law Enforcement Official as stated in the order of the Court.

(5) In cases involving immediate danger to the life, health, morals, or property of residents of the Reservation or any Tribal members, where delay would result in irreparable damage, the Chairman of the Hoopa Valley Business Council, or his/her authorized representative, may request the Court to order any Law Enforcement official to remove a person and/or any property of such person from the Hoopa Valley Indian Reservation immediately using only as much force as is reasonable and necessary to effect the removal. The Court shall cause the Law Enforcement Officer to serve notice upon the person at the time of removal or cause the notice to be served as soon thereafter as possible.

(6) In any case involving the immediate removal of a person from the Hoopa Valley Indian Reservation, the order of the Court shall state the conditions under which the person may return for a hearing is such hearing was not held.

(7) Nothing in this section shall limit the authority of the Hoopa Tribal Court to impose, pursuant to applicable Tribal law, the penalty of exclusion where such penalty is authorized by the Law and Order Code, Rules of Court or other Tribal enactment.

SECTION III: APPEAL ALLOWED TO HOOPA VALLEY TRIBAL COURT

An appeal to the Hoopa Valley Tribal Court, Appellate Division, may be made under the Civil Procedures of the Tribal Law and Order Code within five (5) days after the issuance of an order by the Tribal Court pursuant to this Ordinance. Decisions of the Hoopa Valley Court of Appeals shall be final

SECTION IV: VIOLATION OF ORDER A CRIMINAL OFFENSE

Any person who violates any order or part thereof issued pursuant to this Section shall be deemed guilty of an offense and, upon failure to comply with the order of the Court, may be sentenced to confinement for a period not to exceed six (6) months or to pay a fine of $500.00 or both, with costs, and ordered to comply with the previous order or amended order issued by the Court.

SECTION V; APPLICATION FOR REVOCATION OR AMENDMENT OF ORDER

Any person to whom an order has been issued under this Ordinance may apply to the Tribal Court in writing for revocation or amendment of such an order. A hearing on the application shall be conducted under the provisions of Section II. An appeal may be made from the decision of the Court on the application under the provisions of Section III.

SECTION VI: SUBJECT MATTER JURISDICTION

Pursuant to the Hoopa Valley Tribal Law and Order Code, Preamble, the Hoopa Valley Business Council hereby resolves that violations of this Ordinance shall be subject to adjudication in the Hoopa Tribal Court.

CERTIFICATION

I, the undersigned, as Vice-Chairman of the Hoopa Valley Businesss Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 5 were present constituting a quorum at a Regular Meeting thereof; duly and regularly called, notice, convened and held this 23rd day of September, 1986; and that this ordinance was duly adopted by a vote of 4 for and 0 against, and that said resolution has not been rescinded or amended in any way.

DATED THIS 23RD DAY OF September, 1986

_____
Rodney E. Vigil, Vice-Chairman
Hoopa Valley Business Council

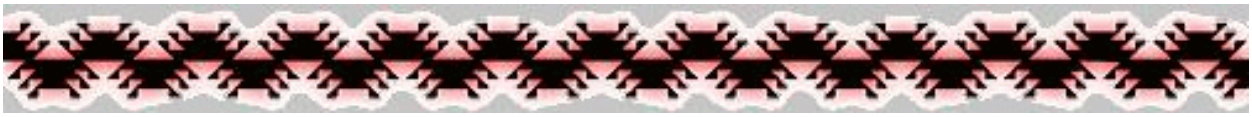
ATTEST:

_____
Deirdre R. Young, Executive Secretary
Hoopa Valley Business Council

TITLE 6 OF THE HOOPA TRIBAL CODE

PURPOSE: LEGISLATIVE PROCEDURES ACT OF THE HOOPA VALLEY TRIBE

ADMINISTRATIVE RECORD: Adopted November 16, 1989



TITLE 6

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 4-89

DATE APPROVED: November 16, 1989

SUBJECT: LEGISLATIVE PROCEDURES ACT OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe is organized under a Constitution and Bylaws, which was approved by the tribal membership on June 20, 1972 and by the Commissioner of Indian Affairs on August 18, 1972, and this Constitution and Bylaws provides that the Hoopa Valley Business Council shall be the governing and law making body of the Tribe, fully authorized to exercise all the retained, inherent sovereign powers of the Tribe; and

WHEREAS: In order to promote efficient and consistent decision making by the Council and to facilitate meaningful participation by tribal managers, employees, and members in important actions and activities of the Tribe, the Hoopa Valley Business Council has identified the need for establishing a uniform process for decision making.

THEREFORE BE IT NOW RESOLVED THAT: The Hoopa Valley Business Council hereby enacts the following Legislative Procedures Act as Title 6 of the Law and Order Code of the Hoopa Valley Tribe, in order to establish procedures, which shall be immediately effective, to be followed in enacting legislation or in taking other major tribal action.

6.0 SHORT TITLE

The short title of this enactment shall be the Legislative Procedures Act.

6.1 PURPOSE

The purpose of this Legislative Procedures Act is to set forth a comprehensive and systematic process for the Tribal Council, its programs, and its entities chartered or established under the authority of the Tribal Council, to establish, amend, or modify policies, ordinances and acts, or to take other governmental actions on behalf of the Hoopa Valley Tribe. Council intends that this Act shall: establish a checks and balances system for the Tribal Council and its entities and departments; provide a mechanism for review and consideration of Tribal Council actions by those persons affected thereby, including programs which are intended to enforce such action; enable Council to gain maximum benefit of the expertise of the professional staff employed by the Tribe; facilitate adequate input from the tribal membership, and where appropriate the

general reservation community, regarding proposed actions of the Council in a manner that permits fair consideration of the concerns from the membership and the community. The definition of the term "major action" as used in this Act shall be left to the reasonable interpretation of the Tribal Council and Tribal Court.

6.2 PROPOSED ACTION

Any person (including a member of Council) , board, committee or department may submit to the Tribal Council a proposal to amend, modify, or establish a policy or ordinance at any duly called meeting. The Council may by motion accept the proposal, and if Council so accepts a proposal it shall refer the matter to the appropriate tribal departments, entities, and staff. Except as provided under Section 6.10 of this Act, which establishes procedures for enactment of emergency legislation, the Tribal Council may not, in the same meeting in which it accepts a proposal, take any action on the proposal other than to refer it as provided in Section 6.3 of this Act.

6.3 REFERRAL BY TRIBAL COUNCIL; DRAFTING

(a) During the same meeting at which Council accepts a proposal under Section 6.2 of this Act, the Council shall identify those department, entities, and staff to whom the proposal shall be referred, and the recording secretary shall, on a routing form developed to fulfill the purposes of this Section, list the names of all such department, entities, and staff. The Executive Secretary shall be responsible for promptly routing the proposed action, as submitted to and accepted by the Council, along with a copy of the routing form, to the departments, entities, and staff identified on the routing form. A copy of the completed routing form shall be kept at the Tribal Office for future reference.

(b) Also during the same meeting at which the Council accepts and refers a proposal, Council shall identify who shall be responsible for drafting the language of the proposal (unless it is submitted in a form that would, if enacted, accomplish its intended effect). Council shall not take final action on any proposal subject to the procedures of this Act unless the proposal contains the actual language that would take effect if approved.

6.4 DEPARTMENT AND STAFF ACTION

After each department receives a copy of a proposal referred under Section 6.3, the manager of each such department shall be responsible for assuring such department's timely response to the referral. Once that department's response has been documented and all information has been considered, that department shall route its comments, suggestions, and recommended amendments back to the Executive Secretary. The Executive Secretary shall prepare a file of all department input for the Council consideration. Once all departments have responded, the Chairman shall schedule time on the agenda to review the department comments, suggestions, and recommendations.

6.5 COUNCIL MODIFICATIONS AND AMENDMENTS

After reviewing and considering all responses to the referral process, the Council may make such changes to the original proposal as it deems necessary or appropriate. Once changes, if any, are made to the original proposal, the Council may set the matter for a public hearing and schedule a hearing date, or take final action in accordance with Section 6.9.

6.6 HEARING NOTIFICATION

The Council shall notice a hearing for two (2) weeks prior to the hearing date in a public place on the Hoopa Valley Indian Reservation and in appropriate public media. The notices shall state the date, time, and place of the hearing and will include a brief description of the proposed action and the final date on which written comments will be accepted.

6.7 HEARING

All hearings will be conducted in accordance with the tribal hearing procedures. The Council shall appoint a hearing officer to preside over the hearing. The hearing officer shall call the hearing to order, briefly outline the hearing procedures, including the final date for written comments, and briefly outline the subject matter of the hearing. Both written and oral testimony may be accepted.

6.8 COUNCIL REVIEW OF PUBLIC COMMENT

Comments received during a hearing, any written comments received before the deadline set for their receipt, and all documentation submitted during the referral process shall be compiled by the hearing officer into one packet for Council review. The proposed action will be placed on the agenda at a duly called Council meeting for consideration. The Council may decide whether any other information is necessary, including whether to send the proposal to any departments for reconsideration. The Council shall have the discretion as to when Council final action will be taken; however, it shall not postpone action for an unreasonable length of time.

6.9 FINAL COUNCIL ACTION

Once the Council has determined that is has adequately considered a proposal as provided in this Act, it shall take action on the proposal by voting according to its ordinary constitutional procedures. If the proposal is approved, the Chairman's office, unless the enactment provides otherwise, shall direct the appropriate departments and staff to begin implementation and enforcement of the enactment. In the case of the enactment of a new law, or the amendment of an existing law, the Council shall be responsible for directing the codification of such action in the Tribe's Law and Order Code, as provided in Title 1, Section 1.09 thereof.

6.10 EMERGENCY ACTION

6.10.1 Enactment of Emergency Regulation

Whenever it determines that there is an immediate threat to the Tribe or any of its resources or assets, the Council may enact emergency regulations or take other emergency action. Such regulations or action shall be valid for not longer than thirty (30) days from the date of enactment, after which such regulations or actions shall no longer be effective, unless upon the expiration of this 30 day period, the Council expressly finds that the emergency situation necessitates extension of such regulations or actions for another period not to exceed 30 days. Emergency regulations or actions pursuant to this Section must be accompanied by a duly adopted Council resolution which specifies the need and intent of such regulations or action.

6.10.2 Emergency Regulation Limitations

This emergency Section is intended to be used only where adherence to the other requirements of this Act would result in a significant injury to the interests of the Tribe, and shall not be used to frustrate the general purposes of this Act as set forth in Section 6.1. It is expected that the Council will, at the time that any emergency action is take as provided herein, propose additional action in accordance with the process established under this Ordinance.

6.10.3 Emergency Regulation Expiration Date

No emergency regulation shall remain valid if allowed to stand longer than 30 days without an official extension as provided under this Section. The enforceability of an emergency regulation shall expire 30 days after its enactment date and such emergency regulation shall be deemed null and void.

6.11 PUBLIC NOTICE

Once action is taken by the Council under this Ordinance, the Executive Secretary shall be responsible for notifying all appropriate departments as to who shall be responsible for posting such notices as may be required by the action taken.

6.12 JUDICIAL REVIEW BY THE TRIBAL COURT

The Hoopa Tribal Court shall have authority to issue declaratory judgements regarding violations of this Ordinance, and any action taken by the Council not substantially in accordance with this Ordinance shall be declared null and void; provided, however, that the Court shall have no jurisdiction to hear challenges to Council action based solely on violations of Section 6.13 of this Act. Except to the extent that this Section provides for judicial review by the Tribal Court, the Council does not waive the sovereign immunity of the Hoopa Valley Tribe, or that of any of its departments or entities, from unconsented lawsuit.

6.13 ROBERTS RULES OF ORDER

It is hereby declared to be the policy of the Council that, to the extent not precluded by law, Roberts Rules of Order shall be the governing process for conducting all meetings of the Tribe. This Policy shall be incorporated into the official meeting process for all committees and boards established under the authority of the Tribal Council and it shall be the duty of the Chairperson of each board and committee to conduct the affairs of such board and committee in a manner in accordance with this Act.

6.14 SERVABILITY

If any part of this Act is held to be invalid, it is the intent of the Council that the remainder shall continue to be in full force and effect to the maximum extent possible.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight (8) members of which (5) were present, constituting a quorum, at a Regular Meeting thereof; duly and regularly called, noticed, convened, and held this 16th day of November, 1989; and that this Ordinance was duly adopted by a vote of four (4) for and none (0) against, and that this Ordinance has not been rescinded or amended in any way.

DATED THIS 16TH DAY OF NOVEMBER, 1989

_____
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

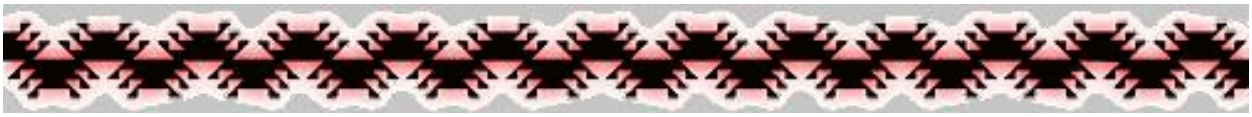
ATTEST:

_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 7 OF THE HOOPA TRIBAL CODE

PURPOSE: RULES AND PROCEDURES FOR OFFICIALS AND EMPLOYEES OF THE TRIBE

ADMINISTRATIVE RECORD: Adopted July 8, 1999



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 7

ORDINANCE NO: 1-90, AS AMENDED

DATE APPROVED: JULY 8, 1999

SUBJECT: RULES AND PROCEDURES FOR OFFICIALS AND EMPLOYEES OF THE HOOPA VALLEY TRIBAL COUNCIL WHEN TRAVELING AND INCURRING EXPENSES FOR OFFICIAL BUSINESS ON BEHALF OF THE TRIBE

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX thereof, imposes broad responsibilities on the Hoopa Valley Business Council, as the Tribe's governing body, to represent and pursue the interests of the Tribe in a manner that necessitates frequent travel both in and out of state;

WHEREAS: Such official Tribal government travel is generally paid with funds derived directly from Tribal revenues or from other funds under the control of the Council, and Article IX, Section 1© of the Tribe's Constitution and Bylaws expressly authorizes Council, "to collect and expend any Hoopa Valley Tribal funds," and

WHEREAS: In order to establish safeguards for the protection of tribal funds and of officials and employees incurring expenses from such funds while traveling on behalf of the Tribe, the Tribal Council has developed this Ordinance to establish rules and procedures for those persons traveling for the Tribe.

NOW THEREFORE BE IT RESOLVED THAT: The Hoopa Valley Tribal Council hereby enacts this Tribal Travel and Expense Act, to be codified as Title 7 of the Law and Order Code of the Hoopa Valley Tribe, and that this Act shall be in full force and effect as of the date of its enactment and shall supersede all previous Ordinances and policies to the extent that they are inconsistent with this Act.

Title 7

7.0 SHORT TITLE

The short title of this Act shall be the Travel and Expense Act.

7.1 PURPOSE

The purpose of this Act shall be to govern all local and non-local travel by members of the Tribal Council, its staff and employees, whether using Tribal or other funds under the control of the Tribe. It is the Tribe's policy that travel shall be conducted in the most efficient and economical means possible and that minimizes the financial impact on program activities and functions. This Act shall further govern the use of Tribal credit cards of the Council, its programs and projects and any officials and employees thereof.

7.2 APPLICABILITY

The provisions of this Act shall govern any and all officials and employees of the Tribe, and any person contracted for services by the Tribe, during the course of official Tribal business. Any travel or other expenses incurred that are not in accordance with this Act shall be presumed to be unauthorized and shall not be subject to reimbursement and payment by the Tribe. This ordinance applies to Tribally chartered entities unless said entities have adopted their own travel ordinance that is expressly approved by the Tribal Council.

7.3 DEFINITIONS

a) "Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

b) "Tribal Court" means the Hoopa Valley Tribal Court.

c) "Per Diem" means an allowance of a set amount of money per day to cover expenses for meals, tips, valet parking, bell service, personal phone calls and other incidental expenses while traveling for official Tribal business.

7.4 TRAVEL FOR OFFICIAL TRIBAL BUSINESS

The only travel for which payment and reimbursement is authorized under this Act shall be for official Tribal activities for which an ongoing program or project has been established; except that travel may be authorized for any activity for which no existing program or project has been established, provided that the official authorized for such travel is responsible for developing a proposal, plan or recommendations on such activity for submission to the Council within 30 days from the date of return. Council members and employees of the Tribe are subject to all applicable Tribal ordinances, rules, regulations, and policies, including but not limited to the Tribe's Drug and Alcohol Policy at all times while on travel. Council members and employees of the Tribe shall physically attend the activities for which travel is authorized. Failure to attend,

except for good cause, shall be considered gross misconduct and shall be grounds for disciplinary action up to and including removal or termination.

7.5 TRAVEL AND EXPENSE AUTHORITY

7.5.1 Local Travel

Local travel shall be that within a 100 mile radius of the Tribal Office Building (includes travel to Redding, California). Program managers shall have approval authority for such travel

7.5.2 In-Region Travel

In-Region travel shall be that beyond the local travel radius but within the States of California, Oregon, Washington, Arizona, Nevada, Idaho, Montana, Utah, Colorado, and New Mexico and not exceeding four (4) nights' duration. The Tribal Chairperson shall have exclusive authority for approval of such travel.

7.5.3 Out of Region and Extended Travel

Out of Region travel means that which is beyond the borders of the states specified in subsection 7.5.2; extended travel means any travel away from the Hoopa Valley Reservation, regardless of distance, for more than four (4) nights. The Tribal Council shall have exclusive approval authority over such travel.

7.6 TRAVEL ARRANGEMENTS AND RECORD KEEPING

The Tribal Council and each department will assign to an employee the following duties and responsibilities:

a. To make all travel arrangements and accommodations, provided that first class air travel is prohibited for In-Region Travel as defined by 7.5.2 except in situations where no other rates are available or upon the express authorization of the Hoopa Valley Tribal Council.

b. To fill out all travel advance requests.

c. To provide a receipt envelope with a copy of the travel advance request for the official prior to the travel.

d. To receive all credit card, parking, rental car, hotel, taxi and air flight receipts and other travel information necessary to liquidate a travel advance after the trip.

e. To liquidate travel advance requests on the appropriate form and send such form to the Fiscal Department showing the amount owed or due, or account closed.

7.7 PER DIEM RATE

a) For the Tribal Council and those departments and programs utilizing tribal funds, individuals shall be paid a per diem rate of $75.00 for travel to Washington, D.C. or other locations as approved by the Tribal Council and $50.00 for overnight travel to all other locations. There shall be no per diem allowance for travel that does not include an overnight stay.

b) Partial Per Diem Rates. Individuals requiring overnight travel shall be paid a per diem for days of departure from Hoopa, California and return to Hoopa, California in accordance with section 7.6 (a), above, at the following rates:

Depart/Leave	**Depart/Leave**
Prior to 12:00 P.M.	After 12:00 P.M.
Full Per Diem Rate	One-half (1/2) Per Diem Rate

Return/Arrive	**Return/Arrive**
Prior to 12:00 P.M.	After 12:00 P.M.
One-half Per Diem Rate	Full Per Diem Rate

Individuals shall be paid a full per diem rate for each full day of overnight travel other than departure and return days, which shall be paid in accordance with this Act.

c) Reimbursements for non-overnight travel will be for actual costs upon presentation of receipts. Departments and programs funded by Federal or State grants that specify per diem rates must follow the applicable rates approved by the granting agency. Program managers may implement written policies regarding disbursement of, and entitlement to, partial or full payment of per diem, that do not exceed the rate(s) established.

6.8 TRIBAL CREDIT CARDS

a) The Hoopa Valley Tribal Council shall maintain a credit card(s) for the limited purpose of reserving hotel accommodations or reserving rental vehicles for Council members and employees of the Hoopa Valley Tribe. Council members and employees are prohibited from using a Tribal credit card to incur charges of any sort on behalf of the Hoopa Valley Tribe or its entities unless expressly approved by the Hoopa Valley Tribal Council prior to incurring said charges.

b) GSA Cards. Nothing herein shall prohibit the use of General Service Administration gas cards for the purpose of operation of GSA vehicles for official Tribal business.

6.9 MILEAGE RATES

The use of private vehicles for Tribal business is authorized ONLY if the vehicle owner has registered his/her insurance information with the Tribe and the person who will operate the vehicle is a legal operator as determined under the laws of the Tribe and State of California. It is the policy of the Tribe to utilize Tribally owned vehicles to the greatest extent possible. Legal operators using private vehicles for tribal business using Tribal funds shall be paid at the rate of $.35 per mile. Attached hereto as Exhibit A is standard mileage reimbursement table to be used as a guide in determining reasonable mileage reimbursement. Exhibit A may be updated annually or as determined necessary. All mileage reimbursement shall be paid based upon the actual mileage traveled as determined by the odometer reading. Those departments and programs utilizing Federal or State grant funds that specify mileage reimbursement rates shall be paid the amount authorized by the granting agency. Mileage reimbursement shall only be paid for one roundtrip to and from a specific destination as necessary to conduct Tribal business. For example, mileage reimbursement for travel to the Eureka/Arcata airport shall only be paid for the actual mileage of one roundtrip to and from the airport from the point of origin, e.g., Hoopa to McKinleyville. No mileage reimbursements shall be paid in conflict with this Act.

7.10 EMERGENCY TRAVEL AND EXPENSE REGULATIONS

6.9.1 Emergency Travel Approval

In the event of a legitimate unforeseen emergency that requires an official or employee to travel for official business of the Tribe and a diligent effort has been made to obtain prior Council approval, the Chairman may approve such travel under this emergency provision. In such a case, the official or Chairperson is not required to obtain Council approval prior to the travel, provided that all previous travel by that individual has been liquidated. The official for whom emergency travel is approved is required to comply with the remaining requirements of this Act. The Chairperson shall report to the Council at its next meeting on the nature of the action and the purpose of the travel.

6.9.2 Emergency Expense Approval

In the event that unforeseen emergency purchases are required that were not planned or expected prior to any travel, the individual making such purchases must make a diligent effort to contact the Tribal Chairperson for approval prior to the emergency expense being incurred, such expenses must be promptly reported to the Chairperson and the Fiscal Department upon return from the travel during which the emergency expenses were incurred. All emergency expenses shall be liquidated in accordance with this Act.

6.10 TRAVEL AND CREDIT CARD LIQUIDATION

6.10.1 Travel Expense Liquidation

Within thirty (30) days from the date of return from a trip, or prior to requesting additional authorization for travel, the traveling official or employee shall submit to the Fiscal Department

a full and complete liquidation for advanced travel funds. The liquidation shall be accomplished by submitting a completed "Authorization To Travel" form and attaching any receipts for expenses of the applicable per diem rates. The Tribal Council shall review and approve credit card expenses in accordance with subsection 7.10.2 of this Act.

6.10.2 Credit Card Liquidation

All charges using a Tribal credit card shall be reported (including all receipts or other appropriate supporting documentation) to the Fiscal Department and liquidated within thirty (30) days from the date the credit card charge was incurred. The Tribal Council maintains exclusive authority to approve all expenses of the Council and its employees.

6.11 MANDATORY FILING OF COMPLAINT

6.11.1 Unreported or Unliquidated Expenses

If any official or employee fails to file a completed form liquidating travel expenditures or expenses charged to a Tribal credit car within the thirty (30) day time frame set forth in subsection 7.11.2, the Fiscal Department shall forward to such official or employee, with copies to the Chairman and Office of Tribal Attorney, a written notice that all such unreported or unliquidated expenditures are unauthorized and must be repaid within ten (10) days. If repayment is not made within ten (10) days of such notice, the Fiscal Department shall issue a written notice of delinquency to the individual and forward a copy of said notice to the Office of Tribal Attorney. Within a reasonable time after the Office of Tribal Attorney's receipt of said notice of delinquency, the Office of Tribal Attorney shall investigate and file a claim, if necessary, for repayment of such unauthorized expenses in the Hoopa Valley Tribal Court on behalf of the Hoopa Valley Tribe.

7.12.2 Expenses Disapproved by Council

If the Council disapproves any expenditures for a Tribal Official or employee, the Fiscal Department shall forward to such official or employee, with copies to the Chairman and Office of Tribal Attorney, a written notice that all such unreported or unliquidated expenditures are unauthorized and must be repaid within ten (10) days. If repayment is not made within ten (10) days of such notice, the Fiscal Department shall issue a notice of delinquency to the Office of Tribal Attorney. Within a reasonable time after the Office of Tribal Attorney's receipt of said notice of delinquency , the Office of Tribal Attorney shall investigate and file a claim, if necessary, for repayment of such unauthorized expenses in the Hoopa Valley Tribal Court on behalf of the Hoopa Valley Tribe.

7.12.3 Sovereign Immunity Not a Defense; Council Immunity Preserved

Because the purpose of any legal claim authorized and mandated by this Section is to recover funds spent without proper authorization, any defendant in such an action shall not be permitted to assert the Tribe's sovereign immunity as a defense. Nor shall anything in this provision be construed as a waiver by the Hoopa Valley Tribe of its sovereign immunity from unconsented

lawsuit, nor as consent to bring an action against it or any of its officials or employees in their authorized capacities, including any cross claim or counter claim that might be asserted.

6.12 TRIBAL COURT AUTHORITY

a) If the Hoopa Valley Tribal Court finds a preponderance of the evidence that an individual failed to properly report and liquidate his or her expenses as provided herein, or if the Court determines that an individual incurred unauthorized expenses of tribal funds, or of funds under Tribal control, the Court shall declare such action in violation of this Act an order repayment to the Tribe of all funds spent without authorization or not properly reported and liquidated.

b) The Tribal Court may also impose such additional penalties as may be appropriate, either on its own motion or on motion of the Tribe. The appropriateness of such additional penalties shall depend on the circumstances surrounding and the magnitude of the violation, and may include assessment of interest, court costs and reasonable attorney fees, any consequential damages proximately caused by the violation of this Act, and as set forth below, punitive damages and other consequences for aggravated violations of this Act.

c) Where violations of this Act involve an intent to conceal wrongful conduct or defraud the Tribe, or amount to embezzlement for personal gain, the Court shall impose the strictest penalties within its authority, including punitive damages. In such cases, the Tribal Council may decide to initiate additional actions in other jurisdictions. Also in such cases, the Tribe may request the Court to determine whether such violations amount to an offense involving moral turpitude with reference to Article VI, Section 6© of the Tribal Constitution.

d) The Court may enforce its orders by garnishment of wages paid by the Tribe, by imposing a lien on future payments from the Tribe (including per capitas and Council or Committee pay), or by any other method that appears effective and appropriate.

6.13 SEVERABILITY

If any part of this Act is held to be invalid, it is the intent of the Council that remaining provisions shall remain in full force and effect to the maximum extent possible.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Indian Tribal Council, do hereby certify that the Hoopa Tribal Council is composed of eight (8) members of which at least seven (7) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 8th day of July, 1999; and that this Ordinance was duly adopted by a vote of five (5) in favor, one (1) opposed and zero (0) abstaining and the said Ordinance has not been rescinded, amended or modified in any way.

Dated this 8th day of July, 1999.

_____

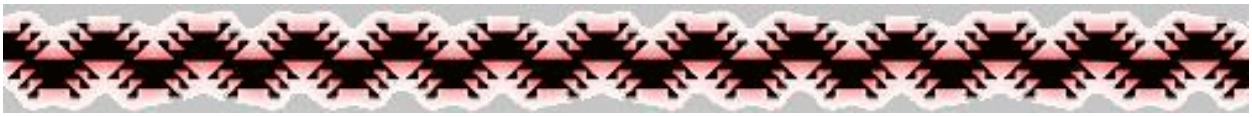
Duane Sherman, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Carol Baldy, Recording Secretary
Hoopa Valley Tribal Council

TITLE 8 OF THE HOOPA TRIBAL CODE

PURPOSE: CONFLICT OF INTEREST AND NEPOTISM ORDINANCE

ADMINISTRATIVE RECORD: Codifying Resolution 81-24, as clarified February 7, 1985



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

Title 8

ORDINANCE NO: 99-01; Codifying Resolution 81-24, as clarified February 7, 1985 (Resolution Number 85-34).

DATE APPROVED: February 11, 1999

SUBJECT: CONFLICT OF INTEREST AND NEPOTISM ORDINANCE

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and confirmed and ratified by the United States Congress on October 31, 1988;

WHEREAS: On February 17, 1981, the membership of the Hoopa Valley Tribe voted in a referendum election on the issues of Conflict of Interest and Nepotism;

WHEREAS: The referendum ballot measure mandated that the election results should take effect immediately upon the official certification of the February 17, 1981 election;

WHEREAS: The Hoopa Valley Tribal Council wishes to codify the result of the February 17, 1981 election in a format consistent with that of the Hoopa Valley Tribal Code;

WHEREAS: Previous codification of the result of the February 17, 1981 election was accomplished via two different resolutions;

WHEREAS: The previous format of Title 8 was not easy to comprehend;

WHEREAS: Utilizing a uniform codification of the result of the February 17, 1981 election will make it easier to understand and comply with the Conflict of Interest and Nepotism Ordinance;

WHEREAS: Consistent with the Constitution and Bylaws, Article VII, section 4, the uniform version of Title 8 does not change the result of the February 17, 1981 election;

NOW, THEREFORE, BE IT RESOLVED that the Hoopa Valley Tribal Council hereby adopts the uniform version of the Conflict of Interest and Nepotism Ordinance.

§ 1 PURPOSE

The purpose of the February 17, 1981 vote and the resulting Conflict of Interest and Nepotism issues was to promulgate uniform regulations that avoid self-dealing to the benefit of individual Committee, Board, Commission and Council members and/or their families and apply uniformly to all Tribal operations, programs and entities.

§ 2 DEFINITIONS

a) "**Tribe**" means the Hoopa Valley Tribe, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.

b) **"Council"** means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

c) **"Tribal Entity"** or "**Tribal Operation**" means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.

§ 3 EFFECTIVE DATE

This Ordinance is effective upon official certification of the results of the February 17, 1981 election.

§ 4 COMMITTEE APPOINTMENTS

No Council member shall be eligible to sit as a voting member on standing committees of the Tribe.

§ 5 BOARD APPOINTMENTS

Council members shall not be eligible to sit as a voting member on the Board of Directors of any Tribal entity chartered under the Tribal Constitution.

§ 6 EMPLOYMENT OF TRIBAL COUNCIL MEMBERS PROHIBITED

Council members shall not be employed within any tribal operation.

§ 7 EMPLOYEES AS BOARD AND COMMITTEE MEMBERS

Members of the governing Board of any Tribal program or chartered entity shall not be employed in any paid position which is subject to direct appointment or supervision by that governing Board.

§ 8 PROHIBITION OF CONFLICTS BY COUNCIL, COMMITTEE OR BOARD MEMBERS

No Council member, Committee member or Board members shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of his official duties. No such member shall use information to which they have access to advance the financial or other private interests of themselves or others.

No such member shall accept any valuable gifts, whether in the form of services, loan, thing or promise from any person who is interested, directly or indirectly in business dealings with the Tribe or grant any improper favor or service.

No such member shall appear in behalf of private interests before any agency of the Tribe or represent other interests in any action or proceedings against the interests of the Tribe. A Council member may appear before private or tribal agencies on behalf of his constituents or in the performance of tribal or civil obligations.

a) Disqualification for Interest: No Council member, Committee member or Board member shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any matter affecting his/her pecuniary interest or pecuniary interests of any corporation, partnership or individuals in which he is directly or indirectly interested. Any member of the Council, a committee, or a Board shall withdraw from the Council, a committee, or a Board meeting during the deliberation or determination of any matter with respect to which he is disqualified and the minutes shall so state. He may be counted present for the purpose of constituting a quorum. Should any such member not comply with these provisions, his vote shall automatically be void and not counted. Intentional non-compliance shall be considered misconduct and the member shall be subject to removal under appropriate provision of the Constitution and Bylaws.

§ 9 DISQUALIFICATION FOR NEPOTISM

No Council member, committee member or Board member shall take part in the deliberation upon or in the determination of any matter affecting his: spouse, son, daughter, sister, brother, mother, father, grandmother, grandfather, aunt, uncle, niece, nephew, and the following in-laws: son, daughter, brother, sister, mother and father.

Such member shall withdraw from the Council, a committee, or a Board meeting during the deliberation or determination of any matter with respect to which he is disqualified and the minutes shall so state. He may be counted present for the purpose of constituting a quorum. Should any such member not comply with these provisions, his vote shall automatically be void and not counted. Intentional non-compliance shall be considered misconduct and the member shall be subject to removal under appropriate provision of the Constitution and Bylaws.

§ 10 NEPOTISM PERTAINING TO SERVICE ON BOARDS AND COMMITTEES

Members of an immediate family defined as: spouse, son, daughter, father, mother, sister, brother, grandmother, grandfather, aunt, uncle, niece, nephew and the following in-laws: son, daughter, brother, sister, mother and father shall not serve together on the same Board or committee.

§ 11 SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

§ 12 SOVEREIGN IMMUNITY PRESERVED

Nothing herein is intended to be or shall be interpreted to be a waiver of the sovereign immunity of the Hoopa Valley Tribe from unconsented suit in tribal, federal or state court.

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 members of which six (6) were present,

constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 11th day February, 1999; and that this Ordinance was duly adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED February 11, 1999.

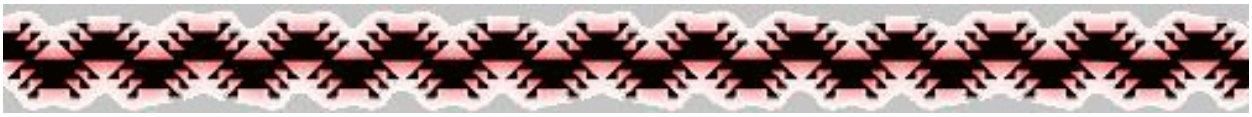
_____
Merv George, Jr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 9 OF THE HOOPA TRIBAL CODE

PURPOSE: ENROLLMENT ORDINANCE

ADMINISTRATIVE RECORD: Referendum vote on May 15, 1990



TITLE 9

ENROLLMENT ORDINANCE
OF THE
HOOPA VALLEY TRIBE
IN CALIFORNIA

WHEREAS, the Hoopa Valley Business Council is the governing body of the Hoopa Valley Tribe in California, by the authority of Article V, Section I of the Constitution and Bylaws of the Tribe as approved on August 18, 1972 by the Commissioner of Indian Affairs and on October 31, 1988 by Congress; and

WHEREAS, the Council is authorized by Article IV of the Constitution to make rules governing membership and to draft an enrollment Ordinance setting forth the procedures governing tribal membership;

NOW, THEREFORE, BE IT RESOLVED that the following Ordinance governing enrollment and membership in the Hoopa Valley Tribe is hereby adopted and shall be effective upon approval by the general membership and by the Bureau of Indian Affairs.

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SECTION 1. PURPOSE.

The Hoopa Valley Business Council finds it to be in the best interest of all members and potential members to clarify the procedures and evidence used by the Hoopa Valley Business Council and Enrollment Committee for determining enrollment and blood degree corrections. This Ordinance formally establishes an Enrollment Committee and directs that committee, among other things, to process applications, hold necessary hearings, and prepare recommendations for the Council. The Council bears the responsibility for making all enrollment decisions and for assuring compliance with the Constitution and this Ordinance, subject to Tribal Court review as provided herein. This Ordinance shall not supersede any previous Hoopa Valley Business Council decision on an individual's enrollment.

SECTION 2. DEFINITIONS.

2.1 APPLICANT. The term "applicant" shall mean a person seeking to enroll in the Hoopa Valley Tribe, and shall include a parent or guardian of a minor or incompetent seeking enrollment.

2.2 COMMITTEE. The term "committee" shall mean the Enrollment Committee of the Hoopa Valley Tribe, as established in Section 9 herein.

2.3 COUNCIL. The term "Council" shall mean the Business Council of the Hoopa Valley Tribe.

2.4 ENROLL. The term "enroll" shall mean the lawful placement of a person's name upon the tribal roll in accordance with this Ordinance.

2.5 GENDER. The terms "he," "his," "him," and the like shall be deemed to include "she," "her," etc.

2.6 HOOPA BLOOD; INDIAN BLOOD. The terms "Hoopa blood" and "Indian blood" shall mean the degree of blood state on the official roll of the Tribe as of October 1, 1949 and enrollment resolutions. Degree or quantum of blood is determined as provided in the Constitution and Bylaws and this Ordinance.

2.7 MARRIED. The term "married" shall mean being in the state of legal matrimony as recognized by the written laws of the Hoopa Valley Tribe or a State.

2.8 TRIBAL MEMBER; MEMBER. The terms "tribal member" and "member" shall mean any living person who is duly enrolled member of the Hoopa Valley Tribe.

2.9 PARENT The term "parent" shall mean the natural, biological parent.

2.10 PARTICIPANT. The term "participant" shall mean the Committee, members requesting a blood degree correction, and applicants or members affected by a proposed correction who wish to present evidence or argument regarding the correction.

2.11 PREPONDERANCE. The term "preponderance of evidence" shall mean evidence that is superior in weight, importance, or strength, and that is more credible and convincing to the mind than the opposing evidence.

2.12 ROLL. The term "roll" shall mean the list of living members of the Tribe, compiled by the Committee from the official roll as of October 1, 1949 and all subsequent resolutions of Council concerning the membership or enrollment of members.

SECTION 3. MEMBERSHIP IN THE HOOPA VALLEY TRIBE.

Membership of the Hoopa Valley Tribe is set forth under Article IV, Section 1(a) and (b) of the Tribe's Constitution and Bylaws and consists as follows:

(a) All persons of Hoopa blood whose names appear on the official roll of the Hoopa Valley Tribe as of October 1, 1949, as corrected. However, no corrections adding a name to the official as of October 1, 1949 shall be made unless a request for such enrollment was made by August 18, 1977.

(b) All children born to members of the Hoopa Valley Tribe after October 1, 1949 who are at least one-quarter degree Indian blood. Degree or quantum of blood to be determined by adding one-half the degree of Indian blood of each parent as shown on the roll or enrollment resolutions of the Hoopa Valley Tribe.

SECTION 4. ENROLLMENT ELIGIBILITY; EVIDENCE .

4.1 ELIGIBILITY FOR ENROLLMENT. Any applicant who meets the criteria contained in Section 1 (a) or 1(b) of Article IV of the Tribe's Constitution and Bylaws shall, upon compliance with this Ordinance, be enrolled as a member of the Hoopa Valley Tribe by Council resolution approving an application for enrollment.

4.2 INELIGIBILITY FOR ENROLLMENT. Any applicant who is duly enrolled in or listed on a final termination roll of another federally-recognized Indian tribe or band is ineligible for enrollment. Any applicant who has relinquished his membership in the Hoopa Valley Tribe or has selected the options provided by Section 6 © or (d) of the Hoopa Yurok Settlement Act is ineligible for enrollment; provided however, that if a parent or guardian of a minor relinquished the minor's membership, the minor after reaching the age of majority, may apply for enrollment.

4.3 BURDEN OF PROOF. The burden of proof shall be upon the applicant to establish every element of his entitlement to enrollment under the Tribe's Constitution and Bylaws and this Ordinance, unless otherwise specifically stated herein. Any matter to be proven

under this Ordinance must be proven to the satisfaction of the Enrollment Committee or the Council by a preponderance of evidence.

4.4 ENROLLMENT EVIDENCE. Any relevant evidence may be considered. Acceptable evidence shall include, but not be limited to: Birth certificates; certified copies of birth certificates; baptismal records; 1928, 1950, or 1968 applications for the roll of Indians of California; reservation census rolls; Bureau of Indian Affairs allotment or probate records; Indian Health Service records; hospital, clinic, or doctor's records; school records; marriage licenses; records of state Bureaus of Vital Statistics; historical society records; adoption agency records; results of blood tests; welfare certifications; verified statements concerning paternity; and newspapers.

SECTION 5. DETERMINATION OF INDIAN BLOOD.

5.1 COMPUTATION. The degree or quantum of Indian blood of an applicant shall be determined by adding one-half the degree of Indian blood of each parent shown on the roll. In the event of a conflict among the roll schedules and enrollment resolutions as to an individual's degree of Indian blood, the most recent resolution regarding enrollment of Indian blood degree possessed shall control.

5.2 MARRIED PARENTS. Where the natural mother of the applicant was married at least nine months prior to the applicant's birth, there shall be a rebuttable presumption that the mother's husband at the time of the applicant's conception is the natural father of the applicant. The presumption may be rebutted by a preponderance of evidence.

5.3 UNMARRIED PARENTS. Where the natural mother of the applicant was not married nine months prior to the applicant's birth, the applicant's birth certificate showing the name of the claimed or stated father, or a statement signed by the applicant's natural mother

naming the father of the applicant, or both, will not be sufficient to establish paternity. The Indian blood degree of the natural father of the applicant may be used to compute the applicant's Indian blood degree only if tests, as specified by the Committee for either or both parents, produce results that tend to confirm that the alleged parent is the natural, biological parent of the applicant, and other acceptable evidence supports such parentage.

5.3.1 Testing Procedures; Enforcement. Only the following may apply to increase or decrease any blood degree presently listed on the roll: The Council or members who desire to have their own blood degree, as listed on the roll, corrected; provided that in this subsection "member" shall mean natural person or the parent or legal guardian or any minor incompetent member. Where a decrease is proposed, the Committee shall endeavor to determine whether any other member will be affected by the correction.

4.4 BLOOD DEGREE CORRECTIONS.

5.4.1 Standing, Parties. Only the following may apply to increase or decrease any blood degree presently listed on the roll: The Council or members who desire to have their own blood degree, as listed on the roll, corrected; provided that in this subsection "member" shall mean natural person or the parent or legal guardian of any minor incompetent member. Where a decrease is proposed, the Committee shall endeavor to determine whether any other members will be affected by the correction.

5.4.2 Standard of Proof. In all proceedings regarding blood degree corrections, the person seeking a blood degree correction shall be required to prove by clear and convincing evidence that a blood degree other than that listed on the roll, for the person whose blood degree is at issue, is the correct blood

degree, and also to so establish what the precise blood degree to be listed on the roll should be.

5.4.3 Procedure. Requests to make a blood degree correction shall be initiated by filing an application and proceedings shall be handled pursuant to Section 7. Such application shall clearly indicate that "Blood Degree Correction" is the action requested. Affected members, as determined by the Committee, shall be sent copies or the application by personal services or certified mail and shall be given thirty days to indicate in writing whether they intend to become participants in the proceedings regarding the proposed blood degree correction. Participants who timely respond to the notice shall be given an additional thirty days to present to the Committee any written evidence or argument regarding the proposed change.

5.4.4 Copies. An explanation of the subject blood degrees, before and after a correction, shall be contained in the Council resolution on the matter. Copies of resolutions changing a blood degree shall be submitted to the Bureau of Indian Affairs in a timely manner in order that Bureau blood degree certifications conform with Tribal records.

SECTION 6. ENROLLMENT

6.1 GROUNDS FOR DISENROLLMENT. All proceedings for disenrollment shall be pursuant to this section. No person shall be disenrolled except on the following grounds:

6.1.1 Fraud or misrepresentation of any evidence, application or data relevant to enrollment eligibility that is presented in connection with his application; or

6.1.2 The person is duly enrolled in or is listed on a final termination roll of another federally recognized Indian tribe or band; provided that a member of the Hoopa Valley Tribe found to be so enrolled or listed in another Indian tribe or band may relinquish his membership with any tribe or band; or

6.1.3 Error; provided that no person on the roll on the effective date of this Ordinance may be disenrolled for error, and provided further, that no person shall be disenrolled for error if five years have passed since the date of his enrollment; or

6.1.4 Receipt of a verified request of an adult member or guardian of an adult member relinquishing membership; or receipt of a verified request of the parent or guardian of a minor member relinquishing membership if minor is being relinquished to permit the enrollment of that minor in another Indian tribe.

5.1.5 The person has selected the option provided by Sections 6© or (d) of the Hoopa Yurok Settlement Act, 25 U.S.C. $ 1300I-5 © or (d).

6.2 DISENROLLMENT PROCEDURE. An involuntary disenrollment proceeding may be initiated by the Council. In the case of involuntary disenrollment, the burden of proof shall rest upon the Council, and the member who is the subject of the proceeding shall be given not less than ninety days written notice, by personal service, or certified mail, of a hearing before the Committee on the proposed disenrollment. Proceedings shall otherwise be governed by section 8 of this Ordinance.

6.3 REMOVAL OF DECEASED. The names of deceased members shall be removed from the roll. Information on the decreased shall be maintained in a list of formerly enrolled members.

SECTION 7. ENROLLMENT PROCEDURE.

7.1 APPLICATION FORMS. All enrollments and blood degree corrections shall be requested by submission of a complete application, on forms approved by the Council. Forms may be obtained from the Enrollment Committee or the tribal secretary upon written or oral request . Each complete application shall contain a statement that the applicant has supplied all relevant data that he intends to submit to the Tribe on the issue of his enrollment, and a certification that the information contained on the application form and accompanying documents is true to the best of the knowledge and belief of the applicant. Attached to the application shall be a birth certificate or other evidence.

7.2 FILING OF APPLICATION FORMS. Application forms and supporting documents shall be filed with the Committee at the tribal office in person or by mail. Appropriate Tribal staff shall stamp all application forms with the date on which they were filed. A copy shall notify the Enrollment Committee in writing of any change in address.

7.3 REVIEW OF APPLICATION BY ENROLLMENT COMMITTEE. The Committee shall review an application as soon as is reasonably possible. After any relevant notice periods have expired, and upon review of an application, the Committee may do the following: Recommend approval or denial of the application to the Council, in writing, stating the reasons for approving or denying the application; Request more information or evidence in support of the application ; Set the matter for a hearing.

7.4 DENIAL OF APPLICATION. If the Committee decides to recommend denial to the Council, the Committee shall notify the applicant or participant, by personal service or certified mail, of its action. The notice shall advise the applicant or participant (a) of his right to request a hearing before the Committee, as provided in this Ordinance, within 30 days of

receipt of the notice; and (b) that the Committee's hearing, if any, will establish the factual record for any subsequent Council action on the application. An application that may be the subject of a Committee hearing shall not be sent to the Council with a recommendation until after the time for requesting a hearing has expired, or the hearing has been held and the applicant or participants have been given 30 days notice.

7.5 COUNCIL ACTION. Following receipt of an application and the recommendation of the Committee, the Council shall approve or deny the application, request more information of the Committee, or remand an application to the Committee for a hearing. In general, enrollment matters shall be taken up on a quarterly basis. The factual basis for the Committee's recommendation shall not be reopened by an applicant or participant before the Council without a showing, as described in section 8.3, that the applicant or participant has available for immediate presentation certain evidence which could not with reasonable diligence have been presented to the Committee, or that this Ordinance has been violated. Within 30 days of making a decision, the Council shall notify the applicant and any participant by personal service or certified mail of its decision. The Council's decision to approve or deny an application shall be final, subject to section 8.

7.6 EFFECTIVE DATE OF COUNCIL ACTION. A person enrolled by the Council, or by operation of this Ordinance, shall be entitled to exercise tribal rights on the date of favorable enrollment action by the Council or by operation of this Ordinance. A person enrolled in the Tribe shall be entitled to receive per capita payments, if any were made, if his application is approved prior to the cut-off date established for the per capita payment. A person whose application was denied shall be permitted to appeal pursuant to Section 8.

SECTION 8. HEARINGS, REMANDS AND APPEALS.

8.1 NOTICE. When an applicant or participant requests a hearing by the Committee, or the Committee or Council sets a matter for a hearing, the applicant or participant shall be given written notice of hearing, by personal service or by certified mail, not less that 30 days before the hearing. The notice shall contain the reason for the hearing, describe evidence to be presented, and shall advise the applicant or participant he has the right to be represented by counsel at his own expense and to present witnesses and other evidence that the Committee may be represented by counsel for the Tribe.

8.2 COMMITTEE HEARING PROCEDURE. An applicant or participant wishing a hearing must request one in writing within 30 days after being notified of the Committee's recommendation to deny an application. The applicant or participant may present witnesses and other evidence and be represented by counsel at his own expense. The hearing will be presided over by the Chairman or Vice-Chairman of the Committee. The Committee may be advised by counsel at the hearing. Formal rules of evidence need not be followed, but the burden of proof remains on the applicant, except in disenrollment proceedings. At the end of the hearing, the Committee may make an immediate decision or take the matter under advisement for up to 30 days before making a decision. The Committee shall notify the applicant or participant 30 days prior to making its recommendation to the Council.

8.3 REOPENING THE APPLICATION. Either before or after the Council acts pursuant to Section 7.5, an applicant or participant may petition the Council, in writing, to reopen an application on the following grounds:

8.3.1 Newly-discovered, substantial, credible evidence that is material to the application, which the applicant or participant could not with reasonable diligence have discovered and given to the Committee; or

8.3.2 A violation of the Constitution and Bylaws or this Ordinance has occurred.

8.3.3 A decision by the Council that a petition does not show the grounds specified in this section shall be appealable only on that specific issue under this Ordinance.

8.4 REMAND. Upon granting a petition under Section 8.3, the Council shall remand the application to the Committee for reconsideration upon any newly-discovered evidence and the previous record. A remanded application shall be treated as if it were an original application.

8.5 APPEALS The decision of the Council pursuant to Section 7.5, 8.3, or 8.4 or otherwise, to approve or deny an application, or to deny a petition to reopen, is final, except that the Tribal Court of the Hoopa Valley Tribe shall have exclusive jurisdiction to hear all appeals of enrollment, disenrollment, or blood degree correction decisions. No jury shall be allowed in such matters.

8.5.1 To the extent necessary for the hearing of appeals under this Ordinance, and as limited by this Ordinance, the Tribe hereby makes a limited waiver of its immunity from suit in the Hoopa Valley Tribal Court for the purpose of hearing appeals under this subsection and issuing judgment as provided herein.

8.5.2 Appeals from disenrollments, denials of enrollment or blood degree corrections shall proceed in the Tribal Court pursuant to the sections of tribal law

Ordinance. No appeal may be brought under this subsection unless it is filed within one year of the final decision of the Council.

7.4.3 The only grounds for appeal of a decision under this subsection shall be:

(1) That the decision of the Council is unsupported by the facts; or

(2) That the Council or the Committee has by its actions violated the Constitution of the Hoopa Valley Tribe or this Ordinance.

8.5.4 The only remedies which the court may order in matters appealed under this subsection are injunctive, requiring reopening the application, enrollment, re-enrollment, or correction of blood degree.

8.5.5 There shall be, in all appeals under this Ordinance a presumption, rebuttable by the appellant, that the Council has acted properly, consistent with the facts of the case, this Ordinance, and the Constitution and Bylaws. Appellants shall have the burden of proving their case by clear and convincing evidence. The court in ruling on an appeal shall strictly construe provisions of this Ordinance.

8.5.6 If the Court rules against an appellant in any appeal under this Ordinance, the appellant shall pay all court costs and the reasonable attorneys fees of the Tribe expended in defending against the appeal. If the Court rules for the appellant in any appeal under this Ordinance, each party shall bear his or her own expenses unless there is a finding that the Tribe acted in bad faith in disenrolling, refusing to enroll, or acting on a blood degree correction. A finding by the court that the Council or the Committee acted in bad faith under this Ordinance shall permit the Tribal Court to order the Tribe to pay, to the persons denied due to the bad faith, fees and expenses and any withheld Tribal per

capita payment or payment derived from land or other claims, plus a reasonable rate of interest.

SECTION 9. ENROLLMENT COMMITTEE.

9.1 ESTABLISHMENT. There is hereby established an Enrollment Committee comprising five adult members of the Tribe. The Committee shall be appointed by the Council to serve staggered four-year terms, subject to removal for cause, as determined by the Council. Committee members shall take an oath of office, administered by the Chairman of the Council. From among its members the Committee shall select a Chairman and Vice-Chairman.

9.2 POWERS. The Enrollment Committee shall exercise the powers and performs the duties assigned to it by this Ordinance, and such other duties as may be assigned to it by the Council. The Committee shall draft, for consideration by the Council, such regulations and forms as may be necessary fairly to implement this Ordinance.

9.3 RECORDS. The Enrollment Committee shall maintain and safeguard the tribal roll and the records and files of the Tribe relating to enrollment. A master copy of the roll shall be maintained in the vault and shall not be removed from the tribal offices at any time. No change shall be made in the tribal roll or in the blood degree of any member except pursuant to written resolution of the Council or this Ordinance. Minutes shall be take of Committee meetings and a written record shall be kept of actions taken, and all recommendations to the Council made, by the Committee. Transcripts or recordings shall be made of all hearings conducted by the Committee, and these shall be permanently maintained.

SECTION 10. EFFECTIVE DATE; AMENDMENT.

This Ordinance shall be effective from the date of its approval by the Bureau of Indian Affairs. This Ordinance may be amended as provided in Article IV, Section 3 of the Constitution and Bylaws.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that this is the complete text of the Enrollment Ordinance of the Hoopa Valley Tribe in California, as adopted by referendum vote on May 15, 1990 and amended by referendum vote on June 19, 1990, and that said Ordinance has not been rescinded or amended in any way.

DATED this _____ day of _____, 1990

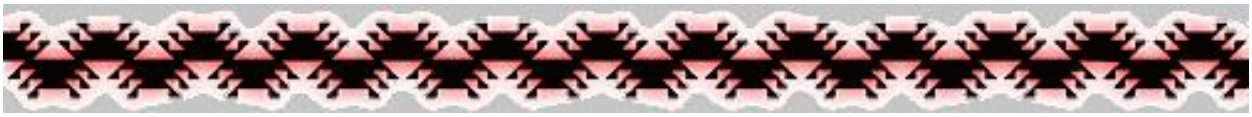
HOOPA VALLEY BUSINESS COUNCIL

By: _____
Chairman
Hoopa Valley Business Council

TITLE 10 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL LAND ASSIGNMENT ORDINANCE

ADMINISTRATIVE RECORD: Adopted October 6, 1998



TRIBAL LAND ASSIGNMENT ORDINANCE
OF THE
HOOPA VALLEY TRIBE, AS AMENDED
October 6, 1997

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TITLE 10

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO.: 1-91, AS AMENDED

DATE APPROVED: OCTOBER 6, 1997

SUBJECT: TRIBAL LAND ASSIGNMENT ORDINANCE OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws, which the Commissioner of Indian Affairs approved on August 18, 1972, and Article IX, Section (1), (a) and (j) of said Constitution authorizes the Hoopa Valley Tribal Council "To administer all tribal property." and, "To exclude from the restricted land of the Hoopa Valley Indians persons not legally entitled to reside therein....", and

WHEREAS: The history of the members of the Hoopa Valley Tribe has been one of a strong relationship with the land. From time immemorial, the land has supplied the Tribe with all material needs with which to survive. It is essential to the development of the Hoopa Valley Tribe and for the protection of the land base that a tribal ordinance setting forth and clarifying the distribution, status, and use of tribal lands be understood by all people, and

WHEREAS: From time immemorial, the Hoopa Valley Tribe has practiced conservation to protect the valuable wildlife and natural resources subject to its jurisdiction from waste and excessive exploitation. It is the tribal policy that Reservation lands be used in a multiple use fashion for the domestic need of tribal members, providing for the needs of the Tribe and for economic and cultural development of the Reservation, and

WHEREAS: The Hoopa membership by referendum vote did adopt the Tribal Land Assignment Ordinance and the Hoopa Valley Tribal Council has from time to time enacted resolutions and policies

designed to issue and administer various types of land uses and there now exists a need to enact a tribal law to manage tribal lands in a comprehensive manner, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council does hereby enact this Tribal Land Assignment Ordinance, as amended, as Title 10.0 of the Law and Order Code of the Hoopa Valley Tribe which shall govern all land transactions of the Tribe and will govern other land activities within the Hoopa Valley Reservation as prescribed in this Ordinance to the greatest extent allowed by law.

BE IT FURTHER RESOLVED: That any amendments to Section 10.8 of this Ordinance shall only be valid if undertaken by referendum election of the Tribal membership.

BE IT FURTHER RESOLVED: That nothing in this amended Ordinance shall effect the status of lands designated under previous versions of the Tribal Land Ordinance, except as provided herein.

10.0 SHORT TITLE

The short title of this Ordinance shall be the Tribal Land Assignment Ordinance of the Hoopa Valley Tribe.

10.1 PURPOSE

The purpose of this Ordinance is to establish uniform policies and procedures for the use, assignment, development and acquisition of lands within the Hoopa Valley Indian Reservation, and those lands outside the Reservation boundaries that are of interest to the Tribe. The provisions of this Ordinance are intended to protect the needs of tribal members and activities of the Tribe, while preserving and protecting the long term interest in tribally controlled and other lands in such a way so as to promote and otherwise safeguard the interests of the Hoopa Valley Tribe.

10.2 TRIBAL LAND POLICY

It is declared that the land policy of the Hoopa Valley Tribe shall be to regain in trust status all lands within the exterior boundaries of the Hoopa Valley Indian Reservation; that such lands be under the exclusive jurisdiction and sovereign

authority of the Hoopa Valley Tribe; that every effort be made to expand the landbase of the Hoopa Valley Tribe; and that all lands under the jurisdiction and sovereign authority of the Tribe be managed in such a way that preserves and promotes the long term interest of the Hoopa Valley Tribe.

10.3 DEFINITIONS

In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a
different meaning is expressly provided, or the context clearly indicates otherwise:

10.3.1 "Assignee" shall mean one to whom an assignment of tribal land is made in accordance with the provisions of this Ordinance.

10.3.2 "Council Assignment" shall mean a formal right to use Reservation land subject to the provisions of this Ordinance as now set forth or as it may be amended from time to time. Council Assignments are separate from those issued under the authority of Tribal Assignments approved by referendum election, as provided in Section 10.8 of this Ordinance.

10.3.3 "Tribal Assignment" means an assignment authorized pursuant to the Tribal Membership Referendum which authorized Tribal Assignments to Tribal members in accordance with that referendum.

10.3.4 "Tribe" shall mean the Hoopa Valley Tribe recognized by the United States of America.

10.3.5 "Beneficial Use" shall mean the right to use and enjoy an assigned parcel of land. As used in this Ordinance, any beneficial use is subject to both federal and tribal laws governing the use of tribal lands.

a) Beneficial use and occupancy shall include but not be limited to:

i) Residence of the premises by the assignee or his/her immediate family for at least six months of each calendar year, or

ii) Performing of at least $100 worth of improvements on the land each calendar year, or

iii) Actual use of the land, consistent with the assignment agreement, for pasturing of livestock if fenced; for farming, gardening, or other agricultural use, for business purposes; or for such other use as may be stipulated in the assignment documents to be signed by the assignee.

b) The following shall not be construed to mean beneficial use:

i) Mere fencing of the land without actual use of the tract for pasture or for other purposes specified above.

ii) Mere cutting of wood from the land without further use of the tract for purposes specified above.

iii) Leasing, assigning or subletting of the land without prior permission of the Tribal Council.

10.3.6 "TRIBAL COUNCIL" or "Council" shall mean the Hoopa Valley Tribal Council, as established in Article V of the Constitution of the Hoopa Valley Tribe.

10.3.7 "COMMERCIAL USE" shall mean any activity entered into or carried out for the purpose of earning a monetary profit other than such activities incidental to the primary residential or other similar personal use, such as, homecrafts or door-to-door type sales such as Avon, Amway, etc., where said use does not involve regular on-site retail sales and is incidental to the site's use for residential purposes.

10.3.8 "DEPENDENT" shall mean a person who received major support from and who has resided with the applicant for a period of at least one year immediately preceding the application for an assignment.

10.3.9 "IMPROVEMENT" shall mean a valuable improvement or addition made to an assignment or an amelioration (to improve,

to make better) in its condition, amounting to more than mere repairs or replacement of waste and intended to enhance its beauty, value or utility or to adapt it for new or further purposes. Notwithstanding any other provisions of this Ordinance, it shall include any and all houses, garages, barns, sheds, interior fences, crops, household items, and personal belongings.

10.3.10 "TRIBAL MEMBER" shall mean an individual member of the Hoopa Tribe. The term shall not include the Hoopa Valley Tribal Council or any of its businesses.

10.3.11 "LAND" as used in this Ordinance shall mean any real property that is owned, controlled, or subject to the authority and for the benefit of the Hoopa Valley Tribe, including all real property in trust and fee status.

10.3.12 "RESERVATION" shall mean the Hoopa Valley Indian Reservation as established by Executive Order of June 23, 1876, and such other lands as may hereafter be acquired by the Hoopa Valley Tribe, whether within or outside such boundaries, under grant, transfer, purchase, gift, adjudication, Executive Order, Act of Congress, or other acquisition.

10.3.13 "SURVEY" shall mean the use of the principles of land survey to locate, relocate, establish, re-establish, or retrace any property line or boundary of any parcel of land to determine the position of any monument or reference point which marks a property line, boundary or corner, or sets, resets, or replaces any such monument or reference point when conducted by a State certified surveyor.

10.3.1 4 "DEPARTMENT" shall mean the Tribal Land Management Department as established under this Ordinance.

10.4 TRIBAL LAND MANAGEMENT DEPARTMENT

10.4.0 ESTABLISHMENT OF LAND MANAGEMENT DEPARTMENT

There is hereby established a Tribal Land Management Department - Realty Division that will be responsible for overseeing the application of this Ordinance.

10.4.1 Powers of the Land Management Department

10.4.1.1 Powers of the Land Management Department

The Land Management Department - Realty Division (hereinafter Department) shall have primary enforcement powers for provisions of this Ordinance. The Department shall initiate all actions under this Ordinance including, but not limited to, the acceptance of applications for assignments, corrective actions resulting from assignment deficiencies, issuing notices of assignment violations and cancellations, hold hearings and removal of the assignment from the assignee. The Department shall have such authority to represent the Tribe in actions before the Tribal Court. The Department may consult with the Tribal Legal Department as needed.

10.4.1.2 Develop and Enforce Regulations

The Department shall develop and enforce regulations, subject to Tribal Council approval, as are needed for the orderly operations of the Department.

10.4.1.3 Relations With Other Entities

The Department is authorized to work with other Tribal departments, agencies, utilities, organizations, entities, institutions and individuals concerning rights-of way, easements, permits and other instruments as may be necessary, and shall recommend to the Tribal Council actions to be taken on such matters.

10.4.1.4 Transferring Leases into Assignments

Any leases issued before the date of this amended Ordinance shall be designated as a Council Assignment. All provisions of existing valid leases issued prior to the date of this amended Ordinance shall continue to be in effect after the lease is converted to a Council Assignment. Nothing in this Ordinance shall be construed as requiring the Bureau of Indian Affairs to approve converting existing leases to Council Assignments.

10.4.1.5 Maintenance of Records

The Department shall maintain a permanent record of each land transaction of the Hoopa Tribe and all trust transactions

within the boundaries of the Reservation, including actions taken in regard to any disposition of assignment applications.

10.5 LAND CONSOLIDATION PLAN, TRUST STATUS TRANSFERS

10.5.1 LAND CONSOLIDATION PLAN

Within one (1) year after enactment of this Ordinance the Department shall develop and propose to the Tribal Council a Tribal Land Consolidation Plan.

10.5.2 TRANSFERS OF TRUST AND FEE STATUS

Prior to converting trust lands within the Reservation to fee patent or from fee status into land held in trust by the United States, the individual seeking to alter the land status and the Bureau of Indian Affairs shall secure approval from the Hoopa Tribal Council.

10.6 RESERVED, IMPLIED RIGHTS OF THE HOOPA VALLEY TRIBE

10.6.1 RESERVED, IMPLIED RIGHTS

The Hoopa Valley Tribe, acting through the Hoopa Valley Tribal Council, maintains all reserved and implied rights, including but not limited to those required for access across any lands within the exterior boundaries of the Reservation, including that owned by individuals whether in fee or in trust status, as may be necessary for tribal governmental activities. The individual owner of the property may be paid reasonable damages resulting from such use if such damages are a direct result of the actions of the Tribe.

10.6.2 OFF-SETS

The Tribal Council reserves the right to use off-sets for any damages, assessments, fees and other costs which have resulted from actions brought against the Hoopa Valley Tribe for governmental activities impacting individual property as may be reasonably estimated expenses based on available industry costs for such services performed. The period of time that such off-sets will apply will be that time within which the appropriate statute of limitations provides for such under federal law.

10.7 COUNCIL RESIDENTIAL ASSIGNMENTS - GENERAL PROVISIONS

10.7.0 PURPOSE

Section 10.7 shall govern all Council residential assignments within the Hoopa Valley Reservation that have been approved by the Tribal Council regardless whether such assignment was granted prior to the enactment of this Ordinance. The provisions of this Section supersede any existing Tribal laws, rules, regulations that may exist that are in conflict with this Section.

10.7.1 TERMS AND CONDITIONS OF ASSIGNMENTS

10.7.1.1 Term of Assignments

Council residential assignments shall be of a size to accommodate the objective of the assignment, provided that the established policy for residential assignments shall be not more than one (1) acre in size. Each residential assignment shall be granted for a period of fifty (50) years, with an option to renew. (amended 10-6-97)

Assignments issued pursuant to this Ordinance are granted for the specific purpose of the assignment agreement and may contain conditions and other requirements to be maintained during its term.

10.7.1.2 Maintenance of Property

The assignee shall comply with all terms of this Ordinance, the assignment and any agreements consistent with this Ordinance. The assigned property and improvements thereon shall be maintained in a neat manner and are subject to applicable sanitation regulations existing at the time the assignment is made and those that may be enacted subsequently by the Council.

10.7.1.3 Numerous Assignments Null and Void

No person shall hold more that one residential assignment at one time and if such a situation occurs, the latest assignment shall be null and void.

10.7.1.4 Council Residential Assignments Supersedes Grazing Assignments

Any grazing assignment and any acreage, or portion thereof, controlled thereunder is superseded by a duly approved residential assignment.

10.7.1.5 Tribal Credit and Other Delinquent Loans

A loan between an assignee and Tribal Credit Program or other program authorized by the Tribal Council to conduct business on assignment lands which remains delinquent for more than ninety (90) days and that was made for improvements on the assigned property, or one which improvements on the assigned property has
been pledged as collateral, shall be sufficient cause for cancellation of the assignment.

10.7.1.6 Subject to Applicable Laws

An assignment and use thereof is subject to all applicable laws and ordinances including, but not limited to, tribal land use, health and safety ordinances. The assignee shall pay all applicable assessments, including but not limited to monthly fees for water, sewer, garbage disposal, and insurance.

10.7.1.7 No Assignment of Unsurveyed Areas

No Council residential assignment shall be made in unsurveyed areas or in areas considered to be more valuable to the Tribe as a tribal holdings for other purposes.

10.7.1.8 Conservation Practices

The assignee shall utilize the tribal land in a careful, economical, and conservation minded manner in accordance with local and accepted soil conservation practices.

10.7.1.9 Riparian Set-Backs

There shall be a minimum riparian set-back for all assignment boundary lines of at least one-hundred (100) feet from any intermittent stream.

10.7.1.10 Minimum Boundary Set-Backs

There shall be a minimum set-back for constructing any fixed improvements of at least twenty (20) feet from the closest assignment property boundary line.

10.7.2 RESERVATIONS FROM ASSIGNMENTS

10.7.2.1 No vested rights or Title in Property

An assignment does not vest legal rights or title to the assigned land to the assignee, but is a use right only as long as the assignment remains in effect, and such use right cannot be sold. Entitlement to rights under an assignment shall terminate upon mutual cancellation, termination, or relinquishment of the assignment. Residential assignments are granted for the specific purpose of providing a homesite and for other similar personal use.

10.7.2.2 Mineral and Resources Reserved

All timber, water, and minerals including sand, gravel, oil, and gas are reserved to the Hoopa Valley Tribe to be managed in accordance with Tribal and applicable laws. All ceremonial and sacred grounds are reserved and excluded from assignment under this Ordinance.

10.7.2.3 Reserved Rights of Way, Easements

There is reserved to the Hoopa Tribe the right to grant easements and rights-of-way over assigned property for purposes in accordance with the Tribal Constitution and Bylaws. Reasonable damages to personal property may be paid for grants of rights-of-way and rights of ingress and egress over assigned property as determined by the Tribal Council or Tribal Court.

10.7.2.4 Use of Merchantable Timber

Green and merchantable timber on the land is reserved from assignments, remains the property of the Tribe and is not conveyed to the assignee, and the assignee shall grant access to or across the land without interference to Tribal agent or contractor conducting activities for the Tribe concerning such timber; provided the lessee shall be allowed reasonable compensation for any damage to personal property. If agreement

as to the amount of damages cannot be reached between the assignee and the Tribal agent, such damages shall be determined by the Council or Tribal Court. The assignee is not granted permission under any assignment to cut merchantable green timber from the premises except under special permit issued by the Tribal Council.

10.7.2.5 Limitation of Acreage

The Tribal Council reserves the right to specify a limit on acreage under any assignment.

10.7.3 INHERITANCE

10.7.3.1 Designated Beneficiary

An assignee may designate a beneficiary to receive his/her improvements in the event of his/her death for the period remaining of the assignment. Subject to the approval of the Tribal Council, the premises may be assigned to the named beneficiary. Notwithstanding any other provisions in this Ordinance, a surviving spouse of the assignee shall be allowed to remain on and use the assigned property for the duration of the assignment, whether or not said spouse is eligible to receive an initial assignment under this Ordinance. The surviving spouse shall eligible for renewal of an expired assignment.

10.7.3.2 Designated Minor

When the deceased holder of an assignment has willed his/her improvements to a person who is underage but otherwise eligible to receive an assignment of tribal land under this Ordinance, and after consultation with the Land Department, the Tribal Council shall appoint a guardian to hold the assignment until the beneficiary is eligible to hold the assignment. The guardian shall utilize the assignment in a manner which is in the best interest of the beneficiary. Any member of the Hoopa Tribe shall have the right to petition the Tribal Council to have the guardian of the beneficiary removed as guardian. The Tribal Council may remove the guardian of the beneficiary and appoint a new guardian for the beneficiary if the Tribal Council after giving notice to the guardian and after a hearing has determined that the guardian has not utilized the assignment to the best

interest of the beneficiary. The guardian appointed by the Council shall be responsible for maintaining the assignment and otherwise complying with the provisions of this Ordinance.

10.7.3.3 No Designated Beneficiary

In the event of the death of a assignee who has not designated a beneficiary, preference for reassigning the premises shall be given to the surviving spouse or eligible children of the assignee. An ineligible surviving spouse shall be allowed to assume the assignment for the remaining period of the assignment. A surviving spouse who is ineligible to receive an initial assignment but who is responsible for the care of otherwise eligible minor children of the deceased assignee, may be granted the assignment until a designated otherwise eligible minor child becomes eligible for a assignment.

10.7.3.4 Designated Minor Reaching Eligible Age

Upon becoming eligible for a assignment pursuant to this Ordinance, the eligible beneficiary shall within sixty (60) days of receipt from the Tribe of written notice of eligibility, or 180 days from the date said beneficiary first becomes eligible, whichever is first, make application for said assignment in accordance with the application procedures set forth herein.

10.7.4 EXCHANGE OF ASSIGNMENTS

For good cause shown, an assignment may be exchanged for another assignment with the approval of the Tribal Council, however, if the original assignee has already received assistance, such as utilities, water and sewage, such person will not be eligible for those services on the new property without specific approval by the Tribal Council. The Department shall promulgate regulations more fully setting forth procedures and acceptable grounds for exchanges.

10.7.5 VOLUNTARY RELINQUISHMENT

Any assignee may relinquish an assignment at any time by giving written notice to the Tribal Council or Land Department. Upon relinquishment, the original assignee officially terminates any interest in the property and any improvements thereon, and the premises may be assigned to any eligible member.

10.7.6 REMOVAL OF UNMERCHANTABLE TIMBER

A Council assignment shall constitute a permit for the purpose of removing unmerchantable timber, as defined in the Tribe's Forest Management Plan, from the assigned property. Upon receipt of an assignment, the assignee may cut and remove dead, down and unmerchantable timber as provided in the Land Approval Package under Section 10.7.15 herein, for his/her personal domestic use only or for clearing of land. Cutting of timber not authorized in the assignment or Land Approval Package shall constitute a violation of this Ordinance.

10.7.7 NO ASSIGNMENT OF INTEREST

10.7.7.1 Rent, Lease, Assign, Sublease, Transfer - Prohibited

An assignee may not rent, lease, assign, sublease, or transfer his/her assignment or any portion thereof without the prior written consent of the Tribal Council, issued after approval of a written plan submitted by the Land Department. Any violation of this section shall be sufficient cause for cancellation of the assignment.

10.7.7.2 Collateral, Pledges, Etc. - Prohibited

Council assignments may not be used as collateral, be pledged, or used as any other instrument that implies a vested personal interest in the assigned property that is capable of being transferred to another person or being foreclosed upon for delinquent debts of any kind without specific authorization by the Tribal Council.

10.7.8 RESPONSIBILITY OF ASSIGNEE/FULFILLING TERMS OF ASSIGNMENT

The assignee agrees to satisfactorily fulfill the terms of the assignment agreement and the terms of any occupancy agreement which may be required to be executed in the case of HUD housing or other similar programs.

10.7.9 ELIGIBILITY FOR ASSIGNMENTS

Except in cases involving a surviving spouse, to be eligible for a assignment, an applicant must meet <u>all</u> of the following requirements at the time of application:

A. Be an enrolled member of the Hoopa Valley Tribe.

B. Be at least eighteen (18) years of age as of the date of application for assignment, except that an assignment may be issued to a guardian on behalf of a minor who would be eligible to receive a lease upon reaching a specified age and whose otherwise eligible parent is deceased or who has been designated as a beneficiary by a deceased assignee.

C. Be without a Council residential assignment or Tribal assignment of tribal land for Hoopa or any Indian Tribe.

D. Be legally competent to manage the land and his/her personal business affairs.

E. Not have had a previous assignment canceled for cause within ten (10) years from the date of application.

10.7.10 APPLICATION FOR ASSIGNMENT

10.7.10.1 Written Applications

All applicants must make a written and dated application to the Land Department setting forth the name and address of the person applying for the land, sufficient information to show that the applicant meets all of the requirements set forth herein, and as accurate a description of the land as circumstances will permit.

10.7.10.2 Land Department Processing

The Land Department shall process all applications under the provisions of this Ordinance and determine whether the desired land is available for assignment. The Land Department shall be responsible for ensuring the timely completion of the Land Approval Package as provided herein for consideration by the Tribal Council.

10.7.11 DOCUMENT PRIORITY, ASSIGNMENT PREFERENCE

10.7.11.1 Priority for Processing Applications

Unless as otherwise provided in this Ordinance, the priority for processing documents and taking other action shall be on a first-in first-out basis.

10.7.11.2 Preference For Granting Assignments

When granting assignment, preference shall be given to otherwise eligible applicants as follows:

A. Elderly applicants, 55 years or older.

B. Handicapped applicants.

C. Married applicants.

D. Single applicants.

10.7.11.3 Preference to Applicants Without Land

An applicant without land shall be given preference over applicants owning lands within the exterior boundaries of the Reservation.

10.7.12 IMPROVEMENTS ON ASSIGNMENTS

10.7.12.1 Use of Property Within 12 Months

Absent prior written consent of the Tribal Council for non-use of the assignment for good cause shown, failure of the assignee to use the assigned property in a meaningful manner for a period of twelve (12) consecutive months shall be sufficient cause for cancellation. In the event that unforeseen circumstances would justify additional time, a reasonable extension may be granted by the Tribal Council.

10.7.12.2 Inheritance of Improvements

Improvement of the following character placed on the assigned land by the assignee shall be considered personal property which may be removed, sold, bequeathed or inherited, subject to prior Council approval; houses, garages, barns, sheds, interior fences, crops, household items and personal belongings.

If the heir to, or owner of, said personal property is not eligible to receive the said assignment, the foregoing listed improvements must be removed within 180 days, provided that said heir has not obtained a valid assignment under Section 10.7.3, Inheritance, above. Other improvements such as exterior fences, underground water and sewage systems, trees, shrubs, and betterment of similar nature attached to the land, even though placed on the property by the assignee, shall be considered part of the real property belonging with the land and shall remain on the assignment unless their removal is authorized by the Tribal Council and Land Department.

10.7.12.3 Improvement - Relinquishment, Cancellation, Etc.

If a assignment is relinquished, canceled, terminated or the assignee is deceased and without eligible heirs, and the improvements were not removed within 180 days, said improvements become a part of the real property, title in them vests with the land, and they become available for assignment or other disposition along with the land.

10.7.12.4 Extension of Removal Time

The Tribal Council may, upon a showing of good cause for a reasonable period, extend the removal time beyond 180 days in order to prevent undue hardship; and may at its option pay to the owner the value of said improvements as determined by the Council.

10.7.13 REMOVAL OF SLASH AND DEBRIS

When clearing land, the assignee shall properly dispose of slash and debris. Disposing of slash, debris, and other materials on other lands, including that adjacent to the assigned property, without the written approval of the land owner is prohibited and such action shall be subject to payment of removal costs and damages as determined by the Tribal Council or Tribal Court.

10.7.14 PROPERTY SURVEY, FENCE CONSTRUCTION

10.7.14.1 Survey Requirements

All Council residential assignments shall be legally surveyed at the expense of the assignee. A legal survey may be described by metes and bounds or, where applicable, by a licensed surveyor. If for any reason a assignee is unable to survey the property by him/herself, he/she may request assistance from the Tribe by submitting a request to the Land Department. The Department shall establish regulations setting forth criteria for determining the conditions under which the Tribe may provide assistance to a tribal member for the purpose of a survey of his/her assignment.

10.7.14.2 Fence Requirements

The assignee is obligated to build and maintain in good repair his/her half of line fences between him/herself and his/her neighbor. His/her half of the fence shall be that portion to his/her right as he stands facing the neighboring land, unless otherwise mutually agreed upon. If a assignee does not construct his/her portion of a fence as provided herein, that assignee shall be responsible for any damages to persons or property resulting therefrom, and upon thirty (30) days notice from the Land Department shall be responsible for reasonable expenses for said fence being constructed by another party on his/her behalf.

10.7.15 LAND APPROVAL PACKAGE

Prior to presenting an assignment to the Tribal Council for final consideration, the Land Department shall complete a Land Approval Package which shall be maintained with the assignment application throughout the approval process. The Land Approval Package shall consist of the legal description of the land, specifications pertaining to road placements, fencing requirements, rights-of-way designations, environmental and archeological considerations, a description of authorized clearing and timber removal, and other information necessary and important to the assignment. A brief statement which contains general information about the proposed assignment and Land Approval Package shall be noticed in a public place on the Reservation and at the Land Department for 30 days prior to presentation to the Tribal Council for final approval.

10.7.16 DEPOSIT OF REVENUES

Revenues generated from assignments under this Ordinance shall be placed into the Land Acquisition Fund, as established by this Ordinance.

10.7.17 PROCEDURES - USE OF IMPROVEMENTS AS SECURITY

All uses of improvements for security purposes must be reviewed and approved in advance by the Land Department. Any uses of improvements for security purposes that are not in conformance with this Ordinance shall be null and void; any attempt to use assigned property in a way not in compliance with this section shall be cause for cancellation of the assignment as provided under this Ordinance.

10.7.18 ASSIGNMENTS ASSIGNED FOR HUD AND CREDIT PROGRAM PURPOSES

10.7.18.1 Assignment Administration - Credit Program, Authority

Except as provided in 10.7.18.2, land assignments used for Housing and Urban Development (HUD) homes by the Hoopa Indian Housing Authority, property used for credit purposes by the Tribal Credit Program, or other programs authorized by the Tribal Council for purposes of improving the lifestyle of the assignee, shall be jointly administered by that program and the Land Department, in accordance with the terms of a written agreement between the assignee and program. In the event of default of the assignee's responsibilities, the program shall have such authority to assign, subassign or otherwise use such land as provided in this Ordinance. Loans with the Tribal Credit Program that were made for the purposes of improvement on the assigned property, or if improvements on the assigned property have been pledged as collateral, which remain delinquent for longer than 90 days without making an agreement otherwise, shall be sufficient cause for cancellation of the assignment.

10.7.18.2 Unused Property Reverts to Tribe

In the event of a foreclosure by the Tribal Credit Program, Hoopa Valley Indian Housing Authority, or other program authorized to allow the placement of improvements on assigned lands, and said lands remains vacant and unused for more than one (1) year or if an agreement is made between that Entity and the Tribal Council, it shall revert back to tribal status, without

program encumbrance. The Tribal Council may grant one (1) extension not to exceed one additional year for good cause shown.

10.7.18.3 Size of HUD Assignments

For the purpose of facilitating the administration of HUD assignments and to assist in defraying survey expenses, the acreage of assigned property that is authorized for HUD houses shall be that amount contained in the original Tribal assignment, except, however, an individual assignee may limit the acreage for a HUD agreement provided that the assignee assumes the expense of the survey.

10.7.18.4 HUD 184 Loans

Notwithstanding the provisions in Section 10.7.8 and 10.7.12.1, any default loan issued pursuant to the HUD Section 184 program shall be governed by the terms of the loan agreement and the remaining provisions of this Ordinance.

10.7.19 TRIBAL AND PERSONAL RESERVES

10.7.19.1 Reserves, Restrictions, Limited Areas and Access

The Tribal Council retains authority to reserve, restrict or otherwise limit areas from being assigned and/or designated in assignments for access routes for Tribal or personal purposes. Violations of the provisions of this section shall be subject to penalties prescribed under this Ordinance and other laws and penalties prescribed under Tribal, Federal and State law.

10.7.19.2 Reserves and Restricted Areas

The following areas are reserved and/or restricted as described:

10.7.20 ARCHAEOLOGICAL, CULTURAL AND HISTORIC RESOURCES PROTECTION.

In the course of construction on the assigned premises involving ground disturbing activities, Assignee agrees that if archaeological or historical resources are uncovered, the construction activity shall immediately be halted and a report of

such finding(s) shall be reported to the Land Management department. All findings of archaeological or historical resources must be evaluated by a qualified archaeologist (specified in 43 CFR, Subpart 7.8) in order to assess damage and recommend mitigative strategy. Upon receiving a report of a discovery, a representative of the Land Management Department will initiate a preliminary site assessment. At the completion of the assessment, the Land Management Department will develop recommendations for consideration by the Tribal Council and other concerned parties as to the disposition of the site. The Assignee is required to comply with the recommendations for mitigation made by the Land Management
Department pursuant to the requirements set forth in 36 CFR 800 and 43 CFR 7.

10.7.22 ERRORS, MISTAKES OR OMISSIONS.

It is understood that from time to time errors, mistakes or omission may occur in the drafting of assignment agreements, developing land approval packages, or in other aspects of approving Council assignments. The Tribe and assignee agree that minor corrections may be made to the assignment agreement in order to accomplish the intent of the assignment, provided that such corrections do not significantly change the intended benefits of the assignment and that such changes are consistent with the Tribal Land Assignment Ordinance.

10.8 TRIBAL LAND ASSIGNMENTS

10.8.0 PURPOSE

This Section shall exclusively apply to all lands remaining from that originally assigned under the Land Assignment Ordinance, except for those assignments or portions thereof that have been leased by the Tribal Council and that the lessee chooses not to convert such leased property to assignment status, and those lands that have already been removed from assignment status. This Section is intended to, to the greatest extent possible, preserve the integrity of those property's that were assigned under the original Land Assignment Ordinance which still remain intact on the date of enactment of this Ordinance. This Section is enacted under the authority of and consistent with the

discretion of the Tribal Council under the Land Assignment Ordinance.

10.8.1 NOT REINSTATEMENT OR ISSUANCE OF ASSIGNMENTS

Nothing in this Ordinance shall be construed as establishing a requirement of reinstating any assignment, or part thereof, or for any damages, to any individual previously assigned and said land has been removed from assignment status for any reason, including but not limited to, by Tribal and Federal actions, leases, or any other types of removal. This Section is not intended to be an obligation by the Tribe to convert any lease, whether or not such leased property is within the boundaries of previously assigned property, to any individual who has not been assigned that property under the Land Assignment Ordinance.

10.8.2 NO AUTHORIZATION FOR CLAIMS

Nothing in this Section shall be construed as authorizing any action to be brought against the Tribe which may arise from the
use, disposition, or otherwise of present and previous assignments, or any portions thereof.

10.8.3 LIMITED APPLICATION

This Section shall only apply to those lands that were previously assigned under the Land Assignment Ordinance and shall not apply to any other property not assigned thereunder. Nothing in this Ordinance shall be construed as authorizing the expansion of or addition to lands governed under the Land Assignment Ordinance beyond the acreage that was formally assigned under that Ordinance.

10.8.4 USE OF TRIBAL ASSIGNMENTS FOR HUD, TRIBAL CREDIT AND OTHER SECURITY PURPOSES

Unless otherwise prohibited in the Tribal Land Assignment Ordinance, the Tribal Council authorizes use of Tribal Assignments for purposes of securing services of HUD, Tribal Credit and other programs authorized by the Tribal Council, in a manner as similarly authorized for Council Assignments. The terms of the agreement shall govern the application of default

procedures, consistent with the provisions of the Tribal Land Assignment Ordinance.

10.8. 5 TRIBAL COURT DELEGATION

The authority of the Tribal Council to enforce provisions of the Land Assignment Ordinance is hereby delegated to the Tribal Court, provided however, that the administrative appeal remedies of the Land Department shall first have been exhausted.

10.8. 6 TRIBAL LAND ASSIGNMENTS

The following provisions are the exact text of the 1955 Tribal Land Assignment Ordinance and any amendments thereto require a referendum election of the Hoopa Membership.

TRIBAL LAND ASSIGNMENT ORDINANCE

BE IT HEREBY RESOLVED, That tribal lands of the Hoopa Valley Indian Reservation may be assigned by the Hoopa Tribal Council, hereinafter called the Council, subject to the following prescribed conditions and stipulations:

1. For the purpose of this ordinance, the words "assignment", "house lot", and "selection" are synonymous. The words "he" and

"his" also includes "she" and "her" in the case of female applicants.

2. Granting of an assignment does not convey to the assignee any vested right to the land but merely grants to the assignee the right of occupancy and beneficial use only for himself and his family during his lifetime, unless, however, the assignee is qualified for an allotment and receives a trust patent for the assigned tract as provided for in Section 19 hereof; and Provided, further the assignee may will his assignment to some person designated by him as permitted under Section 16 hereof.

3. ASSIGNMENT SHALL BE GIVEN TO THE FOLLOWING ONLY:

a. Persons of at least one-quarter Hoopa Indian blood enrolled as a member of the Hoopa Tribe; except that this

restriction shall not apply to land assigned prior to the effective date of this ordinance.

b. Unmarried persons, male and female, not less than eighteen (18) years of age except as hereinafter provided in Section 3 (f).

c. Persons who are physically and mentally competent to manage the land and their personal and business affairs in a successful manner.

d. (omitted in original Ordinance)

e. Persons who have not already been assigned a tract of tribal land.

f. A minor child who would be eligible to receive an assignment upon reaching a specified age but whose parents may have been separated by death or legal divorce with the result that said minor child is in custody of a non-Hoopa Indian having no home of his/her own, said assignment to be issued for the benefit of the child.

4. PREFERENCE shall be given to heads of families with dependents over single persons and married persons without children; married persons over single persons; persons without land over persons owning lands.

5. APPLICATIONS for assignments shall be submitted in writing to the Chairman of the Council at least three days prior to any regular Council meeting. If the Council, in its discretion, agrees to consider the application and the applicant meets the requirements of Section 3 hereof, notice shall be given the public that an application for the assignment is being considered. Notice shall be by means of posters placed in at least three conspicuous public places of business in the Hoopa Valley. Said notices must be posted for a period of not less than thirty days. After the necessary thirty-day notice period has elapsed, the Council at its next regular meeting may approve or reject the application, giving due consideration to the qualifications of the applicant and to any written protests, objections, or conflicting or prior claims.

6. OCCUPANCY AND BENEFICIAL USE shall be construed to mean:

a. Residence on the premises by the assignee for at least six months of each calendar year, or

b. Performing of at least $100 worth of improvements on the lands each calendar year, or

c. Actual use of the land for pasturing of livestock if fenced; for farming, gardening, or other agricultural use; for business purposes; or for such other use as may be stipulated in the assignment papers to be signed by the assignee.

7. The following practices shall NOT be construed to mean BENEFICIAL USE:

a. Mere fencing of the land without actual use of the tract for pasture or for other purposes specified in Section 6 hereof.

b. Mere cutting of wood from the land without further use of the tract for purposes specified in Section 6 hereof.

c. Leasing or subletting of the land without prior permission from the Council.

8. The Council reserves the right to specify and limit extent and acreage of areas to be assigned.

9. Title to buildings and improvements placed upon the land by the assignee shall rest with him and may be removed or sold by him at any time while the assignment is in effect. If the land shall be relinquished by the assignee or if the assignment is canceled by the Council, the time limit for the removal of the improvements and other property of the assignee is sixty days. After that time the title to improvements and other property will attach to the land and may not thereafter be removed except with the written consent of the Council.

10. All buildings and improvements shall be constructed of durable material in a substantial, workmanlike, and presentable manner. Fences built must be hog-tight and must comply with the requirements of the California State Law. The assignee is

obligated to build and maintain in good repair his half of line fences between himself and his neighbor. His half of the fence shall be that portion to his right as he stands facing his neighbor's land unless otherwise mutually agreed upon.

11. All buildings and improvements and the premises shall be kept in good repair by the assignee; he shall keep said lands and premises in an orderly, clean, and healthful condition; he shall use said lands and premises in a husbandlike manner to the best advantage; he shall commit no waste thereon; he shall maintain and preserve the fertility of the soil and permit no over-grazing or deterioration of the land in value or usefulness; he shall keep said land free from noxious weeds and pests; he shall not use or permit to be used any part of the premises for any unlawful purposes; and shall observe all applicable law and order, health, sanitation, conservation, and other requirements imposed by the Federal or State Governments or by the Council.

12. The assignee may cut and remove dead, down, and unmerchantable green timber.

13. Green and merchantable timber on the land assigned is reserved from assignment, remains the property of the Hoopa Valley Tribe and is not conveyed to the assignee; and the assignee shall grant access to or across the land without interference to any contractor who may hereafter purchase green and merchantable timber from the Tribe; provided the assignee shall be allowed reasonable compensation for any damage by his land. If agreement as to the amount of damages cannot be reached between the assignee and the contractor, they shall be determined by the council. The assignee is not granted permission under his assignment to cut merchantable green timber from the premises except under special permit.

14. The Tribe reserves to itself and there are reserved from assignment minerals rights, ceremonial and sacred grounds, and rights of way for irrigation ditches and canals, power and telephone lines, and roads which may not exist or which may hereafter be constructed or maintained for public purposes.

15. Water on the land, such as springs, do not become exclusive property of the assignee. The Council reserves the right to adjudicate use of the water to permit its use by the neighbors if sufficient water is available. Water so adjudicated shall be

transported through a pipe line buried at least two feet in the ground.

16. The assignee may designate in writing one person whom he wishes to receive his assignment upon his death and the reassignment of said land shall be made to such designated person, provided that the person designated is eligible, as provided in Section 3 of this ordinance, to receive a standard assignment. If an assignee married to a white spouse or to an Indian spouse not a member of the Hoopa Tribe, dies without issue, the surviving white or Indian spouse shall not be eligible for reassignment of the land, but shall be entitled to compensation from the new assignee for the value of the improvements placed thereon by the assignee and shall be allowed a reasonable time not to exceed six months to vacate the assigned land. If the deceased assignee leaves a minor child as a result of such marriage who is designated as the devisee who will be eligible to receive an assignment upon reaching a specified age, the surviving spouse shall, with the sanction of the Council, have the right to continue to use and occupy the assignment during the minority of the child, under a land use permit to be issued by the Council for the benefit of the child. Upon death of the assignee and in the event none of his heirs or other person designated by him wish to receive a reassignment covering this land, the permanent improvements placed on the lands by the original assignee may be sold by his heirs within sixty days after date of death and the land may then be reassigned by the Council. The conditions of any such sale must be approved in advance by the Council.

17. Non-use of the premises for a period of one year shall render the assignment subject to cancellation by the Council in its discretion.

18. Any lease, sublease, further assignment, or transfer of assignment or any interest therein must be approved in advance by the Council. Failure to secure such advance approval shall be sufficient cause for cancellation of the assignment.

19. The assignee shall be eligible for allotment of the tract assigned and issuance to him of a trust patent therefore covering the tract assigned at such time in the future as a trust patent therefore may be deemed advisable, <u>provided</u> said assignee can qualify for an allotment and has not already been allotted. Such

issuance of a trust patent cannot be made without the consent of the Council, after 30 days public notice.

20. Failure on the part of the assignee to comply with all the conditions and provisions contained herein or which may hereafter be enacted shall render the assignment subject to cancellation by the Council, it its discretion. In the event the assignment is canceled, the Council shall so notify the assignee sixty days prior to the effective date, and the assignee agrees to deliver up the possession of the premises assigned peaceably and without legal process in as good condition as when assigned, normal wear and tear excepted. If the said assignee objects to said cancellation he shall make such protest in writing within thirty days after receipt of notice. Upon receiving this protest, the Council shall reconsider its action within thirty days and take such action as it may deem appropriate, which decision shall be final.

21. The final interpretation and application of this ordinance shall rest with the Council and any decision shall be final.

22. This ordinance becomes effective as of the date of its adoption by the Hoopa Tribe.

10.9 **GRAZING AND AGRICULTURE** ASSIGNMENTS

10.9.0 PURPOSE

The purposes of grazing and agricultural assignments are to provide members of the Hoopa Tribe an opportunity to utilize tribal lands for grazing and agricultural purposes. The assignee shall be required to maintain all property under a grazing and agricultural assignment in as good or better quality as before the assignment was issued and all fixed improvement to the property shall become the property of the Tribe.

10.9.1 GRAZING ASSIGNMENTS

10.9.1.1 Grazing Assignment Definition

A grazing assignment means a permit issued by the Tribal Council for the purpose of allowing tribal members to use tribal land for grazing livestock that will enhance the livelihood of tribal members and provide benefits for the Tribe.

10.9.1.2 Eligibility

Eligibility for a Grazing assignment is limited to enrolled Tribal members who are physically capable of utilizing the property in a manner provided by the assignment.

10.9.1.3 Application, Consideration

Any adult Tribal member may apply to the Land Department for a grazing assignment. The application shall include the amount and location of the acres requested and the type and amount of livestock to be ranged on the assigned property. Among other factors, the Land Department shall consider the amount of livestock to be ranged and the natural productivity of forage materials of the property. The Land Department shall recommend as to the advisability whether the assignment should be granted and, if necessary, any limitations to be adhered to by the assignee.

Tribal grazing assignments may be issued by the Council in a manner consistent with the best interest of the Tribe, taking into consideration Reservation resources and residents. In consideration of whether to grant a assignment, the Department shall consider whether the person has previously held a grazing assignment and whether that person fulfilled his/her responsibilities under that assignment.

10.9.1.4 Number of Grazing Assignments

Any Tribal member may hold more than one grazing assignment at one time, provided that each lease complies with the provisions of this Ordinance.

10.9.1.5 Grazing Capacity

The Director of the Land Management Department shall determine the grazing capacity of each grazing assignment so as to achieve proper grazing management. The Land Department may adjust the grazing capacity if such modification is necessary for the long range benefit of the livestock and land.

10.9.1.6 Fences, Maintenance

Prior to placing any livestock on the assigned property, the assignee shall construct and maintain adequate fences to securely contain the livestock on the assigned property. Any person who willfully damages or destroys, or in any manner render ineffective, a fence belonging to another person or the Hoopa Valley Tribe shall be guilty of an offense and upon conviction shall be charged with penalties prescribed under the Tribal Civil Penalties, including but not limited to restitution, repair and replacement of any property damaged by said act.

10.9.1.7 Environmental Considerations

The Land Department will be guided by the environmental factors concerning the property and surrounding vicinity when considering grazing assignments.

10.9.1.8 Duration and Renewal of Assignments

Each grazing assignment shall be granted for no longer than a one (1) year initial period and thereafter may be renewed for up to an additional 4 year period, provided, that the assignee shall provide to the Land Department with an annual inventory of the livestock on the property. The assignee shall utilize the land within 30 days after receiving official notice of the assignment being approved by the Tribal Council and shall adhere to the terms of the assignment and this Ordinance or the assignment becomes null and void. Applications for renewal must include an inventory of livestock to be kept on the property and preference for renewal shall be given to the applicant renewing the assignment. When livestock are no longer owned, or if the property remains unused by the assignee longer six (6) months of each year the assignment is automatically terminated and the land reverts back to the Tribe.

10.9.1.9 Fees

A fee of $10 per acre, per year shall be paid at the time that the assignment agreement is signed by the parties. Applications for renewal must include full payment in advance to be submitted with the renewal application.

10.9.1.10 Waiver of Bonds

All bonding requirements contained in Title 25, Code of Federal Regulations, are hereby waived for all grazing assignments granted and administered under this Ordinance.

10.9.1.11 Residential Assignments Supersedes Grazing Assignments

Any grazing assignment and any acreage controlled thereunder may be superseded by a duly approved residential assignment.

10.9.2 AGRICULTURE ASSIGNMENTS

10.9.2.1 Agricultural Assignments Definition

Agricultural assignments shall be those assignments that allow the assignee to utilize Tribal property for agricultural purposes, provided that such property generates at least $250.00 per acre per year in clearly documented value to the assignee.

10.9.2.2 Eligibility

Eligibility for an Agricultural assignment is limited to enrolled Tribal members who are physically capable of utilizing the property in a manner provided in the assignment.

10.9.2.3 Waiver of Bonds

All bonding requirements contained in Title 25, Code of Federal Regulations, are hereby waived for all agricultural assignments granted and administered under this Ordinance.

10.9.2.4 Duration and Renewal of Assignments

Each agricultural assignment may be granted for up to a 5 years term, provided however, that the annual fee and revenue reports are filed with the Land Department and other requirement of this Ordinance and assignment are adhered to. The assignee shall utilize the land within 30 days after receiving official notice of the assignment being approved by the Tribal Council or the assignment becomes null and void. Applicants renewing must include a preference for renewal of the agricultural assignment. If the property is not utilized for agricultural purposes for longer than a 6 month during any year the assignment becomes void, and the land reverts back to the Tribe.

10.9.2.5 Fees

The fees for agricultural assignments shall be $100.00 per acre per year.

10.9.2.6 Annual Reports

The assignee shall file with the Land Department an annual report which identifies any improvements made to the property, the uses of the property and type of crops grown and the amount of annual revenues received from the Agricultural assignment.

10.10 COMMERCIAL ASSIGNMENTS

10.10.0 PURPOSE

The purpose of a Tribal Commercial assignment shall be for improving the economic and community development of the Tribe and its members.

10.10.1 COMMERCIAL ASSIGNMENT DEFINITION

Commercial assignment shall mean any activity entered into or carried out for the purpose of earning a monetary profit to an individual, a Tribal entity or the Tribe.

10.10.2 ELIGIBILITY

Eligibility for a commercial assignment shall be open to any person, company or entity with due consideration being given to the financial probability of success of the operation.

10.10.3 COMMERCIAL ASSIGNMENT FEES

Commercial assignment fees shall be established by the Tribal Council, taking into consideration the amounts received for businesses of similar type in the area. The amount of the assignment fee may take into consideration the benefits to received to the Tribe and membership.

10.10.4 FACTORS FOR CONSIDERING COMMERCIAL ASSIGNMENTS

In considering whether to recommend approval, denial or modification of a new or existing assignment, the Land Department and Council shall consider the environmental impacts of such assignment and business, and to proposed location of the assignment that is being requested.

10.10.5 RESOURCE RELATED COMMERCIAL ASSIGNMENTS

If a person applies for a commercial assignment that proposes to utilize Reservation natural resources, the Land Department shall transmit the application and any other documents to the appropriate Tribal programs for their review. If necessary, the Land Department may recommend that the Council consult with outside organizations, businesses, agencies or individuals to properly review the proposal.

10.11 LAND ACQUISITION AND EXCHANGE

10.11.0 PURPOSE

The purpose of Tribal land acquisition is to regain in Tribal or trust status all lands within the exterior boundaries of the Hoopa Valley Indian Reservation; that such lands be under the exclusive jurisdiction and sovereign authority of the Hoopa Valley Tribe; that every effort be made to expand the landbase of the Hoopa Valley Tribe; and that all lands under the jurisdiction and sovereign authority of the Tribe be managed in such a way that preserves and promotes the long term interest of the Hoopa Valley Tribe. The purpose of land exchange is to provide a uniform process for the consideration of exchanges of lands by individuals or and the Tribe.

10.11.1.1 Establishment of Land Acquisition Reserve Fund

There is hereby established a Land Acquisition Reserve Fund for the exclusive purpose of purchasing and maintaining land under the authority of the Hoopa Valley Tribe. Such Fund shall be administered by the Tribal Fiscal Department and strictly governed under the provisions of the Tribal Budget Ordinance. Except as may be necessary for maintaining Tribal assets, all funds generated from proceeds from land (including land lease fees), rent from Tribal residential and business properties, and other funds as directed by the Council shall be deposited into the Land Acquisition Reserve Fund.

10.11.1.2 Withdrawals From Land Acquisition Reserve Fund

All withdrawals from the Land Acquisition Reserve Fund shall be by a specific spending plan, including appraisals and other available information concerning the land to be purchased, and must be accompanied by a resolution approved by at least six (6) members of the Tribal Council.

10.11.1.3 Land Acquisition Procedure

Prior to withdrawal of any funds from the Land Acquisition Reserve Fund, the Fiscal Department shall develop and submit to the Council specific procedures for expenditures from the Fund.

10.11.1.4 Use of Acquired Land

All acquired lands shall be utilized for the mutual benefit of the Hoopa Tribe. Acquired property, including that acquired prior to the enactment of this Ordinance, may be assigned after the 3 year anniversary date of being acquired by the Tribe, or at an earlier date as provided under a use plan approved by the Tribal Council. The lessee shall be responsible for payment of taxes and other costs associated with the leased property during the term of the lease. Failure of the lessee to pay such costs shall constitute cause for termination of the lease and other action that may be necessary for collection of such costs.

10.11.1.5 Non-Member Acquisition

Any individual not a member of the Hoopa Valley Tribe who acquires land within the exterior boundaries of the Hoopa Valley Reservation shall be deemed to have consented to the jurisdiction of the Tribe, whether or not such land is to be held in trust or in fee status. Lands within the exterior boundaries of the Hoopa Valley Reservation acquired or owned by any such Indian may be held in trust by the United States for that Indian only if the Tribal Council consents by resolution.

10.11.1.5 Land Exchanges

The Tribal Council may approve the exchange of Tribal lands for other property that is deemed to be in the best interest of the Tribe. Land exchanges may take into consideration the land

and other property values and other issues that are important to the Tribe. Exchanges involving trust property must be approved by the Secretary of the Interior of his authorized representative.

10.11.2.1. Exchanges Involving Fee Property

The Tribal Council may exchanges Tribal trust property for land in fee status if such land is deemed to be beneficial to the Tribe.

10.11.2.2 Exchanges for Assignment Land

The Tribal Council may exchange Tribal land for land governed under Section 10.8 of this Title, the Land Assignment Ordinance, if it is determined that such an exchange is beneficial for the Tribe. In such an event, the land that was previously governed under the Land Assignment Ordinance shall be permanently removed from the assignment acreage and its status be converted to land governed under other sections of this Ordinance. Once the land has been converted, no interest shall remain with any individual Tribal member.

10.11.2.3. Land Exchange Outside Reservation Boundaries

The Tribal Council may approve an exchange for land outside the boundaries of the Reservation if is deemed to be in the best interest of the Tribe, provided, however, that no trust property shall be transferred, exchanged, or otherwise lost from the ownership of the Tribe under the authority of this subsection.

10.12 WATER RIGHTS

10.12.1 PURPOSE

This section is to provide guidance to those individuals involved in land matters where concerns involving water, as it relates to the proper use of tribal trust lands and assignments of land is governed by this Ordinance. This section shall also apply in resolving matters relating to the use water resources from unallotted trust lands.

10.12.2 INTERPRETATION OF FEDERAL, STATE AND OTHER LAWS

As used in this Ordinance, the interpretation of federal, state and other laws shall be interpreted, as a matter of proprietary interest, in a manner consistent with the intent to preserve the Hoopa Valley Reservation and its rights and resources for the Hoopa Valley Tribe and its members. It is the intent of the Tribe that matters pertaining to water matters be decided in favor of enrolled tribal members to the greatest extent possible. Matters involving only enrolled tribal members shall be interpreted based on the length of actual proprietary use and the intent of the land involved. The Court may utilize federal, state and other laws to guide in the resolution of water matters before the Court. Nothing in this section shall be construed to establish or recognize individual rights in tribal property.

10.12.3 AUTHORITY OF TRIBAL COURT

The Tribal Court shall have authority to adjudicate matters before the Court involving water use and interest and shall have authority to allocate such water usage in order to resolve disputes. The Court may request to the Tribal Council for policy guidance as may be needed.

10.12.4 APPOINTMENT OF AD HOC WATER COMMITTEE

From time to time, the Tribal Court may appoint a 3 member ad hoc advisory committee of individuals familiar with a water matter before the Court. The Committee shall serve at the discretion of the Tribal Judge.

10.13 ENFORCEMENT PROVISIONS

10.13.0 ENFORCEMENT POLICY

It is the policy of the Tribe that, to the most reasonable extent, assignments not be canceled. Every reasonable effort will be undertaken to maintain the personal property and improvements on assigned land in the name of the official assignee. However, nothing in the Ordinance shall prevent the cancellation of any assignment and the removal or forfeit of personal property and improvements for violations of this Ordinance.

10.13.1 COUNCIL ASSIGNMENTS - RELINQUISHMENT, NOTICE OF CANCELLATION

Non-use of the premises for a period of one year shall be sufficient cause for cancellation of the Council assignment. Failure on the part of the assignee to comply with all the conditions and provisions contained in this Ordinance or which may hereafter be enacted shall render the assignment subject to cancellation. The Land Department shall issue a Notice of Cancellation to the last known address of the lessee sixty days prior to the cancellation date. Unless the assignee responses within 30 days after receiving the Notice of Cancellation the assignee shall be deemed to have voluntarily relinquished the assignment and the assignee is presumed to agree to deliver up the possession of the premises assigned peaceably and without legal process in as good condition as when assigned, normal wear and tear excepted. If the said assignee objects to said cancellation he/she shall make such appeal to the Land Department in writing within thirty days after receipt of the Cancellation Notice.

10.13.2 DEPARTMENT HEARING, APPEAL

The first level of administrative appeal for notices of violation of this Ordinance shall be with the Land Department. The Land Department shall develop procedures for handling appeals, including for hearings when requested by the assignee or as considered advisable by the Department, for addressing concerns raised in the assignment cancellation process. Upon receipt of a final decision of the Land Department concerning disposition of the assignment, the lessee may within 30 days file a complaint with the Tribal Court.

10.13.3 TRIBAL COURT JURISDICTION

The final interpretation and application of this ordinance shall rest with the Tribal Court and any decision of the Court shall be final.

10.13.4 TRIBAL COURT REVIEW

The decision of the Land Department may be reviewed by the Tribal Court. No less than 30 days after receipt of a complaint the Tribal Court shall schedule a date for a hearing. Consistent

with the proper rules and procedures of the Tribal Court, the filing of a proper complaint shall constitute a motion for a stay of proceedings until the matter is considered by the Court.

10.13.5 REMOVAL OF PERSONAL PROPERTY

Title to buildings and non-fixed improvements placed upon the land by the assignee shall rest with him/her and may be removed or sold by him/her at any time while the assignment is in effect. If the land shall be relinquished by the assignee or if the assignment is canceled by the Council, the time limit for the removal of the improvements and other property of the assignee is 180 days. After that time the title to improvements and other property will attach to the land and may not thereafter be removed except with the written consent of the Council.

10.13.6 PROBATIONARY PERIOD

If the circumstances warrant, or if the situation can be resolved by probation, the Land Department or Tribal Court may issue a probation notice to a delinquent assignee for violation of this Ordinance. Such a probation notice shall include the terms and conditions that must be adhered to in order to protect the assignment from being canceled.

10.13.7 COUNCIL ASSIGNMENT CANCELLATION

10.13.7.1 Cancellation for Cause

Council assignments are subject to cancellation for cause for violations, including but not limited to, any of the following provisions:

A. Assigned premises shall not be used for unlawful purposes.

B. Transferring, assigning, or exchanging an assignment without the approval of the Tribal Council.

C. Illegally, or without approval of the Tribal Council, granting leases, assignments, easements, or rights-of-way by the assignee.

D. Removing fixed improvements which are part of the real property without authority from the Tribal Council.

E. Creating a public nuisance, allowing conditions to exist which would endanger life or the property of another person.

F. Unauthorized destruction or damage to any land, resources, or any continuing public threat to health or safety.

G. Non-use of the property beyond the limits established under this Ordinance.

H. Willfully falsifying an assignment application or other documents used in determining matters before the Land Department, or including incorrect information therein.

I. Being delinquent more than 90 days in a Tribal Credit Program loan that was for the purposes of improvement on the assigned property, or if improvement on the assigned property have been pledged as collateral without an agreement with that Program.

10.13.8 ENFORCEMENT - LAND ASSIGNMENT ORDINANCE

Violations and penalties resulting from activities occurring on assigned land as provided under Section 10.8 of this Ordinance shall be governed by provisions prescribed thereunder.

10.13.9 NOTICE OF OTHER VIOLATIONS

Any person who shall violate a provision of this Ordinance shall be served with a written notice to appear within no less that fifteen (15) days before the Land Department or Tribal Court. The notice shall include an explanation of the charges and a description action that is proposed to be taken. Each person shall be given an opportunity to be heard concerning the charges, have the right to be represented by counsel and to present witnesses on his/her behalf.

10.13.10 TRIBAL COURT ACTIONS

The Tribal Court shall make a final determination as to whether or not there has been a violation of this Ordinance. Upon a finding that an individual has intentionally violated a provision of this Ordinance, including failure to rectify a determined violation within a reasonable time period, or as more particularly prescribed by the Land Department, the Tribal Court shall by appropriate order cancel the assignee's assignment period, or in the alternative, may impose a monetary fine not to exceed $500 in lieu of cancellation of the assignment.

10.13.11 VIOLATIONS AND PENALTIES

The penalty for violation of any assignment provisions of this Ordinance may include, but not be limited to, cancellation of the assignment and the ejection of an assignee from the assigned property and an assessment of appropriate fine based on the severity of the violation. A violation of any regulation promulgated under this Ordinance shall be considered a violation of this Ordinance. Nothing in this Ordinance shall be construed as establishing limitations on the further legal action under applicable laws.

10.13.12 OTHER PENALTIES

Nothing in this Ordinance shall be construed to prohibit or otherwise limit the application of other Tribal, Federal and State laws to violations of this Ordinance, including those intended to preserve and protect land and areas protected under this Ordinance.

10.13 CONSTRUCTION

Nothing in this Ordinance shall be construed to establish any non-member rights in any Reservation resources, property or assets that may be held for the benefit of the Tribe or any individual member of the Tribe. Nothing in this Ordinance shall be construed as establishing any individual rights of any Tribal member beyond those recognized by Tribal and Federal law. Nothing in this Ordinance shall be construed to establish jurisdiction in any agency or government that is not recognized by Tribal and Federal law.

10.14 SEVERABILITY

If any part of this Ordinance is held to be invalid the remainder shall remain to be in full force and effect to the maximum extent possible.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which seven were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this sixth day of October, 1997; and that this Ordinance was duly adopted by a vote of six for and none against, and that said resolution has not been rescinded or amended in any way.

DATED THIS SIXTH DAY OF OCTOBER, 1997.

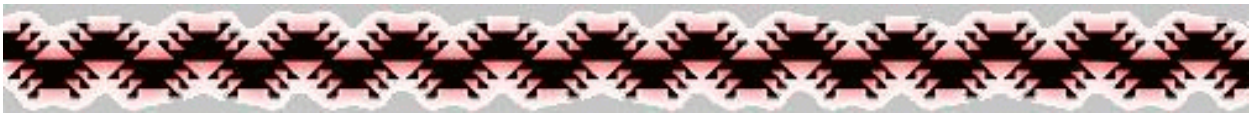
_____
DUANE SHERMAN, SR., TRIBAL CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____
DARCY BALDY, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

TITLE 12 OF THE HOOPA TRIBAL CODE

PURPOSE: PROHIBITION OF IMPROPER CONDUCT AT TRIBAL OFFICES

ADMINISTRATIVE RECORD: Adopted December 18, 1980



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 4-80

DATE APPROVED: DECEMBER 18, 1980

SUBJECT: PROHIBITION OF IMPROPER CONDUCT AT TRIBAL OFFICES AND SURROUNDING PREMISES

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1(k) of this Constitution and Bylaws authorized the Hoopa Valley Tribe "to promulgate and enforce ordinances governing the conduct of members of the Hoopa Valley Indians"; and,

WHEREAS: The interests of the Tribe require that Tribal Officers, employees, members, and guests participating in and/or attending meetings sponsored or conducted by the Hoopa Valley Business Council act appropriately, follow the directives of the Chairman, and not disrupt the proceedings; and,

WHEREAS: The interests of the Tribe require that Tribal Officers, employees, members, and guests conducting business at tribal offices, or any office(s) of a subdivision of the Tribe, act appropriately, follow the directives of the Chairman or immediate supervisor of the respective office or premises, and not disrupt the orderly working environment of any Tribal Officer(s), employee(s), or guest(s); and

WHEREAS: It is in the best interests of the Tribe and its members that the offices and premises of the Tribe be maintained such that an orderly and safe atmosphere shall be provided for the efficient working order of the Tribe and its employees. The interests of the Tribe and its members are further benefited by all parties maintaining a courteous and businesslike decorum while at tribal offices or on tribal premises;

NOW THEREFORE BE IT RESOLVED: That the participation and activity of tribal officials, employees, members, and guests in meeting conducted or sponsored by the Hoopa Valley Business Council or its entities and at tribal offices or on tribal premises shall conform to such rules and regulations of the Hoopa Valley Business Council and its entities as may be promulgated from time to time and that all "Improper Conduct at Tribal Offices and Surrounding Premises" as defined herein shall be prohibited.

BE IT FURTHER RESOLVED: That "Improper Conduct at Tribal Offices and Surrounding Premises" shall mean any conduct which threatens the health and safety of participants at meetings, disrupts the orderly functioning of a tribal office and tribal employees, endangers tribal property, or obstructs the orderly functioning of a meeting or tribal office, and more specifically, includes but is not limited to the following:

1. Partaking of intoxicating beverages or illegal non-prescription drugs;

2. Use and/or possession of firearms or other dangerous weapons;

3. Continuation of any action or behavior after the Chairman of the meeting has ruled it out of order;

4. Continuation of any action or behavior after the immediate supervisor of a tribal office or department has requested that such activity be refrained from for the benefit of maintaining a safe and business-like atmosphere for tribal employees and other personnel;

5. Verbal and/or physical assaults upon tribal officials, employees, or guests which threaten the efficient working atmosphere of tribal offices and their immediate premises.

BE IT FURTHER RESOLVED: That "Improper Conduct at Tribal Offices and Surrounding Premises: shall be grounds for the removal of any person or persons from any meeting or tribal office or said office's surrounding premises. Any person found to be engaging in such improper conduct shall be requested to voluntarily remove himself or themselves from the premises by the Chairman of the meeting or immediate supervisor of the respective tribal office. If removal is not done on a voluntary basis, the assistance of local police authorities shall be employed and any and all legal action shall be taken against a person requested to leave on the basis of the foregoing herein.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 6 were present; constituting a quorum at a Regular meeting thereof; duly and regularly called, noticed, convened, and held this 18th day of December 1980; and that this ordinance was duly adopted by a vote of 5 for with 0 against; and that said ordinance has not been rescinded or amended in any way.

DATED THIS 18TH DAY OF DECEMBER, 1980.

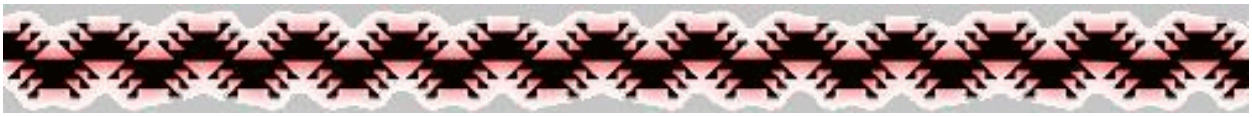
_____
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY

TITLE 13 OF THE HOOPA TRIBAL CODE

PURPOSE: TERO Ordinance (Indian Preference)

ADMINISTRATIVE RECORD: Adopted 1980, Amended April 27, 1995



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO. 2-80, AS AMENDED

DATE APPROVED: APRIL 27, 1995

SUBJECT: ESTABLISHMENT OF STANDARDS AND PROCEDURES FOR EMPLOYMENT PRACTICES AND APPLICATION OF INDIAN PREFERENCE

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, which the Commissioner of Indian Affairs approved on August 18, 1972, and Article IX, Section 1 (f) thereof authorizes the Hoopa Valley Tribal Council to "provide assessments or license fees...."; Article IX, Section 1(g) thereof authorizes the Council to "negotiate with the Federal, State, and local governments on behalf of the tribe"; Article IX, Section 1(j) thereof authorizes the Council to "exclude from the restricted land of the Hoopa Valley Indians persons not legally entitled to reside therein"; and Article IX, Section 1(l) thereof authorizes the Council to "safeguard and promote the peace, safety, morals, and general welfare of the Hoopa Valley Indians by regulating the conduct of trade and the use and disposition of property upon the reservation"; and

WHEREAS: As part of the solutions for developing a sound and progressive socio-economic environment for the Hoopa Valley Reservation community, the Hoopa Valley Tribal Council has determined that access to employment opportunities is a major part of a comprehensive approach, and toward that end has enacted a Tribal Employment Rights Ordinance providing for Indian preference in hiring and contracting; and

WHEREAS: There is a need to clarify the policies and procedures of previous TERO enactments to insure consistent enforcement by the Tribe and full compliance by all employers conducting commercial or employment activities within the Reservation; and

WHEREAS: There is also a need to expand and consolidate the authority of the TERO Office so that it may regulate all aspects of employment practices on the Reservation, including those regulated under previous TERO enactments.

THEREFORE BE IT NOW RESOLVED THAT: The Hoopa Valley Tribal Council does hereby amend Ordinance No. 2-80 in a manner that substitutes this Amendment as Title 13 of the Law and Order Code of the Hoopa Valley Tribe, and further declares that except as

expressly provided herein, any and all previous TERO enactments are hereby repealed and shall be of no effect.

BE IT FURTHER RESOLVED THAT: Ordinance No. 1-85 is hereby amended to confirm Council's intent that said Ordinance require all covered employers to maintain Workman's Compensation Insurance, and to develop a practical definition that effectively distinguishes employees from subcontractors, and the Legal Department is hereby authorized and directed to revise the language of said Ordinance in a manner consistent with this amendment and to present it for Council's ratification not later than the second Regular Council Meeting after the meeting at which this TERO Ordinance is approved.

BE IT FURTHER RESOLVED THAT: All matters arising under this Title shall be regulated, administered, and adjudicated exclusively under the procedures set forth herein, and shall not be subject to any different or concurrent procedures set forth in the Personnel Policies of the Tribe, in the Appellate Review Procedure approved by Resolution No. 83-147 of November 22, 1983, or in any other tribal law or policy that might otherwise be applicable in the absence of this clause.

BE IT FURTHER RESOLVED THAT: The policies and procedures embodied in this Ordinance are intended to fulfill a fundamental obligation of the Council to provide for the basic welfare of the members of the Hoopa Valley Tribe and other Indians of the Reservation community.

BE IT FURTHER RESOLVED THAT: The Tribal Chairman's Office, in consultation with the Legal Department shall take all steps necessary to transmit this Ordinance to the Bureau of Indian Affairs for approval for enforcement with respect to non-members of the Tribe, pursuant to Article IX, Section 1(1) of the Tribal Constitution; provided, however, that this Ordinance shall be deemed approved if not acted upon by the Bureau of Indian Affairs within sixty (60) days of its transmission from the Tribe.

TITLE 13

STANDARDS AND PROCEDURES FOR EMPLOYMENT PRACTICES AND APPLICATION OF INDIAN PREFERENCE

13.0 SHORT TITLE

The short title of this ordinance shall be the Tribal Employment Rights Ordinance, or TERO.

ORDINANCE NO. 2-80, AS AMENDED
APRIL 27, 1995
S U B J E C T :
STANDARDS AND PROCEDURES FOR EMPLOYMENT PRACTICES AND APPLICATION OF INDIAN PREFERENCE

13.1 EFFECT ON PRIOR ENACTMENTS

13.1.1 Repeal. Amendments 1 through 7 of the TERO Ordinance, Resolution 81-101 and the TERO Guidelines approved thereby, and Council Resolution No. 88-75 are hereby repealed and shall be of no further force and effect; provided, however, that any existing agreements or contracts authorized under these now repealed enactments shall remain in effect until such agreements or contracts expire or are terminated; and provided, further, that the TERO Commission established by this Ordinance may terminate any existing Indian preference agreement and issue a permit in conformance with this Ordinance upon notice to the affected party and opportunity for a hearing.

13.1.2 Enforcement of Ordinance No. 1-85, Certification of Indian Firms. The TERO Commission is authorized to certify that an enterprise meets the definition of an Indian firm set forth in Section 13.2.4 for purposes of Indian preference, and for documentation of minority small business contract eligibility or claimed exemptions from state taxation and wage performance bond requirements; provided, however, that certification as provided herein shall not oblige the Commission to advocate the claims of private individuals and entities before any agency of another government.

13.1.3 Fair Operating Standards and Dispute Resolution Procedures for Reservation Timber Sales Preserved Pending Approval of Administrative Rules. TERO procedures established for Reservation timber sales under the former MOU between Hoopa Forest Industries and the Bureau of Indian Affairs, and consisting of (1) Exhibit A to TERO Amendment No. 7, May 21, 1987, Fair Operating Standards and Procedures, and (2) the Report of Timber Sale Contract/MOU Work Group, April 15, 1987, including in particular the Contractor-Subcontractor Dispute Procedure, are hereby preserved to the extent that they do not conflict with the substantive provisions of this Ordinance; provided that the TERO Commission established by this Ordinance shall review, revise, and subject to Council approval, reissue these procedures as administrative rules not later than 60 days after the effective date of this Ordinance.

13.2 DEFINITIONS

13.2.1 "Indian" means any member of any federally recognized tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.

13.2.2 "Hoopa Reservation" or **"Reservation"** means the Hoopa Valley Indian Reservation as defined under Article III of the Constitution and Bylaws of the Hoopa Valley Tribe.

13.2.3 "Employer" means any person, company, contractor, subcontractor or entity located or engaging in commercial or employment activity on the Hoopa Reservation, and which employs two or more persons.

13.2.4 "Indian Firm" means a firm or business certified by the TERO Commission as eligible for Indian preference in contracting and subcontracting; provided that Indians hold at least 51% ownership interest in such firm or business and exercise majority management control.

13.2.5 "Commission" and **"Office"** mean the Tribal Employment Rights Commission and its Office and the Tribal Office of Employment Relations.

13.2.6 "Council" means the Hoopa Valley Tribal Council.

13.2.7 "Minimum Threshold" means a minimum level above which Indian preference will be required as established by:

1. Job Descriptions;
2. Interview Committees;
3. Skills Tests;
4. RFP's and License Requirements;
5. Other Written Requirements.

13.3 ESTABLISHMENT OF TERO COMMISSION AND OFFICE

13.3.1 Establishment and Purpose of Commission

The Hoopa Valley Tribal Council does hereby establish the Tribal Employment Rights Commission (TERO Commission) for the purposes of (A) implementing and enforcing the provisions of this Ordinance, and (B) providing exclusive and independent investigation and administrative review of personnel actions and grievances arising under the Personnel Policies and Procedures of the Hoopa Valley Tribe, Tribal Ordinance No. 1-85, Unemployment, Disability, and Workman's Compensation Insurance Ordinance, as amended herein, or other Council enactments regulating employment practices of the Tribe or its entities (including without limitation the Hoopa Valley Development Enterprise and its subsidiaries and successors) or other employers or contractors within the Reservation.

Consistent with the third "Resolved" clause of this Ordinance, the procedures set forth in this title shall supersede any and all other procedures set forth in the Tribe's Personnel Policies and Procedures or in the Appellate Review Procedure approved in Resolution 83-147 with respect to any matter regulated hereby.

13.3.2 General Powers of the Commission

(A) Organizational Authority. The Commission may hire immediate TERO staff, obligate funds appropriated by the Council, and secure and obligate funding from Federal, State or other sources to carry out its duties and functions under this Ordinance. The Commission is further authorized and directed to adopt such organizational bylaws as are necessary to enable it to carry out its duties and functions. The Commission shall report directly to the Council. The TERO Commission shall be subject to the Conflict-of-Interest and Nepotism Ordinance of the Hoopa Valley Tribe.

(B) Regulatory Authority.

(1) The Commission shall issue rules, regulations, interpretations of law, and guidelines for Indian preference necessary to implement this Ordinance. Such rules shall become effective upon written approval of the Council. Approved rules shall be codified in the Revised Code of the Hoopa Valley Tribe, and the Commission shall take other reasonable steps to insure that the general Reservation community is on notice of all Indian preference and employment related laws.

(2) The Commission shall maintain an Indian Skills Bank as a means of providing qualified Indian employees to employers, contractors, and subcontractors. The Commission shall actively recruit Indians for listing in the Skills Bank. The Commission shall also actively recruit and certify Indian firms as eligible for Indian Preference in contracting and sub-contracting.

(3) The Commission is authorized to certify Indian firms, from on or off the Reservation, for purposes of Indian preference, minority small business contract eligibility, exemption from state taxation and wage performance bond requirements, and other purposes. The Commission shall develop administrative rules to implement this authority, which shall include provisions and procedures for revocation of such certifications.

(4) The Commission may register off-reservation contractors and sub-contractors, approve Indian Preference Plans, and issue permits to such contractors according to rules and procedures to be developed, which shall include procedures for revocation of such permits.

(5) The Commission is further authorized and directed to investigate complaints regarding any violation of the provisions of this Ordinance or any other tribal law the Commission is authorized to enforce; the Commission may also investigate possible violations on its own initiative.

(C) Adjudicatory Authority

The Commission may hold hearings on and determine any matter under its authority, including but not limited to hearings necessary to the issuance, modification, and revocation of any permit, license, certification, or assessment authorized hereunder, as well as any adjudicatory hearing regarding violations of the provisions of this Ordinance or of any other general tribal law or specific departmental employee grievance procedure. The Commission shall promulgate simple and fair rules of procedure to govern its adjudications, and is authorized to issue compliance orders and to impose civil penalties in the form of fines.

(D) Cooperative Agreements with Other Governments

The Commission may negotiate, and upon Council approval, enter into cooperative agreements with agencies of state and federal government in order to implement the intent of this Ordinance, eliminate unlawful discrimination against Indians, and to provide for review of other employment related issues.

13.3.3 Composition of the Commission

(A) The Commission shall be composed of five (5) members in good standing in the community. Three (3) members of the Commission shall be appointed by the Council in October of even numbered years, each for a term of two (2) years; and two (2) members shall be appointed in odd numbered years, each initially for a term of one (1) year, thereafter being appointed in October of odd-numbered years each for a term of two (2) years. Any member may be removed by the Council at any time for cause, subject to notice and opportunity for a hearing before Council.

All terms of office shall commence on October 1 of the year position becomes vacant.

(B) Decisions of the TERO Commission shall be made by a majority vote. A quorum shall consist of any three of the five Commission members.

(C) Any Commission member who is also on the staff of the Council shall be disqualified from any involvement in decisions affecting the tribal department or entity with which he or she is employed.

13.3.4 Powers of the TERO Director

The TERO Director shall have those powers delegated by the Commission as it deems necessary to carry out this Ordinance. The Director shall be the investigating agent for the Commission responsible for investigating, researching, reporting and documenting any information required by the Commission. The Director shall report directly to the Commission.

13.4 INDIAN EMPLOYMENT PREFERENCE POLICY AND PROCEDURES

All employers shall extend a preference to qualified Indians, as provided herein, in all aspects of employment, including but not limited to recruitment, hiring, promotion, lateral transfers, retentions, training, contracting, and subcontracting. No employer may recruit, hire, or otherwise employ any non-Indian for any employment position covered by this Ordinance, unless and until the TERO Commission has furnished written notice to such employer that no qualified Indians are available for such position.

13.4.1 Applicability

Unless clearly and expressly prohibited by federal and other tribal laws, this Ordinance shall apply to all employers, including but not limited to: The Council and all its programs, departments, and chartered entities or enterprises; private employers and independent contractors and subcontractors, including those performing work for the Council, the State of California, or the United States.

13.4.2 Covered Positions

The Indian Employment Preference Policy of this section shall apply to each and every job classification, skill area, or

craft recognized or utilized by an employer, including administrative, supervisory, and professional classifications.

13.4.3 Qualified Indians; Employment Criteria

An Indian shall be qualified for employment in a position if he or she meets the minimum threshold requirements for such position, and such Indian shall be accorded the preferences to which he or she is entitled under this Ordinance. No employer may utilize any employment criterion that is not legitimately related to the performance of the position.

13.4.4 Eligible Indians

(A) Hoopa Valley Tribe and its Entities. The Hoopa Valley Tribe and its programs, departments, and chartered entities and enterprises shall extend Indian preference according to the following priorities:

(1) Members of the Hoopa Valley Tribe;

(2) Indian spouses of members of the Hoopa Valley Tribe;

(3) Other resident local Indians.

(4) Other Indians.

13.4.5 Notice of Employee Rights. All employers subject to this Ordinance shall prominently display a notice to all employees and applicants for employment of their rights under this Ordinance and other tribal departmental grievance procedures.

13.4.6 Employer Retaliation Prohibited. It shall be violation of this Ordinance for any employer to take any adverse personnel or hiring action, or to retaliate in any way, against any person who attempts to exercise rights protected under this Ordinance. Employers found by the Commission, pursuant to an adjudicatory hearing, to have engaged in retaliation shall be subject to appropriate sanctions to be imposed by the Commission. The Commission may in its discretion either hold a hearing or file action in Tribal Court to review an allegation of unlawful retaliation. The Tribal Court is authorized to issue temporary injunctions for enforcement of this provision to prevent unlawful conduct.

13.5 ESTABLISHMENT OF TERO TAX AND FEES

There is hereby established a TERO tax to be paid to the TERO Commission by each prime contractor, and by each employer operating within the exterior boundaries of the Hoopa Reservation, whose total contract or annual gross revenues is $1,000.00 or more. The tax shall be equivalent to one percent (1%) of the total gross value of any contract performed within the Reservation or of the total annual gross revenues. The TERO tax may be paid in incremental payments, subject to the prior written approval of the Commission. The proceeds of the tax shall be placed in a separate account for use in implementing this Ordinance and shall be governed under guidelines approved by the Tribal Fiscal Department. A contractor or employer failing to pay the TERO Tax shall be subject to sanctions imposed by the Commission.

13.6 SPECIAL REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS

The requirements of this Section apply to all employers engaging in commercial or employment activities within the Reservation pursuant to public or private contract:

13.6.1 Certification by Commission

Any contractor or subcontractor claiming eligibility for Indian preference under this title shall submit documentation acceptable to the Commission, pursuant to its authority under Section 13.3.2 (B)(3), that is an Indian firm as defined in Section 13.2.4.

13.6.2 Indian Preference Plan

Each contractor shall include in its bid an Indian Preference plan for the master contract and any subcontracts. The plan shall indicate the name of the proposed subcontractor, whether it is an Indian-owned firm and if not, information on the good faith steps taken to identify Indian firms for the subcontract. A contractor may not refuse to employ an Indian subcontractor for the reason of price so long as the Indian firm's price is within five percent (5%) of the lowest bid, calculated by multiplying the lowest bid by 105%. A contractor may not refuse to employ an Indian subcontractor for the reason that a non-Indian firm is more qualified so long as the Indian firm satisfies the threshold requirements for technical qualifications.

13.6.3 Failure to Submit Indian Preference Plan

An apparent successful bidder who fails to submit an Indian preference plan prior to award of the contract shall be

considered a non-responsive bidder for the purpose of awarding the contract.

13.6.4 Amendments to Plan

If awarded the bid, the contractor may not deviate from the plan or add or delete any existing new subcontracts or subcontractors without the written consent of the Contracting Officer or his designee and notice to the Commission. Any amendments to the Indian Preference Plan must be in writing and approved prior to the date of implementation.

13.6.5 Bid Shopping Prohibited

A contractor is prohibited from engaging in bid shopping as a means of avoiding its Indian subcontract preference obligations. Bid shopping is defined as any practice which a bidder or contractor informs a prospective subcontractor that it will receive a subcontract only if it offers a price lower than that proposed by another firm.

13.7 JOB CATEGORIES

Employers or subcontractors employed by a primary contractor under one or more contracts totaling at least $10,000 shall not participate in more than one area of the overall project for which such employer or subcontractor is employed. A superintendent or any person in a similar capacity employed by the primary contractor shall not be employed in any other aspect of said project.

13.7.1 Identification of Regular, Permanent Employees

Prospective contractors and bidders shall identify regular, permanent employees, including those included in subcontractors, in the bid package. Such employees may be employed on the project whether or not they are Indian. A regular, permanent employee is one who is and has been on the contractor's or subcontractor's annual payroll, or is an owner of the firm. The fact that an individual has worked for the contractor on previous projects shall not of itself qualify that individual as a regular, permanent employee. Exceptions for superintendents and other key personnel may be granted by the Commission on a case-by-case basis. Any contractor or subcontractor which fills vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract on the Hoopa Reservation shall provide evidence acceptable to the Contracting Officer and the Commission that such actions were not intended to circumvent the provisions of this Ordinance.

13.7.2 Lay-Offs

No Indian Worker shall be laid off as long as a non-Indian worker in the same craft is still employed, not as long as the Indian meets threshold qualifications for the job, unless such non-Indian has been employed for more than 90 days longer than such Indian. If the contractor lays off by crews, qualified Indians shall be transferred to any crew that will be retained, as long as there are non-Indians in the same craft employed elsewhere on the Reservation under the same contract.

13.7.3 Existing Contracts, Employers

Any existing contracts or other work presently operating under an agreement with the Tribal Employment Rights Office will continue under the same written guidelines and rules. Each employer shall provide to the Commission a list of employees and their Indian affiliation, if any, as part of the implementation of this Ordinance.

13.7.4 Reporting Requirements

Each employer shall submit monthly reports to the Commission on a form provided indicating the number of employees, including a separate tally of Indians, it has on its work force, monthly hires and fires, and other information as may be identified on the form. An employer who fails to submit monthly reports shall be subject to sanctions provided under this Ordinance.

13.8 IMPLEMENTATION

In implementing the requirements of this Ordinance, the Commission may:

13.8.1 Numerical Hiring Goals

Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire.

13.8.2 Training Programs

Require employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Indians on the Hoopa Reservation. Such training programs must have prior approval from the Contracting Officer and should preferably be included in the bid package. If training programs are not included in the bid package, the Commission shall give due consideration to the increase in cost, if any, for preforming the program.

13.8.3 Attend and monitor all job interviews as a non-voting participant.

13.8.4 Prohibit an employer from establishing extraneous qualification criteria or other requirements that serve as barriers to Indian employment.

13.8.5 Enter into agreements, subject to approval by the Hoopa Tribal Council, with unions and other employers to insure compliance with this Ordinance.

13.8.6 Require employers to give preference in the award of contracts and subcontracts to Indian-owned firms and businesses.

13.8.7 Establish programs to provide counseling and support to Indian Workers to assist them to retain employment. Employers may be required to participate in and/or cooperate with such support and counseling programs.

13.8.8 Issue Permits

Issue permits for implementation and provisions of this Ordinance and other agreements entered into under the authority of this Ordinance.

13.9 ENFORCEMENT BY TERO COMMISSION

In implementing this Ordinance the Commission shall have the following powers of enforcement:

13.9.1 Investigation, Monitoring

To investigate and monitor complaints, concern, and inquiries regarding Indian preference and other employment related concerns.

13.9.2 Issue Notices of Non-Compliance and Compliance Orders

To issue notices of non-compliance with this Ordinance or other rules, regulations, or policies of an employer, Council, or other tribal entity, and to issue such orders as reasonably necessary to remedy the non-compliance.

13.9.3 Citations, Subpoenas, and Penalties

To issue citations and subpoenas to employers regarding violations of this Ordinance or other written personnel policies of the Council or tribal entities, and to impose such civil penalties, including fines, as may be reasonably necessary to remedy the consequences of a violation of this Ordinance or to deter future violations.

13.9.4 Hearings

To hold such hearing as may be necessary to resolve complaints and hear concerns regarding the matters covered under this Ordinance.

13.9.5 File and Defend Cases in Tribal Court

To bring or defend a complaint in Tribal Court for enforcement of this Ordinance, personnel policies of the Council, or other tribal entity against any employer within the exterior boundaries of the Hoopa Reservation.

13.10 TRIBAL COURT

Appeals of decisions of the TERO Commission may be filed under the rules of the Tribal Court. The Tribal Court is hereby authorized to hear and dispose of complaints and other actions brought under this Ordinance and other personnel policies of the Council and other entities.

13.11 LEGAL REPRESENTATION

In carrying out its responsibilities under this Title, the Commission shall consult with the Legal Department, and may request representation in proceedings in Tribal Court in complex cases, in cases of major impact, or in other cases as the workload of the Commission and the Legal Department warrant. There is hereby established a presumption, rebuttable only upon a clear written explanation by the Legal Department that no ethical conflict in interest is present, in which the Tribal Chairman and in his discretion the Council concerns, that the Legal Department shall not defend any entity of the Tribe in a proceeding before the TERO Commission or in Tribal Court.

13.12 PRINCIPLES OF CONSTRUCTION; SEVERABILITY; SOVEREIGN IMMUNITY PRESERVED

13.12.1 This Ordinance is remedial legislation intended to rectify the long-standing problem of severe under-employment of Hoopa tribal members and other Indians living in the Reservation community. Accordingly, it is to be construed liberally to achieve its purposes. Doubtful issues are to be resolved in favor of a right to file a grievance and to obtain judicial review.

13.12.2 If any part of this Ordinance is found to be invalid for any reason, it is the intent of the Council that the remaining provisions remain in force to the maximum extent possible, and that they continue to be construed according to the provisions of this Section.

13.12.3 Except as expressly provided herein, nothing in this Ordinance is to be construed as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, nor as consent by the Tribe to bring an action against the Tribe, its officers, or any of its departments or entities.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council

ORDINANCE NO. 2-80, AS AMENDED
APRIL 27, 1995
S U B J E C T :
STANDARDS AND PROCEDURES FOR EMPLOYMENT PRACTICES AND
APPLICATION OF INDIAN PREFERENCE

is composed of eight members, of which_____ ( ) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held this _____th day of _____, 19_____; that this Ordinance was adopted at said meeting by a vote of _____ ( ) for and _____ ( ) against; and that since its adoptions this Ordinance has not been altered, rescinded, or amended in any way.

DATED THIS _____TH DAY OF _____, 19_____.

_____
_____, CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

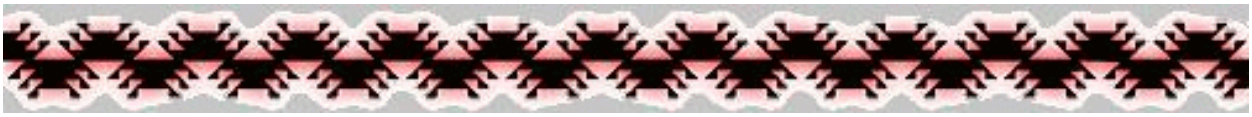
ATTEST:

_____
_____, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

TITLE 14 OF THE HOOPA TRIBAL CODE

PURPOSE: CHILD WELFARE CODE

ADMINISTRATIVE RECORD: Amended September 18, 1997



CHILD WELFARE CODE

(amended September 18, 1997)

TITLE 14

HOOPA VALLEY TRIBAL CODE

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TITLE 14

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 2-90

DATE APPROVED: Amended September 18, 1997

SUBJECT: TO ESTABLISH RULES, PROCEDURES AND CRITERIA FOR GOVERNING ADOPTION AND FOSTER HOME PLACEMENTS AND OTHER ACTIVITIES INVOLVING INDIAN CHILDREN UNDER THE AUTHORITY OF THE INDIAN CHILD WELFARE ACT.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (1) of this Constitution and Bylaws authorized the Hoopa Valley Business Council, " To safeguard and promote the peace, safety, morals, and general welfare of the Hoopa Valley Indians....", and

WHEREAS: The Hoopa Valley Tribe has by referendum vote in June 1985 established as a Tribal priority the enactment of a children's code to assure the protection of Indian children and their cultural heritage under the authority of Tribal and Federal Law pursuant to the Indian Child Welfare Act, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council, under its authority under the Constitution of the Hoopa Valley Tribe and under as authorized by referendum vote of the Hoopa membership, does hereby enact this Child Welfare Code of the Hoopa Valley Tribe As Title 14 of the Law and Order Code of the Hoopa Valley Tribe and that this Code shall be in full force and effect.

CHAPTER 1: GENERAL PROVISIONS

14.0 SHORT TITLE
The short title of this Act shall be the Child Welfare Code of the Hoopa Valley Tribe.

4.1.1 AUTHORITY
The membership of the Hoopa Valley Tribe did in June 1983 approve by referendum election the Hoopa Valley Business Council to enact a Child Welfare Code for reassumption of child welfare matters under the authority established in the Indian Child Welfare Act.

14.1.2. ESTABLISHMENT OF TRIBAL CHILDREN'S COURT
There is hereby established a Children's Component of the Hoopa

Tribal Court with the authority to enforce this Code. Except as provided herein, the procedures of the Tribal Children's Court shall be the same those used by the Tribal Court.

14.1.3. APPOINTMENT OF CHILDREN'S COURT JUDGE
The Chief Judge of the Hoopa Tribal Court shall appoint from within the composition of Tribal Court Judges a judge whose primary function shall be to hear court actions brought under the authority of this Code.

14.1.4. PURPOSE
The purposes of this Code are defined as follows:

14.1.4.1 To secure for each child subject to these provisions such care and guidance, preferably in his/her own home, as will best serve his/her won home, as will best serve his/her welfare and the interests of the Hoopa Valley Tribe and society in general;

14.1.4.2 To preserve and strengthen family ties whenever possible, including improvement of the home environment;

14.1.4.3 To protect and preserve the Tribal heritage and cultural identity of the child;

14.1.4.4 To remove a child from the custody of his/her parents ONLY when his/her welfare and safety or the protection of the public would otherwise be endangered; and

14.1.4.5 To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him/her in becoming responsible and productive manner of his tribe and society in general.

14.1.5.0 DEFINITIONS
As used in this title, unless the context otherwise requires:

14.1.5.1 "ADJUDICATORY HEARING" means a hearing to determine whether the allegations of a petition are supported by evidence beyond a reasonable doubt or the allegations of a petition are supported by a preponderance of the evidence.

14.1.5.2 "ADULT" means a person eighteen years of age or over; except that any minor eighteen years of age or over under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his eighteenth birthday, or concerning whom a petition has been filed for his adoption other than under this Title, shall be referred to as a child.

14.1.5.3 "CHILD-INDIAN" or "INDIAN CHILD" means a an unmarried

person who is an enrolled member of a federally recognized Tribe who is under eighteen years of age; an unmarried person who is eligible for membership in the Hoopa Valley Tribe and is under eighteen years of age; or an unmarried person who is an immediate descendant of an enrolled member of the Hoopa Valley Tribe and is under eighteen years of age. Whenever necessary, the singular form shall be interpreted as the plural, i.e., child interpreted as children.

14.1.5.4 "CHILD-MEMBER" means, for the purposes of this Code, a child under eighteen years of age who is an enrolled member or who is eligible for membership in the Hoopa Valley Tribe.

14.1.5.5 "CHILD CARE CENTER" means a facility licensed and approved pursuant to law. If such facility is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

14.1.5.6 "CHILD IN NEED OF SUPERVISION" means any child:

(a) who has repeatedly disobeyed reasonable and lawful commands or directives of his parents, or legal guardian, or other custodian: or

(b) who is willfully and voluntarily absent from his home without the consent of his parent or guardian or legal custodian for a substantial length of time or without intent to return: or

(c) who being subject to compulsory school attendance, the child is willfully and voluntarily absent from school in violation of law.

14.1.5.7 "CHILD PROTECTION AGENCY" means an agency licensed or approved pursuant to law. If such agency is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

14.1.5.8 "COMMIT" means to transfer legal custody.

14.1.5.9 "DELINQUENT CHILD" means:

(a) a child who has violated any federal, state, or tribal law or any lawful order of the court made under this act; to

(b) a child who has violated traffic laws or traffic ordinances.

14.1.5.10 "DEPRIVATION OF CUSTODY" means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

14.1.5.11 "DETENTION" means the temporary care of a child who

requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

14.1.5.12 "DISPOSITIONAL HEARING" Means a hearing to determine what order of disposition should be made concerning a child adjudicated as a delinquent, in need of supervision, or neglected or dependent. Such hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.

14.1.5.13 "EXTENDED FAMILY--RELATIVE" means a member of the family related by blood who is an enrolled member of the tribe.

14.1.5.14 "FAMILY CARE HOME" means a facility licensed and approved pursuant to law. If such facility is located outside the tribe's jurisdiction it shall be licensed or approved as required by the jurisdiction in which the facility is located.

14.1.5.15 "GROUP CARE FACILITIES AND HOMES" means places other than foster family care homes providing care for small groups of children.

14.1.5.16 "GUARDIANSHIP OF THE PERSON" means the duty and authority vested by court action to make major decisions affecting a child including, but not limited to:

(a) the authority to consent to marriage, to enlistment in the arm forces, and to medical and surgical treatment;

(b) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child.

(c) the authority to consent to the adoption of a child when the parent/child relationship has been terminated by judicial decree; and,

(d) the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

14.1.5.17 "INDIAN CUSTODIAN" means an Indian person in whose care a child is entrusted by informal agreement between that person and the child's parent.

14.1.5.18 "CHILDREN'S COURT OR COURT" means the Children's Court of the Hoopa Valley Tribe established herein to handle child matters.

14.1.5.19 "LEGAL CUSTODY" means the right to the care, custody,

and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.

14.1.5.20 "NEGLECT OR DEPENDENT CHILD" OR " DEPENDENT AND NEGLECTED CHILD " MEANS A CHILD:

(a) whose parent, guardian, legal custodian, or Indian custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse, including physical abuse and sexual exploitation, and prevent it from recurring.

(b) who lacks proper parental care through the actions or omissions of the parent, guardian, legal custodian, or Indian custodian.

(c) whose environment is injurious to his welfare;

(d) whose parent, guardian, legal custodian, or Indian custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other necessary care for his health, guidance, or well-being;

(e) who is homeless, without proper care, or not domiciled with his parent, guardian, legal custodian, or Indian custodian;

14.1.5.21 "PARENT" means either a natural parent of a child or a parent by adoption;

14.1.5.22 "PROTECTIVE SUPERVISION" means a legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the court, the Tribal Social Service Department, or other agency designated by the court.

14.1.5.23 "RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES" means those rights and responsibilities remaining with a parent after legal custody, guardianship of the person, or both have been not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

14.1.5.24 "SHELTER" means the temporary care of a child in physically unrestricting facilities pending court disposition or

execution of a court order for placement.

14.1.5.25 "TERMINATION OF PARENT/CHILD LEGAL RELATIONSHIP" means the permanent elimination by court order of all parental rights and duties, including any residual parental rights and responsibilities.

14.1.5.26 "TRANSFER PROCEEDINGS " means any proceeding in the tribal court to accept or decline transfer from any state court or other tribal court of any court proceeding for the foster care placement of or termination of parental rights to any Indian child.

14.1.5.27 "TRIBAL PRESENTING OFFICER" means a representative of the Tribe who is officially designated to present issues on behalf of the Tribe arising under this code.

14.1.6 JURISDICTION

14.1.6.1 The Children's Court shall have exclusive jurisdiction, with respect to the matters addressed in this Children's code, over all Indian children resident or domiciled within the exterior boundaries of the Hoopa Valley Indian Reservation or who are wards of the Court. The Court may, or if compelling reason is demonstrated, decline transfers of jurisdiction from any other court pursuant to Title I, Section 101 (b) of Pub. Law 95-608, the Indian Child Welfare Act, 25 U.S.C. sec. 1911 (b), over any case involving a Hoopa Indian child. The Court may also offer to transfer jurisdiction of a case to any other court if it appears that another court is a proper forum.

14.1.6.2. Except as otherwise provided by law, the Children's Court shall have exclusive jurisdiction in proceedings under the authority of this title:

(a) Concerning any child in need of supervision;

(b) Concerning any child who is neglected or dependent;

(c) Concerning any transfer proceeding;

(d) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the children's court jurisdiction.

(e) For the issuance of orders of support of minor children.

(f) To determine the parentage of a child and to make order of support in connection therewith.

(g) For the adoption of a child and to make an order of support

in connection therewith.

(h) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.

14.1.6.3 Except as other wise provided by law, the Children's Court shall have jurisdiction in proceedings concerning any adult:

(a) Who induces, aids, or encourages a child to violate any federal, tribal, or state law.

(b) Who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction.

(c) Who violates any duly served order of the court.

14.1.6.4 The court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his/her case.

14.1.6.5 Nothing in this section shall depriver the tribal court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child when the question of legal custody is incidental to the determination of a cause in the tribal court, except that;

(a) If a petition involving the same child is pending in juvenile court or if continuous jurisdiction has been previously acquired by the juvenile court, the tribal court shall certify the question of legal custody to the juvenile court; and

(b) The tribal court at any time may request the children's court to make recommendations pertaining to the guardianship or legal custody.

14.1.6.6 Where a custody award has been made in the tribal court in a dissolution of marriage action or another proceeding and the jurisdiction of the tribal court in the case is continuing, the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

14.1.6.7 The Tribal Council may enter into cooperative enforcement and service agreements with government agencies, other Indian tribes, organizations and individuals for the proper enforcement of this Code.

14.1.6.8 The Tribal Social Services Department may develop, subject to Council approval, rules, regulations and procedures

for determining the selection of cases to be handled and other matters arising under this Code.

14.1.6.9 For determining who is an Indian for purposes of this Code, the Tribal Enrollment Committee shall have such authority for children of enrolled members. The Bureau of Indian Affairs or the Indian tribe of either or both parents shall determine who is an Indian for non-member children.

14.1.7 INDIAN CHILD WELFARE ACT TRANSFERS

14.1.7.1 INDIAN CHILD WELFARE TRANSFERS FROM STATE COURTS

(a) Pursuant to the Indian Child Welfare Act, any local or state court may transfer to the Children's Court herein any proceeding for the foster care placement of, or termination of parental rights to, member or Indian child within the jurisdiction of the court, if the Children's Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Children's Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer proceeding initiated by the Tribe after the order of transfer is received by the court clerk.

(c) A court transferring a case to the Tribe's jurisdiction under subsection (a) of this section shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court.

14.1.7.2 INDIAN CHILD WELFARE ACT TRANSFER FROM OTHER TRIBAL COURTS

(a) When requested by another tribal court, by specific agreement, to have Hoopa jurisdiction apply, any proceeding over which this Court has jurisdiction pursuant to this Title, may be transferred to the Hoopa Tribal Children's Court.

(b) If the Court finds that tribal jurisdiction shall apply, transfer proceedings will be made pursuant to subsection 1 of this section.

14.1.7.3 INDIAN CHILD WELFARE ACT TRANSFERS FROM HOOPA TRIBAL CHILDREN'S COURT

(a) The Hoopa Tribal Children's Court may transfer to the juvenile court of another tribe any proceeding over which this court has jurisdiction pursuant to this chapter, and if the children's court finds that the transfer would not be detrimental

to the best interest of the child.

(b) If transfer to the other tribe is in the best interest of the child, the Children's Court shall transmit all documents, legal and social records or certified copies thereof, to the receiving court.

14.1.8 LEGAL REPRESENTATION

14.1.8.1 RIGHT TO COUNSEL - OTHER THAN HOOPA TRIBE

(a) At his first appearance before the Court, the child and his parents, guardian, or other legal custodian shall be fully advised by the Court of their legal rights, including the right to be represented by counsel, at his own expense, at every stage of the proceedings.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent such are available at no fee, shall be appointed by the court in proceedings Child in Need of Supervision or under Child who is neglected and/or dependent, when termination of the parent/child legal relationship is stated as a possible remedy in the summons.

(c) The Court may appoint counsel without request if it deems representation by counsel necessary to protect the interest of the child or of other parties.

14.1.8.2. REPRESENTATION OF THE HOOPA TRIBE

(a) Tribal Social Services Department is authorized to act as the Presiding Officers and to represent the position of the Tribe in Tribal Court Proceedings arising under this Code, and in proceedings in state courts that are subject to transfer of jurisdiction to the Tribal Court under the Indian Child Welfare Act or in which the Tribe has a right to intervene as a party.

(b) The Tribal Social Services staff shall develop and maintain a file on any proceedings in which tribal participation is contemplated, as set forth in section (a) above. Such file shall include all papers filed in the proceedings, and social worker or related assessments, whether or not filed in court.

(c) The Social Service Department staff may consult with the Legal Department in fulfilling their responsibilities under this Section. If the Department staff desire Legal Department representation in the proceeding, the case file shall be forwarded to the Legal Department at the time the request is made for such representation.

(d) The legal Department shall provide a written recommendation

to the Social Department and to the Tribal Chairman regarding the need for Legal Department representation in any judicial proceeding. Legal Department representation may take into the workload on other priority matters, and the significance or difficulty of the legal issues presented in the proceeding. The Tribal Chairman is authorized to approve the Legal Department's participation in the proceeding, or the chairman may in his discretion seek the advise of the Council.

(e) In any proceeding in which the Tribe is represented by the Legal Department, the Social Service Department shall continue to be responsible for maintaining and updating the case file, including supplemental or other investigative work as requested by the Legal Department.

14.1.9 HEARINGS, PROCEDURES, RECORDS & PUBLICITY

14.1.9.1 The rules and procedure set forth in this Title shall apply in all proceedings under this section.

14.1.9.2 Hearings shall be held before the court without a jury in closed session and may be conducted in a informal manner, except in termination and foster proceedings. The Court shall admit only such persons as it deems proper, including persons whom the parents or guardians wish to be present. Hearings may be continued from time to time as ordered by the Court.

14.1.9.3 A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a mediator, unless waived by the parties in the proceedings and so ordered by the judge or mediator.

14.1.9.4 When more than one child is named in a petition alleging need of supervision, or neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

14.1.9.5 Children's cases shall be heard separately from adult cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

14.1.9.6 The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in proceedings shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars (500).

14.1.10 SOCIAL STUDY AND OTHER REPORTS

14.1.10.1 Unless waived by the Court, the Tribal Social Services Department or other agency designated by the court shall make a social study and report in writing in all Children's cases, except:

(a) If the allegations of a petition filed are denied, the study shall not be made until the court has entered an order of adjudication as provided herein; and

(b) The study and investigation in all adoptions shall be made as provided herein.

14.1.10.2 For the purpose of determining proper disposition of a child, written reports and other material relation to the child's mental, physical, and social history may be received and considered by the Court along with along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party shall require that the person who wrote the subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian or other party to the proceedings so requires.

14.1.10.3 The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in this section.

14.1.11 EFFECT OF PROCEEDINGS

14.1.11.1 No adjudication of disposition in proceedings shall impose any civil disability upon a child or disqualify him from any tribal personnel system or military service application or appointment or from holding tribal office.

14.1.11.2 No adjudication, deposition, or evidence given in proceedings shall be admissible against a child in any criminal or other action or proceeding.

14.1.12 MEDIATOR-QUALIFICATIONS/DUTIES

14.1.12.1 The Children's Court may appoint one or more mediators to hear any case or matter under its jurisdiction. Mediators shall serve at the pleasure of the Court, unless otherwise provided by law.

14.1.12.2 Mediators may conduct hearings in the manner provided

for the hearing of cases by the Court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the mediator shall inform the parties that they have the right to a hearing before the Children's Court Judge in the first instance, except on probable cause hearings, and that they may waive that right, but that by waiving that right, they are bound by the findings and recommendations of the mediator, except as provided in subsection (4) Of this section. If a request is made for this section. If a request is made for a hearing before a Children's Court judge in the first instance, the mediator shall terminate the hearing and transmit the case to the appointing judge.

14.1.12.3 At the conclusion of a hearing the mediator shall:

(a) Transmit promptly to the Children's Court judge all papers relating to the case together with his findings and recommendations in writing.

(b) Advise the parties before him of his findings and recommendations.

(c) Advise the parties of their right to review of the findings and recommendations by the Children's Court Judge.

14.1.12.4 A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the mediator.

14.1.13 COURT RECORDS-INSPECTION-EXPUNGEMENT

14.1.13.1

(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys, and other parties in proceedings before the court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in adoption and relinquishment shall be confidential and open to inspection only by court order.

(b) With consent of the Court, records of the court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in relinquishment and adoption proceedings.

(c) Probation counselor's records and all other reports of social and clinical studies shall not be open to inspection, except by consent of court.

14.1.13.2

(a) Any person may petition the court for the expungement of his record and shall be so informed at the time of adjudication, or the court, on its own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon filing of a petition or entering of a court order, the Court set a date for a hearing and shall notify the tribal prosecutor and anyone else whom the court has reason to believe may have relevant information related to the expungement of the record.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

(i) The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this Title since the termination of the court's jurisdiction.

(ii) No proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under this Title is pending or being instituted against him; and

(iii) The rehabilitation of the person has been attained to the satisfaction of the court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person and the court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records and only to those person named in such petition.

14.1.13.3 In any proceedings under this Title in which the court orders the petition dismissed, the court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the court's motion.

14.1.14 RIGHT OF APPEALS

Appeals will be dealt with pursuant to appellate procedures as provided herein.

CHAPTER 2

14.2.0 TEMPORARY CUSTODY, DETENTION AND SHELTER

14.2.1 TAKING CHILDREN INTO CUSTODY

14.2.1.1 A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others; or

(b) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or legal custodian.

(c) When an Indian Child Welfare or Social Services Department worker reports a case and there is probable cause to believe that the child is in danger.

14.2.1.2 A Tribal Law Enforcement Officer accompanied by an employee of the Social Service Department or their designated representative may take a child into temporary custody:

(a) Under any of the circumstances stated in subsection 14.2.1.1 of this section: or,

(b) If he has violated the conditions of probation and he is under the continuing jurisdiction of the Children's Court.

14.2.1.3 The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

14.2.2 DUTY OF OFFICER-NOTIFICATION-RELEASE OR DETENTION-RECORDS

14.2.2.1 When a child is taken into temporary custody, the

officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him/her that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, an employee of the Social Service Department, or in whose physical custody the child is placed.

14.2.2.2 The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court at a time set or to be set by the court.

14.2.2.3 Except as provided in paragraph (a) of this subsection, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, or other necessary information and to contact his parents, guardian, or legal custodian.

(a) If he is not released as provided in subsection 14.2.2.2, he shall be taken directly to the court or to the place of detention or shelter designated by the court without unnecessary delay.

14.2.2.4 The officer or other person who takes a child to a detention or shelter facility shall notify the court and ant agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

14.2.2.5 The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(a) When the child has escaped from an institution to which he has been committed.

(b) By order of the court.

14.2.2.6 No fingerprint, photograph, name, address, or other

information concerning identity of a child taken into temporary custody or issued a summons under the provision of this chapter may be transmitted to the Federal Bureau of investigation or any other person or agency except a local law enforcement agency and Social Service Department when necessary to assist in apprehension or to conduct a current investigation, or when the court orders the child to be held for criminal proceedings.

14.2.3. DETENTION AND SHELTER - HEARING - TIME LIMITS - RESTRICTION

14.2.3.2 A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the Tribal Social Services Department and shall not be placed in detention.

14.2.3.2 When a child is placed in a detention facility or in a shelter facility designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or if a parent or legal guardian cannot located within the Tribe's jurisdiction, the person with whom the child has been residing, and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such detention hearing within 48 hours, excluding Saturdays, Sundays and court holidays.

14.2.3.3 No child taken into custody pursuant to this Title shall be held longer than 48 hours, at which tine the child may be released to the custody of parent, guardian, or legal custodian. If the child cannot be released to his parent, guardian, or legal custodian, he shall be released to a representative of the Tribal Social Services Department or, upon prior written or verbal approval of the court, a responsible adult. If the child is not released to his parents, guardian, or legal custodian, the court shall hold a detention hearing pursuant to subsection 14.2.3.2.

(a) Notwithstanding the provisions of subsection 14.2.3.2, a child who is alleged to be a runaway from another tribal facility or jail up to seven (7) days, at which time arrangement may be made for returning the child to his parent, guardian, or legal custodian.

(b) if it appears that any child being held in detention or shelter may be mentally ill as defined under this Title or developmentally disabled the court shall place the child is a designated facility approved by the court for a 72-hour treatment and evaluation.

14.2.3.4 The court may at any time order the release of any

child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time to be set by the court.

14.2.3.5 After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care. When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care. When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care if the parent, guardian, or legal custodian are not immediately available.

14.2.4 TEMPORARY SHELTER - CHILD'S HOME

14.2.4.1 The court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Tribal Social Services Department, which will have emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Tribal Social Services Department, to resume charge of the child, but in no event shall such period of time exceed 72 hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Tribal Social Services Department, to resume charge of the child. The director of the Tribal Social Services Department shall designate in writing the representatives of these departments authorized to perform such duties.

14.2.5 SEARCH WARRANTS FOR THE PROTECTION OF CHILDREN

14.2.5.1 A search warrant may be issued by the Children's Court to search any place for the recovery of any child within the jurisdiction of the court believed to be a child in need of supervision, or a neglected and/or dependent child.

14.2.5.2 Such warrant shall be issued only on the condition that the application for warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court:

(b) Name and describe with particularity the child sought;

(c) State that the child is believed to be a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched.

(e) State the reasons why it is necessary to proceed pursuant to this section.

14.2.5.3 If the court is satisfied that grounds for the application exist of that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched.

14.2.5.4 The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.

14.2.5.5 The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

14.2.5.6 The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

14.2.5.7 A copy of the warrant, the application thereof, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

14.2.5.8 If the child is found, the child may be taken into custody in conformance with the provision of this Title.

14.2.5.9 The executed warrant shall be returned to the court.

CHAPTER 3: PETITION, ADJUDICATION, AND DISPOSITION

14.3.1 PETITION INITIATION - PRELIMINARY INVESTIGATION - INFORMAL ADJUSTMENT

14.3.1.1

(a) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the tribal presenting officer who shall determine whether the

interests of the child or of the community require that further action be taken.

(b) If the tribal presenting officer determines that the interests of the child or of the community require that further action be taken, he may file a petition on a form specified which shall be accepted by the court.

(c) If the tribal presenting officer is unable to determine whether the interests of the child or of the tribe require that further action be taken from information available to him, he may refer the matter to the tribal social services department, or other agency designated by the court for a preliminary investigation and recommendations as to filing a petition or as to initiation an informal adjustment under subsection 14.3.1.3.

(i) Whether probable cause exists to believe the minor is a child in need of supervision or is a neglected child or a dependent child; and ,

(ii) Whether shelter care is necessary pending further proceedings.

14.3.1.2 Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the further action be taken, which investigation shall be made by the tribal social services department, or any other agency designated by the court. On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the tribe or of the child;

(b) Authorize a petition to be filed; or

(c) Make whatever informal adjustment is practicable without a petition if:

(i) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and,

(ii) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

14.3.1.3 Efforts to effect informal adjustment may extend no longer than six months. In any informal adjustment, the court or its designated agency shall , during the period of informal

adjustment, periodically counsel and guide the child and his parents, guardian, or legal custodian in a constructive manner designed to promote rehabilitation as well as requiring any one or more conditions of probation.

14.3.1.4

(a) Upon receipt of a report filed by a law enforcement agency, by an employee of a public or private school, or by a medical doctor, or any other person required to report pursuant to this Title indicating that a child has suffered abuse as defined herein and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report from any person other than those identified herein, the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

14.3.2 PETITION FORM AND CONTENT

14.3.2.1 The petition and all subsequent court documents in any proceedings brought under this Title shall be entitled "The Hoopa Valley Tribe in the interest of ...., a child (or children) and concerning ...., Respondent". The petition shall be verified, and the statement in the petition may be made upon information and belief.

14.3.2.2 The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. The petition shall also state the name, age, and resident of the child and the names and residences of the parents, guardian, or other legal custodian if known.

14.3.2.3 All petition filed alleging the dependency or neglect of a child shall include the following statement: "Termination of the parent/child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained." A separate hearing must be held before such termination is ordered. Termination of the parent/child legal relationship means that the child who is the subject of this petition would be eligible for adoption.

14.3.3 SUMMONS-ISSUANCE-CONTENTS-SERVICE

14.3.3.1 After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent/child legal relationship is a possible remedy under the proceedings. Other

legal rights of the child, his parents or guardian, or any other respondent, at his own expense, to have an attorney present at the hearing on the petition. The court may appoint counsel for child.

14.3.3.2 No summons shall be issued to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing, but any such person shall be provided with a copy of the petition and summons upon appearance.

14.3.3.3 The summons shall require the person or persons having the physical custody of the child to appear and to bring the child before the court at the time and place stated. If the person or persons so summoned are not the parents or guardian of the child, the summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for the hearing.

14.3.3.4 The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

14.3.3.5 If it appears that the welfare of the child or of the tribe requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

14.3.3.6 The court may authorize payment of necessary travel expenses incurred by persons required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the tribal court.

14.3.3.7 Summons shall be served personally, pursuant to the tribal rules of civil procedure. If personal service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

14.3.3.8 If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found within the tribal jurisdiction, the fact of the child's presence within the tribe's jurisdiction shall confer jurisdiction on the court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(a) When the residence of the person to be served is outside the

Hoopa Reservation, a copy of the summons and petition shall be sent certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five (5) days after return of the requested receipt.

(b) When the person to be served has no residence within the Hoopa Reservation and his place of residence cannot be determined after due diligence, service may be by publication.

14.3.4 CONTEMPT-WARRANT

14.3.4.1 Any person summoned or required to appear who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

14.3.4.2 If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child.

14.3.4.3 When a parent or other person who signed a written promise to appear and bring the child to court who has waived or acknowledged service fails to appear with the child on the date set by the court, a bench warrant may be issued for the parent or other person, the child, or both.

14.3.5 APPOINTMENT OF GUARDIAN AD LITEM

14.3.5.1 The court may appoint a guardian ad litem to protect the interests of a child in proceedings when:

(a) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(b) The court finds that there may be a conflict of interest between the child and his parent, guardian, or other custodian; or

(c) the court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

14.3.5.2 The court may appoint a guardian ad litem for any parent in proceedings who has been determined to be mentally ill by a court of competent jurisdiction or is developmentally disabled; except that if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be

informed that a guardian ad litem has been appointed.

14.3.5.3 At the time any child first appears in court, if it is determined that he has no guardian of his person, the court shall appoint a guardian of the person of the child before proceeding with the matter.

14.3.5.4 In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the powers and duties specified by the Court.

14.3.6 ADJUDICATORY HEARING-FINDINGS-ADJUDICATION

14.3.6.1 At the adjudicatory hearing, which shall be conducted as provided herein, the court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning children in need of supervision or by a dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

14.3.6.2 When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent. In such event, the court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(a) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceedings.

(b) If it appears from the evidence that the child may be mentally ill or developmentally disabled the court shall proceed under section 14.3.7.

14.3.6.3 After making a finding but before making adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by the tribal social services department as the court may prescribe, if:

(a) Consent is given by the child and his parent, guardian, or other legal custodian after being fully informed by the court of

their rights in the proceedings, including their right to have an adjudication made either dismissing or sustaining the petition.

(b) Such continuation shall extend no longer than six months without review by the court. Upon review the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

14.3.7 MENTALLY ILL OR DEVELOPMENTALLY DISABLED CHILD - DEFINITIONS - PROCEDURE

14.3.7.1 Definitions:

(a) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(b) "Mentally ill person" means a person who is of such mental condition that he is in need of medical supervision, treatment, care or restraint.

(c) "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he or she lacks sufficient control judgment and discretion to manage their property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protective supervision, guidance, training, control, or care.

14.3.7.2 If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, the court shall order that the child be place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed 72 hours, excluding Saturdays, Sundays, and official holidays. A suitable facility for the purpose of examination shall be a facility designated by the court for 72 hour treatment and evaluation.

14.3.7.3 If the report of the examination made states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the court shall proceed as in any other tribal mental health commitment proceeding.

14.3.7.4 The court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

14.3.7.5 The court shall set a time for resuming the hearing on the original petition when:

(a) The report if the examination made states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required.

(b) The child is found not to be mentally ill.

(c) The report of the examination made states that the child is developmentally disabled but not mentally ill.

14.3.8 DISPOSITIONAL HEARING

14.3.8.1 After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interest of the child and the tribe. Such evidence shall include, but not necessarily be limited to, the social study and other reports.

14.3.8.2 The court may have the child examined by a physician, psychiatrist, or psychologist, and the court may place the child in a hospital or other suitable facility for this purpose.

14.3.8.3 The court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause on the motion of any interested party in any case where the termination of the parent/child relationship is a possible remedy.

(a) If the hearing is continued, the court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(b) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

14.3.9 ORDER OF PROTECTION

14.3.9.1 The court may make an order of protection in assistance of, or as a condition of, and decree of disposition authorized by this chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parents, guardian, or any other person who is a party to a proceeding.

14.3.9.2 The order of protection may require any such person:

(a) To stay away from a child or his residence;

(b) To permit a parent a visit a child at stated periods;

(c) To abstain from offensive conduct against a child, his parents or parents, guardian, or any other person to whom legal custody of a child has been given;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency:

(i) which has been given legal custody of a child;

(ii) which is providing protective supervision of a child by court order; or

(iii)To which the child has been referred by the court.

(f) To refrain from acts of commission or omission that tend to make a home am improper place for a child; or

(g) To perform any legal obligation of support.

14.3.9.3 When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause.

14.3.9.4 After notice and opportunity for a hearing is given to a person subject to an order of protection, this order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the tribe will be served thereby.

14.3.9.5 A person failing to comply with an order of protection without good cause may be found in contempt of court.

14.3.10 NEGLECT OF DEPENDENT CHILD-DISPOSITION

14.3.10.1 When a child has been adjudicated to be neglected or dependent, the court shall enter a decree of disposition. When the decree does not terminate the parent/child legal relationship, it shall include one or more of the following provisions which the court finds appropriate.

(a) The court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the court may impose.

(b) The court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the court may impose.

(c) The court may place legal custody in the tribal social services department or a child placement agency for placement in a family care home, or other child care facility.

(d) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive special care and may place the child in a hospital or other suitable facility for such proposes.

14.3.10.2 The court may enter a decree terminating the parent/child legal relationship of one or both parents pursuant to this Title.

(a) Upon the entry of a decree terminating the parent/child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock and whose father does not acknowledge paternity, the court may:

(i) Vest the tribal social services department or child placement agency with the legal custody and guardianship of the person of a child for the purpose of placing the child for adoption; or

(ii) Make any other disposition provided in this section that the court finds appropriate.

(b) Upon the entry of a decree terminating the parent/child legal relationship of one parent, the court may:

(i) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(ii) Make any other disposition that the court finds appropriate.

14.3.10.3 When a child has been adjudicated neglected because he has been abandoned by his parent or parents, the court may enter a decree terminating the parent/child legal relationship if it finds:

(a) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months

and during this period have not manifested to the to resume physical custody a firm intention to resume physical custody or to make a permanent legal arrangement for the care of the child; or

(b) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety (90) days and that reasonable efforts to identify and locate the child has failed.

14.3.10.4 In placing the legal custody or guardian of the person of a child with an individual or a private agency. The court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

14.3.10.5 The court may grant a new hearing as provided herein.

14.3.11 CHILD IN NEED OF SUPERVISION-DISPOSITION

14.3.11.1 When a child has been adjudicated as being in need of supervision, the court shall enter a decree of disposition containing one or more of the following provisions which the court finds appropriate:

(a) The court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the court may impose.

(b) The court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

(i) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(ii) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

(iii)The supervised work program assignment is made for a period of time consistent with the child's best interests, but not exceeding one hundred eighty (180) days.

(c) The court may place legal custody in the tribal social services department or a child placement agency for placement in a family care home or child care facility, or it may place the

child in a child care center.

(d) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he received other special care, and may place the child in a hospital or other suitable facility for such purposes.

(e) The court may require the child to pay for any damage done to persons or property, upon such conditions as the court may deem best, when such payment can be enforced without serious hardship or injustice to the child.

(f) The court may commit the child to an institution or group care facility designated by the court.

14.3.11.2 The court may grant a new hearing as provided herein.

14.3.12 COMMITMENT TO DESIGNATED INSTITUTION

14.3.12.1 When a child is committed to an institution designated by the court, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child. The designated institution shall provide the court with any information concerning a child committed to its care which the court at any time may require.

14.3.12.2 A commitment of a child to a designated institution shall be for an indeterminate period not to exceed two years. The tribal social services department may petition the committing court to extend the commitment for an additional period not to exceed two years. the petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the court shall granted or denied and shall notify all interested parties.

14.3.13 LEGAL CUSTODY-GUARDIANSHIP

14.3.13.1 Any individual, agency, or institution vested by the court with legal custody of a child shall have the rights and duties defined herein; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the court.

14.3.13.2 If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(a) An individual, agency, or institution having legal custody or guardianship of the person shall provide the court with any reports or other information concerning the care and treatment of the child at any time when required to do so by the court.

14.3.13.3 Any agency other than the social services department or institutions vested by the court with legal of a child shall have the right, subject to the approval of the court, to determine when and with whom the child shall live. No individual vested by the court with legal custody of a child shall remove the child from the state for move than thirty days without court approval.

14.3.13.4 A decree vesting legal custody of a child in an individual, institution, or agency other than the tribal social services department shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the court no later than six months after it is entered.

(a) The individual, institution, or agency vested with legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may determine, if it finds such renewal to be n the best interest of the child. The findings of the court and the supporting information shall be entered with the order renewing or denying renewal of the decree.

14.3.13.5 No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

14.3.14 NEW HEARING AUTHORIZED

14.3.14.1 A parent, guardian, custodian, or next friend of any child adjudicated under this chapter, or any person affected by a decree in a proceeding under this chapter, or any person affected by a decree in a proceeding under this chapter, may petition the court for a new hearing on the following grounds:

(a) That new evidence, which was not known or could not with due diligence have been made available to the original hearing and which might affect the decree, has Been discover; or

(b) That irregularities in the proceedings prevented a fair hearing.

14.3.14.2 If it appears to the court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

14.3.15 CONTINUING JURISDICTION

Except as otherwise provided in this Title, the jurisdiction of the court over any child adjudicated as neglected or dependent or in need of supervision shall continue until he becomes eighteen years of age unless terminated by a court order.

14.3.16 ADULT CASES-PROCEEDINGS-PENALTY-SUSPENSION

Proceedings concerning any adult who is alleged to have induced, aided, or encouraged a child to violate any law, the penalty for which may be a jail sentence or court order shall be conducted according to tribal civil court rules or other appropriate court as designated by the tribal court.

CHAPTER 4: CHILD ABUSE

14.4.1 LEGISLATIVE PURPOSE

The Hoopa Valley Tribe hereby declares that the complete reporting of child abuse is a matter of tribal concern and that in enacting this chapter it is the intent of the tribe to protect the children of the tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the tribe that the various federal, state, and tribal medical, mental health, education, and social services agencies through cooperative participation in the child protection teams authorized to be created in this chapter.

14.4.2 DEFINITIONS

As used in this chapter unless the context otherwise requires.

14.4.2.1 "ABUSE" or "CHILD ABUSE OR NEGLECT" means an act or omission which seriously threatens the health or welfare of a child. It means a physical injury which is inflicted by other than accidental means on a child by another person. Child abuse also means the sexual assault or exploitation of a child; willful cruelty or unjustifiable punishment of a child; corporal punishment or injury; neglect of a child; abuse in out of home care; or emotional abuse of a child.

(a) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death as at variance with the degree or type of such condition or death, or circumstances indicate that such condition may not be the product of an accidental occurrence.

(b) Any case in which a child is subject to sexual assault, molestation, or exploitation as described herein:

(i) **"Sexual assault"** means conduct in violation of the following: rape, rape in concert, incest, sodomy, lewd or Lascivious acts upon a child, oral copulation, penetration of a genital or anal opening by a foreign object.

(ii) **"Sexual molestation"** means any indecent touching or acts designed to bring about a sexual response from a child.

(iii) **"Sexual exploitation"** means any acts involving a child for: employment of a minor to perform obscene acts; conduct involving matter depicting a minor engaged in obscene acts; preparing, selling, or distributing obscene matter involved in obscene acts; or prostitution.

(iv) These acts when committed by a person under the age of 18 who is either significantly older than the victim or in a position of power or control over another youth, may be considered sexual abuse.

(c) **"Willful cruelty or unjustifiable punishment of a child"** means a situation where any person willfully causes or permits any child to suffer, or inflicts hereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be placed in such a situation that his or her person or health is endangered.

(d) **"Corporal punishment or injury"** means a situation any person willfully inflicts upon the child any cruel or inhuman corporal punishment or injury resulting in a traumatic situation.

(e) **"Neglect"** means the negligent treatment or the maltreatment of a child by a person responsible for the childs health or welfare. The term includes both acts and omissions on the part of the responsible person.

(i) Typical forms of neglect include: abandonment, lack of supervision, nutritional neglect, medical/dental or health neglect, educational neglect, inappropriate or insufficient clothing, shelter neglect, emotional neglect, and moral neglect, also includes continued infestation of head lice on person and in home.

(ii) **"General neglect"** means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

(iii) **"Severe neglect"** means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred.

(f) **"Abuse in out of home care"** means a situation of suspected physical/ mental injury on a child which is inflicted by other than accidental means, or of sexual abuse or neglect or the willful cruelty or justifiable punishment of a child, as defined in this subsection, where the person responsible for the child's welfare is a foster parent or the administrator or an employee of a public or private residential home, school, or other institution or agency.

(g) **"Emotional or mental abuse"** means injury to the intellectual or psychological capacity of the child as evidenced by an observable and substantial impairment in his ability to function within a normal range of performance and behavior, with due regard to his culture.

(h) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a "reasonable" exercise of parental supervision.

14.4.2.2 "Child Protection Team" means a multidisciplinary team for the purposes of studying the public and private agencies responses to each report of child abuse and/or neglect as well as the team's recommendation related to public/agency response. The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

14.4.2.3 "Tribal Department" or "Tribal Child Welfare Department" shall mean the Tribal Social Services Department or Agency.

14.4.2.4 "Law Enforcement Agency" shall mean the Tribal Police Department or Tribal Law Enforcement Department, or the office of the county sheriff.

14.4.2.5 "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse and/or neglect" as defined in subsection (.1) of this section.

14.4.2.6 "Receiving Agency" means the Department or Law Enforcement Agency first receiving a report of alleged child abuse.

14.4.2.7 "Responsible Person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

14.4.2.8 "Unfounded Report" means any report pursuant to this chapter which is not supported by some credible evidence.

14.4.3 PERSONS REQUIRED TO REPORT CHILD ABUSE OR NEGLECT

14.4.3.1 Any person who has reasonable cause to suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonable result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Social Service Department or Tribal Law Enforcement Agency.

14.4.3.2 Persons required to report such abuse or neglect or circumstances or conditions shall include:

(a) Any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse or licenses practical nurse, hospital/ clinic personnel engaged in the admission, examination, care, or treatment of persons.

(b) Any mental health professional and personnel.

(c) Any school official or employee.

(d) Any child care custodian or worker in a child care center.

(e) Any social worker or worker in child protection capacity.

14.4.3.3 In addition to those persons specifically required by this section to report known or <u>suspected</u> child abuse or neglect, any other person may report known or suspected child abuse or neglect or circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal Law Enforcement Agency or the Tribal Child Social Services Agency.

14.4.3.4 The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making the report.

14.4.3.5 Any person who willfully violates the provision of this subsection may be subject to a civil penalty not to exceed five hundred dollars ($500) or be liable for damages proximately caused thereby.

14.4.4 REQUIRED REPORT OF POSTMORTEM INVESTIGATION

14.4.4.1 Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal Law Enforcement Agency and the Social Service Department.

14.4.4.2 The Social Service Department shall forward a copy of such report of the central registry.

14.4.5 EVIDENCE OF ABUSE -- COLOR PHOTOGRAPH AND X-RAYS

14.4.5.1 Any child associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has been abused and/or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child.

14.4.5.2 Any color photographs or x-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

14.4.6 TEMPORARY PROTECTIVE CUSTODY

The judge of the tribal court shall be responsible for making available a person who may be a mediator or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the children's court to issue written or verbal temporary protective custody orders. These orders may be requested by the Social Service Department, a Tribal Law Enforcement Officer, an administrator of a hospital in which a child reasonably believed to have been abused and/or neglected is being treated, or any physician who has been abused and/or neglected, whether or not additional medical treatment is required, if the belief that circumstances or condition of a child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The Social Service Department shall be notified of such action immediately by the court appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody shall not exceed 72 hours notwithstanding any provision to the contrary.

14.4.7 REPORTING PROCEDURES

14.4.7.1 Reports of known or suspected child abuse or neglect made pursuant to this Title shall be made immediately to the Social Service Department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Social Service Department.

14.4.7.2 Such reports, when possible shall include the following information:

(a) The name, address, age, sex, and race (Tribal affiliation, if appropriate) of the child;

(b) The name and address of the responsible person;

(c) The nature and extent of the pending case, including any evidence of the child's injuries;

(d) Dates and incidents of previous known or suspected abuse or neglect to the child or the child's siblings including number of previous reports of same or similar situations.

(e) The name(s) and address of the person(s) responsible for the suspected abuse or neglect, if known;

(f) The family composition;

(g) The source of the report and the name, address, and occupation of the person making the report;

(h) Any action taken by the reporting source; and

(i) Any other information that the person making the report believes may be helpful in furthering the purpose of this chapter.

14.4.7.3 A Copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal Legal Department and to the Tribal Law Enforcement agency.

14.4.7.4 A written report from persons or officials required by this chapter to report known or suspected child abuse and/or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 14.4.1.

14.4.8 ACTION UPON RECEIPT OF REPORT

14.4.8.1 The Social Services Department shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

14.4.8.2 The investigation, to the extent that it is reasonably possible, shall include:

(a) The nature, extent, and cause of the abuse or neglect;

(b) The identity of the person responsible for such abuse or neglect;

(c) The names and conditions of any other children living in the same place;

(d) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;

(e) All other data deemed pertinent.

14.4.8.3 The investigation shall, at a minimum, include a visit of the child's place of residence or place of custody and to the location of the alleged abuse and/or neglect and an interview with or observance of the child reportedly having been abuse and/or neglected. If admission to the child's place of residence cannot be obtained, the children's court, upon good cause shown, shall order the responsible person to allow the interview, examination, and investigation.

14.4.8.4

(a) The Tribal Social Services Department, except as provided in 14.4.8.5, shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse/neglect. It shall arrange for such investigation to be conducted by persons trained to conduct either the complete investigations or such parts thereof as may be assigned. The department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill.

(b) Upon receipt of a report, if the Social Service Department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of their report and his family and file a petition in the children's court on behalf of such child. If, before the investigation is completed, the opinion of the investigators is

that assistance of the Tribal Law Enforcement is necessary for the protection of the child or the other children under the same care, the Tribal Law Enforcement Agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody as provided in this Title.

14.4.8.5 If a local law enforcement agency receives a report of known or suspected child abuse ore neglect, it shall first attempt to contact the Social Service Department in order to refer the case for investigation. If the local law enforcement agency is unable to contract the department, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Tribal Law Enforcement Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Social Service Department.

14.4.9 DEVELOPMENT OF CHILD PROTECTION TEAM

It is the intent of this legislation to encourage participation between agencies impacting on child welfare matters by encouraging the creation of a child protection team.

14.4.9.1 The judge of the court shall have responsibility for inaugurating the child protection team.

14.4.9.2 The role of the child protection team shall be advisory only.

14.4.9.3 Development of roles and responsibilities shall also be decided by the judge of the court.

14.4.10 IMMUNITY FROM LIABILITY-PERSONS REPORTING

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or x-rays, or the placing in temporary custody of a child pursuant of this chapter or otherwise performing his duties or acting pursuant to this article shall be immune forum any liability, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or x-rays, and any person who has legal authority to place a child in protective custody, shall be presumed.

14.4.11 CHILD ABUSE AND CHILD NEGLECT DIVERSION PROGRAM

14.4.11.1 The tribal presenting officer, upon recommendation of the Social Service Department, may withhold filing a case against any person accused or suspected of child abuse and/or neglect and refer that person to a non-judicial source of treatment or assistance, upon conditions set forth by the Social Service Department. If a person is so diverted from the criminal justice system, the Tribal Presenting Officer shall not file charges in connection with the Social Service Department and the Tribal Presenting Officer in the diversion program offered.

14.4.11.2 The initial diversion shall be for a period not to exceed two years. This diversion period may be extended to one additional one year period by the Tribal Presenting Officer if necessary. Decisions regarding extending diversion time period shall be made following review of the person diverted by the Tribal Presenting Officer.

14.4.11.3 If the person diverted successfully completes the diversion program to the satisfaction of the Social Service Department, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

14.4.11.4 Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

14.4.12 EVIDENCE NOT PRIVILEGED

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this chapter.

14.4.13 COURT PROCEEDING-GUARDIAN AD LITEM

14.4.13.1 The Social Service Department or law enforcement agency receiving a report, in addition to taking such immediate steps pursuant to this Chapter, as may be required to protect a child, shall inform, within 72 hours, the children's court that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation- to determine whether protection of the child from further abuse is required and upon such determination may authorize the filing of a petition.

l4.4.13.2 In any proceeding initiated pursuant to this Chapter, the court shall name as respondents all persons alleged by the petition. In every such case, the responsible person shall be named as respondent. Summonses may be issued for all named respondents.

14.4.13.3 The court in every case filed under this section shall appoint, at no fee, a guardian ad litem at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to or by any agency or person pursuant to this chapter with reports of any examination of the responsible- person made pursuant to this section. The court or the Social Service Worker assigned to the case shall advise the guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross examine and cross examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

14.4.13.4 If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the court against the respondent.

14.4.14 CENTRAL REGISTRY

14.4.14.1 There shall be established a central registry of child protection in the Tribal Social Services Department for the purpose of maintaining a registry of information concerning each case of child abuse report under this chapter.

14.4.14.2 The central registry shall contain but shall not be limited to:

(a) All information in any written report received under this chapter;

(b) Record of the final disposition of the report, including services offered and services accepted;

(c) The plan for rehabilitative treatment;

(d) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;

(e) Any other information which might be helpful in furthering the purposes of this chapter.

14.4.14.3 The tribe shall appoint a person to act as director of the central registry and who shall have charge of said registry.

14.4.14.4 After a child who is the subject of a report reaches

the age of 18 years, access to his record shall be permitted only if a sibling or offspring of such child is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Tribal Presenting Officer or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

14.4.14.5 Unless an investigation of a report conducted pursuant to this chapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation by the Social Service Department or the Tribal Law Enforcement Agency.

14.4.14.6 In all other cases, the record of the reports to the central registry shall be sealed no later than ten years after the child's 18th birthday. Once sealed the record shall not otherwise be available unless the director of central registry, pursuant to rules promulgated by the Tribe and upon notice to the subject of the report, gives his personal approval for an appropriate reason. IN any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

14.4.14.7 At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

14.4.14.8 Any time subsequent to the completion of the investigation , a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The

Social Service Department shall be given notice of the hearing. The burden in such a hearing shall be on the Tribal Department. In such a hearing shall be on the Tribal Department. IN such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

14.4.14.9 Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this chapter shall be given to the subject of such report and to the Tribal Department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

14.4.14.10 Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this chapter shall be subject to a civil penalty not in excess of five hundred dollars ($500).

14.4.14.11 The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes, states, and the National Center on child abuse and neglect.

14.4.15 CONFIDENTIALITY OF RECORDS

14.4.15.1 Except as provided herein, reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such report shall be confidential and shall not be public information.

14.4.15.2 Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.

14.4.15.3 Any person who violates any provision of this section shall be subject to a civil penalty of not more than five hundred dollars ($500).

14.4.15.4 Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

(a) The law enforcement agency or department investigating a report of known or suspected child abuse and/or neglect or treating a child or family which is the subject of the report.

(b) A physician who has before him a child whom he reasonably suspects to be abused or neglected.

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report ore record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare.

(d) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem.

(e) A parent, guardian, legal custodian, or the other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons.

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) The central registry of child protection.

(h) All members of a child protection team.

(i) Such other persons as a court may determine, for good cause.

14.4.15.5 After a child who is the subject of a report to the central registry reaches the age of 18 years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (.4) of this section and is a suspected victim of child abuse and/or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall no divulge or make public any identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of the report.

CHAPTER 5: TERMINATION OF PARENT/CHILD LEGAL RELATIONSHIP

14.5.1 DEFINITIONS

As used in this chapter, unless the context otherwise requires:

14.5.1.1 "Guardian ad litem" means a person who has been appointed to represent a child who is the subject of a written motion for the termination of the parent/child legal relationship.

14.5.1.2 "Termination of Parental Right" means a legal severance of the relationship between a parent and child. This severance relieves both the parent and the child from future obligations to one another.

14.5.2 MOTION FOR TERMINATION-SEPARATE HEARING-RIGHT TO COUNSEL-NO JURY TRIAL

14.5.2.1 Termination of a parent/child legal relationship shall be considered only after the filing of a written motion filed with the Children's Court, alleging the factual grounds for termination, and termination of a parent/child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

14.5.2.2 After a motion for termination of a parent/child legal relationship is filed pursuant to this chapter, the parent(s) shall be appointed in accordance with the provisions this Title.

14.5.2.3 An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement for the child is effected or until the court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

14.5.2.4 There shall be no right to a jury trial at proceedings held to consider the termination of a parent/child legal relationship.

14.5.3 NOTICE -- ABANDONMENT

Before a termination of the parent/child legal relationship based on abandonment can be ordered, the petitioner shall file and

affidavit stating what efforts have been made to locate the parent(s) of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

14.5.4 CRITERIA FOR TERMINATION

14.5.4.1 The court may order a termination of the parent/child legal relationship upon the finding of either of the following:

(a) That the child has been abandoned by his parent(s) ; or

(b) That the child is adjudicated dependent or neglected and all of the following exist:

(i) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent(s) or has not been successful.

(ii) That the parent is unfit.

(iii)That the conduct or condition of the parent(s) is unlikely to change within a reasonable time.

14.5.4.2 In determining unfitness, conduct, or condition, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent(s) unable or unwilling to give the child reasonable parental care. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child.

(b) Conduct towards the child of a physically or sexually abusive nature.

(c) History of violent behavior.

(d) A single incident of life-threatening or gravely disabling injury or disfigurement of the child.

(e) Excessive use of intoxicating liquors or narcotics or dangerous drugs which affect the ability to care and provide for the child.
(f) Neglect of the child.

(g) Long term confinement of the parent.

(h) Injury or death of a sibling due to proven parental abuse or neglect.

(i) Reasonable efforts by child care agencies which have been unable to rehabilitate the parent(s).

14.5.4.3 In considering any of the factors for terminating the parent/child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

14.5.5 REVIEW OF CHILD'S DISPOSITION FOLLOWING TERMINATION OF THE PARENT/CHILD LEGAL RELATIONSHIP

14.5.5.1 The court, at the conclusion of a hearing in which it ordered the termination of a parent/child legal relationship, shall order that a review hearing be held not later than ninety (90) days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the court, based upon an independent investigation, for the best disposition of the child.

14.5.5.2 If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision by made immediately for long term foster placement of the child.

14.5.6 EXPERT TESTIMONY

14.5.6.1 Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the court's prior review and approval, shall be paid from the court funds.

14.5.6.2 All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.

14.5.7 EFFECT OF DECREE

14.5.7.1 An order for the termination of the parent/child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent, such child's right of inheritance shall be terminated only by a final decree of adoption.

14.5.7.2 No order or decree entered pursuant to this chapter shall disentitle a child to any benefit due him from any third person, including but not limited to, any Indian Tribe, any agency, any state, or the United States.

14.5.7.3 After the termination of a parent/child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

14.5.8 APPEALS

14.5.8.1 Appeals of court decrees made under this chapter shall be given precedence on the calendar of the Tribal Appellate Court over all matters unless provided by law.

14.5.8.2 Whenever an appeal is made under this chapter, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript to the tribal proceeding for the appeal at the expense of the tribe to be paid from the court fund.

14.5.8.3 Appeals will be dealt with in the same manner as appeals in the Tribal Civil Court, except as provided 14.8.1.

CHAPTER 6: ADOPTION

14.6.1 JURISDICTION

The Hoopa Tribal Children's Court shall have jurisdiction in any adoption proceeding involving a member or Indian Child.

14.6.1.2 Any child under the age of 18 years may be adopted by any adult person pursuant to this chapter. The person adopting the child must be at least 10 years older than the person adopted unless good cause is shown why this requirement should be waived.

14.6.1.3 CONSENT

The consent of the child, if over the age of 12 years is necessary to its adoption.

14.6.1.4 A child cannot be adopted without the consent of the parents, if living, provided that in the following cases consent shall not be necessary:

(a) From any parent who has been judicially deprived of the custody of the child, provided any such adjudication shall be

final on appeal or the time for such appeal shall have expired; or

(b) From any parent who has been judged by a court to be mentally incompetent.

14.6.1.5 A married man or woman cannot adopt a person without the consent of his or her spouse, providing the spouse is capable of giving such consent.

14.6.1.6 The proven father of a child born to a woman who is not married shall have rights to service of process in adoption, delinquency, dependency, or termination of parental rights proceedings, provided that he has, prior to the entry of the final order in any of the proceedings, acknowledged the child as his own by affirmatively asserting paternity within 60 days after the birth of the child or after being informed that the child is his:

(a) By Tribal Diagnostic Blood Testing in compliance with Tribal Enrollment Ordinance.

(b) By publicly acknowledging it as his own, receiving it into his family, and treating it as if it were his child.

(c) By causing his name to be affixed to the birth certificate.

(d) By commencing a judicial proceeding claiming a parental right.

14.6.1.7 The adoption of two or more children by the same adopting parent(s) may be included in one proceeding, provided that a separate order of adoption shall be made and filed by the court as to each child adopted.

14.6.1.8 No petition for adoption shall be granted until the child shall have lived within the proposed adoptive home for a period of at least six months before or after the filing of the petition.

14.6.1.9 The petition filed shall be sworn by the person or persons requesting adoption and shall state the:

(a) Name, address, residence, social security number, birth date, and race (Tribal Affiliation, if necessary or applicable) of the person or persons requesting adoption;

(b) Name, address, birthrate, race and residence of the person(s) to be adopted;

(c) Length of time that the person to be adopted has been in the

proposed adopted home;

(d) Name, address, residence, birthdate, and race, if known, of the legal mother and father of the child to be adopted;

(e) Facts describing under what circumstances the person to be adopted began residing in the proposed adoptive home, including whether or not one or both legal parents have consented to that arrangement and to the proposed adoption or whether the consent of one or both of the parents is not required by the provisions of this chapter, and whether or not the father of the child is entitled to service of process'

(f) A full description and statement of value of all property owned or possessed by the person to be adopted; and

(g) Relief requested.

14.6.1.10 Whenever a person petitions the Hoopa Tribal Children's Court for and order adopting a minor child the judge of the Children's Court shall fix a time for a hearing and shall request the Tribal Social Services Department to make a careful and thorough investigation of the matter and report his findings including a recommendation as to whether or not the adoption should or should not be granted, in writing to the court.

14.6.1.11 Upon filing a petition for the adoption of a minor child the court shall notify the Tribal Social Services Department by mailing to the office a copy of the said petition, or mail to the office a copy of the order fixing the date of such hearing. The Tribal Presenting Official shall make recommendations-
as to the desirability of the adoption. The office may appear in any such procedure the same as the part in interest, and may request a postponement of hearing on the petition in event more time is needed for its investigation.

14.6.1.12 A copy of the petition for adoption and order for hearing shall be personally served upon the legal or natural mother and father of the child to be adopted; provided however, that service may not be required if otherwise excused under this chapter. The petition and order shall be accompanied by a notice that adoption of their child is requested, that if granted their parental rights in said child will be terminated, of the time and place of hearing, and that they may attend the hearing and show cause why the adoption should not be granted if said cause exists. Proof of service required shall be made to appear by affidavit or oral testimony.

14.6.1.13 At the time of the hearing on the petition for adoption, the person adopting a child, the child adopted, the

natural mother and father of the adopted child, and any spouse of any person adopting any child must appear before the court. The spouse of the person adopting the child must execute a consent to the adoption. Any person except the adoptive child and the person adopting may enter their consent through a power of attorney.

14.6.1.14 Any person or entity who has been given custody of any child after the rights of the natural parents have been terminated may consent to the adoption of the child surrendered to it if permission to do so has been given by the court.

14.6.1.15 At the time of the hearing on the petition for adoption, and agreement must be executed that the child adopted shall be treated in all respects as his, her, or their natural and lawful child would be treated.

14.6.1.16 The court shall enter finding of fact and conclusions of law when testimony is presented establishing any facts relevant to any point.

14.6.1.17 Notwithstanding any other provision of this chapter, the court shall, if the child to be adopted is Indian, satisfy itself and make a finding reflected in either findings of fact and conclusions of law and order of adoption that such adoption will not be harmful to the cultural interests of the child.

14.6.1.18 The judge must examine all persons appearing separately and if satisfied from such examination and the report of the investigation that the child is suitable for adoption and the petitioning parent or parents financially and morally fit to have the care and training of such child, that all requirements of law have been met and that the interest of the child will be promoted by the adoption, he must make and order declaring that the child thenceforth shall be regarded and treated in all respects as the child of such person; and which order, among other things, shall contain the following:

(a) The full adoptive name, date of birth, sex, color or race, and place of birth of the adoptive child; and

(b) The full name, date of birth, citizenship, residence, color or race, birthplace, and occupation of both adoptive parents.

14.6.1.19 The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parents by adoption and their attorneys, representatives of the Bureau of Indian Affairs, Sacramento, or the Tribal Social Services Department, and the child when he reaches the age of maturity, except upon the order of the court expressly permitting inspection or copy. No person having change of any birth or adoption records shall disclose the names of any

parents, or parents by adoption, or any other matter, appearing in such records, except upon order of the Hoopa Tribal Children's Court.

14.6.1.20 A child, when adopted, may take the family name of the person adopting and after adoption the two shall sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation.

14.6.1.21 The natural parents of an adopted child are from the time of the adoption relieved of all parental duties towards, and of all responsibilities for the child-so-adopted, and have no right over it, except in cases where a natural parent consents to the adoption of his or her child by the child's stepfather or stepmother who is the present spouse of the natural parent.

14.6.1.22 An adopted child will retain full inheritance rights from his natural parent or parents.

14.6.1.23 The fact of adoption shall not in any manner whatsoever affect the adoptive child's qualification and right to be enrolled in Hoopa Valley Tribe of California.

14.6.1.24 The order of preference for adoptions under this Title, regardless of residence, shall be:

1. Extended Family;
2. Tribal Member;
3. Other Indian;
4. Non-Indian.

CHAPTER 7: FOSTER HOME STANDARDS

14.7.1 PURPOSE

14.7.1.1 The purpose and intent of these foster care standards are in accordance with both the Federal Indian Child Welfare Act (P.L. 95-608) and the California State Department of Social Services in reference to Information Release No. 40-80. Both recognize the need and desirability of Indian Tribes to establish and regulate foster homes for Indian children.

14.7.1.2 These standards are to insure continuity of the child's culture, spiritual values, and family and extended family ties, while providing for the establishment of services which meet the individual needs of the child. These standards are apperceptive and responsive to the rights of the Hoopa Valley Tribe of California.

14.7.2 TRIBAL AUTHORITY TO LICENSE FOSTER HOMES

The authority of the court to issue license shall be pursuant to this Title and the provisions adopted under.

14.7.3 DEFINITIONS

14.7.3.1 "Indian Family" means a family in which at least one head of the household is a member of and Indian Tribe or is eligible for membership in a tribe.

14.7.3.2 "Indian Child" means an unmarried person under eighteen years who is a member, or is a direct descendent of an enrolled member of the Hoopa Valley Tribe.

14.7.3.3 "Member Child" means a child who is a direct descendent of an enrolled member of the Hoopa Valley Tribe.

14.7.3.4 "Foster Child" means an Indian child placed for foster care through a tribal agency by the authority of the state or Tribal Court, parent, guardian, or custodian.

14.7.3.5 "Extended Family" means any person related by blood.

14.7.4 FOSTER CARE LICENSING PROCEDURES

14.7.4.1 ELIGIBILITY FOR FOSTER CARE LICENSING

Any Indian Family living within or near the area served by the Tribal Social Services Department may apply for certification as a foster family home for Tribal Children.

14.7.4.2 FOSTER HOME ASSESSMENT
A foster home assessment or study will be made in accordance with the established procedures of the tribal social services department to determine if the applicants meet the foster home standards as established herein.

14.7.4.3 FOSTER CARE LICENSE

Once a home study is completed and the applicant's home is determined to meet the foster home licensing standards, a foster care license will be granted to the applicants. The Tribal Court shall have exclusive authority to issue foster license under this Title.

14.7.4.4 REFUSAL TO LICENSE AND/OR ISSUANCE OF A PROVISIONAL LICENSE

(a) The Tribal Court may refuse to license a home. The refusal must be based on an assessment showing that the applicant does not meet the foster home standards. Applicants may reapply,

showing that the necessary changes have been made, and they may be reconsidered. An applicant may be granted a provisional license pending implementation of the recommended changes.

(b) The applicant has primary responsibility for corrections necessary to fulfill the necessary standards for a foster care license.

14.7.4.5 FOSTER CARE LICENSE RENEWAL

(A) Foster care license renewal will on an annual basis.

(B) Renewal of licenses will be based on the approval of the Tribal Court dependent upon an evaluation conducted by the Social Services Department of the foster family and its care of children during the past year.

(C) A medical report will be necessary.

14.7.4.6 FOSTER CARE PAYMENTS

Foster care payments, if any, will be made in accordance with the foster care agreement made between the Tribal Court and the foster family at the time the child is placed in foster care. Members of an extended family may be eligible to receive payment for foster care in accordance with the foster care agreement.

14.7.4.7 REVOCATION OF FOSTER CARE, PROVISIONAL OR SPECIAL LICENSE

A license may be revoked by the Tribal Court. Standard of revoking a license must be that continued custody of their child by the foster parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Evidence must be supported " beyond a reasonable doubt " including testimony of a " qualified earnest witness."

14.7.4.8 FOSTER CARE LICENSING RECORDS

Records shall be maintained on each foster family. These records shall include pertinent information gathered during the foster care application and assessment process, a record of foster children placed in the home, foster care licensing reviews, and current license status. The records to be maintained by the Tribal Social Services Department.

14.7.5 FOSTER CARE PLACEMENT PROCEDURES

14.7.5.1 FOSTER CARE PLACEMENT AUTHORITY

Authority to place an Indian Child can be granted to the Tribal Court by any of the following:

(a) A state court having jurisdiction;

(b) A Tribal Court having jurisdiction;

(c) The child's parent having custody and making voluntary consent for placement; or

(d) A legal guardian or Indian Custodian, other than a parent making voluntary consent for placement.

14.7.5.2 PROVISION FOR MEDICAL CARE

The foster care agreement shall include a provision granting the Tribal Social Services Department the authority to consent of routine and emergency medical and dental care and treatment, including emergency surgery, for the child.

14.7.5.3 FOSTER CARE CASE PLAN

At the time of placement, a case plan will be developed by the Tribal Social Services Department for each child placed in foster care by the department. The participation of the child and his family will be sought in developing the case plan, when appropriate. The case plan shall include a " permanency plan " for the child in order to provide a designed program to develop a long-term situation for the child, the first option being his return to the parents, the second option being relative placement, the third option being the child's adoption, and the fourth option being long-term foster care.

14.7.5.4 FOSTER CARE REVIEW

A case review shall be made at least every six months for every Indian Child placed in foster care by the Tribal Court. The child, the child's parents or custodians, the foster family, and the social worker are to participate in the foster care review, if at all possible. The foster care review shall include the following:

(a) Assessment of the child's development and progress.

(b) Assessment of the development and progress of the child's family.

(c) Assessment of the child's relationship with his parents or custodians.

(d) Assessment of the child's relationship with the foster family.

(e) Review of the foster care case plan.

14.7.5.5 FOSTER CARE AGREEMENT

Upon placement of an Indian Child in foster care, the Tribal Court and the foster parent(s) shall acknowledge the following:

(a) The rights and responsibilities of the foster child.

(b) The rights and responsibilities of the Tribal Social Services Department.

(c) The rights and responsibilities of the foster parents.

(d) The rights and responsibilities of the child's parent(s) or custodians.

(e) The amount and manner, if any, of foster care payment.

14.7.5.6 FOSTER CARE PLACEMENT RECORDS

All pertinent foster care placement records shall be maintained, with provisions for insuring confidentially. These records shall include the following:

(a) Case plans and reviews.

(b) Case summaries, reports, and narratives.

(c) Court orders.

(d) Medical and dental records.

(e) Any other salient information.

14.7.6 FOSTER HOME STANDARDS

14.7.6.1 FOSTER FAMILY

(a) HEALTH: Each member of the foster family household, and any person who assists with the care and supervision of Indian Foster Children, shall be in good health and have had a physical examination within a year of the date of application for foster care license. The physician's report of the foster care applicant shall be completed and signed by a licensed physician, stating that the applying family is in good health and free from any physical or mental illness which might be detrimental to a foster child. A medical statement shall be completed and signed by a licensed physician which states that any other members of the household are free from communicable and contagious diseases and have no health condition which would be detrimental to foster children.

(i) Physical handicaps of foster parent's shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect and individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

(b) PERSONAL QUALITIES: Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character.

(i) Relationships within the family shall be such that a wholesome atmosphere for growth of the foster child will be assured. No family member or household occupant shall have a record of child abuse, felony, or demeanor involving moral turpitude.

(c) AGE: The biological age of a foster parent should be considered in relation to physical condition, vitality, flexibility, maturity, and ability to exercise appropriate authority, supervision, and physical care for specific children. No restriction is placed on upper age levels, but an older foster parent must have the physical and emotional stamina to deal with the guidance, care, and protection of children.

(d) INCOME: The foster family shall have sufficient income to meet the family's basic needs. This will allow payments, if any, for foster care to meet the basic needs of the foster child.

(i) At this time the department does not have a plan for paying foster families a salary. If the foster family wishes to receive payment for foster carte services, it will have to be worked out through either a Tribal/ State agreement or use of California State Department of Social Services Standards for Foster Family Homes.

(e) EMPLOYMENT: Education, and/or training pursuits of foster parents are evaluated in regard to the ages and needs of the child(ren) for whom they wish to provide care. When both parents in a two-parent home and when single parents are employed, suitable plans for day care and/or supervision of the child after school and during the summer while parents are at work must be approved by the Tribal Court.

(f) PARENTING ABILITIES: Foster parents' motivation for application should be examined. Attitudes of significant members of the extended family regarding child placement capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of

foster care.

(i) When necessary, foster parents should have special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.)

(ii) Foster parents should have the ability to administer discipline in a manner appropriate to the age and development of the child. Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior, punishment is, more narrowly, negative reinforcement for unacceptable behavior.

(g) BOARDERS: a Tribal Foster Home may not have adult roomers or boarders unrelated to the foster parents without special permission of the Tribal Court. The foster parents shall keep the social services department informed about all persons living in the home, and all others having regular contact with the foster home.

(h) FAMILY COMPOSITION: The composition of the foster family will have taken into account in assessing whether the child's needs will be met by such a placement. The presence of other children in the home, either the foster parent's or foster family's, related or unrelated adults, shall be taken into account as they may be affected by, or have an affect upon the foster child or children.

(i) REFERENCES: The foster family shall provide name sand addresses of those references (non-related) who can attest to the family's, qualifications to become foster parents.

(j) RELATIONSHIP WITH TRIBAL SOCIAL SERVICES DEPARTMENT: Foster parents should be able to work with the tribal social services department in making plans for the foster child and meeting his needs.

Foster parents should be willing to discuss problems and questions with the tribal social services department. They should be willing to accept the policies of the tribe.

Foster parents must be willing to sign and abide by the terms of the tribal foster care agreement. Foster parents must be willing to have a tribal social services worker visit the home at least once every six months, and at any time a special problem involving the child or his family arise, and at any other reasonable time.

14.7.6.2 FOSTER HOME

(a) SAFETY: The house and premises shall be reasonably clean. The physical facilities of the home must present no hazards to the safety of the foster child. the foster family must have access to emergency services in case of crisis.

(b) LOCATION: The location should be such that the foster parent is able to arrange transportation to school, church, recreational activities, and other resources as needed.

(c) SLEEPING ARRANGEMENT/PERSONAL SPACE: the foster child shall be provided adequate and appropriate sleeping space, consistent with his needs for privacy or personal contact space shall be provided for the child's personal possessions.

Separate sleeping areas must be provided for children over age six who are of the opposite sex. The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster child(ren) who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior.

Children, other than infants and during emergencies such as illness, shall not share sleeping quarters with adults in the household.

In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socioeconomic circumstances create a situation in which such exceptions will not be the detriment of the child.

(d) STANDARD OF LIVING: Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

(e) PLAY SAFE: Play space, fenced if necessary, shall be available and free from hazards which might be dangerous to the life and health of the child.

14.7.6.3 FOSTER CHILD

(a) DAILY ROUTINE: A daily routine shall be such as to promote good health, rest, play habits, and positive growth.

(b) RESOURCES: The foster family must demonstrate a willingness to cooperate with available resources for the foster child.

(c) RELIGION: Opportunities for satisfying religious and spiritual experience are provided the child through an appropriate religious affiliation which does not conflict with

the broad religious preference of the child and his family.

(d) NUTRITION: A balanced and ample diet adjusted to the age, special needs, and physical development of the foster child shall be provided.

The foster child shall not be deprived of a meal or of eating with the family as a disciplinary measure.

(e) CONFIDENTIALITY: The foster family must demonstrate the ability to maintain confidentiality as it relates to the foster child and his biological family.

At no time is the biological family to be denigrated or otherwise put down to the foster child or in the presence of the foster child.

(f) CULTURAL HERITAGE: The foster family must demonstrate a willingness to show respect for the child's individual cultural heritage.

(g) DISCIPLINE: The foster family understands that discipline is a method of teaching not of punishing. Effective non-physical methods of discipline are used in a manner consistent with the child's age and development.

14.7.7 GUIDELINES FOR ASSESSING FOSTER FAMILY APPLICANTS

14.7.7.1 PURPOSE

The guidelines are for the purpose of the study and evaluation of foster family applicants. After modification and adaptation to reflect community standards and traditions, such guidelines will help to:

1. Determine if the family and home meet the basic requirements of the Tribal Social Services Department and the Tribal Children's Court.

2. To fulfill the legal and moral responsibilities of these entities in protecting the physical, mental, and emotional well being of the child.

3. Assess the foster parenting abilities of the applicants.

4. Learn enough about the applicants to determine what kind of child they can best serve.

5. Assist applicants in understanding the responsibilities involved and decide if they wish to participate.

6. To prepare potential foster parents to deal with the special

needs of foster children.

These guidelines will assist the worker in evaluating the applicants and their home. The study includes but does not have to be limited to the following areas. Although it is not necessary to adhere strictly to the sequence of the following guidelines, the areas are basic and should be included in the applicant study--the extent of each depending upon applicability to the potential foster family situation.

14.7.7.2 BASIC REQUIREMENTS OF FOSTER PARENTS

Desirable personal qualities of those who wish to serve as foster parents are:

(a) Evidence of an interest in and responsiveness to other people--particularly children.

(b) Capacity to give love, affection, and understanding to a child without undue expectation for gratification from such care, and to endure the frustrations inherent in the care of such children.

(c) Ability to share with each other in the care of foster children.

(d) Provision of proper consideration to their own children's feelings and the feelings of close relatives towards a foster child.

(e) Maintenance of stable and satisfactory relationships (marital, parent/child, etc.), realizing that family problems may affect foster children differently from their own children.

(f) Evidence of emotional stability and ability to function adequately in relation to family responsibilities and employment.

(g) Ability to administer discipline in a manner appropriate to the age and development of the child.

(h) Reputable character, values, and ethical standards conducive to the will-being of children.

(i) Practical understanding of the developmental stages of children and their accompanying needs.

(j) Ability to accept a foster child's relationship with his/her natural parents, including neglectful and abusive parents.

(k) Capacity to help prepare the children for his/her return home or for adoptive placement.

(l) Ability to accept that children placed for foster care are placed for their foster care only and not for adoption purposes.

14.7.7.3 FOSTER PARENTS RELATIONSHIP WITH TRIBAL SOCIAL SERVICES DEPARTMENT

The family reflects an ability to work constructively with the Tribal Social Services Department.

(a) In developing plans and meeting the needs of the foster child and his/her family.

(b) By accepting consultation and training.

(c) By maintaining confidentiality.

(d) By working within the department's policies.

14.7.7.4 FAMILY INTEREST AND MOTIVATION

A family's motivation for wanting a foster child may be based on reasons which are not recognized or verbalized. Circumstances which promoted the family to apply at the particular time of their application can help clarify these reasons. The source of information about the foster family program as set up by the social services department may turn out to be the key to their decision.

During the process of the study and evaluation of the family, underlying needs of the family not previously stated or recognized may be revealed and should be assessed realistically and honestly with the family. Specific discussion of the difference between a foster family home and an adoptive home is necessary to determine whether the applicants realistically accept the difference.

14.7.7.5 PERSONAL INFORMATION OF FOSTER PARENTS (AND ANY OTHER ADULT IN THE HOME)

Knowledge of past experience and influences are vital in understanding the adult’s current functioning not only as individuals, but also as members of a family. Significant areas of study are:

(a) Personality and attitudes of the applicant. What is the person like as an individual?

(b) Childhood relationships with parents, siblings, relatives, or other meaningful person. What were their childhood and growing up like?

(c) Experiences such as death, illness, divorce, poverty, etc.,

which had an impact on the person's attitudes, feelings, expectations, etc.

(d) Concepts of appropriate discipline and manner in which it should be administered.

(e) Education and training and what it means to the person.

(f) General physical and emotional health of members of the household as evidenced by an examination report from a physician must be obtained for each member of the household.

(g) If a physical handicap exists, how does it affect ability to function as a parent in providing adequate care and supervision.

(h) Any specific medical or emotional condition existent in members of the household? Is any member of the household under professional care for any condition which requires the use of prescribed drugs and/or narcotics, and if so, to what extent?

(i) If any member of the household previously received psychiatric or psychological counseling, explore the circumstances and results.

(j) Physical description, with any notable abnormalities described in detail.
(k) Employment record with respect to stability or work and satisfaction derived from employment.

(l) Social relationships within the community, hobbies, skills, talents, special interests, etc.

(m) Religious influences, affiliations, and activities.

(n) Reaction to stressful situations.

(o) Current relationships within the family including marital and parent/child relationships.

(p) Special training, ability, or experience in working with or caring for children with special needs such as physical handicaps, mental retardation, behavioral problems, emotional disturbances, etc.

(q) Further exploration or explanation of any arrests for or conviction of any criminal action, including status of parole or probation.

14.7.7.6 PERSONAL INFORMATION OF CHILDREN IN THE HOME

Describe children as to:

(a) Age and physical appearance.

(b) Personality, interests, skills, etc.

(c) Strengths and/or problems in parent/child relationships, school adjustment, behavior and health.

(d) Ability to get along with other and children and depending on age, attitude towards foster children.

14.7.7.7 DISCIPLINE

Effective and constructive discipline includes diversion, separation from problem situation, deprivation of privileges, praise for appropriate behavior, and gentle physical restraint such as holding. The use of the open hand to lightly swat the child's buttocks or hands could be considered non-physical discipline and used only when necessary to protect the child's safety and well-being. In no instance is any object to be used to discipline a foster child.

Verbal abuse or derogatory remarks about the child, the child's family, race, religion, or cultural background is not used or permitted. Deprivation of meals is not used as discipline. No child is shaken, pinched, or roughly jerked by a family member or any other person in the home.

Discuss the applicant's understanding and acceptance of the policy on discipline and include this in the written report. Is there mutual agreement between the foster parents on methods of discipline? Discuss the manner in which they discipline their natural children, if any. If not covered in any other section of this study, review types of discipline used by the applicant's parents or caretakers and any effect this has had on their attitudes.

14.7.7.8 MARITAL STATUS AND BACKGROUND

Discuss the applicants current marital status as to length of marriage, stability, and method of resolution of any problems. If applicable, discuss any previous marriages as to cause of divorce, children involved, an if so, visitation arrangements.

14.7.7.9 INCOME AND MONEY MANAGEMENT

Discuss the family's method of managing financial resources and obligations. Does the family function without undue problems, and independent of foster child care payments. Factors to consider are net income including salary and any income from other sources, any debts, child support obligations, etc.

14.7.7.10 HOME AND LIVING STANDARDS

Include a concise but complete description of the home and the neighborhood. Be specific as to:

(a) Cleanliness and appearance of home and yard.

(b) Sleeping arrangements for foster children.

(c) Sanitary facilities if not on public system (i.e., toilet and bathing, water supply, garbage and sewage disposal).

(d) Safety factors (particularly relating to preschool or handicapped children) such as guards and rails on stairways, heating facilities and outdoor play area protected from traffic hazards.

14.7.7.11 REFERENCES

A minimum of three (3) references are personally, contacted, either by the person conducting the home evaluation or by a contracted agency at sites remote from jurisdictional area (at written request of social services department). In the event out of state references are given, written correspondence and replies are acceptable as valid references to supplement those provided locally. If the applicant has served as a foster parent for another agency or institution, a written release of information is obtained to gather information from the former agency, and this information is reviewed in relation to the family's current request.

Persons familiar with the family from a variety of perspectives who can provide a well-rounded picture of the family's functioning and character are sought. These might include friends with whom the family shares an ongoing social relationship, and whose children socialize and visit in the home of the applicants with their children. Neighbors acquainted with the family and their children. Neighbors acquainted with the family and their activities, employers and/or coworkers, relatives, ministers, and others knowledgeable of the family on a personal basis as to habits, interests, values, and child rearing practices should be sought.

14.7.7.12 TEAMWORK AND SUPERVISION

The study is to include a summation of the social worker's explanation and the foster parent applicant's understanding of:

(a) The fundamental responsibility of the social services department in meeting the physical, emotional, and medical needs of the child in care.

(b) The responsibility of the foster parent for the child's

daily care so that all three areas of need (physical, emotional, and medical) are met.

(c) The social worker's primary responsibility as the liaison in all planning among the child, the natural family, the foster family, the social services department, and the children's court.

(d) Kinds of parental situations necessitating placement.

(e) Varying lengths of time for which children require placement.

(f) Characteristics of children requiring placement and problems associated with being a foster child.

(g) Differences between foster family care and adoption.

(h) Policies and procedures regarding payment (if any), provision of clothing, medical care, discipline, confidentiality, education, religious training, etc.

14.7.7.13 RECOMMENDATIONS

As a result of the study process, recommendation is made as to whether or not the applicant meets standards for providing foster family care. Included in the final assessment are:

(a) The applicant's understanding and acceptance of the purpose of foster care and willingness to cooperate in adhering to agency policies.

(b) Areas in which the applicants show special strength and those in which they will need help and training.

(c) A delineation of the number, age range, sex, and special areas of needs of children for whom the applicant, if approved as meeting standards, is qualified to provide care.

(d) If it is determined that the applicants do not meet standards for foster parenthood, a detailed analysis of the basis for the decision is made.
(e) Personal contact with the applicants to notify them of the decision regarding approval or disapproval of the application, followed by written notification.

(f) The effective date for opening the foster home, showing it as not meeting standards, or a cancellation of the application.

14.7.7.14 EVALUATION

The six-month evaluation of a new foster home and the annual re-evaluation thereafter is a comprehensive appraisal of the foster

family's functioning. The evaluation consists of the foster home, in which an assessment is made on the manner in which the foster parents were able to meet the needs of the various children placed in their home. The successful and/or ineffective means used by the foster parents in caring for and directing the child enables the social services department to determine what type of child the foster parent can best serve. Areas in which the foster parents need additional help from the social worker and/or social services department to strengthen their parenting ability are recorded.

All changes in the physical arrangements and in the foster parents' capacities for child caring since the original study are included in the re-evaluation.

CHAPTER 8

14.8. PERSONAL RIGHTS OF CHILDREN IF FOSTER CARE

Each child shall have personal rights which include but are not limited to:

14.8.1 To be accorded dignity in his/her personal relationships with other persons in the home.

14.8.2 To be accorded safe, healthful and comfortable accommodations, furnishings and equipment that are appropriate to his/her needs.

14.8.3 To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature including but not limited to interference with the daily living functions of eating, sleeping, or toileting, or withholding of shelter, clothing, or aids to physical functioning.

14.8.4 To be informed and to have his/her authorized representative informed by the foster parent(s) of the provisions of law regarding complaints, including but not limited to the address and telephone number of the complaint receiving unit of the licensing agency and of information regarding the confidential registration of complaints.

14.8.5 To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisors of his/her choice.

14.8.6 Not to be locked in any room, building, or facility premises by day or night.

14.8.6.1 This does not prohibit the home from being secured by

locking exterior doors and windows or from establishing house rules for the protection of the children so long as the children can exit from the home.

14.8.7 Not to be placed in any restraint device except a supportive restraint approved in advance by the licensing agency.

14.8.7.1 Supportive restraint shall be limited to appliances or devices to prevent falling and shall be fastened or tied in a manner which permits quick release. This includes car seats.

14.8.8 To be free of the administration of medication or chemical substances not authorized by a physician.

14.8.9 To have visitors as specified below by mutual agreement between the licensee and the visitors, provided the rights of others are not infringed upon.

14.8.9.1 Relatives, during waking hours, unless prohibited by court order or by the child's authorized representative.

14.8.9.2 The authorize representative.

14.8.9.3 Other visitors unless prohibited by court order or by the child's authorized representative.

14.8.10 To wear his/her own clothes.

14.8.11 To possess and control his/her own case resources, unless otherwise agreed to in the child's needs and services plan and by the child's authorized representative.

14.8.12 To possess and use his/her own personal possessions, including toilet articles.

14.8.13 To have access to individual storage space for his/her private use.

14.8.14 To have access to telephones, both to make and receive confidential calls, provided that such calls are not prohibited by court order or by the child's authorized representative, or are not prohibited as a form of discipline. However, such use shall not infringe upon the rights of others, nor tie up the telephone during emergencies.

14.8.14.1 The licensee shall be permitted to require reimbursement for long distance calls from the child to his/her authorized representative.

14.8.14.2 The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested

reimbursement for previous long distance calls has not been received.

14.8.14.3 Calls permitted to be prohibited as a form of discipline shall not include calls to the child's authorized representative or placement agency.

14.8.15 To have access to letter writing material and to send and receive unopened correspondence unless prohibited by court order or by the child's authorized representative.

14.8.16 The licensee shall ensure that each child is accorded the personal rights specified in this section.

CHAPTER 9

14.9 AGREEMENT WITH FOSTER PARENTS

14.9.1 The Hoopa Tribal Court agrees to accept its responsibilities including, but not limited to, visiting the foster family on a regular basis and providing all necessary services to the foster family, the child, and the child's own family. Refer to form.

14.9.2 The foster parents agree as follows:

14.9.2.1 To accept the child or children named above for temporary foster care and maintain the child(ran)'s health and welfare.

14.9.2.2 To accept the condition that any children placed for foster care in the home by the Tribal Court are placed for the purpose of their foster care only, and not for the purpose of adoption.

14.9.2.3 To accept the court's decision to remove a foster child from the home when it deems such removal is in the child's best interest.

14.9.2.4 To accept the condition that the court is responsible for making, carrying out, or approving all plans for the children placed by them in the foster home.

14.9.2.5 To cooperate with the Tribal Children's Court and the Tribal Social Services Department in such planning and to follow their suggestions and recommendations regarding the care, education, and training of the foster children.

14.9.2.6 To allow representatives of the social services department to visit the home at mutually agreed upon times.

14.9.2.7 To report at once to the Tribal Social Services Department any change of address or change in family composition; to secure permission before making any plans for taking the children out of state for any purpose; to notify the department of vacation plans away from the area.

14.9.2.8 To report to the Hoopa Social Services Department any change of address or change in family composition; to secure permission before making any plans for taking the children out of state fore any purpose; to notify the department of vacation plans away from the area.

14.9.2.9 To contact the Hoopa Health Association for medical services and emergencies rendered to the foster child.

14.9.2.10 To contact the Tribal Social Services Department in all emergencies.

14.9.2.11 To authorize the Tribal Social Services Department to investigate the medical status of the household (adults and children) to insure the health of the foster child.

CHAPTER 10

14.10 PERMANENCY PLANNING FOR INDIAN CHILDREN IN FOSTER CARE

14.10.1 OBJECTIVE OF PERMANENT PLAN

14.10.1.1 To place child in permanent living situation as soon as possible.

14.10.1.2 Reunify family if possible.

14.10.1.3 If reunification is not possible, place child in permanent living situation with or without termination of parental rights. A permanent situation may be one of the following: Foster care, adoption, guardianship. Preferences in these placements will be with relatives or extended family members with stable living situations.

14.10.2 CRITERIA FOR PLACEMENT

14.10.2.1 If the child has been harmed or threatened or otherwise endangered.

14.10.2.2 If the child is a runaway from another area and is being harmed or threatened and is within Tribal Court scope of jurisdiction.

14.10.2.3 If the child is neglected or dependent.

14.10.2.4 If care, custody, and control is assigned by a court system and relative resources have been explored and are not available.

14.10.2.5 When in home plan has been explored and are not appropriate.

14.10.2.6 When day care services have been explored and are not appropriate.

14.10.3 PLACEMENT RESOURCES TO BE EXPLORED

Child must be placed in "reasonable proximity" to his/her home. Meeting special needs precedes over proximity.

14.10.3.1 Order of preference according to the best interest of the child is as follows:

(a) Member of the child's extended family.
(b) Licensed foster home approved by the Tribal Court.
(c) Institution for children approved by Tribe or operated by an Indian organization.
(d) A BIA, state, or private agency licensed or approved foster home, group home, or institution.
(e) Emancipation if allowed by Tribal Code.

14.10.3.2 ADOPTIVE PLACEMENT RESOURCES

(a) Members of extended family.
(b) Other Tribal members.
(c) Other Indian families.
(d) Non-Indians.

14.10.4 CASE PLAN
The following are steps to be set out ion permanency planning:

14.10.4.1 REASON FOR REMOVAL
Be as specific as possible in describing the time, conditions, and need for removing the children.

14.10.4.2 OBJECTIVES OF THE PARTIES

The Tribal Social Services Department and the parents agree to the following goals:

(a) Appropriate care and placement of the children during the time they are in the care, custody, and control of the social services department or Tribal Court.
(b) Strengthening the family unit.

(c) Reuniting the family.

14.10.4.3 APPROPRIATE CARE AND PLACEMENT

The children will be maintained in licensed or approved foster homes or the children may be maintained in the home of extended family. The social worker will inspect the homes on a regular basis to insure that they remain proper environments for the children. The children are eligible for IHS services.

14.10.4.4 PLAN FOR THE USE OF STRENGTHENING THE FAMILY UNIT

(a) List available resources to be used to strengthen the family.

(b) Child Support: If the parents are able to contribute, insert amount. If they cannot, use this statement: " From the financial statement indicating their income, the Tribal Social Services Department believes that the parents cannot be expected to pay any child support but may contribute to the child(ren)'s support in any other feasible manner."

(c) Visitation: A written visitation plan will be established by the Tribal Children's court and the parents. The Tribal Social Services Department will provide transportation if necessary and if possible.

(d) Special Provisions: List medical, emotional, educational, or any special provisions in this section.

14.10.4.5 REUNITING THE FAMILY

When the parties agree that the children are entitled to grow up with a family environment and they agree that a timetable is necessary and will be strictly enforced. The parents are responsible for making necessary changes in their lifestyle. The social worker will be responsible for providing support services.

(a) 1 to 6 months: The parents realize that this is the critical period. The understand that they must make active progress so that the family can be reunited. In order to insure that progress is ongoing and in order to monitor the progress, the social worker will meet with the parents on a weekly basis to assist progress and counsel with them about any deficiencies or any problems. The social worker will also monitor the progress of the parents with any other agency assisting them and require reports from the agencies.

(b) 6 to 12 months: The parents understand and agree that if the children are in the custody of the Tribal Court at that time, the entire treatment plan should be re-evaluated and goals established so as to eradicate any deficiencies.

(c) 12 months or longer: The parents agree that if the child is in the custody of the Tribal Court for such and extended period of time because of their failure to make any progress, then termination of parental rights will be considered.

14.10.4.6 REINFORCERS

The social services department is the main reinforcer in this case and will monitor the progress of the parents in order to detect any deficiencies. If deficiencies are noted, the social worker and the parents will attempt to remove the deficiencies.

14.10.4.7 SPECIFY ROLE OF DEPARTMENT OF SOCIAL SERVICES

(a) The social worker will be the coordinator of the treatment plan, in conjunction with the child protection team, if one exists on the reservation.

(b) The social worker will be in continuous contact with the parents to ensure the performance of the required tasks.

(c) The social worker will further establish an ongoing relationship with the relatives and extended family members helping the parents, and other agencies providing services.

14.10.4.8 MONITORING TREATMENT PLAN

The social services department will keep an up to date record on the family. It will include all court records, as well as records of services rendered by the other agencies providing services. An ongoing file will include a record of all contacts with the parents as well as contacts with relatives and other agencies. Copies of all reports will be attached to the request for review. In this manner the court will be able to check parental performance and department performance towards reuniting the family.

14.10.4.9 RESOURCES
List all resources needed to fulfill the treatment plan.

14.10.4.10 APPROVAL OF CASE PLAN
Once case plan is decided upon and written, it must be drafted and signed by all parties involved: social worker, parent(s), child (if age appropriate), and Tribal Judge.

14.11 SEVERABILITY
If any part of this Code is held to be invalid the remainder shall continue to be in full force and effect to the greatest extent possible.

C E R T I F I C A T I O N

I the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which seven (7) were present constituting a quorum of a Regular Meeting thereof; duly noticed, and signed this 18th day of September, 1997; and that this Ordinance was duly adopted by a vote of six (6) for and none(0) against and that said Ordinance has not been rescinded or amended in any way.

DATED THIS 18th DAY OF September, 1997.

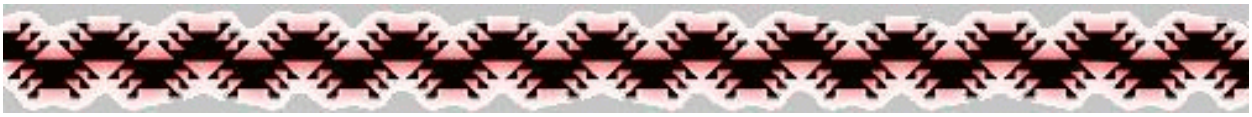
_____
Duane Sherman, Sr. Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 15 OF THE HOOPA TRIBAL CODE

PURPOSE: CONSERVATION/TRESPASS ACT

ADMINISTRATIVE RECORD: Adopted November 16, 1989 and amended November 3, 1999



CONSERVATION/TRESPASS ORDINANCE

HOOPA VALLEY TRIBE
Hoopa, California

Title 15

Ordinance No: 3-89

Date Approved: November 16, 1989 as amended November 3, 1999

Subject: OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and By-Laws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1(e) of this Constitution and Bylaws authorized the Hoopa Valley Tribal Council, "To enforce the protection of tribal property, wildlife, and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance…",

WHEREAS: That this Conservation/Trespass Act is consistent with the objectives of the Hoopa Valley Tribe and Federal Government to further the goal of self-determination through the enforcement of tribal laws intended to strengthen the Tribe's authority over all tribal affairs, and

NOW, THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby enacts the Conservation/Trespass Act of the Hoopa Valley Tribe under its authority contained in the Constitution as Title 15 of the Law and Order Code of the Hoopa Valley Tribe, and the Use Permit Ordinance, No. 1-88 approved February 8, 1988, shall be made part of this Act, and that this act shall be in full force and effect.

15.0 SHORT TITLE

The short title for this Act shall be the Conservation/ Trespass Act of the Hoopa Valley Tribe.

15.1 PURPOSE

The purpose of this Act is to protect the interest of the members of the Hoopa Valley Tribe, ensure proper management of Reservation resources, and to prevent unauthorized exploitation of unallotted tribal natural resources within the exterior boundaries of the Hoopa Valley Indian Reservation (hereinafter "Reservation"). This Act further regulates the use of Reservation resources in order to insure their continual

availability to members of the Hoopa Valley Tribe, and to protect such resources from unauthorized exploitation or otherwise illegal use.

15.2 PRIOR ORDINANCES AND POLICIES REPEALED

Any prior ordinances and policies are repealed to the extent that they are inconsistent with this Act.

15.3 HOOPA VALLEY INDIAN RESERVATION CLOSED

Except as provided in existing legal rights-of-way and federal laws, all parts, territories, roads and streams on unallotted land and properties within the exterior boundaries of the Hoopa Valley Indian Reservation, including, but not limited to tribal ceremonial and religious grounds, are hereby closed to use and access by any person who is not a member of the Hoopa Valley Tribe. A non-member may accompany a tribal member into a closed area provided, however, that the non-member has first obtained a permit as provided under this Act and that the accompanying tribal member(s) accepts full responsibility for the actions of the non-member. This allowance is not a recognition or granting of Reservation or tribal rights to any non-member and such allowance is intended solely for the convenience of the tribal member, and this privilege does not exempt the non-member from prosecution under appropriate tribal, federal or state law. All unallotted lands, territories and areas within the exterior boundaries of the Hoopa Valley Indian Reservation are closed to hunting by any person who is not a member of the Hoopa Valley Tribe. All tributary streams to the Trinity river and that portion of Pine Creek within the exterior boundaries of the Hoopa Valley Indian Reservation are closed to fishing by any person who is not a member of the Hoopa Valley Tribe. All unallotted natural resources are reaffirmed to be for the exclusive benefit of members of the Hoopa Valley Tribe.

15.4 ESTABLISHMENT OF PERMIT SYSTEM

15.4.1 Permit System

It is hereby authorized that a tribal permit system be established. Such permits may be issued to members of the Hoopa Valley Tribe and to non-members of the Hoopa Valley Tribe and may include conditions under which the permit can be used, and such conditions shall be enforceable under this Act.

15.4.2 Membership Identification Cards

Except as otherwise provided in this Act, Hoopa Tribal members holding a valid identification card issued under the authority of the Hoopa Valley Tribal Council shall be deemed permitted under this Act. However, activities authorized by the Membership Identification Card may be suspended or revoked if used in violation of this Act. For enforcement purposes, a Membership Identification Card shall be considered a permit under this act.

15.4.3 Special Wood and Gravel Permits Required

Any person, including enrolled members, are required to obtain special permits prior to cutting wood and removing gravel and post and pole material under this Act. Special permits may include conditions under which the permit remains valid.

15.4.4 Tribal Employees

Each employee of the Hoopa Valley Tribe shall be issued an identification card by the Tribal Personnel Department. Each employee identification card shall remain the property of the Tribe and shall be relinquished by the holder upon demand of the Tribal Chairman or his authorized representative.

15.5 PERMITS REQUIRED

Every person found to be on allotted lands within the exterior boundaries of the Hoopa Valley Indian Reservation is required to have in their possession a valid permit as provided under this Act. Any person not in possession of an official Tribal permit shall be considered in violation of this and other applicable Tribal and Federal laws.

15.6 PERSONS NOT KNOWN TO BE HOOPA MEMBERS

Any person not known by an Officer of the Tribe to be a member of the Hoopa Valley Tribe, or any person not having in their possession a valid Hoopa membership card, shall be presumed not to be a member of the Hoopa Valley Tribe.

15.7 TYPES OF PERMITS

15.7.1 Personal Use Permits

Personal Use Permits may be issued solely to enrolled members and are expressly limited for the legitimate personal use

of resources allowed under the permit and shall not be used for barter, sale or any other activity that can be interpreted as to increase the personal commercial gain to the person to whom a tribal use permit is issued.

15.7.2 Fee Permits

Fee Permits may be issued to any person and are expressly limited for the legitimate personal use of resources allowed under the permit and shall not be used for barter, sale or any other activity that can be interpreted as to increase the personal commercial gain to the person to whom a tribal use permit is issued. The cost of Fee Permits shall be established as provided by a resolution approved by the Tribal Council and the revenues generated by fee permits shall be used to enforce this Act.

15.8 LIMITATIONS OF AUTHORIZATION

15.8.1 Activities of Tribal Government

Activities of the Tribal Government or its subordinate entities shall be exempt from the requirements of this Act and shall be governed pursuant to management plans and applicable laws regulating such activities. Tribal employees whose duties require activities involving Tribal resources are exempt from obtaining a permit under this Act while they are performing duties in their official capacity.

15.8.2 Permits Not Exemption From Laws

Possession of a permit issued under this Act does not exempt any person from any applicable laws or authorize any activity on property other than unallotted tribal lands or allow access to any resources not authorized by the permit.

15.8.3 Sensitive Resources

Except as specifically authorized by the Hoopa Valley Tribal Council, no permits shall be issued under this Act for resources that have a substantial cultural and/or ceremonial value to the Hoopa Valley Tribe or resources that are considered scarce or fragile in nature.

15.9 APPLICATION PROCESS – ISSUING AGENT – RECORDKEEPING

15.9.1 Issuing Agent

The Issuing Agent is the person responsible for issuing permits as provided by this Act and shall be the Chairperson of the Hoopa Valley Tribal Council, or their authorized representative. Any person requesting a permit shall apply in person during regular business hours.

15.9.2 Evaluation By Issuing Agent

As soon as reasonably possible after application for a permit is made, the Issuing Agent shall evaluate the application in light of the factors set forth in Section 15.10 below, and approve or deny the application; except that where the evaluation shows that the resources sought to used under the permit have substantial cultural and/or ceremonial value, or are scarce or fragile, the Issuing Agent shall forward the application, with a written recommendation for action to the Hoopa Valley Tribal Council for a decision, pursuant to Section 15.8 above.

15.9.3 Evaluation, Issuance, Denial of Permit

The Issuing Agent (or Hoopa Valley Tribal Council if the application is evaluated pursuant to Section 15.8) shall set the terms and conditions of the Use Permit in writing, including the expiration date, based on consideration of the factors set forth in Section 15.10 below. Any denial of an application shall be supported by a brief written statement of reasons based on the factors in Section 15.10 below. Any denial of a permit may be appealed pursuant to Section 15.16 below.

15.10 FACTORS FOR ISSUING PERMITS

In determining whether to issue a permit, and the nature of any terms and conditions thereof, the Issuing Agent shall consider the following factors:

15.10.1

Whether a sufficient quantity of the resource in question is available and accessible on the Reservation.

15.10.2

That there is neither a conservation nor allocation problem, nor any conflict between the resource use applied for and traditional, aboriginal family use areas or traditional cultural and/or ceremonial uses. If such concern or conflict is found to exist, the application shall be forwarded to the Hoopa Valley Tribal Council for decision pursuant to Section 15.8 above.

15.10.3

Whether the applicant had been in non-compliance with the terms and conditions of a previous permit or has ever had a permit revoked.

15.10.4

Whether the resource in question is governed by an approved management plan that authorizes such activity.

15.10.5

The location of the applicant's residence and whether the resource in question may be available and accessible in a larger quantities in other areas.

15.10.6

Whether the resource allowed under the permit is intended to promote the personal economic or monetary gain of the applicant.

15.10.7

Whether the applicant intends to transport the resource in question outside the exterior boundaries of the Reservation.

15.11 OFF-RESERVATION TRANSPORT

Every person, including Hoopa Tribal members holding valid identification cards, shall be required to obtain approval prior to transporting any Reservation resource beyond the exterior boundaries of the Hoopa Valley Indian Reservation. Permits issued under this Act may be used as a transportation permit, provided it contains clear authorizing language and such transport has been approved by the Issuing Agent.

15.12 INVALIDATION OF PERMIT

Any permit issued under this Act shall become immediately invalid for reasons including, but not limited to, the following:

15.12.1

If any resources utilized under the permit are used for barter or commercial purposes.

15.12.2

If any person in their application for a permit gives false information.

15.12.3

If any changes are made to a permit after it has been issued.

15.12.4

If a person violates any terms or conditions of a permit.

15.12.5

If the expiration date on the permit has expired.

15.13 SUSPENSION, REVISIONS AND TERMINATION OF PERMIT

Once a permit has been issued, it may be suspended, revised or terminated by the Issuing Agent or by a Tribal Court Judge based upon evidence which indicates that the continuation of such permit, or a permit in its present form, has been violated, or is a threat to any person or to the resources of the Reservation, or has been used in connection with an illegal activity. Any enforcement officer of the Hoopa Valley Tribe shall have the authority to temporarily suspend a permit if they find that if allowed to continue, such activity will threaten the health and safety of any person or the resources of the Reservation.

15.14 SEIZURE/CONFISCATION OF PROPERTY

14.13.1 Seizure of Resources

a) Any natural resources, or products of natural resources that are in the possession of, or being transported by any person not having in his/her possession a permit issued under this Act shall be presumed to have taken such resources illegally from unallotted tribal lands or territories of the Reservation and such natural resources are subject to immediate seizure by an authorized officer of the Tribe. Persons transporting private property within the exterior boundaries of the Reservation are responsible for obtaining a permit from the legal property owner before transporting any natural resources, or products of natural resources, on any unallotted Reservation lands or any roadways within the exterior boundaries of the Hoopa Valley Reservation.

b) Seizure of natural resources within the exterior boundaries of the Hoopa Valley Reservation, including Indian

Regulations, Section 163.29(e).

c) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the responsible Tribal official shall provide notice to the owner of the land or the party in possession of the trespass products in accordance with 25 Code of Federal Regulations, Section 163.29(f).

14.13.2 Confiscation of Property

In accordance with 25 Code of Federal Regulations, Section 163.29(e), any authorized enforcement officer of the Tribe, or the Tribal Court Judge, is authorized to confiscate any private property used in the commission of a violation of this Act.

15.15 ENFORCEMENT

14.14.1 Tribal Police/Court Jurisdiction

Enforcement of this Act and permits issued under it shall be by the Hoopa Tribal Police Department or any other officers authorized by the Hoopa Valley Tribal Council. Violations of this Act shall be subject to the jurisdiction of the Hoopa Valley Tribal Court and the penalties prescribed herein. Any Tribal enforcement officer shall have the authority to stop any person within the exterior boundaries of the Hoopa Valley Reservation who is suspected to be in violation of this Act, regardless of tribal membership, property and road ownership status.

15.15.2 Issuance of Citations

Any Tribal law enforcement officer, or any person officially appointed by the Hoopa Valley Tribal Council in consultation with the Chief of the Hoopa Tribal Police Department, may issue a citation for violation of this Act.

15.15.3 Exclusive Tribal Court Jurisdiction

Adjudication of violations of this Act shall be exclusively within the jurisdiction of the Tribal Court.

14.14.4 Penalties/Disposal of Private Property

a) Any person who violates this Act shall be fined a civil penalty not to exceed $1,000, or by imposition of treble damages, without a requirement of a showing of willfulness or intent, based upon the highest stumpage value obtainable from the raw materials involved in the trespass, or by fine and treble damages, and payment of reasonable costs associated with the enforcement of this Act and any other amounts authorized pursuant to 25 Code of Federal Regulations, Section 163.29. Any person who violates this Act may also be subject to exclusion from the Hoopa Valley Reservation in accordance with the Exclusion Ordinance of the Hoopa Valley Tribe.

b) All private property seized for violations of this Act may be forfeited to the Tribe as directed by the Tribal Court Judge. The Tribal Court shall assume control over all forfeited property and shall dispose of such property as provided by the applicable rules of the Law and Order Code or as directed by the Tribal Council through appropriate resolution. Natural resources seized under this Act may be used for the benefit of Tribal elders or may be sold and revenues from such sales shall be used for enforcement of this Act.

c) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified in this Act in accordance with 25 Code of Federal Regulations, Section 163.29(b).

15.16 APPEALS OF ADMINISTRATIVE ACTION

The Decision of the Issuing Agent to issue, deny, revise, suspend or terminate, or of any enforcement officer to temporarily suspend, a permit issued under this Act may be appealed by filing a complaint in the Tribal Court within ten (10) days following such action. For purposes of this Act, "days" shall mean calendar days.

15.17 SEVERABILITY

If any part of this Act is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

15.18 WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Act is intended to, nor should it be construed as, a waiver of the protections of sovereign immunity, including those of suit in any court, other than Tribal Court.

Furthermore, this Act is not intended to, nor shall it be construed as, establishing or recognizing any rights or interests in any tribal resources, property, lands, or other tribal holdings, to any person to whom a permit may be issued, nor shall this Act be construed as recognizing any authority in any other jurisdiction.

CERTIFICATION

I, the undersigned, as Vice-Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which at least five (5) were present, constituting a quorum at a Special Meeting thereof; duly and specially called, noticed, convened and held this 3rd day of November, 1999; and that this Ordinance was duly adopted by a vote of four (4) in favor, none (0) opposed and none (0) abstaining and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 3rd day of November, 1999.

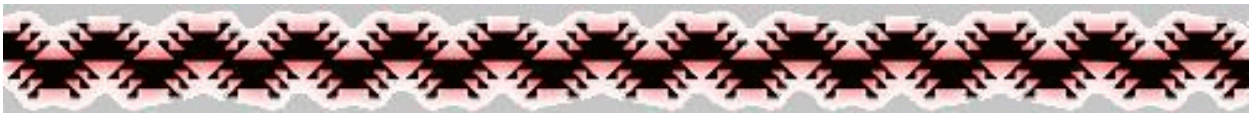
_____
Joseph LeMieux, Vice-Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy A. Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 16 OF THE HOOPA TRIBAL CODE

PURPOSE: FISHING REGULATIONS

ADMINISTRATIVE RECORD: September 16, 1976 amended May 28, 1986



TITLE 16
HOOPA TRIBAL
NETTING ORDINANCE

ORDINANCE NO: 2-76
DATE APPROVED: September 16, 1976

Be it enacted by the Business Council of the Hoopa Valley Tribe acting in accordance with Article IX, Section I (e) of the Constitution and Bylaws of the Hoopa Valley Tribe in California the following:

SECTION 1: The following fishing practices are prohibited within the exterior boundaries of the Hoopa Indian Reservation. (12 mile square)

A. Placing wire, boards or any other items in the river which result in complete blockage of the river.

B. Placing any net which extends beyond 2/3 of the distance across the main stream of the river, and no net shall be placed in front of the mouth of a contributory stream.

C. Gill nets must be lifted and removed from the river daily, and leaving salmon in nets during the day is prohibited.

D. Taking fish for commerical purposes is prohibited.

SECTION 2, VIOLATIONS:

A. Any violations of this ordinance shall be deemed a trespass on tribal lands whether committed by a member or non-member of the tribe, and in addition to any civil or criminal penalties set forth in Federal statutes for such trespass, violations of any of the foregoing rules shall be deemed just cause to confiscate all fish illegally taken, revoke, and cancel all fishing priviledges of the offender and likewise seize all fishing gear and equipment of the offender pending further judicial determination of the matter.

SECTION 3, ENFORCEMENT:

B. The Tribal Chairman is hereby directed to take any and all steps necessary to enforce this Ordinance including, but not limited to, requesting immediate involvement by the Bureau of Indian Affairs as trustee utilization of tribal employees to remove nets or structures which are in violation of this ordinance and the establishment of a procedure for appeal and hearing by the Tribal Council when requested by any violator herein.

C. The Tribal Chairman is further instructed to seek full enforcement of applicable federal statutes by issuance of citations under the jurisdiction of the Federal District Court, Northern District of California.

C E R T I F I C A T I O N

I, the undersigned as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 7 were present duly constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened, and held this 16th day of September, 1976, and this resolution was adopted by a vote of 6 for with 0 against and said Ordinance has not been recinded or amended in any way.

DATED THIS 16TH DAY OF SEPTEMBER, 1976

_____
PETER H. MASTEN JR., CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG
EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO. : 2-76, Amendment No. 2

DATE APPROVED: December 3, 1987

SUBJECT: Amendment No. 2 of Ordinance No. 2-76, Fishing Ordinance of the Hoopa Valley Tribe, Codified at Title VI, Chapter 1, of the Law and Order Code of the Hoopa Valley Tribe

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1(e) of this Constitution and Bylaws authorizes the Hoopa Valley Business Council, "To enforce the protection of tribal property, wild life, and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance . . . "; and

WHEREAS: Pursuant to the above cited provision of its Constitution and Bylaws, the Hoopa Valley Business Council did on September 23, 1985, enact Ordinance No. 2-76, Amendment No. 2, a comprehensive Fishing Ordinance asserting exclusive jurisdiction of the Hoopa Valley Tribe to regulate the exercise by its members of tribal fishing rights on the Hoopa Square; and

WHEREAS: Since the enactment of its Fishing Ordinance the Hoopa Valley Tribe has established a Tribal Court system, and certain provisions of the Fishing Ordinance have become obsolete or have been repealed; and

WHEREAS: There is a need to confirm established enforcement administrative procedures and to provide guidance to the Tribal Court regarding penalties for persons convicted of violating the Fishing Ordinance.

NOW THEREFORE BE IT RESOLVED THAT: The Hoopa Valley Business Council hereby adopts the following Amendment No. 2 to Ordinance No. 2-76, Fishing Ordinance of the Hoopa Valley Tribe, to confirm the repeal of certain obsolete provisions, to confirm established enforcement administrative procedures, and to provide guidance to the Tribal Court regarding penalties.

**AMENDMENT NO. 2 OF ORDINANCE NO. 2-76,
FISHING ORDINANCE OF THE HOOPA VALLEY TRIBE, CODIFIED AT
TITLE VI, CHAPTER I, OF THE LAW AND ORDER CODE OF
THE HOOPA VALLEY TRIBE**

Section (1) The Hoopa Valley Business Council hereby confirms that pursuant to Title I, Chapter 1, Section .06 of the Law and Order Code of the Hoopa Valley Tribe, Sections 12 and 14 of Ordinance No. 2-76, Amendment No. 1, have been repealed

Section (2) Ordinance No. 2-76, as amended, is codified at Title VI, Chapter 1, of the Law and Order Code of the Hoopa Valley Tribe. Repealed Sections 12 and 14 of Amendment No. 2 shall be deleted from Title VI, Chapter1, and Section 13, Amendments, of Amendment No. 1 shall be recodified as the new Section 12 of Title VI, Chapter 1.

Section (3) The following sections are hereby enacted; to be codified as Sections 13 and 14 of Title VI, Chapter 1:

Section 13 – Enforcement

(a) Tribal Court: Members of the Hoopa Valley Tribe shall be subject to prosecution in the Hoopa Valley Tribal Court for violation of any provision of this Chapter or for violation of any annual, seasonal, and/or emergency regulation promulgated under Section (11) of this Chapter. The Tribal Court may issue any order it deems necessary to enforce a conviction. Any person convicted under this Chapter may appeal the conviction in accordance with Chapter 7, Title I of this Law and Order Code.

(b) Citations: The Hoopa Valley Tribal Police are the tribal enforcement officers charged with enforcement of the provisions of this Chapter and any regulations promulgated thereunder. Tribal Police officers may issue citations to any member of the Hoopa Valley Tribe who the officer believes has committed a violation of any provision of this Chapter or of a regulation promulgated thereunder. Such citation shall state when and where the person is charged, and shall be forwarded in a timely manner to the Clerk of the Hoopa Valley Tribal Court.

Section 14 – Penalties

(a) Persons convicted of violating a time closure or any other regulation promulgated under Section (11) of this Chapter may be subject to penalties set forth in the Tribal Resolution enacting the Section (11) regulation they have violated.

(b) Persons convicted of violating Sections 9(e), 10(a), and 10(b) of this Chapter, which prohibit commercial sales of fish and/or eels, shall be subject to the following maximum penalty:

- Not more than $200.00 fine; or
- Forfeiture of fish or fishing gear; or
- Sixty (60) days suspension of fishing rights; or
- Any combination of the above deemed necessary or appropriate by the Tribal Court

Nothing in this subsection shall be construed to restrict the Court's discretion to impose less that the maximum penalty.

© Persons convicted of violating any other provision of this Chapter shall be subject to the following maximum penalty:

- Fine of $50.00; or
- Forfeiture of fish or fishing gear: or
- Thirty (30) days suspension of fishing rights; or
- Any combination of the above deemed necessary or appropriate by the Tribal Court.

If a person is convicted more than twice during any three-year period of violating the same provision is penalized under this subsection, such person may, upon the third conviction, be subject to a maximum fine of $100.00, forfeiture of fish or gear, or sixty (60) days suspension of fishing rights, or any combination suspension of fishing rights, and any combination thereof deemed necessary or appropriate by the Tribal Court. Nothing in this subsection shall be construed to restrict the Court's discretion to impose less than the maximum penalty.

(d) Any person who refuses or fails to obey a lawful order of the Tribal Court shall be fined not more than $50.00 and/or suffer suspension of fishing rights for not more than thirty (30) days.

(e) Community Service. The Tribal Court may order community service work to be performed by any person convicted of violating any provision of this Chapter or any regulation promulgated thereunder. Such work may be ordered as an alternative to all or any part of the penalties which, in the absence of this subsection, otherwise would be imposed. As a guideline to the Tribal Court, one hour of such work should be valued at $5.00.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 6 were present constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 3rd day of December 1987; and that this ordinance was duly adopted by a vote of 5 for and 0 against; and that said resolution has not been rescinded or amended in any way.

DATED this 3rd day of December 1987.

_____
Wilfred K. Colegrove, Chairman
Hoopa Valley Business Council

ATTEST:

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_____
Deirdre R. Young, Executive Secretary
Hoopa Valley Business Council

REGULATION # 2-76 NUMBER 1
MAY 27, 1986

Under the authority set out by the Fishing Ordinance of the Hoopa Valley Tribe No. 2-76 section 11 (a) the Hoopa Valley Business Council hereby adopts the following management regulations for the 1986 fishing season.

Fishing shall be open for all species of anadromous fish for the period from July 1, 1986 until December 1, 1986 for 7 days each week except that the fishery will be closed between the hours of 9:00 a.m. and 5:00 p.m., on Monday of each week, to retrieve lost and abandoned fishing gear.

All other parts of Ordinance 2-76 shall be in full force and effect.

Violations of this regulation and of Ordinance 2-76 shall be subject to adjudication in the Hoopa Tribal Court and penalties as set out in the Hoopa Tribal Law and Order Code.

Fishing before July 1, 1986 and after December 1, 1986 shall be open to all species with any gear except as prohibited under Ordinance 2-76.

This inseason regulation is designed to maximize fishing opportunity to members of the Hoopa Valley Tribe in accordance with the estimated harvest of 5,600 adult fall chinook salmon for the 1986 fishing season.

This regulation may be modified, as authorized under Section 11 (b) based on best scientific available data for conservation concerns.

TITLE 16

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 2-76 Amendment No. 2

DATE APPROVED: May 28, 1986

SUBJECT: FISHING ORDINANCE OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section I (e) of this Constitution and Bylaws authorizes the Hoopa Valley Business Council "to enforce the protection of tribal property, wildlife and natural resources of the Hoopa Valley Tribe in accordance with a conservation ordinance", and

WHEREAS: Pursuant to Article IX, Section 1 (e) of the Constitution of the Hoopa Tribe, the Hoopa Valley Business Council did enact Tribal Ordinance No. 2-76, dated September 16,1976, entitled "Hoopa Netting Ordinance" for the expressed purpose of conservation of the Hoopa Tribal fishery resource and did amend said ordinance, September 23, 1985, and

WHEREAS: The Hoopa Valley Business Council through it's organizational development has implemented conservation programs through it's Tribal Fisheries Department and law enforcement capabilities through the Tribal Law Enforcement Services Division and therefore has demonstrated it's capability to manage it's fisheries resources, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Tribe will exercise it's control over fishing and related activities to the fullest extent of Tribal jurisdiction in order to properly regulate, manage and protect all of the Tribal fisheries resources pursuant to the provisions of the following ordinance:

FISHING ORDINACE OF THE HOOPA VALLEY TRIBE

ORDINANCE NO. 2-76 AMENDMENT NO. 2

Section 1. – Title

This Ordinance shall be known as the "Hoopa Tribal Fishing Ordinance."

Section 2. – Findings and Purpose

(a) Under the authority set out by the Fishing Ordinance of the Hoopa Valley Tribe No. 2-76 section 11 (a) the Hoopa Valley Business Council hereby adopts the following management regulations for the 1986 fishing season.

Fishing shall be open for all species of anadromous fish for the period from July 1, 1986 until December 1, 1986 for twenty-four (24) hours a day seven (7) days each week except that the fishery will be closed between the hours of 9:00 a.m. and 5:00 p.m., on Monday of each week to retrieve lost and abandoned fishing gear.

All other parts of Ordinance 2-76 shall be in full force and effect.

Violations of this regulation and of Ordinance 2-76 shall be subject to adjudication in the Hoopa Tribal Court and penalties as set out in the Hoopa Tribal Law and Order Code.

Fishing before July 1, 1986 and after December 1, 1986 shall be open to all species with any gear except as prohibited under Ordinance 2-76.

This in season regulation is designed to maximize fishing opportunity to members of the Hoopa Valley Tribe in accordance with the estimated harvest of 5,600 adult fall chinook salmon for the 1986 fishing season.

This regulation may be modified, as authorized under Section 11 (b) based on best scientific available data for conservation concerns.

(b) Fishing has always been central to the cultural and religious existence of the Hoopa Valley Tribe and it's members. By this Ordinance and regulations adopted under it, the Hoopa Valley Tribe will exercise control over fishing and related activities to the fullest extent of Tribal jurisdiction in order to properly regulate, manage and protect all of the fisheries resources available to the Tribe and to insure their continued availability to the Tribe and it's members. Nothing in this ordinance shall be construed as a relinquishment, abrogation or abridgment of any rights of the Hoopa Valley Tribe.

© Tribal regulation is an internal affair of the Hoopa Valley Tribe, and is a natural attribute of the Tribe's internal sovereignty.

(d) In order to provide for increased Tribal control over the fisheries resource on the Reservation, the Hoopa Valley Business Council adopts this Fishing Ordinance pursuant to the powers vested in it by Article IX, Section 1 (e) and 1 (k) of the Constitution and Bylaws of the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, California.

(e) Any and all provisions of the Code of Federal Regulations, Title 25, as presently constituted or hereafter constituted which deal with the subject covered herein or are otherwise inconsistent with or are in conflict with the provisions of this Fishing Ordinance are declared to be no longer applicable.

Section 3. – Relation to Other Tribal Laws

The Hoopa Tribal Netting Ordinance, Ordinance Number 2-76, as approved on September 16. 1976, as reaffirmed by Ordinance Number 2-79 of July 20, 1979 are hereby codified and incorporated herein. Further, any and all sections and provisions which are in consistent with, or contrary to the spirit and/or purpose of this Amended Fishing Ordinance are hereby repealed.

Section 4. – Definitions

As used in this ordinance, the following definitions shall apply unless the contest clearly indicates otherwise:

(a) "Biological Personnel" means well qualified experts in fishery science and management who are on the Tribal staff and whose duties include advising on the management and/or enhancement of the Tribal fishery.

(b) "Ceremonial Fishing" is the taking of any fisheries resource for use in the traditional Tribal ceremonies and/or religious activities and is protected under the American Indian Religious Freedom Act and is exclusive of fishing for subsistence and commercial purposes.

© "Commercial Fishing" is the taking of and fisheries resource with the expressed intent to sell and profit economically.

(d) "Conservation" means to the extent necessary to insure optimum spawning escapement for the perpetuation of fish runs.

(e) "Depth of Net" means the total distance between the cork line and the lead line in meshes measured perpendicular to either the cork or lead lines.

(f) "Drift Net" is a net that is not anchored or staked on either end but drifts free in the water.

(g) "Tribal Member or Enrolled Member" means any person who is an officially enrolled member of the Hoopa Valley Tribe.

(h) "Tribal Enforcement Officer" means the person or persons charged with the responsibility of enforcing this ordinance and the regulations promulgated herein.

(i) "Fishing Gear" means all types and sizes of hooks, nets, gaffs, lines, traps, appliances, and other apparatus used to take fish.

(j) "Gill Net" is a net of a single web construction bound at the top by a float line and at the bottom by a weighted line.

(k) "Dip Net" is a section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be any size.

(l) "Hook and line" means a single line, attached to which are no more that two (2) single-barbed hooks or a single treble barbed hook.

(m) "Non-Enrolled Person or Non-Member" means any person who is not an enrolled member of the Hoopa Valley Tribe.

(n) "Stretched Measure" means the distance between the inside of one knot to the opposite (vertical) knot, one mesh. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three (3) while under tension.

(o) "Subsistence Fishing" is the taking of any fisheries resource for personal consumption by Tribal Members and their families.

(p) "Tribal Court" means a court established by the Hoopa Valley Business Council to hear violations of this ordinance and any regulations promulgated under it.

(q) ":Snag Gear or Snagging" means the use of a fishing pole, multiple hook and weight to hook fish as they swim by. The use of a multiple hook in conjunction with bait or lure shall not be considered snagging provided the multiple hook is 1.0 inches or less between any two points.

® "Identification Card" means a card issued by the Hoopa Valley Tribe to it's members identifying the holder as an enrolled member of the Hoopa Valley Tribe.

(s) "Identification Number" means a number assigned by the Hoopa Valley Tribe to its members to be placed on his or her fishing gear.

(t) "Set Net" means a gillnet which is staked or anchored to one (1) end so that it does not drift down the river.

Section 5. – Jurisdiction

(a) Territory: The provisions of this ordinance and all rules and regulations adopted under it shall apply to the full extent of the sovereign jurisdiction of the Hoopa Valley Tribe and shall apply in conformity with all agreements entered into by the Hoopa Valley Tribe which are designed to provide effective fisheries management on the Hoopa Valley Reservation as defined by the Tribal Constitution.

(b) Persons: The provisions of this ordinance and all rules and regulations adopted under it shall apply to all persons who are regulated and/or are eligible to fish under this ordinance.

Section 6. – Eligible Fishermen

(a) Enrolled Tribal Members: Members of the Hoopa Valley Tribe are eligible to exercise Tribal Fishing rights on the "Square" portion of the Hoopa Valley Indian Reservation provided such fishing activities are in accordance with this fishing ordinance.

(b) Minors: Enrolled members of the Hoopa Valley Tribe ages fifteen (15) years or less may exercise Tribal fishing rights under this ordinance. Such minors shall comply with the provisions of this ordinance and any regulations adopted under it. Violations of this ordinance and any regulations adopted under it shall be the responsibility of the minor and the parent or guardian who permit a minor to violate this ordinance shall be subject to the penalties provided by this ordinance.

© Non-Member Fishermen: Any person fishing under regulations other than under this ordinance shall be subject to the authority of the appropriate jurisdiction.

Section 7. – Tribal Biological Personnel

(a) Tribal Biological Personnel: Biological personnel of the Hoopa Valley Tribe may take and possess fish of any species for approved scientific, management and/or enhancement purposes by any means or gear suitable for the purposes of the biological program. Tribal biological personnel taking fish under the authority of this ordinance shall keep a cumulative record of all fish taken and shall provide such for inspection upon request by the Hoopa Valley Business Council. Fish taken by Tribal biological personnel for biological purposes shall not be used for their personal gain, but shall remain the property of the Hoopa Valley Tribe to be distributed as they may decide.

Section 8. – Identification

(a) No person who is eligible to fish under this ordinance shall exercise any Tribal fishing rights or other activities unless he or she is in possession of a valid current identification card as provided by this ordinance or unless that person can, without doubt, prove he or she is an enrolled member of the Hoopa Valley Tribe. All identification cards shall be issued by the Hoopa Valley Business Council, or their authorized representative and shall remain the property of the Hoopa Valley Tribe.

(b) Any person fishing within the boundaries of the Hoopa Valley "Square" shall produce an identification card as required by this ordinance upon demand of any

authorized Tribal Law Enforcement Officer. Failure to produce the required forms of identification or proof of enrollment shall be probable cause to believe that such person is not authorized to exercise fishing rights or privileges within the internal boundaries of the "Square".

© The Tribal issued identification cards shall state the name of the enrolled member, the current address, signature of the enrolled member, enrollment number of the individual and shall include a recent photograph of the person.

Section 9. – Fishing Equipment and Other Gear

(a) It shall be unlawful to exercise Tribal fishing rights with any gear which has not been properly marked in accordance with the procedures of this ordinance.

(b) Any gillnets used in accordance with this ordinance or any regulations adopted under it shall be marked with a number issued by the Hoopa Valley Business Council. Gillnets shall be marked at the end closest to the center of the river. Nets not so marked shall be removed from the river or confiscated by any Tribal Law Enforcement Officer. Repeated incidents of this section shall require confiscation and citation from any Tribal law Enforcement Officer and such net shall be impounded pending decision from the Tribal Court.

© Gillnets used on the "Square" shall not exceed 100 feet in length and/or which blocks a distance of more than 1/3 of the river width.

(d) Fish dams and weirs shall be allowed for the benefit of the Hoopa Valley Tribe. Such weirs or dams will be allowed based on a permit process. Applications for fish dams and weirs shall be presented to the Hoopa Valley Business Council for consideration at any regular meeting. The Hoopa Valley Business Council shall consult with Tribal Biological personnel prior to the issuance of a permit.

(e) Eel baskets and traps shall be permitted under this ordinance without restriction. However the commercial sale of eels shall be prohibited and subject to applicable penalties.

Section 10. – Prohibited and Restricted Fishing Gear

The following shall be prohibited or restricted while exercising Tribal fishing rights within the interior boundaries of the Hoopa Valley Indian Reservation as defined herein. Penalties for violations of the section shall be applied by the Tribal Court based on the severity and/or circumstances of the violation:

(a) Commercial sale of any fishery resource shall be prohibited.

(b) Sale of any fishery resource to any elderly or incapacitated person who cannot fish for themselves shall be prohibited. This section shall not be construed as

restricting or prohibiting the voluntary transfer to any elderly or incapacitated person.

© The taking of adult salmon from any tributary shall be prohibited.

(d) Theft or destruction of another persons equipment shall be prohibited.

(e) Any person who knowingly misappropriates the use of another persons identification card or number shall be in violation of this ordinance.

(f) Taking fish by means of snagging shall be prohibited.

(g) Gillnets set within fifty (50) feet from any spawning tributary shall be prohibited.
(h) Placing any net in any spawning tributary of the Trinity River shall be prohibited.

(i) Placing any net within five-hundred (500) feet from the mouth of the Trinity River shall be prohibited.

(j) Placing wire, boards or any other items in the river which result in the blockage of the river shall be prohibited.

(k) The use of heavy equipment in the river and/or tributaries without the prior approval of the Hoopa Valley Business Council shall be prohibited.

(l) Placing any net which extends more than 2/3 of the distance across the river shall be prohibited.

(m) No person shall use more than two (2) nets at one time with a combined length of one-hundred (100) feet.

(n) The use of explosives, stunning agents or caustic or lethal chemicals of any form is prohibited in all fisheries.

Section 11. – Annual, Seasonal and Emergency Regulations

(a) The Hoopa Valley Business Council shall make any annual, seasonal and/or emergency regulations for the protection of the rights of the members of the Hoopa Valley Tribe and for the protection of the fishery resource of the Tribe.

(b) Emergency regulations shall be considered and adopted at a duly called and convened meeting of the Hoopa Valley Business Council and shall be based on the condition of the fish runs and the fishery resource. Emergency regulations shall take effect as the Hoopa Valley Business Council deems necessary. Such emergency regulations shall be posted in conspicuous areas of the reservation and shall be broadcast over the Tribal Radio Station.

Section 12. – Appeals

(a) Appeals under this ordinance and regulations adopted under this ordinance shall be in accordance with the Appellate Review Procedure pursuant to Resolution 83-147 of the Hoopa Valley Business Council.

Section 13. – Amendments

(a) Amendments of this ordinance shall be by majority vote of the Hoopa Valley Business Council in accordance with the Hoopa Valley Tribe's Constitution and Bylaws.

Section 14. – Tribal Court

(a) Until the Hoopa Valley Tribe implements a comprehensive court system, violations under this ordinance shall be held before a Court of Elders.

(b) The Court of Elders shall consist of three (3) elder members of the Hoopa Valley Tribe and will be appointed by the Hoopa Valley Business Council. The elders appointed to sit on the Court shall have knowledge in the areas of traditional law and practices of the Hoopa Tribe.

© Penalties for violations under the Hoopa Valley Tribe's Fishing Ordinance shall be imposed by the Court based on traditional Tribal law and the levels of the penalties will be based on the severity of the violations.

(d) Penalties may include warnings, impoundment of fishing gear and/or suspension from participation in fishing activities for a time specified by the Court.

(e) In no event, will the Court of Elders impose excessive penalties and/or punishments which extend beyond the authority pursuant to Article VIII, Section 1 of the Constitution and Bylaws of the Hoopa Valley Tribe.

C E R T I F I C A T I O N

I, the undersigned, as Chairman or Vice-Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 7 were present, constituting a quorum, at a Special Meeting thereof; duly and specially called, noticed, convened and held this 28th day of May 1986; and that this resolution was adopted by a vote of 6 for with 0 against; and that said resolution has not been rescinded or amended in any way.

DATED THIS 28TH DAY OF MAY 1986.

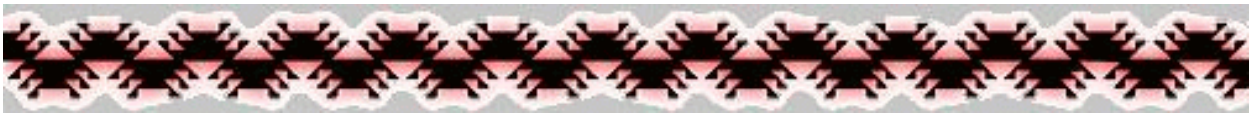
_____
WILFRED K. COLEGROVE, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 18 OF THE HOOPA TRIBAL CODE

PURPOSE: Duties & Responsibilities of Tribal Chairman

ADMINISTRATIVE RECORD: Adopted March 5, 1998



CHAIRMAN'S ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

Title 18

ORDINANCE NO: 1-80 AMENDMENT NO. 2

DATE APPROVED: March 5, 1998

SUBJECT: ESTABLISHING DUTIES, RESPONSIBILITIES AND SALARY OF TRIBAL CHAIRMAN

WHEREAS: The Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, which was approved by the Commissioner of Indian Affairs on August 18, 1972, and confirmed and ratified by the United States Congress on October 31, 1988; and

WHEREAS: Article XI, Section 1, Constitution and Bylaws of the Hoopa Valley Tribe states that "the Chairman shall preside over all meetings of the Tribal Council and the Tribe's general membership. He shall perform all duties of the Chairman and exercise any authority delegated to him by the Tribal Council. The specific duties and responsibilities of the Chairman and other members of the Council shall be spelled out in appropriate ordinance of the Tribal Council. The chairman shall vote only in case of a tie"; and

WHEREAS: Due to the ever increasing and expanding operations and interests of the Hoopa Valley Tribal Council it is appropriate at this time to define in an enactment of a permanent nature the duties, responsibilities and salary of the position of Chairman of the Hoopa Valley Tribe.

NOW THEREFORE BE IT RESOLVED: That the duties, responsibilities and powers of the Tribal Chairman shall include, but not be limited to, those items established within Article XI, Section 1 of the Constitution and Bylaws of the Hoopa Valley Tribe. Such other duties, responsibilities and powers delegated to the Tribal Chairman by the Hoopa Valley Tribal Council are:

1. The Tribal Chairman shall act as the Chief Administrator for the Hoopa Valley Tribe and all

Tribal employees by being responsible to and for the Hoopa Valley Tribe's membership and employees through maintenance and direction of daily Tribal activities and business;

2. Keeps the Hoopa Valley Tribal Council informed of activities through quarterly reports. The Chairman upon receipt of monthly reports submitted to him by managers, shall condense their contents; and add his comments and recommendations which may involve corrective actions. This shall be submitted to the Tribal Council quarterly in writing;

3. Makes recommendations and special reports in connection with any projects to be developed by the Council;

4. Takes part in or has input into studies for economic and social development of the Hoopa Valley Tribe makes appropriate recommendations to the Tribal Council regarding their feasibility;

5. Answers and investigates, or appoints staff to do so, complaints or concerns registered by Hoopa Valley Tribal members;

6. Maintains and familiarizes himself or herself with services available through the Bureau of Indian Affairs, the Indian Health Service and any other agencies related to Indian Affairs;

7. Coordinates efforts, possibly directs, and monitors persons rendering professional services to the Hoopa Valley Tribe;

8. Reviews budget expenditures, encumbrances and compares them with appropriations from reports prepared by fiscal staff to ensure that expenditures are in conformance with appropriations and applicable law(s);

9. Meets with managers and directors of programs/departments of the Hoopa Valley Tribe on a regular basis to ensure awareness of department and entity activities, concerns and progress;

10. Accomplishes in writing directives of the Council, including employment and termination directives by the Council, by attending to those items referred to the Chairman and directing appropriate managers to accomplish items directed to them. Monitors status of progress on Council directives in accordance with the intent of said directives to ensure completion;

11. Acts as the political leader for the Hoopa Valley Tribe in matters of local, state and federal intervention, and/or interaction. Issues public and/or political statements in accordance with the position of the Council with prior consent of the Council. In situations where issuance of a statement is urgent the Council may be polled for concurrence;

12. Strives to enhance the public awareness, image and credibility of the Hoopa Valley Tribe within the reservation and elsewhere;

13. Keeps abreast of all legislation pending on both state and national levels pertinent to Indian matters and to the Hoopa Valley Tribe, specifically;

14. Acts as the liaison, or designates a representative of the Hoopa Valley Tribe to and with the Bureau of Indian Affairs, Indian Health Service, and other agencies, offices or government bodies;

15. Coordinates activities and information with all Council members;

16. Travels as requested or required to carryout the desires and priorities of the Hoopa Valley Tribe. Chairman's travel shall be listed as a separate budget line item and travel costs shall not exceed the annual budgeted amount without prior approval of the Council. All travel by the Chairman shall be consistent with Tribal ordinances regarding travel and expense reimbursement. Travel exceeding four days away from the Reservation must receive prior Council approval and in all

instances of absence from the office for one day or more the Chairman shall inform the Vice-Chairman to be available to act in his absence;

BE IT FURTHER RESOLVED: That the Tribal Chairman shall have the authority to expend funds identified in accordance with the Budget Ordinance up to and including $2,500 per transaction.

BE IT FURTHER RESOLVED: That there shall be a limit of one (1) political appointment to be made by the Chairman and confirmed by the Tribal Council. The term of the Chairman's political appointee shall be co-terminus with that of the Chairman. The Chairman shall have authority to contract with the political appointees for a salary that is approved by the Tribal Council and consistent with the budget amount identified for that purpose. Nothing herein shall prohibit the Chairman from terminating a political appointment, with or without cause, during the term of the Chairman.

BE IT FURTHER RESOLVED: That a fixed annual compensation for the Tribal Chairman is set at a rate consistent with the annual amount budgeted for this line item, and

BE IT FURTHER RESOLVED: That should the Tribal Chairman neglect or refuse to carry out the duties and responsibilities as outlined in this ordinance, the Tribal Council, upon submission of appropriate written justification, may act to decrease the annual compensation of the Chairman provided that before any vote is taken, the Chairman shall be provided with the written justification for such action at least five (5) days before the meeting of the Council to consider the matter and he shall have an opportunity to answer any and all points contained in said written justification.

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 members of which six (6) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 5th day March, 1998; and that this Ordinance was duly adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that

since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED March ___, 1998.

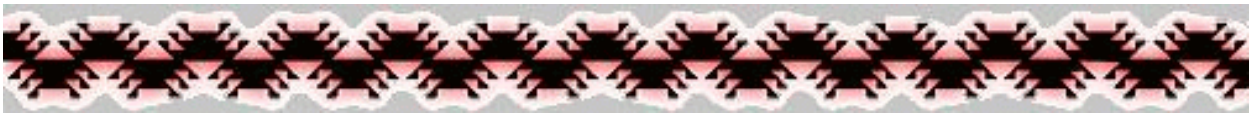
_____
Merv George, Jr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 19 OF THE HOOPA TRIBAL CODE

PURPOSE: BUDGET ORDINANCE OF THE HOOPA VALLEY TRIBE

ADMINISTRATIVE RECORD: Adopted October 18, 1989



TITLE 19

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 2-89

DATE APPROVED: OCTOBER 18, 1989

SUBJECT: BUDGET ORDINANCE OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribe did on June 20,1972 adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX,

Section 1© of this Constitution and Bylaws authorized the Hoopa Valley Business Council, "To collect and expend any Hoopa Valley Tribal funds within the exclusive control of the tribe and to recommend the expenditure of any other tribal funds.", and

WHEREAS: The Hoopa Valley Business Council has deemed it necessary to establish this Tribal Budget Ordinance to ensure fiscal accountability by the Council and its programs, projects and entities, and

WHEREAS: This ordinance shall govern any and all funds under the control of the Hoopa Valley Tribe, its Business Council and all of its programs, projects and entities, as well as any and all funds controlled by any official or employee of the Tribe, if such funds are subject to his/her employment with the Tribe. These funds shall be deemed to be "within the exclusive control of the tribe" under Article IX, Section 1 © of the Constitution and Bylaws, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council hereby enacts the Tribal Budget Ordinance as Ordinance No. 2-89, and such Ordinance shall have full force and effect.

Section 1 – Purpose

The purpose of this Ordinance is to control the use and expenditure of any and all Hoopa Valley Indian funds; including but not limited to: funds generated from tribal businesses and assets, and funds derived from contracts, grants, and gifts from outside governments and entities. Thus, the Council, all tribal programs and entities, all tribal officials and all employees of the tribe, its programs and its entities are prohibited from expending funds except as authorized under this Ordinance.

Section 2 – Establishment of Fiscal Year Revenues

1.1 Identification of Tribal Revenues

No later that May 15 of each year all tribal programs and entities shall provide a written report to the Chief Fiscal Officer which identifies any and all revenues, including reserves and certificates of deposit, that expect to receive during the next fiscal year. The Tribal Chairman shall be responsible for ensuring that this requirement is carried out.

1.2 Identification of Grants, Contracts, Miscellaneous Funds

No later than May 15 of each year, each tribal program and entity shall provide a written report to the Chief Fiscal Officer detailing any and all grants, contracts, or any other miscellaneous funds that it expects to receive during the next fiscal year. The use of any funds identified under this subsection shall be detailed in the Budget Authority Resolution under Section 3. No grant, contract or miscellaneous funds may be expended unless they have been identified, and their use designated and approved in the Budget Authority Resolution or any amendments thereto. The use of tribal funds for grant matching funds is not permitted unless such tribal funds have been identified in the Budget Authority Resolution.

1.3 Tribal Reserve Funds

The Tribal Council may, by appropriate action, establish special reserves that are exempt from this Ordinance, if and only if it has formally enacted fiscal controls for such reserves. Such controls shall at a minimum require that expenditure or commitment of such reserves can be undertaken only by formal action of at least three-fourths (3/4) affirmative vote of the Tribal Council at a duly called and recorded meeting.

Section 3 – Establishment of Budget Authority

2.1 Establishment by Tribal Resolution

At its first regular meeting in June, the Tribal Council shall review all materials submitted under Section 2, and formally adopt a resolution setting out the total authorized tribal budget expenditure. This resolution shall specifically designate the source of the funds for each authorized activity. The budget authority for the next fiscal year does not become valid until the funding for it has been specifically identified. If the fiscal year budget authorizes an activity but fails to identify its funding source the Council's actions are deemed to be null and void and the Tribal Chairman and Chief Fiscal Officer are expressly prohibited from preparing any budgets for such amounts. The Resolution enacted under this section shall be call the Budget Authority Resolution.

2.2 Permanent Fiscal Year Budget Package

Once enacted, the Budget Authority Resolution shall become a permanent part of the Tribe's budget and budget justification package. The Council, Tribal Chairman, Chief Fiscal Officer and program managers and directors are responsible for ensuring strict compliance with the Budget Authority Resolution.

2.3 Funds, Contracts, Grants Not Identified

Only those funds, contracts and grants which are properly identified in the Budget Authority Resolution are authorized for expenditure.. Thus, the use of any funds not included in the resolution is prohibited. If funding opportunities become available after the Budget Authority Resolution is adopted, the Tribal Council may, prior to submission of a proposal or application, amend the Resolution to include said funding, provided, however, that if matching funds are required the Council shall identify the source of such funds. Any such amendments shall designate the name of the program applied to, the amount of money requested and the program or entity which will be responsible for such funding if it is received. If any program submits an application for funding that is not in compliance with this Ordinance, the Council shall have the authority to refuse to accept any or all of the funds received, or to change their use to the extent allowed by law, the Council may also use any funds received as an off-set to the tribal budget and may withdraw any tribal funds from that program as it deems necessary. All amendments provided herein shall be governed under Section 7 of this Ordinance.

Section 4 – Development of Tribal Budget

3.1 Chairman's Budget Recommendations

Based on the information contained in the Budget Authority Resolution, the Tribal Chairman shall prepare and submit to the Tribal Council, before the first regular meeting in July, a proposed fiscal year budget. The total amount of this proposed budget shall not exceed the amount established in the Budget Authority Resolution and the budget itself shall contain recommendations for use of all grants, contracts, an other funds identified in the Budget Authority Resolution.

3.2 Tribal Council Review / Adoption of Proposed Budget

After reviewing the Chairman's budget recommendations the Council shall make any changes that it deems appropriate, provided that those changes are consistent with the Budget Authority Resolution. No later than the second regular meeting in July, the Council shall formally adopt a proposed budget for the coming fiscal year. At the meeting, the Council shall schedule a budget review hearing to allow input on the proposed budget from the public and tribal managers. Prior to this hearing date the Council shall make the proposed budget, including the Budget Authority Resolution, identification of grants, contracts and other funds, and any budget justification documents available for public review. This information is to be made a part of the official record of the budget hearing. The budget hearing shall be held in accordance with the Tribe's hearing procedures.

Section 5 – Adoption of Tribal Budget

4.1 Changes To The Proposed Budget

After review of the public comments, the Tribal Council shall, no later that the second regular meeting in August, make any necessary changes to the proposed budget and Budget Authority Resolution. After all necessary changes, if any, are made, the Council shall adopt the fiscal year budget package by official resolution.

4.2 Final Budget Preparation

Once the Council has formally adopted the fiscal year budget package, the Tribal Chairman and Chief Fiscal Officer are responsible for making all approved changes. Any changes including any amendments to the Budget Resolution are to be accompanied by the additional documentation required to justify such modifications. The formal fiscal year budget shall be completed and presented to the Bureau of Indian Affairs Office no later than September 1 of each year.

Section 6 – Assignment of Authority and Responsibility

5.1 Authority and Responsibility of the Council

Except as otherwise provided in this Ordinance, neither the Council, nor any individual member of the Council, has the authority to deviate from this Ordinance, its procedures and any budgets adopted under it. Once the fiscal year budget is adopted, the authority of the Council is limited to budget oversight, except as otherwise provided herein. However, these limitations shall not prevent the Council from taking corrective action, when necessary, to ensure compliance with this Ordinance.

5.2 Authority and Responsibility of the Chairman

The Tribal Chairman acting as the Chief Executive Officer of the Tribe, shall be responsible for carrying out the terms of this Ordinance and any budgets adopted under it. The Chairman shall report to the Council on all requested or proposed changes or modifications to the approved fiscal year budget as well as any matter which might justify such changes or modifications. To aid in emergencies, the Chairman may, with the concurrence of the Chief Fiscal Officer, approve one modification a year to the approved fiscal year budget for each program, provided that such modification shall not exceed a maximum of $1,000.00. The Chairman shall have the authority, including for disciplinary action, to take whatever actions are necessary and appropriate to carry out the terms of this Ordinance.

5.3 Authority and Responsibility of the Chief Fiscal Officer

Once the tribal budget is properly approved, the Chief Fiscal Officer (CFO) of the Tribe is directly responsible for ensuring that it is properly implemented and that any and all unauthorized expenditures are prohibited. In this regard, the CFO shall have full and complete authority and control to prevent any unauthorized expenditures of funds. The CFO shall immediately report any deviations from the approved fiscal year budget to the Tribal Chairman. The CFO shall assure that all programs and projects operated under any grants, contracts, and or any other funding arrangements are provided with monthly financial statements.

5.4 Authority and Responsibility of Managers/Directors

All program managers have the direct day to day responsibilities to assure that their programs are operated in compliance with the budgets approved under this Ordinance, as well as all other applicable laws and regulations. Program managers shall be directly responsible for obtaining monthly financial statements for their respective programs and projects and they are required to report immediately to the Tribal Chairman and CFO any deviations from their approved fiscal year budget. All managers are required to identify and report to the CFO, in writing, any matters that prevent compliance with their program's legally adopted budget. This information is to be reported before any steps are taken which are not in compliance with the approved budget. If a program manager learns that an action has been or is about to be taken which is not in compliance with the programs approved budget, the program manager becomes directly and immediately responsible for insuring that the problem is corrected, whether or not he or she is directed to do so by the CFO or Tribal Chairman. For the purposes of this Ordinance, the term "manager" shall include any director, manager, chief, or interim official who has direct control over the operations of a program and project, regardless of the time served in such position.

5.5 Limitations on Authority

Unless specifically authorized in this Ordinance, no person: whether elected; appointed; or employed under any position, department or entity of the Tribe, has the authority to deviate from this Ordinance. However, this Ordinance is not intended to, nor shall it be construed as preventing the Hoopa Valley Business Council, if acting in accordance with its overriding responsibility to the Hoopa Valley Tribe, from taking any necessary action to protect and safeguard the rights, resources, or welfare of the Tribe.

Section 7 – Regular and Emergency Budget Amendments

6.1 Budget Line Item Amendments

The Tribal Chairman, with concurrence of the CFO, may amend an approved budget up to a maximum of $1,000.00 for each program per any fiscal year.

7.2 Regular Budget Amendments

If, after the Council has formally adopted a fiscal year budget, it becomes necessary to amend such budget and such funds have been identified, the Tribal Chairman and the CFO may propose recommended changes to the Council. The Council may adopt an amendment to a duly authorized fiscal year budget only after the issue has been noticed on the Council's agenda and it has been discussed and voted on at a regularly duly called Council meeting. All amendments must be considered in accordance with the provisions of this Ordinance.

7.3 Emergency Amendments

The Council retains the emergency power to reprogram any tribal funds if it is determined that a substantial threat exists to the Hoopa Valley Tribe, its resources, or its rights. If the Council takes such emergency action, it shall, within 30 days, call a special Council

session for the purpose of formally recording their action and for amending the Budget and Budget Authority Resolution where necessary to accommodate their changes. Nothing in this Ordinance shall require the Tribal Chairman, the Council, or any other tribal officials, acting during such an emergency, to publicly disclose any information that could adversely impact the legal and/or political standing of the Hoopa Valley Tribe.

7.4 Limitations on Amendments

No amendment to the Budget Authority Resolution, or to any authorized or proposed budget becomes valid until such funds are realized. In addition, no funds not contained in an approved fiscal year budget may be advanced nor expended, including grant matching fund obligation, unless and until an amendment to the budget is adopted in accordance with this Ordinance. The Special Consent process of the Tribal Council shall have no binding manner authority under this Ordinance and any actions enacted in that manner shall be considered null and void.

Section 8 – Enforcement

8.1 Council, Chairman, Chief Fiscal Officer

The Tribal Council, the Tribal Chairman, and the Chief Fiscal Officer are responsible for assuring the Tribe's compliance with this Ordinance and any resolutions, amendments, and budgets adopted under it. Nothing in this Ordinance is intended to place limitations on any lawful powers of the Tribal Council, tribal officials or tribal staff other than those limitations specifically delineated in this Ordinance.

8.2 Tribal Court

Any claims, challenges and alleged violations of this Ordinance that have not been satisfactorily resolved by the party or parties assigned that responsibility under this Ordinance shall be brought in the Hoopa Tribal Court. The Tribal Council, by adopting of this Ordinance, hereby agrees to waive any and all rights which prevent such action in the Hoopa Tribal Court. No other waivers are offered nor are intended.

8.3 Penalties

The Tribal Court shall have such authority to impose penalties for infractions under this Ordinance. These penalties are to be based on the circumstances surrounding and magnitude of the violation. Misuse of tribal funds for personal gain, intentional violations, fraud and embezzlement of tribal funds shall carry with them the strictest penalties available. Such penalties may include, but are not limited to: the remedies outlined in the Tribe's Personnel policies and procedures, the imposition of fines, and person and punitive damages, and the recommendation that additional charges be brought in other appropriate courts which have jurisdiction over such matters.

BE IT FURTHER RESOLVED: That if any part of this Ordinance is held to be invalid the remainder shall continue to be if full force and effect, and

BE IT FURTHER RESOLVED: That this Ordinance may not be amended or repealed unless that action is approved by a three-fourths (3/4) affirmative vote of the Hoopa Valley Business Council, taken at a regular duly called meeting of the Council, after and only after the proposed action was publicly announced for at least 2 weeks prior to the meeting and the item was properly noted on the Council's agenda.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 5 were present constituting a quorum at a Special meeting thereof; duly and regularly called, noticed, and convened, and held this 18th day of October, 1989; and that said resolution has not been rescinded or amended in any way.

DATED THIS 18TH DAY OF OCTOBER, 1989

_____

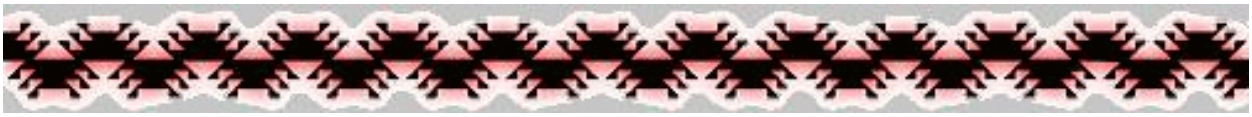
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 20 OF THE HOOPA TRIBAL CODE

PURPOSE: EMERGENCY ACTION TO SUPPRESS ARSON

ADMINISTRATIVE RECORD: Adopted in 1981 amended August 18, 1994



ORDINANCE
OF THE
HOOPA VALLEY TRIBAL COUNCIL

TITLE NO. 20

ORDINANCE NO: 1-81 Amendment No. 1

DATE APPROVED: August 18, 1994

SUBJECT: AMENDING ORDINANCE 1-81 EMERGENCY ACTION TO SUPPRESS ARSON

WHEREAS: The Hoopa Valley Tribe on June 20, 1972, adopted a Constitution and By-Laws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified and confirmed by Congress, PL 100-580, § 8, 102 Stat. 2932 (1988);

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

WHEREAS: Article IX of the Constitution grants to the Tribal Council the power and the duty to administer tribal property, § 1(a), and to safeguard and promote the peace, safety, morals and general welfare of enrolled members of the Hoopa Valley Tribe by regulating the use and disposition of property on the Hoopa Valley Reservation, § 1(l);

WHEREAS: The Hoopa Valley Tribe, proceeding through the Tribal Council, retains the inherent sovereign authority to suppress arson on the Hoopa Valley Reservation;

WHEREAS: On the afternoon of August 18, 1994, there were at least 15 fires burning on 130 acres, 250 acres having burned in just the last few weeks, the net financial loss to the Tribe for 75 acres of standing timber burned on Supply Creek being roughly $100,000, there are 170 or more fire suppression personnel on site, many of whom are enrolled tribal members, at least 10 fire fighters have sustained serious injuries while fighting fires; if the present fires or subsequent fires get out of hand, profound loss of life, homes, forest and watershed can occur;

WHEREAS: The Tribal Council is informed that the source of the fires is arson;

WHEREAS: In light of the recitals herein and the information on which they are grounded, supplied by Hoopa tribal members and the Hoopa Valley Tribal Police and Fire Suppression personnel, the Tribal Council finds and hereby determines that there is an immediate threat to the Tribe, its enrolled tribal members and its resources and assets, and further that emergency regulation is called for to reduce the risk of harm to Hoopa children, women and men, their homes, their financial security and natural resources by continuing arson.

NOW THEREFORE BE IT RESOLVED THAT: the Tribal Council hereby invokes § 6.10.1 of the Legislative Procedures Act, Ordinance No. 4-89, and amends Ordinance No. 1-81, passed February 19, 1981, by inserting the following new language:

3. Arson - the Hoopa Valley Tribal Council authorizes and instructs the Chairman to offer a $10,000.00 reward for information leading to the arrest and conviction of a person or persons responsible for committing arson on the Hoopa Valley Reservation; to carry out a public information plan intended to suppress arson; to obtain from federal, state and local officials their priority assistance in

investigating and prosecuting incidents of arson; and to initiate the process for exclusion from the Hoopa Valley Reservation of convicted arsonists.

THEREFORE BE IT FURTHER RESOLVED THAT: the Tribal Council hereby instructs the Chairman to solicit public opinion respecting suppression of arson and to place this amended language on the Tribal Council Agenda to be considered for permanent adoption; this ordinance shall be routed to tribal departments and components in conformance with § 6.3 of the Legislative Procedures Act to obtain their comments and criticism.

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 five (5) were present, constituting a quorum by Special Consent thereof; duly and regularly called, noticed, convened and adopted by a vote of five (5) in favor, zero (0) opposed and zero (0) abstaining, and that said resolution has not been rescinded or amended or modified in any way.

Dated this eighteenth day of August 1994.

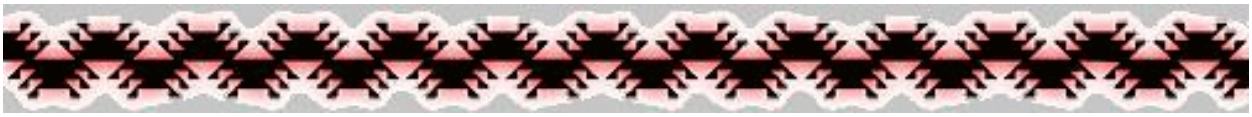
_____
Pliny McCovey, Sr., Vice-Chairman
Hoopa Valley Tribal Council

Attest:_____
Marla Hunsucker, Executive Secretary
Hoopa Valley Tribal Council

TITLE 21 OF THE HOOPA TRIBAL CODE

PURPOSE: Drug and Alcohol Policies

ADMINISTRATIVE RECORD: Adopted February 22, 1996



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,	being under the influence
manufacture,	

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.

1.6 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 22nd 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.

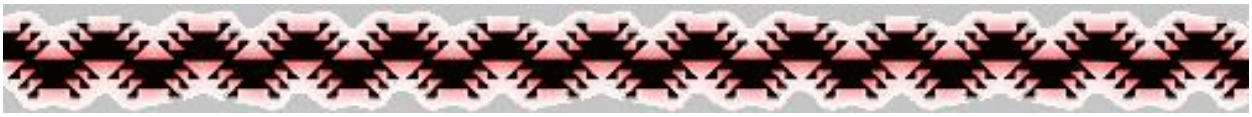
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 23 OF THE HOOPA TRIBAL CODE

PURPOSE: UNEMPLOYMENT AND DISABILITY INSURANCE ORDINANCE

ADMINISTRATIVE RECORD: Adopted December 20, 1985



TITLE 23

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO.: 1-85, AMENDMENT NO. 2

DATE APPROVED: December 20, 1985

SUBJECT: UNEMPLOYMENT AND DISABILITY INSURANCE ORDINANCE OF THE HOOPA VALLEY TRIBE.

WHEREAS: The Hoopa Valley Tribe did on June 20,1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (1) of this Constitution and Bylaws authorized the Hoopa Valley Business Council "to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians by regulating the conduct of trade and the use of disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs or his authorized representative, and,

WHEREAS: It is the desire of the Hoopa Valley Business Council to enact an Unemployment and Disability Insurance Ordinance to ensure the provision of these vital insurance protection services for all Indians of the Hoopa Valley Reservation, and,

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council does hereby adopt for implementation this Unemployment and Disability Insurance Ordinance of the Hoopa Valley Tribe and approvals required by the Commissioner or his authorized representative is requested at the earliest possible time:

(a) GENERAL PROVISIONS.

Section 1 – Title

This Ordinance shall be known as the "Unemployment and Disability Insurance Ordinance of the Hoopa Valley Tribe."

Section 2. – Findings and Purpose

(b) The Hoopa Valley Tribe is a federally-recognized Indian Tribe, organized pursuant to a Constitution and Bylaws which were approved by the Commissioner of Indian Affairs on August 18, 1972 and exercising sovereign governmental authority over the Hoopa Valley Reservation established by Executive Order of June 23, 1876, 1 Kapp 815.

(c) The sovereign governmental authority of the Hoopa Valley Tribe extends not only to enrolled tribal members but also to all non-members, whether Indians or non-Indians within the exterior boundaries of the Hoopa Valley Reservation with regard to any conduct which threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.

(d) The power to levy taxes and similar exactions is an inherent and essential part of the authority of the Tribe. The sovereign power of the Tribe to tax is embodied in Article IX, Section 1 (f) of the Constitution and Bylaws of the Hoopa Valley Tribe, approved by the Commissioner of Indian Affairs on August 18,1972.

(e) The power to regulate the conduct of trade and the use and disposition of property upon the Reservation is also an inherent and essential part of the authority of the Tribe. The sovereign disposition of property is embodied in Article IX, Section 1(1) of the Constitution and Bylaws of the Hoopa Valley Tribe, approved by the Commissioner of Indian Affairs on August 18, 1972.

(f) Employment by any enrolled tribal member or any non-member within the boundaries of the Hoopa Valley Reservation has a direct affect on the economic security, health and welfare of the Tribe and its enrolled members and their families, and on the Reservation itself.
(g) Because of the uncertainties and often physically arduous nature of employment on the Reservation, unemployment insurance and disability insurance for all employees on the Reservation are necessary concomitants to the economic and social health and welfare of such employees and their families and the well being of all people on the Reservation.
(h) Among the benefits provided by the tribal governments to tribal members and to nonmembers residing or conducting business inside the Reservation are the following: The provision of governmental services, including sewer and water systems, police and fire protection; the promotion and regulation of economic activities within the Tribe's sovereign jurisdiction; and the protection of Reservation lands and resources.
(i) Without the exercise of the Tribe's sovereign authority to tax, as implemented by this Ordinance, it is not possible for the Tribe to provide the unemployment insurance and disability insurance essential to tribal members, Indians who are not tribal members, and non-Indians who are employed inside the Reservation. Because the State of California has enacted a comprehensive unemployment insurance code governing all employers and employees in the State other than those covered under this Ordinance, and because the State's comprehensive unemployment and disability insurance scheme spreads the cost and the insurance risk over the population of California other than employers and employees governed by this Ordinance, and because the comprehensive State Unemployment and Disability Insurance Program includes all necessary mechanisms for administration and enforcement, the Tribe has determined that utilization of the State Unemployment and Disability scheme offers the best and most economic insurance protection for enrolled tribal members and all nonmembers, whether Indians or non-Indians employed inside the Reservation.
(j) In order to provide for the health and welfare of the Tribe, its enrolled members and their families, and all persons residing or working inside the Reservation, the Hoopa Valley Business Council adopts this Unemployment and Disability Insurance Ordinance pursuant to the powers vested in it by Article IX, Section 1 (f), (j), (k), and (1) of the Constitution and Bylaws of the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation, California.
(k) Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth herein whether plainly stated or clearly apparent from the context of the language used herein.

Section 3. – Relation to Other Tribal Laws.

All prior ordinances and resolutions of the Tribe regulating, authorizing, prohibiting or in any way dealing with unemployment and disability insurance or any matters relating to enforcement provisions contained herein, are of no further force or effect.

Section 4. – Definitions.

As used in this Ordinance, the following definitions shall apply unless the context clearly indicates otherwise.

(a) "Code" means the California Unemployment Insurance Code, California Statutes of 1953, Ch. 308, as amended heretofore and hereafter.
(b) "Council" means the Hoopa Valley Business Council, governing body of the Hoopa Valley Tribe.
(c) "Reservation" means the Square portion of the Hoopa Valley Reservation established by the Executive Order of June 23, 1876, 1 Kapp 815 and shall not include any portion of the Hoopa Valley Reservation added thereto thereafter which lies outside the Square.
(d) "Person" or "company" herein used interchangeably, means any individual, firm, partnership, joint venture, club, company, corporation, association, society or any group of individuals acting as a unit but does not mean the United States or any political subdivision or instrumentality thereof, or the Hoopa Valley Tribe or any subordinate entity thereof.
(e) "Unemployment insurance" and "disability insurance" mean unemployment insurance and disability insurance as defined and provided in the California Unemployment Insurance Code, California Statutes of 1953, Ch. 308, as amended heretofore and hereafter.

(f) “Tribe “ means the Hoopa Valley Tribe, a federally recognized Indian tribe, organized pursuant to a Constitution and Bylaws which were approved by the Commissioner of Indian Affairs on August 18, 1972.

All other words, terms and phrases used in this Ordinance shall have the meanings assigned to them in the Code.

Section 5. – Mandatory Coverage – General.

Every person who conducts business inside the Reservation shall be subject to the Code and all California law pertinent thereto as a matter of tribal law; therefore, every such person must provide mandatory unemployment insurance and disability insurance upon every employee inside the Reservation. The insurance coverage required hereby shall be a condition upon any such person’s right to conduct such business inside the Reservation. The conduct of any such business inside the Reservation by any such person shall be deemed a consent to be bound by the Code of operation of tribal law. In addition, any such person must contract in writing for unemployment and disability insurance upon request by the State of California.

Section 6. – Mandatory Coverage –Subordinate Tribal Entities.

All subordinate entities of the Tribe must provide unemployment insurance and disability insurance upon every employee with respect to employment inside the Reservation. The insurance coverage required hereby shall be mandatory and each such subordinate entity must contract in writing for unemployment and disability insurance upon request by the State of California.

Section 7. – Tribal Tax Levied.

There is hereby levied upon each employer for all employment subject to this Ordinance a tribal tax in the amount of the contributions required by the Code for unemployment insurance and disability insurance coverage upon such employment of each such employee.

(a) The tax levied hereunder with respect to unemployment insurance shall be paid by the employer and shall not be deducted from wages of the employee.

(b) The tax is levied hereunder with respect to disability insurance shall be paid by the employer but may be deducted from wages of the employee.

(c) This section shall not apply to subordinate entities of the Tribe.

Section 8. – Manner of Compliance.

(a) Every employer, including every subordinate tribal entity, subject to this Ordinance shall register for unemployment insurance and disability insurance with the State of California pursuant to all requirements of the Code.

(b) Every employer, including every subordinate tribal entity, liable for tribal taxes levied under this Ordinance will be credited with all contributions paid to the State of California under the Code with respect to all employment subject to this Ordinance.

Section 9. – Status of Contributions.

All contributions deducted from employees' wages pursuant to this Ordinance shall be deemed tribal taxes and shall be held in trust by the employer for the State of California and shall be exempt from attachment, garnishment, execution or any other remedy for the collection of debts and in the event of insolvency or bankruptcy of the employer, shall not be considered any part of his assets but shall be paid to the State of California prior to the payment of any other claim against the employer.

II. ENFORCEMENT – STATE OF CALIFORNIA.

Section 10. – Enforcement.

With respect to every employer and every employee and all employment subject to this Ordinance, all provisions of the Code shall be applicable irrespective of any action or lack of action by the Council pursuant to this Ordinance.

Section 11. – Validity of State Process.

With respect to the unemployment insurance and disability insurance required by this Ordinance, all state process, whether administrative or judicial, utilized in the administration or enforcement of the Code in any proceeding, whether administrative or judicial, shall be of full force and validity inside the Hoopa Valley Reservation irrespective of any action or lack of action the Council pursuant to this Ordinance.

Section 12. – Notice to Hoopa Valley Business Council

Within five days after service of any notice of the State of California authorized by this Ordinance, the state department charged with enforcing the Code shall give notice in writing to the Council of the action taken, the person against whom the action was taken, and may include a brief summary of the action including a description of actions which could be taken by the Council to assist the State in the matter.

Section 13. – Exhaustion of Tribal Remedies.

Enforcement of the Code by the State of California is independent of any action of the Council and does not require resort to or exhaustion of, any tribal remedies by the employer or employees involved in such enforcement.

III. ENFORCEMENT – HOOPA VALLEY TRIBE.

Section 14. – Civil Enforcement Hearing Before Council.

Upon notice to the Council by any person that an employer, subject to this Ordinance, has violated any provisions of the Code, such employer may be summoned to an enforcement hearing before the Council upon 20 days written notice.

Section 15. – Notice and Service.

Service of the Notice shall be made personally by a person not a member of the Council or by means of certified mail, return receipt requested. The Notice shall cite the employer to appear before the Council at a time and place therein specified which shall not be less than 20 days from the date of service of the Notice. Evidence of the receipt of Notice shall be kept as part of the record in the matter.

Section 16. – Publication of Notice.

Upon a showing to the Council that diligent efforts were made to serve the Notice on the employer and that for sufficient reasons service could not be made, the Council may allow service to be made by posting copies of the Notice in two public places in the Reservation for three weeks and by publication of a copy of the Notice and Complaint once a week for three consecutive weeks in a newspaper of general circulation in the vicinity of the Reservation. In such case the return date shall be not less than 30 days from the date of first publication.

Section 17. - Informal Hearing; Evidence; Attorney.

The hearing will be informal and the employer shall have the right to present evidence in his behalf, both written and oral, and may be represented by an attorney. The Council may grant continuances for good cause shown and may utilize such other procedures as the Council deems proper.

Section 18. - Burden and Standard of Proof.

In the hearing, the burden of proof shall be upon the Council and the standard of proof shall be the greater weight of the evidence. Notice of failure of the employer to comply with the Code shall be deemed a presumption of the facts stated in the state Notice.

Section 19. - Applicable Law.

In the hearing the Council shall apply any applicable law of the Tribe, the Code, any other applicable provisions of California state law pertinent to administration or enforcement of the Code, any applicable laws of the United States or regulations of the Secretary of the Interior and all customs of the Tribe not prohibited by federal law.

Section 20. - Evidence Standard.

The Council shall not be bound by common law rules of evidence but shall use its own discretion as to what evidence it deems necessary and relevant to the matter.

Section 21. - Judgment of the Council.

Subsequent to the hearing, the Council's judgment shall consist of an order of the Council assessing money damages against the employer or directing the performance or prohibition of appropriate legal acts.

Section 22. - Damages - Kind and Amount.

Damages assessed by the judgment may include all delinquent contributions required by the Code, interest thereon, attorney's fees incurred by the Council, and a civil penalty of not more than $500.00.

Section 23. - Injunction; Collection Procedures; Disbursement.

In addition to assessment of damages, the judgment of the Council may enjoin the employer from further violations of the Code or from conducting any further business inside the Reservation. The Council may utilize any necessary collection procedures including garnishment, attachment and execution upon real and personal property pursuant to rules governing such procedures which the Council deems proper. Any delinquent contributions, interest thereon or attorneys fees collected pursuant to the Code and this Ordinance shall be disbursed by the Council to the agency of the State of California charged with administration of State Unemployment and Disability Insurance.

Section 24. - Exclusion from Reservation.

In addition to the assessment of damages as provided in this Ordinance, the Council is authorized to exclude from the Reservation temporarily or permanently, except from public highways thereon, any employer who is not an Indian, who willfully fails to comply with this Ordinance, provided, that such exclusion may not adjudged against a person authorized by federal law to be present on tribal land and provided further, that as to any person who owns land within the Reservation which is neither held in trust by the United States nor subject to restrictions against alienation posed by the United States, or is a bona fide resident on such land, such exclusion shall not bar such person from such land which he owns or on which he resides.

Section 25. - Severability.

(a) If any clause, part or section of this Ordinance shall be adjudged invalid, such judgment shall not affect or invalidate the remainder of the Ordinance, but shall be confined in its operation to the clause, part, or section directly involved in the controversy in which such judgment was rendered.

(b) If any application of this Ordinance or any clause, part or section thereof, is adjudged invalid, such judgment shall not be deemed to render that provision inapplicable to other persons or circumstances.

Section 26. - Effective Date.

This Ordinance shall be effective as of the date of its approval by the Secretary of the Interior or his duly authorized representative.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 6 were present, constituting a quorum, at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 20th day of December, 1985; and that this resolution was adopted by a vote of 5 for with 0 against; and that said resolution has not been rescinded or amended in any way.

DATED THIS 20TH DAY OF DECEMBER, 1985.

_____

WILFRED K. COLEGROVE, CHAIRMAN

HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____

DEIRDRE R. YOUNG, EXEC. SECRETARY

HOOPA VALLEY BUSINESS COUNCIL

APPROVED:

_____

AREA DIRECTOR

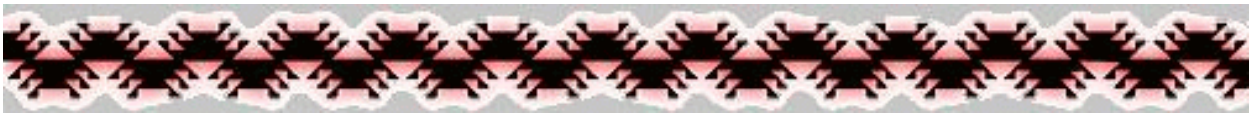
_____

DATE

TITLE 24 OF THE HOOPA TRIBAL CODE

PURPOSE: CONFIDENTIAL NATURE OF EXECUTIVE SESSIONS

ADMINISTRATIVE RECORD: January 15, 1981



TITLE 24

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 2-81

DATE APPROVED: JANUARY 15, 1981

SUBJECT: CONFIDENTIAL NATURE OF EXECUTIVE SESSION PROCEEDINGS OF THE TRIBAL BUSINESS COUNCIL

WHEREAS: The Hoopa Valley Tribe did on June 20,1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section I (k) of this Constitution and Bylaws authorizes the Hoopa Valley Tribe "to promulgate and enforce ordinances governing the conduct of members of the Hoopa Valley Indians", and,

WHEREAS: The purpose of this Ordinance is to establish a standard of ethical conduct for members of the Hoopa Valley Business Council concerning matters discussed in Executive Sessions of the Council, and,

WHEREAS: The subject matter of all Executive Sessions of the Business Council is confidential and it is vital to the Tribe's best interest that is remain so, and ,

NOW THEREFORE BE IT RESOLVED: That all discussions in Executive Session of the Hoopa Valley Business Council are strictly confidential and are to main so. All Council Members shall refrain from discussing or in any disclosing any discussions or activities occurring during Executive Sessions.

BE IT FURTHER RESOLVED: That any disclosure by a Council Member of any discussions or activities which occurred at an Executive Session shall be deemed a neglect of duty by said member.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of 8 members of which 7 were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened, and held this 15th day of January, 1981; and that this Ordinance was duly adopted by a vote of 6 for with 0 against; and that said Ordinance has not been rescinded or amended in any way.

DATED THIS 15TH DAY OF JANUARY, 1981.

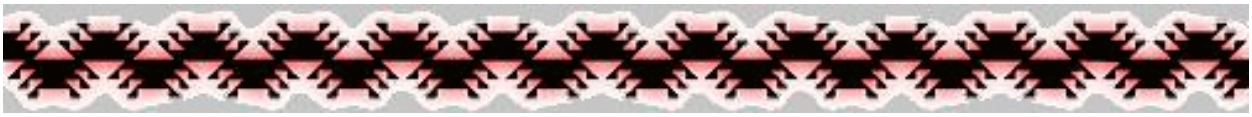
_____
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 25 OF THE HOOPA TRIBAL CODE

PURPOSE: GRANTS FOR BURIAL AND ILLNESS TO TRIBAL MEMBERS

ADMINISTRATIVE RECORD: Adopted August 31, 1967 amended August 6, 1984



TITLE 25

ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 66-4 AMENDMENT NO: 3

DATE APPROVED: August 6, 1984

SUBJECT: AN ORDINANCE TO ESTABLISH A SYSTEM OF GRANTS TO BE APPLIED TO THE EXPENSES OF BURIAL AND ILLNESS OF ENROLLED MEMBERS OF THE HOOPA VALLEY TRIBE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (c) of this Constitution and Bylaws authorized the Hoopa Valley Business Council to "collect and expend any Hoopa Tribal Funds within the exclusive control of the Tribe and to recommend the expenditure of any other tribal funds", and,

WHEREAS: The Hoopa Valley Business Council did establish and obtain approval of the amended Financial Program of the Hoopa Valley Tribe as set forth in Resolution No. 274, adopted August 31, 1967, which provided in Part III, that tribal funds may be budgeted annually for grants to be applied to the expenses of burial and last illness of deceased tribal members, and,

WHEREAS: Tribal Ordinance No. 66-4, approved 11/3/67, established a system of grants to be applied to the expenses of burial and last illness of deceased members of the Hoopa Valley Tribe, and,

WHEREAS: Due to increased burial costs and other changes since this 1967 enactment it is necessary to amend said ordinance to fit present needs.

NOW THEREFORE BE IT RESOLVED: That Tribal Ordinance No. 66-4 is hereby amended to read as follows:

SECTION I. EFFECTIVE DATE.

The purpose of this amendment shall be effective as of August 6, 1984 and shall apply to all enrolled members of the Hoopa Valley Tribe.

SECTION II. AMOUNT OF GRANT.

A grant of $2000.00 or less may be paid for the expenses of burial and last illness of an enrolled Hoopa Tribal Member, the exact amount to be determined in accordance with the procedures hereinafter set forth.

SECTION III. CLAIMANTS.

Claims for payment pursuant to this Ordinance will be considered when received from the following:

1. Professional persons or firms who furnished direct burial or last illness services for an enrolled member of the Hoopa Valley Tribe, and who have not been paid for such services.

2. Persons who have paid out of their own funds for the burial and last illness expenses of an enrolled member of the Hoopa Valley Tribe, and who desire to be reimbursed therefore.

SECTION IV. PURPOSES OF GRANT AND PRIORITIES IN PAYMENT OF CLAIMS.

A. Claims shall be paid only for the following purposes, and in the following order of priorities:

   1. Claims for expense of burial. Funds from the grant not used to defray this expense shall be available for discharge of obligations set forth in Paragraph 2 of this section only.

   2. Claims for expense of last illness, including, but not limited to, hospital expenses, doctor's fees, and professional nurse's fees, except that nursing care performed by a relative or friend of the deceased shall not be reimbursed, unless it was performed in a professional capacity.

   3. No payment under Section 4.A.2. shall be made until the expiration of the six month time limit provided in Section 5.

   4. In the event there are insufficient funds to satisfy claims described in Section 4.A.2. the available funds shall be divided proporationately among the claims according to the ratio of the total amount of claims to each individual claim.

B. If the expenses described in Section 4.A.1. and 2. Are not claimed within the six month time limit provided in Section 5, or if such expenses do not, in fact exist, no person or estate shall be entitled to receive any monies pursuant to this Ordinance.

SECTION V. TIME LIMIT FOR SUBMISSION OF CLAIMS.

All claims with regard to any deceased tribal member shall be filed within six months of the date of adoption of this Ordinance, or within six months of the date of death of a tribal member, whichever comes later. Claims filed after the expiration of the six month period shall not be eligible for consideration pursuant to this Ordinance.

SECTION VI. FILING OF CLAIMS.

1. Claims shall be filed in person or by mail at the business office of Hoopa Valley Business Council, P.O. Box 1348, Hoopa, California 95546.

2. Claims of professional persons or firms who furnished direct burial or last illness services for an enrolled member of the Hoopa Valley Tribe shall be in the form of itemized bills describing the services or things furnished, the date when such service or things were furnished, and the individual cost of each service or thing. Each such claim must be supported by an affidavit of the claimant that the amount claimed is justly due from the decedent, and that no payments have been made on the account that are not credited thereon.
3.
4. Claims of persons who paid out of their own funds for the burial and last illness expenses of an enrolled member of the Hoopa Valley Tribe shall be in letter form, signed by the claimants, and supported by the original receipts which were issued to them by the professional persons or firms who furnished the burial or last illness services for the tribal member. Where more than one person has a claim pertaining to the same tribal member, a single separate claim shall be filed for burial expenses, and a single separate claim shall be file for last illness expenses, and the letters pertaining thereto shall state the amount which was paid by each person and shall be signed by each of the claimants.

5. The Hoopa Valley Business Council shall, whenever it is deemed necessary, require evidence of the death of the enrolled tribal member in the form of a death certificate or affidavit of death.

SECTION VII. ADMINISTRATION OF CLAIMS.

1. A claims investigation shall be conducted by the Tribal Chairman and Tribal Treasurer of the Hoopa Valley Business Council, to determine the following:

1. Determination whether a claim is eligible for consideration pursuant to Section III and Section V.

2. If a claim for last illness expense is determined eligible for consideration, the Treasurer shall record thereon the expiration date of the six month time limitation period.

3. Determine whether a claim is eligible for payment pursuant to Section IV.

4. Whether a claim is determined eligible or ineligible for payment, the Treasurer shall present the claim to the Hoopa Valley Business Council at its next regular meeting with a recommendation in favor of paying the claim, or of disapproving the claim, except that claims for last illness expense, if otherwise eligible for payment, shall be held until the expiration of the six month time limit when it can be determined what amount of funds, if any, is available for the payment.

5. Advise the claimant in writing in all cases when the Hoopa Valley Business Council disapproves a claim. Such letters shall be signed by the Chairman of the Council.

2. Final decision on claims shall be by the Hoopa Valley Business Council. The Council may abide by the recommendations unless it is determined that an error was made, and that the recommendation was contrary to the intent of this Ordinance.

3. Disbursement of funds for burial and last illness expenses of enrolled Hoopa Tribal members shall be made in accordance with approved, current tribal plan of operation.

SECTION VIII. AMENDMENT OF ORDINANCE.

Amendments to this Ordinance may be made by the Hoopa Valley Business Council.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 7 were present constituting a quorum at a Special meeting thereof; duly and specially called, noticed, convened, and held this 6th day of August, 1984, and that this resolution was adopted by a vote of 6 for with 0 against, and said resolution has not been rescinded or amended in any way.

DATED THIS 6TH DAY OF AUGUST, 1984

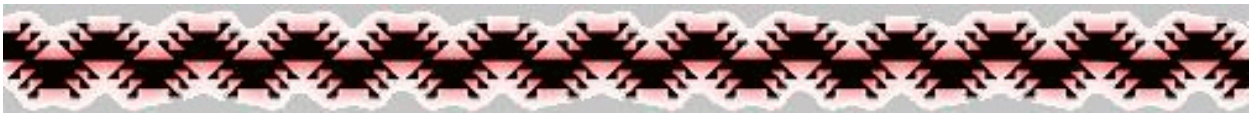
_____
ELSIE G. RICKLEFS, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 26 OF THE HOOPA TRIBAL CODE

PURPOSE: UNIFORM BUILDING CODE

ADMINISTRATIVE RECORD: Adopted January 9, 1975 amended July 20, 2000



UNIFORM BUILDING CODE ORDINANCE

Of The Hoopa Valley Tribe
Hoopa Valley Indian Reservation
Hoopa, California

Title 26

ORDINANCE NO: 1-75

DATE APPROVED: JANUARY 9, 1975, as amended July 20, 2000

SUBJECT: ADOPTION OF UNIFORM BUILDING CODE

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and subsequently ratified and confirmed by the United States Congress on October 31, 1988 in the Hoopa-Yurok Settlement Act (25 U.S.C.§ 1300I, *et seq.*);

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe pursuant to authority contained in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws;

WHEREAS: Article XII, Section 4 directs the Tribe to embody Tribal enactments of a permanent nature which are to be effective over an extended period of time in an ordinance,

WHEREAS: The Hoopa Valley Business Council did on June 21, 1973, adopt the Hoopa Comprehensive Plan which authorized a Uniform Building Code,

WHEREAS: On or about September 10, 1999, the Hoopa Valley Tribe entered into a tribal state gaming compact (Compact) with the State of California pursuant to the Indian Gaming Regulatory Act;

WHEREAS: Section 6.4 of the Compact requires the Hoopa Valley Tribe to adopt, or otherwise amend existing, building codes so that they meet the standards of either the building and safety codes of Humboldt County or the Uniform Building Codes;

NOW THEREFORE, BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby adopts the 1997 Uniform Building Code, including all uniform fire, plumbing, electrical, mechanical, and related codes, and as thereafter amended;

BE IT FURTHER RESOLVED: That no amendments of this Ordinance shall be approved except in accordance with the Legislative Procedures Act, and as said Act is hereafter amended;

BE IT FURTHER RESOLVED: That this Ordinance shall be effective immediately; and

BE IT FURTHER RESOLVED: That no building or construction under the jurisdiction of the Hoopa Valley Tribe shall begin unless all building plans are drawn and construction implemented in conformance with said Uniform Building Code.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 20th day of July, 2000; and that this ordinance was duly adopted by a vote of six (6) for with none (0) against; and that since approval, said ordinance has not been rescinded or amended in anyway.

DATED THIS 20TH DAY OF JULY, 2000.

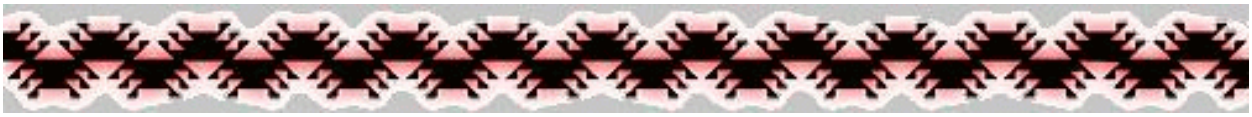
_____
DUANE J. SHERMAN, SR., CHAIRMAN
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 27 OF THE HOOPA TRIBAL CODE

PURPOSE: ESTABLISHING THE HOOPA VALLEY INDIAN HOUSING AUTHORITY

ADMINISTRATIVE RECORD: Adopted April 16, 1968



Date Approved: 4/16/68

TRIBAL ORDINANCE
No. 68-1

Pursuant to the authority vested in the Hoopa Valley Tribe by its Constitution, and particularly by Article VIII, Section l(g) thereof, and its authority to provide for health, safety, morals and welfare of the Tribe, the Tribal Council of the Hoopa Valley Tribe hereby charters a public corporation known as Hoopa Valley Housing Authority (hereinafter referred to as the Authority), and enacts this ordinance which shall constitute the charter of the Authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this ordinance. A copy of the ordinance duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

I. Declaration of Need

It is hereby declared:

a. That there exist on the Hoopa Valley Indian Reservation insanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of safe or sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy insanitary, unsafe and overcrowded dwelling accommodations;

b. That these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the Reservation; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

c. That these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise;

d. That the clearance, replanning and preparation for rebuilding of these areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of Tribal concern;

e. That residential construction activity is an important factor to general economic activity and that the undertakings authorized by this ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume or residential construction activity which will assist materially in maintaining full employment; and

f. That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

II. Purposes

The Authority shall be organized and operated for the purposes of :

a. Remedying on the reservation unsafe and insanitary housing conditions, that are injurious to the public health, safety and morals;

b. Alleviating the acute shortage of decent, safe and sanitary dwellings for families of low income; and

c. Providing employment opportunities on the Reservation through the construction, reconstruction, improvement, extension, alteration or repair and operation of low-rent dwellings.

III. Definitions

The following terms, wherever used or referred to in this ordinance shall have the following respective meanings, unless a different meaning clearly appears from the context:

a. "Board" means the Board of Commissioners of the Authority.

b. "Council" means the Hoopa Valley Tribal Council.

c. "Federal government" includes the United States of America, the Housing Assistance Administration, or any other agency or instrumentality, corporate or otherwise of the United States of America.

d. "Slum" means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

e. "Housing project" or "project" means any work or undertaking:

(1) to demolish, clear, or remove buildings from any slum area; or

(2) to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multifamily structures under conventional condominium or cooperative sales contracts; lease-purchase agreements; loans or subsidizing of rentals or charges), decent safe and sanitary dwellings, apartments, or other living accommodations for persons of low income; or

(3) to accomplish a combination of the forgoing. Such work may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities,

parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

f. "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the Authority) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

g. "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by the Authority pursuant to this ordinance.

h. "Obligee" includes any bondholder, agent or trustee for any bondholder, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal government when it is a party to any contract with the Authority in respect to a housing project.

IV. Organization

1. The affairs of the Authority shall be managed by a Board of Commissioners composed of five persons.

a. The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall conclusive evidence of the due and proper appointment of the commissioner.

b. The term of office shall be four years and staggered. When the Board is first established one member's term shall be designed to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years. Thereafter all appointments shall be for four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

c. The Council shall name one of the commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer; and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman, the Secretary shall preside.

d. The Council may remove any member of the Board for cause.

e. The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including traveling expenses, incurred in the discharge of their duties.

f. Three members of the Board shall constitute a quorum for the transaction of business, notwithstanding the existence of any vacancies.

g. The Secretary shall keep complete and accurate records of all meetings and action taken by the Board.

h. The Treasurer shall keep full and accurate financial records, make periodic reports to the Board and submit a complete annual report, in written form, to the Council as required by Article VII, Section l, of this ordinance. The Treasurer shall be bonded in such amount as is prescribed by the Council or by any agreement to which the Authority is a party.

2. The Board shall have authority to exercise, by majority vote of those present and voting, any and all powers delegated to the Authority by this ordinance or any amendments thereto, except as provided in Article VI, Section 5a. for the adoption of bond resolutions.

3. Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that three or more members concur in the proposed action.

V. Powers

1. The Authority shall have perpetual succession in its corporate name.

2. The Authority shall have the following powers which it may exercise consistent with the purpose for which it is established:

a. The Council hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which might otherwise have; but the Tribe shall be liable for the debts or obligations of the Authority, except insofar as expressly authorized by this ordinance.

b. To adopt and use a corporate seal.

c. To enter into agreements, contracts, and understandings with any governmental agency, Federal, state or local (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any condition attached to Federal financial assistance. Notwithstanding anything to the contrary contained in this ordinance or in any provision of law, to agree to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any

subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid of the project. In any contract with the Federal government for annual contributions to the Authority, the Authority may obligate itself to convey to the Federal government possession of or title to the project to which such contract relates, upon the concurrence of a substantial default (as defined in such contract) with respect to the covenant or conditions to which the Authority is subject; and such contract may further provide that incase of such conveyance , the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, That the contract requires that as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the Authority the project as then constituted. It is the purpose and intent of this ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

d. To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

e. To borrow money, to issue temporary or longterm evidence of indebtedness; and to repay the same. Corporate bonds shall be issued and repaid in accordance with the provision of Section VI of this ordinance.

f. To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease exchange , transfer or assign personal property or interests therein.

g. To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

h. To undertake and carry out studies and analyses of the housing needs on the Reservation, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

i. To lease, rent, sell, or lease with option to purchase any dwellings, accommodations, lands, buildings or facilities embraced within any project; to establish and revise rents; and to make rule and regulations concerning the occupancy, rental, care and management of its low-rent housing units. Such rules and regulations may establish priorities for the admission of tenants, and provide for the eviction of tenants for failure to pay rent, for failure to comply with rules and regulations, or for failure to maintain the premises in satisfactory condition.

The Board shall insure that dwelling accommodations in a housing project shall be made available only to families of low income at rentals within their financial reach by (A) establishing lower than average rentals for especially need families, and (B) by establishing

income limits for admission and continued occupancy by low income families. In make these determinations, the Board may take into consideration family size, composition, age, physical handicaps or other factors which might affect the financial ability of the family to pay rental and shall consider as well such economic factors as may affect the financial stability and solvency of the project.

j. To purchase insurance in any stock or mutual company for any property or against any risk or hazards.

k. To invest such funds as are not required for immediate disbursement.

l. To establish and maintain such bank accounts as may be necessary or convenient.

m. To employ an executive director, technical and maintenance personnel, and such other officers and employees, permanent or temporary, as it may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

n. To take such further actions as are commonly engaged in by corporate bodies of this character as the Board may deem necessary and desirable to effectuate the purpose of the Authority.

o. To adopt such bylaws as the Board deems necessary and appropriate.

p. To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a state or another tribe in the exercise; wither jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purpose of financing (including but not limited to the issuance of bond, notes or other obligations and giving security therefore), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies.
For such purpose the Authority may by resolution prescribe and authorize any other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

3. No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Authority in its operations pursuant to this ordinance unless the Council shall specifically so state.

VI. Bonds

1. The Authority may issue bonds from time to time in its discretion for any of its corporate purposes and may also issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. The Authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such bonds, or with such income and

revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such bonds; or (c) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues of any project, projects or other property of the Authority.

2. Neither the commissioner of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

3. The bonds and other obligations of the Authority shall not be a debt of the Tribe and the bonds and obligations shall so state on their face.

4. Bonds of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. The tax exemption provisions of this ordinance shall be considered part of the security for the repayment of bonds and shall constitute, by virtue of this ordinance and without necessity of being restated in the bonds, a contract between (a) the Authority and the Tribe, and (b) bondholders and each of them, including all transferees of the bonds from time to time.

5. Bonds shall be issued and sold in the following manner:

a. Bonds of the Authority shall be authorized by a resolution adopted by the vote of an absolute majority of the Board and may be issued in one or more series.

b. The bonds shall bear such dates, mature at such times, bear interest at such rates, be in denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such places and be subject to such terms of redemption, with or without premium, as such resolution may provide.

c. The bonds may be sold at public or private sale at not less than par.

d. In case any of the commissioners of the Authority whose signatures appear on any bonds or coupons cease to be commissioners before the delivery of such bonds, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

6. Bonds of the Authority shall be fully negotiable. In any suit, action or proceedings involving the validity or enforcement of any bond of the Authority or the security therefore, any such bonds reciting in substance that it has been issued by the Authority pursuant to this ordinance shall be conclusively deemed to have been issued for such purpose and the project for which such bond was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purpose and provision of this ordinance.

7. In connection with the issuance of bonds or incurring of obligations under leases and in order to secure the payment of such bonds or obligations, the Authority, subject to the limitations in this ordinance, may:

a. Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

b. Provide for the powers and duties of obliges and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the bonds.

c. Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

d. Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

e. Covenant as to what other or additional debts or obligations may be incurred by it.

f. Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as the use and disposition of the proceeds thereof.

g. Provide for the replacement of lost, destroyed or mutilated bonds.

h. Covenant against extending the time for the payment of its bonds or interest thereon.

i. Redeem the bonds and covenant for their redemption and provide the terms and conditions thereof.

j. Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

k. Create or authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the moneys held in such funds.

l. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the proportion of outstanding bonds the holders of which must consent thereto, and the manner in which such consent may be given.

m. Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys.

n. Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

o. Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declarations and its consequences may be waived.

p. Vest in any obligees or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds.

q. Exercise all or any part or combination of the powers granted in this section.

r. Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

s. Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of the Authority tending to make the bonds more marketable although the covenant acts or things are not enumerated in this section.

VII. Miscellaneous

1. The Authority shall submit a detailed annual report, signed by the Chairman of the Board, to the Council showing (a) the names of occupants of all the housing units, (b) the number of vacancies, if any, (c) the status of construction, maintenance and repair of all housing units, and (d) such other information as the Authority or the Council shall deem pertinent.

2. During his tenure and for one year thereafter, no officer or employee of the Authority shall voluntarily acquire any interest, direct or indirect in any project, or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project. If any such officer or employee involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as an officer or employee, the officer or employee, in any such event, shall immediately disclose his interest in writing to the Authority and such disclosure shall be entered upon the minutes of the Authority, and the officer or employee shall not participate in any action by the Authority relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in notes or bonds of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit of handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency.

3. All projects of the Authority shall be subject to the planning, zoning, sanitary and building regulations applicable to the locality in which the planned project is situated.

4. The Authority shall not construct or operate any project for profit.

5. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

6. All property including funds acquired or held by the Authority pursuant to this ordinance shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property; Provided, however, That the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the Federal Government to pursue any remedies conferred upon it pursuant to the provisions of this ordinance.

VIII. Cooperation in Connection with Projects

1. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Hoopa Valley Tribe agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project.

(b) It will furnish or cause to be furnished to the Authority and the tenants of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other dwellings and inhabitants on the Reservation.

© Insofar as it may lawfully do so, it will grant such deviations from any present or future building code of the Tribe as are reasonable and necessary to promote economy and efficiency in the development and administration of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development and protection of such project and the surrounding territory.

(d) It will do any and all things, within its lawful powers necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(e) It will join in any disposition of project property or interest therein by the Authority and make assignments or other appropriate disposition of the underlying land as permitted by law, where such action is required in order to grant the maximum interest therein permitted by law.

(f) This section will not be abrogated, changed, or modified without the consent of the Public Housing Administration.

2. The Tribe declares its intentions to use its lawful powers, to the extent feasible, to eliminate unsafe or insanitary dwellings units on the Reservation, as additional dwellings are provided by projects of the Authority.

3. The provisions of paragraph 1 of this section shall remain in effect with respect to any project so long as the project is either (i) owned by a public body or governmental agency and is used for low-rent housing purposes, (ii) any contract between the Authority and the Public Housing Administration for loans or annual contributions, or both, in connection with such project remains in force and affect, or (iii) any bonds issued in connection with such project or any monies due to the Public Housing Administration in connection with such project remain unpaid, whichever period is the longest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized bylaw to engage in the development or administration of low-rent housing or slum clearance projects, including the Federal Government, the provisions of this section shall inure to the benefit of and be enforced by such public body or government agency.

IX. Approval by Secretary of Interior.

With respect to any financial assistance contract between the Authority and the Federal Government, the Authority shall obtain the approval of the Secretary of Interior or his designee.

Be it Ordained by the Council of the Hoopa Valley Tribe on this 16th day of April,1968.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council hereby certify that the Hoopa Valley Business Council is composed of 7 members of which 6, constituting a quorum were present at a Special meeting thereof; duly and specially called, noticed, and convened and held this 16th day of April, 1968; and that this Ordinance was duly adopted by a vote of 5 for with 0 against; and said Ordinance has not been rescinded or amended in any way.

DATED THIS 16TH DAY OF APRIL, 1968.

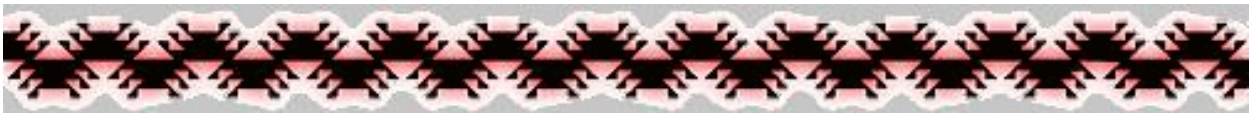
_____
Charles J. Moon, Chairman
Hoopa Valley Business Council

ATTEST:_____
Deirdre R. Young, Executive Secretary
Hoopa Valley Business Council

TITLE 28 OF THE HOOPA TRIBAL CODE

PURPOSE: PROCEDURE FOR COLLECTING DEBTS

ADMINISTRATIVE RECORD: February 20, 1992



TITLE 28

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 1-92

DATE APPROVED: February 20, 1992

SUBJECT: TO ESTABLISH A UNIFORM PROCEDURE FOR COLLECTING DEBTS OWED TO THE TRIBE AND TRIBAL ENTITIES

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, and Article IX, Section 1 (c) of this Constitution and Bylaws authorized the Hoopa Valley Business Council, "To collect and expend any Hoopa Valley Tribal funds...", and

WHEREAS: The Tribe has various Tribal entities that are designed to render services to members and non-members, some of which required the issuance of credit for services rendered, and

WHEREAS: The Tribal Council has determined that it would best serve the Tribal interest to develop a fair and uniform procedure for collecting outstanding delinquent debts owed to the Tribe and Tribal entities, and

NOW THEREFORE BE IT RESOLVED: That the Hoopa Tribal Council does hereby enact this Tribal Debt Collection Ordinance as Title 28 of the Tribal Code and said Ordinance shall be in full force and effect.

28.0 SHORT TITLE

The short title of this Ordinance shall be the Tribal Debt Collection Ordinance of the Hoopa Valley Tribe.

28.1 PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform process for the collection of debts owed to the Hoopa Valley Tribe and its subdivisions. This Ordinance is not intended nor shall be construed as authorization for the issuance of credit to anyone, including organizations, entities or individuals. The collection of debts resulting from such issuance of credit shall be the responsibility of the issuing official of the Tribe, or his/her successor.

28.2 DEFINITIONS

28.2.1 "Debt" means any debt owed to the Hoopa Valley Tribe or any Tribal entity which functions under the authority of the Hoopa Tribal Constitution.

28.2.2 "Official" means any person who is responsible for overseeing, administering, supervising or managing the operations and activities from which a debt occurs. In every situation where the Official is not readily identifiable, it shall be the program, department or entity director, whether the person is in interim, temporary, or permanent employment status, or their designated representative.

28.2.3 "Debtor" means any person, organization or other entity (1) as defined by the loan document or Credit Policy as a delinquent borrower; or (2) whose payments are beyond the terms of the loan or credit agreement; or (3) not having a formal loan or credit agreement but who has not made satisfactory payment within a thirty (30) calendar day period from the date which the debt occurred or from the date of the last payment.

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

28.2.5 "Per Capita" means any distribution of the Tribe or the United States that is distributed to each enrolled member of the Tribe.

28.3 ESTABLISHMENT OF CREDIT POLICY

Prior to issuing credit, each Official of the Tribal entity shall establish a Credit Policy which may include, among other things, a process which is internal to that entity for collecting debts owed to the Tribe. The Credit Policy shall include provisions for late charges and interest and any other assessments that will be charged to the borrower.

28.4 EFFECT OF EXISTING COLLECTION PROCEEDINGS

Any collection proceedings which may be underway on the date of enactment of this Ordinance shall be continued under the provisions of this Ordinance. To the extent the entity has already served on the debtor notice comparable with those contained in 28.8 such notice need not be repeated under 28.8.

28.5 JURISDICTION

28.5.1 Application to Debts

This Ordinance shall apply to any debts owed to the Tribe regardless of the identity of the debtor.

28.5.2 Actions brought in Tribal Court

All lawsuits to collect debts owed to the Tribe shall be brought in Tribal Court unless it is determined by the Tribal Council through resolution that the Tribe's interest would be better served by filing such action in another jurisdiction.

28.5.3 Tribal Entities Empowered to File Actions

Each Tribal entity is empowered to file a collection action in Tribal Court in its own name whether or not its governing document contains such authority.

28.6 RESPONSIBLE PARTIES

28.6.1 Official to Bring Action

The Official shall be responsible as a matter of his/her employment requirements for the collection of any debts and shall take all necessary steps, including but not limited to those prescribed in this Ordinance, to collect such debts and to inform appropriate parties of a judgment.

28.6.2 Responsibility of Entity Managers

Whenever a monetary judgment is rendered by the Tribal Court, each entity manager shall as a matter of his/her responsibility to the Tribe assist in the collection of such judgement. It is the responsibility of each entity manager to assist in the collection of all debts owed to his or her entity and those of other entities.

28.7 TRIBAL ATTORNEY - TECHNICAL ASSISTANCE/REPRESENTATION

Any Official may seek the technical assistance from the Office of Tribal Attorney, or other legal office authorized by the Tribe, in pursuing the collection of any debt. Any Official may request representation by the Office of Tribal Attorney in any matter, including those involving litigation, however, such representation does not diminish the responsibility of the Official in such matter. The Hoopa Valley Development Enterprise shall be assisted and may be represented by its in-house legal counsel.

28.8 NOTIFICATION

When a debtor has not made timely payment on a debt, the following procedure shall be followed except where an entity's Credit Policy provides comparable notice provisions:

28.8.1 First Notice

Within ten (10) working days after a payment becomes due but is not paid, the Official shall by first class mail send the debtor a late payment notice requesting an immediate payment plus any other charges as provided in the credit policy.

28.8.2 Second Notice

Whenever the payment becomes thirty (30) days late, the Official shall by first class mail send the debtor a "Second Notice" late payment notice which shall also state that the debtor must make such immediate payment or collection proceedings will be initiated.

28.8.3 Collection Notice

Whenever a payment becomes sixty (60) days late, the Official shall by first class mail send the debtor a "Collection Notice" that the Official is filing a complaint in Tribal Court for collection. Failure to send the debtor a Collection Notice shall not constitute a defense that would prevent an action from being brought for collection of any debt.

28.9 ASSESSMENT OF DAMAGES INCURRED

Whenever a debt becomes thirty (30) or more days delinquent the Official may assess charges, in addition to the outstanding balance of the debt for damages incurred. Such damages may include, but are not be limited to, the loss of interest income, additional expenses such as legal and other experts needed during the collection process, and filing fees and other court expenses.

28.10 REAL PROPERTY FORECLOSURES

Foreclosures on deeds of trust and mortgages shall be in accordance with California law which is adopted herein as a matter of Tribal law.

28.11 PER CAPITA PAYMENTS

28.11.1 Payments not Liable for Previous Obligations

Per capita payments shall not be liable for any previous obligations except those to Tribal entities.

28.11.2 Applied to Debts

Per capita payments are authorized to be applied, in part of in full, with or without first obtaining a judgement, toward any debt of any Tribal member to a Tribal entity. It is the responsibility of the Official of the Tribal entity to which

the payment, or portion thereof, has been credited to provide the debtor with an acknowledgement of receipt of the funds.

28.11.3 Per Capita Withholding Form

All requests to withhold any per capita payment shall be made by filing a Per Capita Withholding Form with the Tribal Fiscal Department. Such forms shall contain the following provisions:

a. The name of the Tribal entity and Official directing that a per capita payment be withheld from distribution to the Tribal member.

b. The name and address of the debtor.

c. A brief explanation of the nature and amount of the debt.

d. A statement that the debtor may receive other Per Capita Withholding Forms from other Tribal entities if the debtor has multiple debts with the Tribe.

e. A explanation of the appeal procedures available to the Tribal member.

28.11.4 Debts Secured By Prior Agreement

28.11.4.1 Secured Prior Agreement

When the Tribal entity has secured a prior agreement with the debtor that authorizes a per capita payment to be withheld to repay such debt, the Official shall file a Per Capita Withholding Form with the Tribal Fiscal Department with a copy being sent to the debtor. The Fiscal Department shall honor the directions contained in the withholding form unless notified by the Official otherwise.

28.11.4.2 Perfected Security Interest

Whenever an individual has pledged his or her per capita payments as security for a debt owed to a Tribal entity,

or has authorized the withholding of such future per capita payments as a method of repayment of such a debt, the Tribe shall, as a matter of Tribal law, have a perfected security interest in such payment.

28.11.4.3 Individual(s) understanding

The entity holding the perfected security interest shall notify individuals that his or her (or their) per capita will be deducted if the individual or individuals are delinquent or defaulted on any loans.

The individual or individuals shall also initial a statement (prepared by the entity) assuring that they understand that per capita will be deducted in the event of delinquency or default

28.11.5 Debts Not Secured By Prior Agreement

For debts where the Tribal entity has not secured a prior agreement from the debtor to withhold per capita payments, an Official shall mail a Per Capita Withholding Form to the individual Tribal member at least thirty (30) days prior to the payment date, informing them that unless they contest the debt owed, their per capita payments will be automatically transferred and credited to their delinquent account of that Tribal entity. Unless the Tribal member contests the debt, or any part thereof, by filing a notice with the Tribal entity not less than fifteen (15) days prior to the issuance date of the payments, the Fiscal Department shall process the withholding action as directed. It is the responsibility of the Official to notify the Fiscal Department of any changes in the request to withhold any payment from distribution to a Tribal member.

28.11.6 Appeal by the Debtor

If the matter cannot be first resolved between the debtor and Tribal entity, the following appeal procedures shall apply:

28.11.6.1 Without Prior Security Agreement

The debtor shall have the opportunity for appealing the claims contained in the Per Capita Withholding Form by filing an appeal with the Official. If the matter is not resolved between the Official and debtor, notwithstanding the opinion of the Official, it is the responsibility of the Official to file a complaint in Tribal Court to resolve any disputed matters. Filing an appeal with the Tribal Court shall constitute a stay of any distribution of the payment, or any portion thereof, by the Fiscal Department to either the Tribal entity or the debtor until the Court has issued a decision. The Official is responsible for informing the Fiscal Department of any appeals being filed.

28.11.6.2 With Prior Security Agreement

In cases where a prior security agreement has been obtained by the Tribal entity for the debt, the Fiscal Department shall distribute the payment as provided in the Per Capita Withholding Form(s). The debtor may appeal such withholding by bringing a separate action in Tribal Court against the Tribal entity for any alleged wrongful withholding of the payment or portion thereof.

28.11.7 Payment Proportional Distribution

In cases where the total of multiple debts exceeds the amount of the per capita payment the Tribal Fiscal Department shall distribute the p[ayment on a proportional basis to each Tribal entity to which a debt is owed. However, no distribution shall be made to a Tribal enetity that does not possess a prior agreement granting a security interest in or authorizing withholding of furture per capitas until the debts owed to Tribal entities having such agreements have been satisfied. When the percapita of a debtor is to be devided between two or more Tribal entities, the portion to which each entity is entitled shall be calculated by mulitplying the dedtor's total per capita by a fraction, the numerator of which is the debt owed to that Tribal entity and the denominator of which is the total of all debts owed by the debtor to all Tribal entities entitled to a portion of the per capita.

28.11.8 Frivolous Claims

The Tribal Court may assess reasonable costs and expenses against the debtor or Official for frivolous claims, including but not limited to court costs, administrative costs and expenses, and other costs that have been incurred by either party that are a direct result of the claims made in such action.

28.12 SATISFACTION OF JUDGMENTS

Upon issuance of a judgment, the Official may apply the following in the satisfaction of such judgment:

28.12.1 Garnishment of Earnings

A judgment creditor may apply to the Tribal court for an order for the garnishment of earnings and other payments due the judgment debtor from the Tribe. The Tribal court may order garnishment of earnings in an amount that does not exceed the amount allowed by federal law, 15 U.S.C., Section 1673. For the purposes of this section, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, contractual payment, or otherwise, and includes periodic payments pursuant to a pension or retirement program. For purposes of this section, "other payments" includes Council and committee honorariums.

28.12.2 Examination of Judgement Debtor

Once a judgment has been rendered, any Official may file with the Tribal Court a motion to examine financial and asset records of the judgement debtor to determine those available that could be used to satisfy the judgment. The rules for examining the records shall be those contained in the Tribal Code.

28.12.3 Seizure and Sale of Personal Assets

The Tribal Court may authorize the seizure and sale of a judgement debtor's personal assets located within the boundaries of the Hoopa Reservation with the proceeds to be used to satisfy the judgement after deduction for the cost of the seizure and sale. The Judge may order that particular personal assets or classes of assets by exempt from seizure and sale. In

determining such exemptions, the Court may, in its discretion, be guided by the exemptions provided in Federal bankruptcy laws.

28.13 RECORDS OF JUDGMENTS

Whenever a judgment is rendered in favor of the Tribe the Official shall notify the following:

28.13.1 County Recorder's Office

The Humboldt County Recorder's Office of a lien on real property when fee property is involved; and

28.13.2 Bureau of Indian Affairs

The Bureau of Indian Affairs and appropriate Tribal entity when trust property is involved.

28.13.3 Tribal Entity

Any Tribal entity after a request has been made for such information.

28.14 REPORTS OF BAD DEBTS

Each Tribal entity shall maintain a current list of those individuals having outstanding and delinquent debts. The specific names and credit information of individual debtors shall be made available to other Tribal entities upon request.

28.15 FOREIGN JUDGMENTS

Any Tribal entity that has received a judgement from another court may file a request to the Tribal Court to honor a foreign judgement and make such judgement enforceable under Tribal law.

28.16 SOVEREIGN IMMUNITY

28.16.2. Sovereign Immunity of the Tribe

Except as provided in 28.16.2, nothing in this Ordinance is intended nor shall be construed as waiving the sovereign immunity from suit of the Tribe, any Tribal entity or any Official while in the performance of his/her official duties.

28.16.2. Counterclaims

When the Tribe or a Tribal entity files a lawsuit pursuant to this Ordinance to collect a debt, the defendant may assert any counterclaim that arises from the same transaction as the alleged debt. The amount sought in the counterclaim may not exceed the amount sought by the plaintiff. Any recovery on the counterclaim may operate only as a setoff against plaintiff's claim. Under no circumstances may a counterclaim result in a money judgement against the Tribe or a Tribal entity.

28.17 Severability

If any part of this Ordinance is held to be invalid the remainder shall continued to be in full force and effect to the maximum extent possible.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council do hereby certify that the Hoopa Valley Business Council is composed of eight members of which 5 were present constituting a quorum at a regular (special) meeting thereof; duly and regularly called, noticed, and convened, and held this 20th day of February, 1992; and that this Ordinance was duly adopted by a vote of 5 for and 0 against, and that said resolution has not been rescinded or amended in any way.

DATED THIS 20TH DAY OF February, 1992

_____

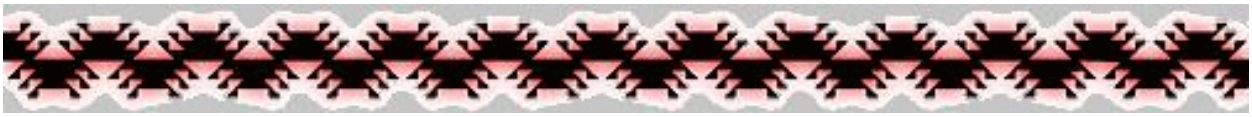
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
CHRISTINA PHILLIPS, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 29 OF THE HOOPA TRIBAL CODE

PURPOSE:AMENDING PERSONNEL POLICIES ON POLITICAL APPOINTMENTS

ADMINISTRATIVE RECORD: December 4, 1980



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 29

ORDINANCE NO: 3-79 Amendment No. 1

DATE APPROVED: December 4, 1980

SUBJECT: AMENDING TRIBAL ADMINISTRATIVE PLAN-PERSONNEL POLICIES TO PROHIBIT POLICAL APPOINTMENT OF EMPLOYEES.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972 adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972 and Article XII, Section 4 state in part that "enactments of a permanent nature which are to be effective over an extended period of time shall be embodied in ordinances, and,

WHEREAS: The Hoopa Valley Business Council did adopt Ordinance No. 3-79 on October 18, 1979 which authorized approval and implementation of the Tribal Administrative Plan Accountability Manuel and Personnel Policies, and,

WHEREAS: The Council has given due consideration to recommendations contained in recently performed desk audits wherein it is proposed that a number of tribal employees shall be classified as political appointments and serve at the pleasure of the Tribal Chairman, and,

WHEREAS: It is the consensus of the Council that political appointments would not be beneficial to the operations of the Hoopa Valley Tribe in that there would be lack of continunity and also a conflict with approved employment practices; furthermore such appointments could cause dissension among members especially where tribal members fill said positions, and,

NOW THEREFORE BE IT RESOLVED: That the Hoopa Valley Business Council herewith amends Ordinance 3-79 pursuant to the following clause;

BE IT FURTHER RESOLVED: That in no instance shall any employee of the Hoopa Valley Tribe be subject to political appointment and Section 6.4 of the Personnel Policies of the Tribal Administrative Plan shall be amended to add the following language prohibiting such appointments

6.4 TYPES OF APPOINTMENTS: POLITICAL APPOINTMENTS:

Political appointment of any employee of the Hoopa Valley Tribe is prohibited. All employment shall be in accordance with the provisions of the Current Personnel Policies and the Tribal Employment Rights Ordinance No. 2-80.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Business Council, do hereby certify that the Hoopa Valley Business Council is composed of 8 members of which 7 present, constituting a quorum a Regular Meeting thereof; duly and regularly called, noticed, convened, and held the 4th day of December, 1980; and that this resolution was duly adopted by a vote of 6 for and 0 against; and that said resolution has not been rescinded or amended in any way.

DATED THIS 4TH DAY OF DECEMBER, 1980.

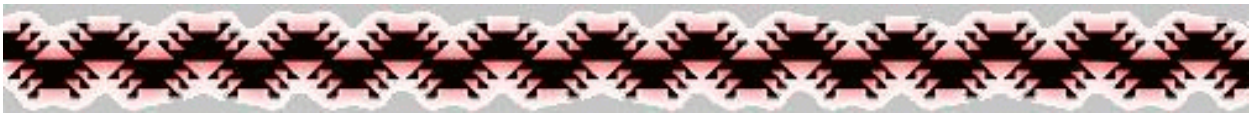
_____
DALE RISLING, CHAIRMAN
HOOPA VALLEY BUSINESS COUNCIL

ATTEST:_____
DEIRDRE R. YOUNG, EXECUTIVE SECRETARY
HOOPA VALLEY BUSINESS COUNCIL

TITLE 30 OF THE HOOPA TRIBAL CODE

PURPOSE: PERSONNEL POLICIES AND PROCEDURES

ADMINISTRATIVE RECORD: Revised May 18, 1995



PERSONNEL POLICIES AND PROCEDURES

OF THE

HOOPA VALLEY TRIBAL COUNCIL

REVISED 5/18/1995

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PERSONNEL POLICIES AND PROCEDURES

OF THE

HOOPA VALLEY TRIBAL COUNCIL

CHAPTER I - GENERAL PROVISIONS

INTRODUCTION

1.1

The policies and procedures contained in this manual constitute management guidelines only and are in no way to be interpreted as a contract between the Tribe and any of its employees.

The Tribe reserves the right to modify or delete any of these policies when, in its opinion, it becomes advisable to do so. Changes will be made as provided under the Legislative Procedures Act (LPA).

This policy manual supersedes all previous manuals, letters, memorandums and understandings.

If you have any questions or wish to have further information about any particular guideline in this manual, please contact the Personnel Department.

Notwithstanding anything to the contrary contained in this manual, the contents and guidelines contained in this manual shall be interpreted in a manner that furthers the political and economic stability of the Hoopa Tribal Government and, as such, each of its employees is expected to provide services to the Tribe in a manner that promotes and furthers the well-being of the Tribal Government. Nothing in this manual shall be interpreted as limiting the duties, responsibilities, employment requirements or services of any employee, including those outside of an employee's ordinary duties and responsibilities, if such action is needed or necessary to accommodate a Tribal goal. It is the policy of the Hoopa Tribal Government that each Program Manager play a pro-active role in problem solving and that problems be solved at the closest possible level to where the service is delivered.

PURPOSE AND OBJECTIVES

1.2

This Personnel Policy and Procedures manual is to provide uniform and consistent practices to be followed in administering personnel related activities while carrying out the functions and operations of the Hoopa Tribal Government. This manual is intended to provide a fair and appropriate method for addressing personnel matters of the Tribe. Preference in hiring shall be consistent with the Tribal Employment Rights Ordinance.

APPLICATION

1.3

These policies apply to all employees & program managers of departments, programs and entities of the Tribe, except for those that are employed under procurement contracts.

APPLICATION TO TRIBAL CHARTERED ENTITIES

1.4

This manual shall apply to all entities of the Tribe. Tribal chartered entities may develop personnel manuals that are not in conflict with this manual provided there is concurrence by the Tribal Council. Entities shall, no later than 30 days following passage of this policy, submit to the Council their present personnel policies and procedures accompanied by proposed deletions and amendments in conformance with this paragraph; subsequent entity personnel policies and procedures shall, preceding implementation, be submitted to the Council for its concurrence.

NEPOTISM/CONFLICT OF INTEREST

1.5

"Nepotism", as used in this Policy is defined as preferential treatment accorded to a member of one's immediate family: spouse, son, daughter, father, mother, sister, brother, grandmother, grandfather, grandson, granddaughter, aunt, uncle, niece, nephew, including step fathers, mothers, sons and daughters when determined clearly evident by the Personnel Director and the Chairman concurs with the findings; and the following in-laws: son, daughter, brother, sister, mother, father, aunt, uncle, nephew and niece.

In conducting Tribal activities:

a) No member of a Personnel Selection Committee or the Tribal Council shall participate in any portion of the selection process when a conflict of interest or nepotism exists, as defined in this section.

b) No employee or the Tribal Council shall participate in the taking of personnel action of any individual when a conflict of interest or nepotism exists, as defined in this section. No Manager should promote or hire a employee that would create a conflict of interest or nepotism.

c) No employee may be assigned to a unit supervised by a member of the family, as defined in this section. In the event the supervisory relationship is brought into existence by the promotion of an employee, the Personnel Director shall recommend to the Chairman the proper personnel action to take on an individual case basis.

d) Employees shall not accept outside employment or participate in a activity which interferes in any manner with the full and proper discharge of the duties of his or her position or results in a conflict of interest. A conflict of interest also exists if an employee's private activities interfere with the proper discharge of his or her official duties.

e) No Program Manager with decision making authority shall participate in any activity that creates a conflict of interest situation. A conflict of interest exists when a manager with decision making authority uses, or appears to use, his or her position for benefits to himself or herself, relatives (as defined in this section), or business associates. If a manager with decision making authority pertaining to the activity subject to inquiry is involved in an outside interest which could be affected by a Tribal project or activity, and a conflict of interest exists in reality or appearance, he or she must report the situation to the Tribal Chairman immediately. The Tribal Chairman will take necessary measures to remedy the Conflict of Interest situation. Such measures may include reassignment. Unless as specifically authorized in writing, no manager

shall participate in a conflict of interest situation and such participation shall be deemed a violation of this Policy.

CHAPTER 2 - ORGANIZATION FOR TRIBAL AND PERSONNEL ADMINISTRATION

HOOPA VALLEY TRIBAL COUNCIL

2.1

The Council is responsible for approving personnel policies, procedures, amendments and waivers, consistent with section 1.2 of this manual. The Council shall carry out an oversight function in the application of this policy. The Council may, from time to time, conduct an oversight review of the administration of these policies by the Tribal Chairman.

TRIBAL CHAIRMAN

2.2

The Tribal Chairman, as the Senior Executive Tribal Officer, shall ~~have complete and independent authority to~~ carry out this policy and have supervisory authority over all personnel. The Tribal Chairman may delegate to his/her representative the responsibility for carrying out this policy. The Tribal Chairman ~~has the authority to~~ shall approve budget revisions, new positions and salary increases consistent with the budget. The Chairman ~~has authority to~~ shall make interim appointments to key position vacancies until the selection has been made as provided in the personnel policies and confirmed for key positions by the Tribal Council. Key positions are defined as political and ~~executive appointment personnel~~ constitutional appointment personnel and Program Managers. The Chairman shall approve waivers that are administrative in nature and do not change the intent of these policies.

TRIBAL VICE-CHAIRMAN

2.3

The Tribal Vice-Chairman, only in the absence of the Tribal Chairman, shall act as the Senior Executive Tribal Officer and shall have the same authority as the Tribal Chairman.

PERSONNEL DEPARTMENT/DIRECTOR

2.4

The Personnel Department shall have day-to-day general oversight authority to carry out this policy; to provide support services to the Chairman, Council and Program Managers on personnel matters. The Personnel Director exercises oversight, administrative and employment development functions pertaining to management of personnel, including, but not limited to:

Oversight Functions:

- Communicates and interprets policies;
- Recommends policy changes and conducts salary surveys at least every 3 years;
- Assists department managers in classifying positions;
- Prepares special policies and waivers; and
- Advises entities on personnel matters.

Administrative Functions:

- Maintains employee personnel files;
- Advertises jobs, boards, committees and commissions and assists in screening and selection process of candidates;
- Certifies personnel actions, reviews disciplinary actions, and provides technical and staff assistance on appeals;

- Assists on group, workman's compensation and disability insurance issues and the retirement plan.

Employment Development:

- Conducts initial orientations with new employees;
- Assists in employee training, counseling and career development;
- Attends Program Manager evaluation meetings; and
- Serves as the Fit For Duty Officer and implements alcohol & drug testing policies with Human Services Department.

INSURANCE ADMINISTRATOR

2.5

The Insurance Administrator is responsible for administering and evaluating the Tribe's insurance coverage, including entities that wish to participate in the Tribe's insurance program. Included in the responsibilities are, but not limited to, group medical, life, pension and retirement plan, flexible benefit package, workers compensation, disability, property and liability insurance. The Administrator is also responsible for billing departments and entities for insurance coverage and ensuring that all departments, personnel and events are properly insured.

PROGRAM MANAGER

2.6

The Program Manager, whether regular, interim or temporary, is responsible for the administration of personnel matters, consistent with this policy, within his/her respective department. It is the responsibility of each manager to participate in a pro-active manner to identify and solve problems and deficiencies within the Tribal Government and to address matters at the closest level to where the service is delivered. The authorities and responsibilities of the Program Manager shall include, and are not limited to, the following oversight, administrative and employment development functions:

Oversight Functions:

- Initiates changes in this policy, special policies and waivers to best meet program needs and cost effectiveness.

Administrative Functions:

- Informs each employee under their charge of responsibility to know and understand these personnel policies.
- Develops and participates in the evaluation of annual program goals and objectives, program structure, and service delivery;
- Participates and is responsible for the development of subordinate program goals and objectives, program structure and service delivery;
- In consultation with the Personnel Director, develops employee wage/salary classifications, job descriptions, hires, assigns, reassigns and recommends merit increases for staff;
- Evaluates staff performance, disciplines staff;
- Reports staff accidents and injuries;
- Submits certified payroll and approved leave requests; and
- Recommends recruitment methods, testing and interview procedures for hire.

Employment Development Functions:

- Determines work assignments, schedules and locations;
- Develops training, counseling and career development plans; and
- Assists the Fit For Duty Officer in accordance with the Tribe's Drug and Alcohol Policy.

BOARDS, COMMITTEES AND COMMISSIONS

2.7

1. Unless as otherwise delegated in written and approved governing documents to the contrary, the authority of any board of directors, committee and commission shall be limited to oversight functions, policy development and interpretation necessary to carry out this Policy. The board, committee or commission may, from time to time, conduct oversight reviews of the administration of this Policy with the program or entity. No board, committee or commission, or any member of any board, committee or commission, shall have or exercise any administrative authorities in carrying out this Policy.

2. Each member of a board, committee or commission shall conduct his/herself in a professional and ethical manner. Information acquired during his/her term of office shall not be purposely misused or misinterpreted in a manner that results in a misrepresentation of the truth.

3. It is the responsibility of the board, committee or commission to enforce policies, rules and regulations applicable to them, including the conflict of interest and nepotism policies and the Legislative Procedures Act.

4. Each member of the board, committee or commission is responsible for enforcing this section within their membership and shall report, within 10 days any violation to the Tribal Council along with recommended actions to remedy the alleged violation.

5. Each member of the board, committee or commission is subject to the Tribe's Alcohol and Drug Policy.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

2.8

The TERO office and commission is responsible for processing employment related appeals of personnel actions under this policy and equal employment opportunity complaints (EEOC) as prescribed under TERO.

CHAPTER 3 - EMPLOYMENT CLASSIFICATION

EMPLOYMENT CATEGORIES

3.1

Political Appointment Personnel

3.1.1

Political appointments are those positions appointed or employed at the political discretion of the Tribal Council and/or Chairman and are subject to immediate appointment, removal or termination by the Tribal Chairman and/or Council, excluding members of boards, committees and commissions. The term of a Political Appointment shall be determined by the Council and/or Chairman. Political Appointment personnel shall not have appeal rights under these policies except in cases of alleged discrimination~~ have no right to appeal a decision of the Chairman or Council~~. The decision of the appointing authority shall be final. Political appointment personnel who are paid a salary wage shall be entitled to fringe benefits. Appointee's are subject to alcohol & drug testing pursuant to the Tribe's Alcohol & Drug Policy.

~~*3.1.2 Executive Appointment Personnel*~~

~~Executive Appointment Personnel are defined as executive management, non-program positions appointed for a period of not longer than 2 years and subject to immediate appointment and discharge by the Chairman and Council, and whose work station shall be in the Executive Office of the Tribe. Notwithstanding sections of this Policy or other Tribal ordinance to the contrary, when a position is identified as Executive Appointment Personnel by the Tribal Council, the Council and/or Chairman may appoint, employ and discharge Executive Appointment Personnel as deemed necessary, and at their sole discretion. Executive Appointments shall receive employment benefits as described in an employment contract. Advertisement, selection and recruitment of Executive Appointment Personnel shall be conducted in an efficient manner at the discretion of the Council or Chairman. Executive Appointment personnel have no right to appeal a decision of the Chairman or Council. The decision of the appointing authority shall be final.~~

Constitutional Appointment Personnel

3.1.2

Constitutional appointment are those positions appointed by the Council as stated in the constitution and bylaws of the Hoopa Valley Tribe. The term of a constitutional appointment shall be one (1) year or at the discretion of the Council. Constitutional appointment personnel shall not have appeal rights under these policies except in cases of alleged discrimination. The decision of appointing authority shall be final. Salary, Stipend and fringe benefits is determined by the Council. Appointee's are subject to alcohol & drug testing pursuant to the Tribe's Alcohol & Drug Policy.

Sgt. At Arms to the Tribal Council

3.1.3

The Sgt. At Arms to the Tribal Council is a position appointed by the Council as stated in the constitution and bylaws of the Hoopa Valley Tribe. The term of the Sgt. At Arms shall be one (1) year or at the discretion of the Council. The Sgt. At Arms shall not have appeal rights under these policies except in cases of alleged discrimination. The decision of appointing authority shall be final. The Sgt. At Arms shall receive health insurance benefits and will be covered by workers compensation insurance. The Sgt. At Arms is subject to alcohol and drug testing pursuant to the Tribe's Alcohol and Drug Policy.

Employee

3.1.3~~3~~4

An employee may be employed in a full-time or part-time capacity. Employees are not considered to be in a Management position.

Program Manager

3.1.4~~4~~5

A Program Manager has the direct responsibility for the functions of the operations of a department, subordinate programs, company or business.

Contract Employee

3.1.5~~5~~6

A contract employee is one that is hired under a specific employment contract. This policy applies to all contract employees except where contract language should supersede these personnel policies. In the absence of a contract employee evaluation process, the Manager's evaluation and appeal process will apply to contract employees. Contract employees are subject to the alcohol & drug testing pursuant to the Tribe's Alcohol & Drug Policy.

Volunteer/Serving without pay

3.1.67

Volunteers and persons appointed to serve without pay are not eligible to receive wages and benefits available to paid employees under this manual, other than workers compensation benefits, provided that they have completed the proper documents and are approved for appointment.

EMPLOYMENT STATUS

3.2

Introductory Employee

3.2.1

The Introductory period shall be an integral part of the selection and screening process and shall be utilized by the Program Manager as an opportunity to observe the new employees work, to train and aid the new employee in adjustment to the position, and to relieve from employment any employee whose performance fails to meet required standards. All entrances and all promotional appointments are subject to an introductory period of at least ninety (90) days from the date of hire. Any interruption of service during the introductory period shall not be counted as part of such period.

Part-time employee

3.2.2

1. A part-time employee is one who receives an assignment to work for less than 30 hours per week on a continuing basis.
2. A part-time employee may be a regular or temporary employee.

3. A part-time employee shall be eligible for benefits described in this Manual if classified as regular, prorated to the hours worked.

Regular employee

3.2.3

A regular employee is one who has completed the introductory period either in a full-time or part-time capacity. Positions are of an on-going nature and very unlikely to be discontinued.

Temporary employee

3.2.4

1. A temporary employee receives an appointment with the understanding that it is a short-time assignment.

2. Employees on temporary appointment do not accrue sick or annual leave and are not eligible for benefits described in this manual with the exception of paid Tribal Holidays consistent with section 11.1 of this policy. Other benefits may be granted on occasion or to the extent required by state and federal laws.

3. Should a temporary employee become a regular employee, his/her anniversary date will be based on the date the said employee acquired regular status.

4. Temporary appointments are limited to six (6) months. Successive temporary appointments to the same position with the same person are prohibited.

5. A temporary employee shall not have appeal rights under these policies except in cases of alleged discrimination.

6. ~~All temporary employees hired to work for less than seven (7) days are not subject to a pre-employment alcohol and drug test~~All temporary employees are subject to alcohol and drug testing for positions exceeding seven (7) workdays, pursuant to the Tribe's Alcohol & Drug Policy.

Seasonal Employee

3.2.5

Program Managers may make seasonal appointments where additional employees are needed during a particular season, provided budgeted funds are available. The types of seasonal employees include:

1. **Temporary Seasonal:** A seasonal employee may be hired on a temporary basis for a limited time period and are not eligible for benefits with the exception of paid Tribal Holidays consistent with section 11.1 of this policy. ~~except for provisions of state and federal laws~~ Other benefits may be granted on occasion or to the extent required by state and federal laws. Seasonal appointments are paid by the hour. Temporary seasonal positions must be advertised each season.

2. **Regular Seasonal:** Regular seasonal employees are reinstated each year for the season and are eligible for all benefits for the time period in which they are employed. After the initial advertising it is not required to advertise each season.

Volunteer

3.2.6

1. Volunteer employees are not entitled to any benefits provided under this policy but shall perform consistent with these policies. Volunteer employees will be covered by Workers Compensation benefits.

2. Volunteers may be dismissed at the discretion of the department manager and have no appeal rights.

3. All volunteers are subject to alcohol and drug testing for positions ~~longer than~~ exceeding seven (7) workdays, pursuant to the Tribe's Alcohol & Drug Policy.

CHAPTER 4 - RECRUITMENT AND SELECTION

RECRUITMENT

4.1

To assure that interested persons are informed and qualified persons are attracted to compete, job vacancies must be publicized for a minimum of 15 days except for temporary appointments for periods less than 15 work days. In order to assure equal employment opportunity, announcements shall be posted on bulletin boards and advertised to the extent that they will be available to all members of the community and other interested parties as deemed necessary by the Personnel Director. Additional announcements may be made to newspapers, radio and television stations, educational institutions, and community organizations as needed.

~~b) Current Indian employees will be afforded preference, insofar as their Tribal employment experience bears on the responsibilities of the position, but consistent with TERO, in filling vacancies, provided that they meet the minimum qualification of the position.~~

JOB ANNOUNCEMENTS

4.2

Vacancy announcements shall include the position title, filing deadline, salary range, brief description of major duties, responsibilities and minimum qualifications for the position. The announcement shall also include an Indian Preference statement and Drug Policy statement. Public notices shall be done in a cost effective manner.

FILING APPLICATIONS

4.3

1. Application for employment shall be made on forms provided by the Personnel Department and must be filed with that office on or prior to the closing date specified in the announcement or postmarked before midnight of that date. Such applications may require information concerning education, experience, references, and other pertinent information. All applications shall be signed, and the truth of the statements contained therein certified by such signatures.

2. Applications for employment will be accepted at anytime. The applications will be kept on file for one year and, applicants will be considered for positions if requested by the applicant.

3. All applicants shall be informed of the Tribe's Alcohol and Drug Policy.

AFFIRMATIVE ACTION

4.4

1. Candidates for employment will be considered without regard to race, color, age, religion, national origin, political affiliation, marital status, sex, disability, or other non-merit factor.

2. As provided by TERO, qualified members of the Hoopa Valley Tribe and other qualified Indians of a federally recognized Tribe shall be given preference in hiring.

~~c) After the application of Indian preference in b) above, preference in hiring will be given to honorably discharged veterans of the Armed Forces of the United States of America.~~

QUALIFICATIONS

4.5

The Screening Committee shall screen all applications for minimum qualification requirements established for the job. Minimum qualification requirements reflect only the basic knowledge, skills, and abilities which are directly related to the duties of the position. Applicants who meet the minimum qualifications shall be rated qualified. Applicants who do not meet these requirements will not be considered for employment and shall be notified in writing by the Personnel Department.

EVALUATION OF APPLICANTS

4.6

1. Evaluation of applicants can take the form of written examinations, oral interviews, consideration of training/education and experience, and previous job performance, etc. All applicants must be evaluated by the same method. Whatever form the evaluation takes, it must be practical in nature, job-related, and constructed to reveal the capacity of the candidate for the particular position for which he or she is competing.

2. Applicants for a position are ranked by the Personnel Director or by a Selection Committee.

SELECTION COMMITTEE

4.7

1. Selection Committees may be convened by the Program Director or Personnel Director.

2. The Committee will consist of two to three individuals selected for their knowledge of the position, objectivity, and skill in interviewing and evaluating qualifications of candidates.

SELECTION

4.8

1. Neither the Personnel Director nor the Selection Committee will make hiring decisions. They will rank applicants and send the list to the appropriate Program Manager for action.

2. The selection of key management personnel must be confirmed by the Tribal Council. A final offer of employment will be contingent upon completion of a favorable background investigation. Key positions are defined as political and ~~executive~~ constitutional appointment personnel and Program Managers.

3. All selected applicants will be subject to alcohol and drug testing pursuant to the Tribe's alcohol and drug testing policy.

4. Background investigations may be required for other employment positions if contained in the minimum qualifications or job description.

APPOINTMENT

4.9

Prospective employees shall receive written offers of employment. Upon arrival in the work place, employees will be given an initial orientation regarding employment with the Tribe. The written offer will include a brief description of the job, starting monthly salary, effective date of employment, and other specific conditions relating to the individuals employment.

PAYROLL CERTIFICATION

4.10

The Personnel Director shall certify those persons who have been appointed and are employed in accordance with the provisions of the Tribal Personnel Ordinance and Personnel Rules. The Chief Financial Officer shall not approve payment for salary and/or wages to any person who has not been so certified by the Personnel Director.

CHAPTER 5 - CONDITIONS OF EMPLOYMENT

CHAIN OF COMMAND POLICY

5.1

It is the policy of the Tribal Council that all violations of the chain of command are prohibited within the operations of the Tribe with respect to policy & personnel matters. Any employee or manager who violates the chain of command policy shall be subject to immediate disciplinary action, including possible termination of employment. A violation to the chain of command policy is defined as, 1) when an employee usurps the established lines of authority within the Tribal structure without first discussing the matter with his/her Program Manager; or 2), when a Program Manager submits a matter to the Tribal Chairman and/or Council without including a recommended solution.

MANAGEMENT GENERAL PRINCIPLES

5.2

a) The Tribal Council shall ~~have the right to~~ expect adequate performance from its Program Managers.

~~b) The Tribal Council is held to the same standard as the Program Manager in problem solving.~~

b) Program Managers have a direct responsibility to contribute to the continued development and improvement of the Tribal Government. These include goal setting, evaluations and problem solving.

c) Persons holding management positions are expected to know the responsibilities of their jobs, contribute to the identification and resolution of deficiencies in the Tribal structure that impact their jobs, programs and services.

~~e) Program Managers shall receive support and encouragement from the Tribal Council.~~

EMPLOYEE GENERAL PRINCIPLES

5.3

1. The Tribal Council shall ~~have the right to~~ expect adequate performance from its employees.

2. New employees shall receive an orientation on job requirements by the immediate supervisor.

3. Employees shall be fully informed of the performance requirements of the positions they fill and shall receive a current copy of their job description.

4. Employees shall be informed of the location and accessibility of the personnel manual and shall receive clarification on all personnel matters affecting them such as fringe benefits, pay policies, Indian Preference, etc.

5. Employees shall be informed of any inadequacies in their job performance and shall have the opportunity to improve performance through counseling or coaching from the supervisor. If counseling or coaching fails, the employee may be terminated from his/her position.

~~6. f) Employees shall have an opportunity to apply for vacant positions.~~

7. Employees shall be permitted to appeal their complaints through the grievance procedures without reprisal.

8. Employees shall be informed in writing of any adverse actions that may directly affect them.

9. Personnel information about employees shall be protected. Personnel folders shall only be available to the employee and officially authorized personnel consistent with section 14.1 of this policy.

10. Employees shall be reimbursed for expenses accumulated for travel and transportation on authorized Tribal activities at rates approved by the Council.

11. Employees are encouraged to exercise their political rights as citizens and Tribal Members. They may vote as they choose, support candidates of their choice, and express their political opinions. However, political activities must take place outside of working hours and away from Tribal offices.

EMPLOYEE RESPONSIBILITIES

5.4

1. Employees shall provide complete and accurate information in their job applications.

2. Employees shall perform "other duties as assigned", as it pertains to their position or goals of the Tribe.

3. Employees shall make a conscientious effort to improve performance when the supervisor has identified inadequacies.

4. All employees shall read this manual in its entirety, shall keep abreast of changes and revisions, and shall seek clarification when necessary.

5. No employee shall presume to speak for the Hoopa Valley Tribe to any mass media outlet on any matter concerning the Tribe without the delegated authority to do so, or the express prior written approval of the Tribal Council, or unless public relations, negotiations, and similar work is a duty of the employee's position.

6. Employees shall be expected to dress in a manner appropriate to their position and proper in respect to specific occasions. Each Program Manager is responsible for establishing a reasonable dress code appropriate for their department. Personal appearance should be a matter of concern for each employee, which includes grooming and personal hygiene. The manager has sole discretion to determine whether an employee is dressed appropriately for his/her position.

7. An employee may not solicit or accept gifts, contributions, favors, etc. for personal gain in excess of $25.00 value from any person or organization doing business with the Hoopa Valley Tribe.

8. No children of employees shall be allowed in the Tribal offices during working hours.

9. Employees are responsible for the maintenance and upkeep of all Tribal equipment.
10. Employees are required to abide by all policies and procedures, including the Tribe's Alcohol and Drug Testing Policy.

11. Any employee leaving a work site must notify the supervisor in advance. Every employee is required to be at the work site as directed by the Program Manager or his/her immediate supervisor.

HARASSMENT

5.5

Employees shall be provided a safe work environment, free from harassment of any sort i.e.; verbal, physical, visual. Any alleged violation of the above should be reported immediately to the Personnel Department or TERO. The Tribal Council accepts no liability for harassment of one employee by another. The individual who makes unwelcome advances, threatens or in any way harasses another employee is personally liable for such actions and their consequences. The Tribal Council will not provide legal, financial or any other assistance to an individual accused of harassment if a legal complaint is filed.

CHAPTER 6 - EMPLOYEE & MANAGER PERFORMANCE, EVALUATION

EMPLOYEE AND MANAGER EVALUATION PROCEDURES

6.1

It is the policy of the Hoopa Valley Tribe that employees and managers be provided constructive and objective feedback regularly in order to maximize their contributions to the organizations. The employee and manager evaluation performance appraisal serves several purposes. The most important aspects are communication between the supervisor and employee regarding any changes in the employee's job, areas of performance strength and weakness, and areas of specific training need. It is the responsibility of the Program Manager to ensure that employee evaluations are conducted no later than January of each year. Evaluations conducted under this policy include, but are not limited to, introductory, employee and manager reviews.

Introductory Evaluations

6.1.1

Written evaluations are made on introductory employee performance one month prior to completion of the introductory period. The Personnel Department shall send reminders to managers when the introductory performance reviews are due. However, failure to send the reminder does not excuse the manager from responsibility to conduct the evaluation.

Evaluation of an employee's performance during the introductory period is a continuing process. However, one month prior to completion of the introductory period, the employee's manager will provide a detailed assessment in writing of the employee's performance with a recommendation to take one of the following actions:

- Affirm that the services of the employee have been found to be satisfactory and certifies that the employee be given a regular appointment to the position.
- Recommend that the employee's services be terminated.
- Recommend that the introductory period be extended.

Extension of Introductory Period

6.1.2

A Program Manager, may with the concurrence of the Personnel Director, extend an employee's introductory period for a specified time not to exceed an additional 90 days.

The employee shall be notified of the reason for the extension through the Performance Evaluation process, and a further report and decision shall be required at the end of this additional period.

Termination During Introductory Period

6.1.3

If at any time during the introductory period it is determined that an employee's performance is unsatisfactory, the employee may be terminated without the right of appeal or hearing, except in cases of alleged discrimination.

MANAGEMENT EVALUATIONS

6.2

Managers are hired based upon their expertise and ability to manage in the discipline for which they were hired. The premise upon which management evaluations will be based is that managers are expected to be among the most knowledgeable in developing decisions and for addressing problem areas within their program.

Program Managers will be evaluated at least annually, or as otherwise needed, by the Tribal Chairman or his/her authorized representative using the manager evaluation forms provided by the personnel department. Performance deficiencies will be identified during the evaluation or under a separate document and provided to the manager. Annual manager evaluations will be consistent with the provision of the Tribal Audit and Report Policy. A manager evaluation is required within 90 days prior to taking any adverse personnel action against a manager, however, immediate action may be taken provided that the Tribal Chairman or Council certifies in writing that in their sound discretion the manager's action is seriously prejudicial to the best interests of the Tribe. Managers will be provided a copy of the completed evaluation form and a copy will be placed in the manager's personnel file. A manager may submit a written response to the evaluation which will be placed in the manager's personnel file.

Managers will be evaluated on the following criteria:

- Goals and objectives - progress/achievements;
- Management of finances and Tribal assets;
- Efforts/ability to identify and solve problems;
- Administrative functions - personnel/budget management, application/waiver of policies and procedures; and
- Identification of areas needing improvement.
- Other written criteria that are specific to the manager's duties.

Poor and/or unsatisfactory performance by managers may be subject to disciplinary action as prescribed for managers under this policy.

EMPLOYEE EVALUATIONS

6.3

Regular employee evaluations will be conducted annually, or as otherwise needed, by the Program Manager or his/her authorized representative using the employee evaluation forms provided by the personnel department. Performance deficiencies will be identified during the evaluation or under a separate document and provided to the employee. An employee evaluation is required to be completed within 90 days prior to any adverse personnel action taken against an employee, however, immediate action may be taken provided that the Program Manager certifies in writing that in their sound discretion the employee's action is seriously prejudicial to the best interests of the Tribe. Employees will be provided a copy of the completed evaluation form and a copy will be placed in the employee's personnel file.

Employees will be evaluated on the following criteria:

- Work performance;
- Knowledge of job/ability to satisfactorily perform;
- Administrative functions, time cards, property control, attendance;
- Efforts/ability to understand, address and remedy job related problems; and
- Identification of areas needing improvement.
- Other written criteria that are specific to the employee's duties.

The supervisor and employee will meet to discuss the completed evaluation form. The evaluation form shall be signed by the employee and supervisor and forwarded to the Program Manager for review. Following review, the form shall be forwarded to the employee's personnel file.

Employees disagreeing with a performance evaluation should sign the report and outline in writing their basis for disagreement to be included with the evaluation.

CHAPTER 7 - CHANGES IN EMPLOYMENT STATUS

There are various factors that can affect an employee's or manager's status of employment within the Tribe. These can include actions intended to benefit an employee or manager following superior work performance, those that are mutually agreed to by the employee or manager and Tribe, as well as those actions resulting from the need to take corrective actions resulting from less than satisfactory work performance. Any employee or manager who does not agree with actions taken to change their employment status with the Tribe may appeal such actions through the appropriate employee or manager procedures contained in this policy. Examples of changes in employment status include:

PROMOTION

7.1

Vacancies shall be filled by promotion whenever practical and in the best interest of the Hoopa Valley Tribe. Promotion occurs when an employee moves from his/her current position to a position of increased responsibility and complexity. No employee may be promoted permanently if he/she does not meet the minimum qualifications at the higher level position.

Temporary Promotions

7.1.1

Temporary promotions may be made in certain situations such as periods of extended leave, special temporary projects, etc. Competition will not be required for a temporary promotion, but the employee must be performing the higher level duties for at least two pay periods. The employee will be paid at the usual rate of the higher level position. The employee's pay will revert to his/her previous pay when the temporary promotion is over.

Retroactive Promotions & Pay Increases

7.1.2

Promotions and pay increases may not be retroactive before the date of approval by the appointing power authority. The Program Manager is responsible to provide the necessary forms and documentation to the Personnel Department in advance of any deadlines for processing promotions or pay increases.

TRANSFER/REASSIGNMENT

7.2

Transfer is when an employee is moved from one position to another position. An employee must meet the minimum qualifications of the said job before he/she can be transferred to it. Reassignment is when an employee is returned to a formally held position. The Personnel Director shall verify that the employee meets the qualifications for the position. The salary paid to a transferred or reassigned employee shall be at the rate normally paid for the position by the department or entity.

SEPARATION

7.3

Separation is when there is a termination of an employee relationship with the Tribe, for any cause. When separation occurs, the employee's final pay check will not be prepared by the Fiscal Department until a statement of clearance is submitted by the Program Manager stating that all Tribal assets have been returned and outstanding obligations liquidated.

RETIREMENT

7.4

Retirement is the separation of an employee in accordance with the provisions of the retirement system under which the employee is eligible to receive benefits.

RESIGNATION

7.5

1. Resignation is the separation of an employee by his/her voluntary act.

2. The employee should give at least two weeks notice in writing to the immediate supervisor. A copy of the notice shall be forwarded to the Personnel Director by the Program Manager.

3. Employees who are not at work and have not contacted their supervisor within three (3) working days from the last day worked, or at the end of authorized leave, shall be deemed to have resigned.

LAYOFF

7.6

1. An employee may be laid off whenever it is deemed necessary by reason of lack of work or funds due to program reduction, reorganization, or other administrative adjustments.

2. The affected employee(s) shall be notified of an impending lay off at least 10 working days prior to the effective date of the layoff, when possible. The notification shall state the reasons for the layoff and the option(s) the employee has, if any, for reassignment and subsequent re-employment.

3. Seniority, performance, and type of appointment shall be considered in determining the order of layoff. No permanent employee is to be separated by layoff until all temporary and introductory employees serving in the same job classification have been separated.

DISMISSAL

7.7

An employee may be dismissed due to poor performance or to effect disciplinary action. A Program Manager may not dismiss an employee without consulting the Personnel Director who shall verify that all required documentation has been properly placed in the employee's file.

END OF CONTRACT PERIOD

7.8

Employment of a contract employee with the Tribe shall end upon expiration of the contract.

CHAPTER 8 - CHANGES OF EMPLOYMENT RESULTING FROM DISCIPLINARY ACTION

DISCIPLINARY ACTION - EMPLOYEES

8.1

Disciplinary Action including termination or demotion, may be taken against an employee for an unsatisfactory performance evaluation. Program Managers must demonstrate that counseling on specific areas of poor performance has occurred and that insufficient improvement has taken place as a result of counseling or other corrective efforts. Unsatisfactory performance must be documented and must directly relate to the employee's job description and employee's evaluation. (see section 8.1.3 Table of Penalties.)

Corrective Interview/Written Warning

8.1.1

The supervisor shall discuss the problem with the employee and suggest corrective action. Within five (5) workdays following the corrective interview, the Program Manager and/or supervisor shall file with the employee and Personnel Department a written warning form that identified the problem and suggested corrective action needed by the employee. The written warning shall be kept in the employee's personnel file for no more than twelve (12) months.

Written Reprimand/Disciplinary Action

8.1.2

At the discretion of the Program Manager, disciplinary action may be taken against an employee at the time that a written reprimand is given. In the event of immediate termination, a written notice of termination shall be given in place of a reprimand.

A written reprimand/notice of disciplinary action shall be addressed to the employee and shall include: the charge; the specific behavior, the dates of behavior (where appropriate) that support the charge and the type of disciplinary action being taken against the employee. The employee will be advised that continuance of inappropriate behavior will result in more severe disciplinary action, which could include termination. Employees shall be advised of their right to an appeal of the disciplinary action. A signed copy of the reprimand shall be included in the employee's personnel file, and the employee will have the opportunity to submit comments for the personnel folder. Both documents will be purged from an employee's file at the end of 12 months. The types of disciplinary action which may be taken, but not limited to, include:

1. **Disciplinary Probation:** Disciplinary probation is when an employee is placed in probationary status pending further review of job performance. The notice will explain the reasons for the probationary period, the duration, the standards for judging the employee's improvements and the action to be taken if the deficiencies are not corrected within the probationary period. A copy of the personnel action is placed in the employee's personnel file. In no instance shall disciplinary probation be more than 90 days.

2. **Suspension With/Without Pay:** Suspension with pay will only be allowed in cases of pending investigation and while waiting to be assessed or waiting for results of a for cause drug test. The Department Director may suspend an employee without pay for up to, but not exceeding, 30

calendar days. On or before the effective date of the suspension, the supervisor will furnish the employee with a written statement setting forth reasons for the suspension, the effective dates of the suspension, and the date the employee is to return to work.

3. **Demotion:** Demotion is defined as when an employee is moved to a lower level of responsibility and compensation for disciplinary reasons.

4. **Dismissal:** Dismissal is when an employee is removed from employment for disciplinary reasons.

Table of Penalties

8.1.3

The penalties listed below are guidelines only and are not intended to limit other appropriate action. These penalties need not be followed in the order indicated; also they are in addition to any which may be imposed by a court of law.

KIND OF OFFENSE	1ST PENALTY	2ND PENALTY	3RD PENALTY
Unsatisfactory Job Performance	Corrective Interview/ Written Warning	Disciplinary Action	Dismissal
Neglect of Duty/ Sleeping on the Job	Disciplinary Action or Dismissal	Dismissal	
Excessive absenteeism/ Tardiness; abuse of policies.	Corrective Interview/ Written Warning	Disciplinary Action	Dismissal
Insubordination; failure to carry out legitimate instructions or duties.	Disciplinary Action or Dismissal	Dismissal	
Releasing confidential information without proper authorization.	Disciplinary Action or Dismissal	Dismissal	
Vending, soliciting, or collecting contributions on employer time or premises without authorization.	Corrective Interview/ Written Warning	Disciplinary Action	Dismissal
Reporting under the influence of alcohol or drugs.	Refer to Alcohol and Drug Policy.		
Consuming alcohol or drugs on the job.	Refer to Alcohol and Drug Policy.		

KIND OF OFFENSE	1ST PENALTY	2ND PENALTY	3RD PENALTY
Misconduct.	Disciplinary Action or Dismissal	Dismissal	
Misconduct while on official travel, including non-attendance & credit card abuse.	Repayment; Disciplinary Action or Dismissal	Dismissal	
Violation of safety regulations	Corrective Interview/ Written Warning	Disciplinary Action	Dismissal
Intentional falsification of information on employment application or falsification of personnel records, time sheet, or other records.	Repayment; Disciplinary Action or Dismissal	Dismissal	
Falsifying or counterfeiting expense claims.	Repayment; Disciplinary Action or Dismissal	Repayment; Dismissal	
Intentional misuse of tribal property.	Disciplinary Action or Dismissal	Dismissal	
Theft or unauthorized possession of tribal property.	Dismissal; Prosecution		
Acceptance or solicitation of gifts over $25; unless its a promotion or company logo. Acceptance of bribes in official capacity.	Repayment or Forfeiture; Disciplinary Action or Dismissal	Dismissal	
AWOL 1 - 3 Days.	Disciplinary Action or Dismissal	Dismissal	
Harassment	Refer to Section 5.5 of this policy.		

DISCIPLINARY ACTION - MANAGERS 8.2

With the exception of alleged discrimination, this section will exclusively apply to disciplinary action against Program Managers and no other section to the contrary shall have any validity.

An evaluation of the manager's performance must have been completed within ninety (90) days prior to any disciplinary action. Program deficiencies will be identified during the evaluation or under a separate document and provided to the manager. Managers will be given a reasonable opportunity to develop and submit a performance plan that outlines the method in which the manager plans to overcomes the deficiencies. The performance plan shall identify solution(s), time-frames and needed resources. Performance plans must be based on achievable and measurable factors and be based upon available resources of the Tribe. Failure by the manager to develop a performance plan or to perform in accordance with the performance plan once submitted will constitute cause for immediate disciplinary action against the manager, which may include termination or demotion. When necessary, the Program Manager is responsible for amending and/or updating the proposed or final performance plan within a reasonable time frame, or within the time as otherwise agreed. If the ~~Council/Chairman~~ immediate supervisor does not specifically reject the performance plan within 30 days, the manager's plan will become the criteria for future evaluations. ~~Following any disciplinary action against a manager, the manager may submit for consideration by the Tribal Council or Chairman documentation why such disciplinary action should not have been taken. A copy of the manager's documentation will be placed in the managers personnel file. Tribal Employment Rights Office and Tribal Court appeals of the matter can only be based on the procedures followed and on the merits of the decision.~~

CHAPTER 9 - APPEALS/GRIEVANCE PROCEDURES

Grievance rights are accorded to all non-introductory regular employees and managers. The person filing a grievance shall be free from restraint, coercion, discrimination, or reprisal. Employees will have an opportunity to present his/her view prior to the disciplinary action taken against them. A copy of the grievance procedure will be provided to any manager and employee against whom the disciplinary action is taken.

MANAGERS GRIEVANCE PROCEDURE

9.1

Following any disciplinary action against a Program Manager, the manager may submit for consideration by the ~~Tribal Council or Chairman~~ immediate supervisor documentation why such disciplinary action should not have been taken. A copy of the manager's documentation will be placed in the manager's personnel file. Tribal Employment Rights Office and Tribal Court appeals of the matter can only be based on the procedures followed and on the merits of the decision.

If no action has been taken on an appeal by the ~~Chairman and/or Council~~ immediate supervisor within ten (10) working days, the previous decision will be considered upheld. After the ten day period the manager may appeal the issue to TERO and shall follow the TERO appeal procedures.

EMPLOYEE GRIEVANCE PROCEDURE

9.2

An employee has the right to file a grievance if an employee feels that disciplinary action has been taken against him or her unjustly. Grievances may also be filed if he or she has been treated unfairly with respect to working conditions or terms of employment.

Failure of the employee to proceed to the next step of the grievance procedure within the time period specified will constitute withdrawal of the grievance. Failure by management to render a decision within the allotted time at any step confirms the decision made by the manager at the previous step, and the employee may then proceed to the next step.

The employee must first discuss the disciplinary action or grievance with his or her immediate supervisor. If the problem cannot be resolved between the employee and supervisor, the employee may grieve in writing to successively higher levels of authority, following the steps listed:

1. Within ten (10) working days of the action taken against them, the employee will prepare a brief memorandum for his or her immediate supervisor summarizing the action or circumstances he or she is grieving, the specific reasons for the grievance, and the remedy sought.

2. Within five (5) working days of receipt of written notice, the immediate supervisor shall give a decision or response to the employee in writing.

3. If the grievance is not resolved to the employee's satisfaction, the employee may within five (5) working days submit the grievance to the Program Manager. The Program Manager shall investigate the grievance, confer individually with the employee and immediate supervisor (where applicable) in an attempt to resolve the grievance. A decision is given in writing to the employee and the employee's immediate supervisor within five (5) working days after the formal grievance is filed.

4. If the employee is not satisfied with the Program Managers decision, within 10 working days, the employee may appeal the decision to TERO and shall follow the TERO appeal procedures.

CHAPTER 10 - CLASSIFICATION AND COMPENSATION

CLASSIFICATION

10.1

1. The position classification system groups jobs into categories based upon the type and difficulty of work performed and ranks the category according to predetermined standards. A classification system does not evaluate people. It evaluates and describes the duties of positions.

2. The objective of the system is to assure employees that there has been an objective analysis of the place of their position within the organization's structure and that pay administration and other actions will be handled equitably for equivalent positions.

3. A position is classified after a careful study of the duties and responsibilities assigned to the position. This process requires a systematic study of the organizational structures, position descriptions, an interview of the supervisor and the employee, and other techniques as needed to gather the necessary information about the position or positions concerned.

4. If the assignment of an employee has changed substantially as to type or level of work, a revised position description should be written and the position considered for re-classification.

COMPENSATION

10.2

1. A current salary plan shall be maintained by the Hoopa Valley Tribe by conducting a periodic salary survey and job analysis.

2. In setting salaries for a particular position, the following are considered:

- Salaries for similar positions in the same category.
- Availability of program funds.

- Minimum wage (no employee shall receive less)
- Outstanding qualifications of the applicant for the position.
- Increases for superior performance or longevity.

3. Most salaries are set at the first step of the salary range. The Council may authorize hiring at a higher step in the pay schedule upon the request of the Program Manager. The salary may be set at a higher step if the person selected has qualifications which significantly exceed the minimum qualifications specified in the job description. The basis for this determination must be documented and should be included in the personnel folder.

4. Annual evaluations of regular employees may result in recommendations for salary increases. Supervisors/Managers will evaluate employees in January of each year.

5. Merit salary increases are not automatic. Program Managers shall recommend to the Personnel Director merit increases only for those employees who have demonstrated superior standards of work performance.

6. The feasibility of a cost of living increase shall be determined and approved by the Tribal Council.

7. Program Managers and the Tribal Council must certify that sufficient funds are available to cover the cost of salary increases as provided in these rules and that no budgetary or service deficiency will thereby be created.

8. Pay days are semi-monthly, and will be paid on the 5th and 20th of each month. Should the pay day fall on a weekend, pay day will be on the preceding Friday.

9. Pay advances will not be granted except in emergencies. When requests for pay advances are made, they must be submitted in writing with evidence supporting the emergency and must be approved by the Program Manager and the Chief Financial Officer. Pay advances shall be limited to the amount of accrued compensation at the time of the request.

HOURS OF WORK

10.3

1. The normal work week for employees shall be 40 hours.

2. The normal schedule is Monday through Friday, eight hours a day from 8:00 a.m. to 5 p.m., except where otherwise scheduled. One hour is allocated for lunch.

3. A temporary flex-time schedule may be approved for an employee by the Tribal Chairman, providing all flex-time is fully justified and approved in advance.

4. A temporary flex-time schedule may be approved for all employees by the Tribal Chairman in emergency situations such as adverse weather conditions.

OVERTIME AND COMPENSATORY TIME

10.4

It is expected that, from time to time, managers and other salaried personnel may be required to work hours more than the normal work schedule. Program Managers and other salaried personnel are not eligible to receive overtime or compensatory time.

1. It is the policy of the Hoopa Valley Tribe that overtime work be held to a minimum and reserved for essential or emergency situations. Any and all overtime/compensatory time must be approved in advance by the immediate supervisor. Paid overtime must be approved by the Program Manager, providing funds are available.
2. Non-management employees who work more than forty hours a week shall be paid 1 1/2 times the hourly rate for each hour worked over forty hours in a work week.

3. Non-management employees shall receive double the hourly rate for all hours worked in excess of 60 hours each week and for hours in excess of eight hours on the seventh day of any work week. Any employee may be employed on the seventh work day in one week with no overtime pay when the total hours do not exceed thirty for the work week, or six in any work day.

4. When no funds are available for overtime pay for non-management employees, 1 1/2 hours of "comp" (compensatory) time shall be given for each hour of work over forty hours in a work week provided written authorization has been given.

5. Comp-time shall be used as soon as possible, but at a mutually acceptable time for employee and supervisor. Employees may not accrue comp-time over a 40 hour balance, unless approved by the Tribal Chairman. An employee wishing to earn comp-time must obtain the approval of his or her supervisor in writing before working the extra hours.

6. Employees must punch out when attending meetings which do not pertain to their jobs, during working hours. They may use either compensatory time or annual leave, or leave without pay, provided their supervisor has approved the leave request.

7. Employees may be required to spend time in travel status and in attending training sessions as part of their job requirements and are not eligible for overtime or compensatory time.

TIME CARD PROCEDURES

10.5

The Program Manager is responsible for certifying the accuracy of payroll documentation. Neglect of responsibility for certifying payroll documentation shall be reflected in the manager's evaluation.

All employees of the Hoopa Valley Tribal Council will utilize the time card procedures with the exception of management employees. Time cards will not be accepted or approved if they do not follow the procedures below:

1. Time cards with time written in by hand, typed, or any other non conformance are not acceptable. When an employee fails to punch in or out, the Immediate Supervisor must verify that the employee worked by initialing the time card.

2. Time cards will be punched at the start of each workday, at the beginning and end of lunch periods and at the end of the workday.

3. Absolutely no one may punch a time card in or out for another employee under any circumstances. Violation of this policy may be grounds for dismissal.

4. Time punched in early at the beginning of the workday and punched out late at the end of the workday will not be allowed to be used towards compensatory time or overtime, unless prior written approval is obtained.

5. Employees may not use annual, sick or compensatory leave to compensate for tardiness.

6. No employee shall work through their lunch period and add it to hours worked without prior written approval from the Program Manager in each occurrence.

7. Employees who punch in late more than five minutes will be docked one-quarter of an hour of pay. Example:

- 8:01 am. No docking
- 8:06 am. Dock fifteen minutes
- 8:16 am. Dock one-half hour
- 8:31 am. Dock forty-five minutes
- 8:46 am. Dock one hour
- 9:01 am. Is considered absent without official leave. (A.W.O.L.).

8. Employees may not take more than the allocated time for lunch period. Employees will be docked when late.

9. Employees punching out early will be paid only the actual time worked.

10. Employees are not allowed to carry time cards with them.

CHAPTER 11 - EMPLOYEE BENEFITS

HOLIDAYS

11.1

1. The following holidays are recognized as paid holiday by the Hoopa Valley Tribal Council:

- New Year's Day
- President's Day~~Martin Luther King~~
- Memorial Day
- Independence Day
- Sovereign Day
- Labor Day
- Day of the Boat Dance
- Indian Day (last Friday in Sept.)
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

2. After three (3) years of service, employees will be eligible for one floating holiday each year. The floating holiday may be added to vacation time.

3. Holidays falling on Saturday shall be observed on the Friday preceding. Those falling on Sunday shall be observed the following Monday.

4. Part-time employees and temporary employees may receive a paid holiday if such a holiday falls on one of their regular work days. Part-time employees who work on a regularly scheduled work week, but with unequal hours per day, may be paid for the hours regularly scheduled for that day.

5. Employees wishing to observe religious holidays or participate in religious ceremonies during normal working hours must take annual leave.

LEAVE POLICY

11.2

The transfer of accrued leave of any type from one employee to another is not permitted. The Tribal Council reserves the right to appoint or employ additional employees to serve in a temporary position in place of a regular employee who is on official leave.

1. Leave is any authorized absence, with or without pay, during regularly scheduled work hours and shall not exceed six (6) months. Requests for such leave must be in writing and must establish reasonable justification for approval of request.

2. Leave is granted on the basis of the work requirements and whenever possible, the personal wishes of the employee. Leave must be approved in advance by the Program Manager.

3. Absence without leave (AWOL) is an unauthorized absence and shall be subject to disciplinary action.

4. Any employee failing to return to work at the end of an authorized leave and failing to contact the Program Manager within three (3) working days is deemed to have resigned.

5. All leaves of absence for periods in excess of (90) days must be approved by the Tribal Chairman. Such leave will not be approved for an employee who is accepting employment outside Tribal Government.

ANNUAL LEAVE

11.3

1. All regular employees and Program Managers accrue annual leave from the date of employment, but no annual leave may be taken until the completion of the Introductory period.

0 - 3	years of service	8 hours per month
4 - 10	years of service	12 hours per month
11 - 15	years of service	14 hours per month
16 - 20	years of service	16 hours per month
20 or more	years of service	20 hours per month

2. Annual leave for part-time regular employees is accrued on a prorated basis.

3. An authorized holiday falling within an employee's approved leave will not be counted as annual leave time.

4. Vacations are to be arranged at times that are most convenient for the Hoopa Valley Tribe, although the individual employee's preference will be given due consideration. When two or more employees desire the same leave time, and only one can be spared, the choice will be given to the senior employee. Annual leave will be taken during the period of the grant or calendar year.

5. Annual leave maximum carryover per year is 160 hours. If the hours are in excess of the carry over amount, accrual of annual leave will cease until annual leave balance recedes to 160 hours or less at which time the accrual will again commence.

6. An employee who terminates during the initial introductory period shall not be entitled to annual leave. Those employees who have completed their initial introductory period and are separated from Tribal employment, shall be entitled to payment for accrued annual leave. In no case shall payment be for more than the maximum accumulation. In case of death, compensation for accrued annual leave shall be paid in the same manner that salary due is paid.

7. It is the policy of the Tribal Council that all employees take annual leave. It is the responsibility of Program Managers to require their personnel to take vacations during the year in which leave is earned. Payment of money in lieu of accrued leave will not be permitted.

8. When the transfer of an employee, from one Tribal department/entity to another Tribal department/entity occurs, the annual leave accrued will be transferred providing funding is available.

SICK LEAVE

11.4

Sick leave may be granted for illness, disability, pregnancy or other medical purposes.

1. Regular employees earn sick leave at a rate of one day per month. Part-time Regular employees accrue sick leave on a pro-rated basis. Temporary employees are not entitled to sick leave benefits.

2. Sick leave credit accrues from the date of hire, but shall not be granted during the employee's introductory period.

3. Sick leave may be accrued on an unlimited basis.

4. Sick leave may only be used when an employee is ill/injured or a member of the employee's immediate family is ill, injured or dies. Immediate family is defined in section 1.5 of this Policy.

5. Payment of sick leave is dependent upon the employee notifying the immediate supervisor in the morning, before 9:00 a.m., on the first work day of illness. Medical certification from a doctor is required should the period of illness exceed three (3) days.
6. Misuse of sick leave may result in disciplinary action.

7. Upon termination of employment, no payment shall be made for accumulated sick leave.

8. Sick leave not exceeding ninety (90) calendar days may be approved by the Program Manager. If the employee is a Program Manager, the leave must be approved by the Tribal Chairman. The following conditions must apply:

- Written request submitted by employee or representative.
- A Doctor's excuse must be submitted.
- May or may not be in excess of accrued sick leave.

1. Sick leave in excess of ninety (90) calendar days must be approved by the Tribal Chairman, provided the same conditions (named in h above), apply. Sick leave in excess of six (6) months may be only granted by Council action, provided reasonable justification is submitted. (same as in h above).

2. Employees who are off work due to extended sick leave in excess of six (6) months may be terminated at the discretion of the Council.

MATERNITY LEAVE

11.5

3. Employees shall be permitted to use accrued annual and sick leave for purposes relating to pregnancy or childbirth. Any additional time beyond the sick and/or annual leave balance will be counted as leave without pay.

4. A combination of leave and leave without pay may be granted for a period of up to six months for maternity purposes.

5. The employee is responsible for making known in advance his/her intention to request leave for maternity purposes including the type of leave, approximate dates, and anticipated duration in order to allow the Tribe time to prepare for any staffing adjustments which may be necessary.

6. The employee's position may be filled on a temporary basis during the absence.

7. The employee will have re-employment rights to the former position or a position of similar rank and pay.

ADMINISTRATIVE LEAVE

11.6

Paid administrative leave may be granted at the discretion of the Tribal Chairman and shall be granted only for the time and day specified. Employees who work during administrative leave will be paid at their regular wage. No additional compensation will be paid.

MILITARY LEAVE

11.7

1. A regular employee or Program Manager who is a member of any reserve unit of the United States Armed Forces shall be allowed a leave of absence for required training or duty up to 15 working days a year. The employee shall be paid the difference between compensation received while on reserve duty and regular compensation rates paid the employee by the Hoopa Valley Tribe.

2. Employees who are inducted into the United States Armed Forces will be eligible for re-employment after completing military service, provided:

- Notification is presented to the Program Manager.

- Satisfactory completion of active duty service.
- Employee enters military service directly from employment with the Hoopa Valley Tribal Council.
- Employee applies for and is available for re-employment within 90 days after discharge from active duty. If returning from up to six (6) months active duty for training, he/she must apply within 30 days of discharge.

BEREAVEMENT LEAVE

11.8

Bereavement leave up to five days 40 hours per fiscal year shall be granted for death in the immediate family. Immediate family is defined as spouse, son daughter, father, mother, sister, brother, grandmother, grandfather, aunt, uncle niece, nephew and the following in-laws: son, daughter, brother, sister, mother and father.

JURY DUTY

11.9

An employee shall be granted pay for jury duty. An employee called for such duty shall advise the Program Manager as soon as summoned. The employee shall receive the difference between his/her regular salary and the compensation received for the jury services not to exceed 8 hours per day. (The employee may retain any compensation paid for mileage.) The employee will continue to receive all benefits to which entitled during the period he or she is on jury duty.

ELECTION DAYS

11.10

Primary and General Election Days will not be considered as holidays. Employees are expected to vote during non-working hours.

SOCIAL SECURITY

11.11

All employees are covered under the provisions of the Social Security Act and are eligible for the benefits which are provided.

GROUP INSURANCE PLANS

11.12

Employees are eligible for group health insurance benefits after the first of the month following 90 days of employment. Premiums are paid by the Tribe for employees only. Dependent coverage is paid by the employee (The Council may elect to pay a portion of the dependent premium).

Group health insurance coverage on the employee and dependent(s), if applicable, may continue for a maximum of six (6) months while the employee is on medical and/or disability leave. Employee will be responsible for payment of their portion of the dependent coverage

Employees on any other type of unpaid leave will be responsible for total insurance premium. Should employee fail to make premium payments, employee and dependents (if applicable) will be terminated from the group health insurance plan and notified of their right to continue coverage under COBRA.

OPTIONAL/ADDITIONAL INSURANCE COVERAGE

11.13

Employees may purchase additional insurance coverage for themselves and/or dependents. This is called the Flexible Benefits Plan. Interested employees may contact the Insurance Administrator.

FRINGE BENEFIT STATUS DURING INTRODUCTORY PERIOD

11.14

This section applies only to new employees serving an introductory period to the Tribe. It does not apply to employees who are serving a period of introduction to a position as a result of being promoted.

1. Leave. No leave other than authorized without pay or military leave shall be taken by an employee during the introductory period.
2. Accrual of Leave. Sick leave and annual leave benefits based upon or earned in connection with time worked shall accumulate during an employee's introductory period. The employee shall not be entitled to receive leave or benefits during the introductory period, other than compensatory time.

WORKERS COMPENSATION/UNEMPLOYMENT INSURANCE

11.15

The Hoopa Valley Tribe pays premiums for Workers Compensation Insurance and Unemployment Insurance. All accidents must be reported immediately.

CHAPTER 12 - TRAINING

GENERAL POLICY/OBJECTIVE OF THE TRIBAL TRAINING PROGRAM

12.1

The Council encourages and promotes training opportunities for all Tribal employees provided that services they render to the Tribe may be more effective. Preference in training will be afforded to Tribal member employees except in instances in which the training is necessary for a specific employee. The Personnel Director shall assist Program Managers in meeting the training needs of the personnel of the departments; and in cooperation with Program Manager, shall encourage the development of departmental and inter-departmental training programs designed to meet personnel needs and to prepare Tribal employees for promotion to positions of greater responsibility.

The objective of the Tribe's training program is to improve the ability of Tribal staff to provide services to the members of the Hoopa Tribe and community. The Council recognizes the training function to be essential to the development of technical and administrative skills of Tribal employees.

EDUCATION LEAVE POLICY

12.2

The Hoopa Valley Tribal Council, a sovereign government, has the responsibility to exercise Tribal rights and promote the welfare of its membership in accordance with the Constitution and Bylaws of the Hoopa Valley Tribe.

In order to operate an effective governmental system, the Council encourages and supports educational and training development for the purpose of increasing productivity and capability of Tribal personnel. In order to achieve this goal, the Council hereby establishes the following conditions and guidelines to govern Tribal personnel development and training. These requirements shall apply to all Tribal entities and departments.

The guidelines identify two general categories of training that will enable the Council to develop more effective personnel performance and capability.

1. **Employee Development:** Based upon program or department needs and Program Manager recommendations, employees may be granted an opportunity to attend workshops, seminars, classes and other training sessions related to specific job requirements.

2. **Accelerated or Extended Training:** Based upon priorities approved by the Council and recommendations by Program Managers, employees may be granted leave, for a pre specified time period, with pay to attend an accredited institution or recognized training facility in order to acquire specific job related knowledge and capabilities that will benefit and enhance overall Tribal management and technical development. All accelerated or extended training opportunities shall be conducted in accordance with a written contract.

Educational leave

12.2.1

Education leave is defined as leave granted to Tribal employees and Program Managers for the purpose of attending an accredited institution of higher education or other recognized training facility for a period of thirty (30) days or more.

1. **Eligibility for Educational Leave with Pay:** Eligibility for educational leave with pay shall be limited to employees enrolled in, or preparing to meet the entrance requirements for a planned academic program related to Tribal or departmental needs. Educational leave will not be approved if the services of the department diminish. Educational leave shall be limited to full-time, employees who have been employed by the Council for a period of at least two (2) years.

2. **Salary or Stipend:** Requests for educational leave with pay shall detail salary request; costs of tuition, books and supplies, travel, housing, and other costs; grants, scholarships and stipends from any source for the period of leave.

3. **Contractual Arrangements:** Employees who are granted educational leave with pay shall enter into a contractual agreement in which the applicant agrees to provide services in a manner determined by the Council and the Program Manager for a period of obligated service equal to one year for each year of educational leave received or two years, which ever is greater.

- The Program Manager shall recommend and submit a proposed education plan and contract to the Council for approval by resolution prior to the leave being approved.
- An educational or training plan must be developed by the employee, Program Manager, Education Director and an advisor for the educational institution. The educational plan shall include an estimated completion date, required units per term, academic performance requirements, expected results and benefits, anticipated job position to be obtained, a financial assessment which identifies the total and yearly projected costs and financial resources available to meet the employee's personal and educational expenses.
- The Council shall be entitled to recover an amount equal to the educational costs, including associated funds awarded, plus interest at 10% per annum from employees who fail to begin or complete the period of obligated service incurred under contract for any reason, other than those expressly waived by the Council. Failure of the employee to perform his/her obligations shall be considered a debt to the Hoopa Valley Tribe.

4. **Performance:** The student must maintain full-time enrollment, or the number of units expressly agreed upon in the contractual agreement, until completion of the course of study for which the educational leave is provided.

- The student must maintain a Grade Point Average (GPA) of at lease 2.0 while enrolled in the course of study for which the educational leave is provided.
- The student must submit a class schedule prior to the beginning of each semester for review by the Program Manager, the Education Department and the Personnel Department.
- The student must submit grades at the end of each semester to the Program Manager, the Education Department and the Personnel Department.
- The student must serve one year of obligated service for each year the educational endowment is provided, or two years, whichever is greater, upon completion of course of study (this requirement may be waived by the Council in the event there is no employment opportunity within the Hoopa Tribal Government).

Educational Co-op. (section reserved)

12.2.2

EXECUTIVE MANAGEMENT TRAINING PROGRAM

12.3

The purpose of the Tribal Executive Management Training Program is to provide training and other opportunities to Tribal Member Program Managers in the areas relating to the executive management and functions of the Hoopa Tribal Government. To the greatest extent possible, Program Managers participating in the Tribal Executive Management Training programs will be provided opportunities to work in areas involving the legislative, judicial and administrative functions of the Tribe. Executive Training positions will be not longer than one (1) year. The manager will be guaranteed that the Program Manager position will be available after completing the Executive Management Training Program. Once appointed in a position under the Executive Management Training Program, the manager will be evaluated based on the performance standards established for that position. The Council may provide funds for this program in the Tribal budget.

RESPONSIBILITY FOR DELIVERY OF TRAINING

12.4

The Personnel Department is responsible for all training programs involving persons from more than one department. Individual Program Managers will be responsible for training that affects only members of their individual departments.

TRAINING CATEGORIES

12.5

The following categories of training are established to meet the objectives of the training program:

1. **Job-related Training:** This category includes training to provide skills or knowledge not usually available in the labor market. Included is training:

- To meet requirements of Tribal programs.
- To improve proficiency in one's present position.
- To improve performance of one's present job in terms of administrative procedure and inter-departmental coordination.

2. **Employee Development Training:** This category includes training to improve general knowledge and skill useful in a wide range of positions in Tribal Government. Included is training:

- In basic skills (written secretarial skills, language, mathematics).
- To prepare for future positions in the Tribal structure (professional development activities, technical and vocational training).

IDENTIFICATION OF TRAINING NEEDS

12.6

All Tribal training activities will be scheduled in response to needs identified by Tribal employees and Program Managers in individual development plans completed during the time of the annual performance appraisal.

BUDGETING FOR TRIBAL TRAINING

12.7

The Hoopa Valley Tribal Council will appropriate budget amounts to support Tribal training. Training programs which benefit personnel of only one department will be budgeted for by that department in coordination with the Personnel Director.

EVALUATION OF TRAINING

12.8

Employees attending training courses will be asked to complete an evaluation form to determine if the training met Tribal objectives.

CHAPTER 13 - EEO COMPLAINTS

EEO COMPLAINTS

13.1

Any applicant or employee who alleges discrimination in any aspect of employment may first discuss the problem with the Tribal Employment Rights Officer, and if the problem is not resolved, file a complaint through the grievance process. The applicant or employee also retains the right to file a complaint with any State or Federal agency exercising authority in matters of discrimination (e.g. Equal Employment Opportunity Commission) and with Federal agencies funding Tribal activities.

CHAPTER 14 - RECORD KEEPING

PERSONNEL RECORDS

14.1

1. An individual personnel file folder shall be maintained for each employee beginning at the date of hire. The folder shall be maintained through the entire length of employment. Upon separation of employment, the folders are transferred to inactive files and retained as a permanent section of Tribal records.

2. Access to personnel folders shall be limited to the following authorized personnel: Tribal Chairman, Personnel Director, Program Manager and employee's supervisor to only on a "need to know" basis. Before any information is released from an employee's personnel folder~~,~~ to anyone~~ other than the officials listed above,~~ the Personnel Director must obtain written consent from the employee.

3. All information pertaining to an employee shall be kept in the personnel folder. This includes, but is not limited to: applications for employment and promotions; test results, if any; reference letters; formal education records; correspondence pertaining to employment or promotion; current job description; performance evaluations; records of changes in job, salary, grade,

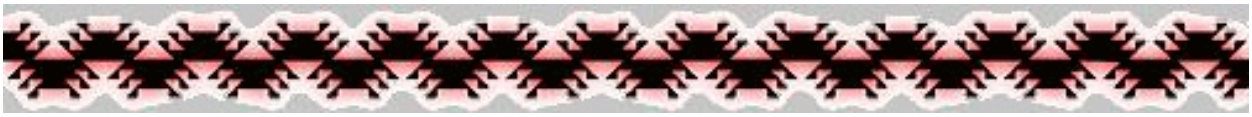
tenure; copy of driver's license, if required for the job; records of any pre-employment physical; records of disciplinary actions except those reversed on appeal; awards, letters of appreciation, etc.; certificates from completed training.

33

TITLE 31 OF THE HOOPA TRIBAL CODE

PURPOSE: GAMING ORDINANCE

ADMINISTRATIVE RECORD: Adopted March 5, 1998 amended February 1, 2001



GAMING ORDINANCE

of the
Hoopa Valley Tribe
Title 31

ORDINANCE NO: 2-92

DATE APPROVED: March 5, 1998, as amended February 1, 2001

SUBJECT: Gaming Ordinance

31.1 Purpose. The Hoopa Valley Tribal Council, the elected governing body of the Hoopa Valley Tribe (hereinafter "Tribe"), empowered by the Hoopa Valley Tribal Constitution and Bylaws, adopted June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, and confirmed and ratified by the U.S. Congress in October, 1988, in Public Law 100-580, The Hoopa-Yurok Settlement Act, to enact ordinances, hereby enacts this Ordinance in order in order to regulate all forms of Gaming on the Tribe's Reservation.

31.2 Short Title. This Code shall be known and may be cited as the Hoopa Valley Tribal Gaming Code or Title 31.

31.3 Gaming Authorized.

31.3.1 Class II Gaming Authorized Class II Gaming is hereby authorized to be conducted on lands within the Tribe's Reservation; provided, however, that such Class II Gaming shall be conducted only in accordance with the provisions of this Code, the Rules, and IGRA.

31.3.2 Class III Gaming Authorized. Class III Gaming is hereby authorized on lands within the Tribe's Reservation; provided, however, that Class III Gaming shall be conducted only in accordance with the provisions of this Code, the Rules, the Compact, and IGRA.

31.4 Public Policy. All Gaming which is conducted within the Tribe's Reservation and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this Code.

31.4.1 The Tribal Council hereby finds, and declares it to be the public policy of the Tribe, that:

(A) Regulation of licensed Gaming is important in order that licensed Gaming is conducted honestly and that Gaming is free from criminal and corruptive elements.

(B) Public confidence and trust can only be maintained by strict regulation of all Persons, locations, practices, associations and activities related to the operation of licensed Gaming Establishments and the manufacture or distribution of Gaming Devices.

(C) All Management Entities or Controlling Shareholders, Primary Management Officials, Key Employees, Gaming Establishments and Gaming Device Suppliers must therefore be licensed and controlled to protect the public health, safety, morals, good order and general welfare of the Tribe.

31.4.2 Prohibition Regarding Minors. No licensee shall permit persons under the age of 18 years to be present in any room in which Class III gaming activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Establishment.

31.5 Ownership of Gaming. The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Ordinance. The Tribe shall receive, at a minimum, not less than sixty (60) percent of the Net Revenues from any Gaming Operation. The Commission shall ensure that (i) such Gaming as it authorizes and licenses pursuant to this Code is conducted on lands within the Tribe's Reservation, and (ii) such gaming is not otherwise specifically prohibited by Federal law.

31.6 Definitions

Unless a different meaning is set forth below, the terms used in this Code shall have the same meaning as defined in the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. 2701, et seq. ("IGRA").

31.6.1 "Applicant" means any person, partnership, corporation, joint venture or other entity applying for, or requesting renewal of, any License described in or required by this Code.

31.6.2 "Application" means a request for the issuance or renewal of a License described in or required by this Code.

31.6.3 "Tribe" shall mean and "Tribal" shall refer to the Hoopa Valley Tribe.

31.6.4 "Council" or "Tribal Council" means the Tribal Council of the Hoopa Valley Tribe.

31.6.5 "Chairman" means the Chairman of the National Indian Gaming Commission.

31.6.6 "Class II Gaming" means Class II gaming as defined at 25 U.S.C. 2703(7)(A) and (B).

31.6.7 "Class III Gaming" means Class III gaming as defined in 25 U.S.C. 2703(8).

31.6.8 "Code" or "Ordinance" means this Tribal Gaming Code of the Hoopa Valley Tribe, as amended from time to time, and any Rules promulgated hereunder.

31.6.9 "Compact" means the Tribal-State Compact between the Hoopa Valley Tribe and the State of California executed by the Governor of California and the Chairman of the Tribe and pursuant to the IGRA, including all renewals, amendments, appendices, exhibits and other attachments thereto.

31.6.10 "Commission" means the Hoopa Valley Tribal Gaming Commission.

31.6.11 "Commissioner" means an individual member of the Hoopa Valley Tribal Gaming Commission.

31.6.12 "Fiscal Year" means the period beginning at 12:01 am on October 1 of each year and ending at midnight September 30 of the following year.

31.6.13 "Gaming" means any Class II Gaming or Class III Gaming activity, either individually or collectively, whether authorized or unauthorized.

31.6.14 "Gaming Device" means a slot machines, including an electronic, electromechanical, electrical or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

31.6.15 "Gaming Device Supplier" means any Person who manufactures, sells, leases, distributes, supplies or makes modifications to, any Gaming Device of the Tribe and all Persons holding any direct or indirect financial interest in such Gaming Device Supplier.

31.6.16 "Gaming Establishment" means any premises where Gaming is operated or conducted on the Tribe's Reservation, and includes all buildings, improvements, appurtenances, equipment and facilities used or maintained in connection with such gaming.

31.6.17 "Gaming Operation" means any business enterprise owned by the Tribe, the revenues of which are primarily derived from Gaming or from any Gaming Establishment.

31.6.18 "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources tot he Gaming Operation.

31.6.19 "Gross Revenue" means the total value due to any operator of any Gaming for any chance taken or game played, for any table fees for card playing, on account of fees charged for participation in any Gaming or for admittance to any Gaming Establishment (or any combination of the foregoing) less the total of all cash paid out as losses to patrons. Gross Revenue shall be stated in U.S. currency and shall be calculated before any deductions or allowances for prizes, pay out of winnings, costs of operation, taxes, labor expenses, equipment,

materials used or any other expenses. In the absence of adequate records, Gross Revenue shall be the maximum amount that would be due to a Gaming operator if the particular Gaming conducted by said operator was conducted at maximum capacity. Gross Revenue shall not include:

(a) Counterfeit money or tokens;

(b) Coins of other countries which are received in slot machines or Gaming Devices; or

(c) Cash taken in fraudulent acts perpetrated against a Licensee for which the Licensee is not reimbursed.

31.6.20 "Key Employee" means:

(a) a person who performs one or more of the following functions:

(1) operations manager
(2) bingo caller,
(3) counting room supervisor,
(4) chief of security,
(5) custodian of gaming supplies or cash,
(6) floor manager,
(7) pit boss,
(8) dealer,
(9) croupier,
(10) approver of credit, or
(11) custodian of gambling terminals or other devices operated by the management of any Gaming Operation, including persons with access to cash and accounting records for such devices;
(12) surveillance personnel

(b) if not otherwise included, any other person whose total cash compensation from employment in any Gaming Operation exceeds $50,000 per year;

(c) if not otherwise included, the four most highly compensated persons in any Gaming Operation; or

(d) any other employee of any Gaming Operation that the Commission designates by its Rules as a Key Employee.

31.6.21 "License" means any authorization granted by the Commission, pursuant to this Code, to any Person which is required for such Person to perform certain acts or engage in certain activities. All Licenses shall be held at the will of the Commission and the issuance of a License shall not create a property or liberty interest in such License for the benefit of the Licensee.

31.6.22 "Licensee" means any Person who has been issued a valid and current License pursuant to the provisions of this Code.

31.6.23 "Management Contract" means any contract, agreement or other document, including all collateral agreements, establishing a relationship between the Tribal government and any Person, pursuant to which such Person has managerial responsibilities in or for any Gaming Operation.

31.6.24 "Management Entity" or "Controlling Shareholder" means:

(a) any Person having a direct or indirect financial interest in any Management Contract, including those Persons who, either alone or in combination with a spouse, parent, child or sibling, own five (5) percent or more of any Management Entity's outstanding capital stock;

(b) when a trust is a party to a Management Contract, any beneficiary or trustee of such trust;

(c) when a partnership is a party to a Management Contract, any partner, general or limited, in such partnership;

(d) when a corporation is a party to a Management Contract, any Person who is an officer or director of such corporation, or who holds five (5) percent or more of the issued and outstanding capital stock of such corporation either alone or in combination with a spouse, parent, child or sibling; or

(e) with respect to any non-natural Person with an interest in a trust, partnership or corporation that has an interest in a Management Contract, all beneficiaries, trustees, partners, or directors of, and stockholders of, such non-natural Person holding at least five (5) percent of the outstanding stock either alone or in combination with a spouse, parent, child or sibling.

31.6.25 "Management Fee" means any monies paid from Gaming revenue to any Person pursuant to an NIGC approved contract to operate a Gaming Establishment. Such term shall not include monies paid for the operating expenses of such Gaming Establishment.

31.6.26 "Net Revenue" means Gross Revenue of any Gaming Operation minus amounts paid for, or paid out as prizes, winnings, and related operating expenses, excluding Management Fees.

31.6.27 "NIGC" means the National Indian Gaming Commission.

31.6.28 "Operating Expense" means any expense incurred in the operation of Gaming that is specifically designated as an Operating Expense in any Management Contract or which by operation of Generally Accepted Accounting Principles, consistently applied, is so treated

31.6.29 "Patron" means any Person who participates in Gaming, or who is physically present on premises wherein or whereon Gaming is conducted.

31.6.30 "Person" means any association, partnership, corporation, firm, trust or other form of business association or entity, as well as a natural person.

31.6.31 "Primary Management Officials" means:

(a) the Person(s) having management responsibility over all or any part of any Gaming Operation;

(b) any Person who has authority;

(i) to hire and fire employees of a Gaming Operation,

(ii) 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;

31.6.32 "Reservation" means any Indian lands, as defined by IGRA, over which the Tribe exercises jurisdiction.

31.6.33 "Rules" means any Rules governing the conduct of games or the control of internal fiscal affairs of Gaming Operations as may be promulgated by the Commission established pursuant to this Code.

31.6.34 "Secretary" means the Secretary of the United States Department of the Interior.

31.6.35 "State" means the State of California.

31.7 Use of Gaming Revenue. Net Revenues from any form of Gaming authorized under this Code shall be used only for the following purposes: to fund Tribal government operations and programs; to provide for the general welfare of the Tribe and its members; to promote Tribal economic development; to make donations to charitable organizations; or to help fund operations of local government agencies.

31.7.1 Per Capita Payments. If the Tribe elects to make per capita payments directly from revenues derived from gaming to Tribal members, it shall authorize such payments only pursuant to a plan submitted to and approved by the Secretary pursuant to 25 U.S.C. §2710(b)(3).

31.8 Unauthorized Gaming. Any person who commits any act of unauthorized Gaming on the Reservation or any other Tribal land shall be guilty of a crime and shall be prosecuted in Tribal Court or any other court of competent jurisdiction. It is hereby declared that authorized Class II Gaming or Class III Gaming conducted on the Reservation, or on any other Tribal land

that fully complies with the provisions of this Code, the Rules, the Compact and IGRA shall not be subject to any criminal penalties.

31.9 Conduct of Games. All Gaming shall be conducted by persons duly licensed by the Commission. No person licensed by the Commission shall engage in, conduct or condone any Gaming that is not conducted in accordance with this Code and such Rules governing the conduct of games as may be promulgated by the Commission under this Code.

31.10 Applicability of Code. Unless specifically indicated otherwise, all provisions of this Code shall apply to both Class II Gaming and Class III Gaming including, but not limited to, all licensing and background investigation procedures.

31.11 Establishment of Commission. The Hoopa Valley Tribal Council hereby establishes the Hoopa Valley Tribal Gaming Commission composed of five (5) members appointed by a majority vote of the Council as follows: A Commissioner shall serve for two (2) years and may be removed from office prior to the end of the Commissioner's term with or without cause and the 2/3 majority vote of the entire membership of the Council at a regular meeting thereof. In order to establish an annually staggered Commission appointment schedule, the first Commission shall be appointed by the Council as follows: two (2) Commissioners shall serve a two (2) year term; three (3) Commissioners shall serve a three (3) year term, for their initial terms only. Thereafter, all successive terms of appointment for a Commissioner shall run for two (2) years. Vacancies on the Commission shall be filled within thirty (30) days by a majority vote of the Council. The Commission shall select annually, from its membership, a Commission Chairman.

a) Licensing of Commissioners. Applicants for the position of Commissioner must meet the requirements of Section 13.11.1 and must first obtain a License from the Council prior to assuming office.

b) Failure to Meet License Requirements or License Violations. If the Tribal Chairman or the Council has reason to believe that a Licensed Commissioner fails at any time to meet the License requirements under this Code or that the Commissioner has violated this Code, the Rules, the Compact, or the IGRA or any other applicable law, the Tribal Chairman or the Council shall direct an investigation to be conducted and may notice the Commissioner for a hearing before the Council. All investigations and hearings under this Section shall be conducted as provided in this Code and a Commissioner shall have all of the rights and obligations given to a Licensee or Applicant therein, except that all hearings shall be conducted by and before the Council.

c) Appeals of Council Decision. A Commissioner may not appeal a decision of the Council.

d) Restrictions on Commissioners. No person shall serve on the Commission if that:

(i) person’s other employment or responsibilities conflict or could potentially

conflict with the duties and responsibilities of a member of the Commission;

(ii) person is an employee of the Gaming Operation or the person's other employment or responsibilities create an impression or appearance of impropriety in the fulfillment of the duties and responsibilities of a member of the Commission; or

(iii) person is a Judge in any Tribal Court.

31.11.1 All members of the Hoopa Valley Tribal Gaming Commission shall be subject to the background investigation requirements discussed in section 31.28.

30.10.2 The Hoopa Valley Tribal Gaming Commission shall select from among its members a Chairman to communicate with and provide direction to primary management officials of Tribal Gaming.

30.10.3 Quorum. A quorum of the Commission shall consist of three (3) Commissioners. All decisions shall require the concurring votes of at least three members of the Commission, unless particular power is delegated to the Chairman pursuant to this Code or the Rules.

31.11.4 The authority of the Hoopa Valley Tribal Gaming Commission shall supervene any other board, commission or committee other than the Tribal Council.

31.11.5 The Hoopa Valley Tribal Gaming Commission shall be charged with, but not be limited to, the following responsibilities:

(A) to perform background investigations, including but not limited to civil, criminal, credit, social security number, FBI, and prior employment;

(B) promulgate Rules pursuant to this Code, for the operation of games and the control of internal fiscal affairs of Gaming Operations and the conduct of all business before the Commission;

(C) grant, conditionally grant or deny any application for License;

(D) enforce all relevant laws and rules with respect to the gaming operation and to conduct investigations and hearings with respect thereto;

(E) limit, cancel, revoke, terminate, condition, modify, suspend, or restrict any License;

(F) make findings of suitability or unsuitability;

(G) require the Licensee or Applicant to make restitution for the actual or consequential damages of any violation of this Code or the Rules;

(H) conduct, or cause to be conducted, background investigations on all Applicants and Licensees;

(H) hold administrative licensing hearings under this Code;

(I) bring or respond to actions pursuant to this Code or the Rules before the Tribal Court.

(J) to establish written policies to perform the above duties consistent with the Tribal Gaming Ordinance, Tribal Law, Federal law, and State Law (if applicable);

(K) to establish written policies regarding the daily operation of gaming operations within the exterior boundaries of the Hoopa Valley Indian Reservation, including but not limited to surveillance, bank deposits, check cashing, jackpot payouts, internal auditing, security, and customer relations;

(L) to establish written policies for determining the eligibility of applicants to obtain a gaming license;

(M) to establish simple and fair rules for hearings before the Hoopa Valley Tribal Gaming Commission; and

(N) to establish any other written procedures and/or regulations necessary to safeguard the integrity of gaming and to ensure the safety of all patrons of Tribal Gaming within the exterior boundaries of the Hoopa Valley Indian Reservation.

31.11.6 The non-employee, non-contractor with Tribe, community members appointed to the Hoopa Valley Tribal Gaming Commission shall continue to carry out their duties for a period of two years from the date of appointment. The other Gaming Commission members that are employees of the Tribe shall serve during their employment. Nothing herein shall prevent re-appointment of the non-employee, non-contractor with Tribe, community members to the Hoopa Valley Tribal Gaming Commission.

31.11.7 All members of the Hoopa Valley Tribal Gaming Commission serve at the will of the Hoopa Valley Tribal Council and may be removed with or without cause, upon a majority vote of the Hoopa Valley Tribal Council at a regular meeting thereof.

31.11.8 All positions on the Commission shall be compensated on a per meeting basis at a rate equal to that of Tribal Employment Rights Commission.

31.11.9 Commission Meetings.

(a) Regular Meetings. The Commission shall meet at least twice per month at the Commission's main office or at any other designated meeting place.

(b) Special Meetings. Special meetings shall be convened by the Commission Chairman as necessary to carry out the official duties of the Commission. Notice of each special meeting shall be given by the Commission Chairman by telephone or mail to each Commissioner. Notice shall be received at least 24 hours in advance of such meeting and shall include the date, time and place of the proposed meeting.

(c) Emergency Meetings. An emergency meeting may be called by the Chair of the Commission with less than 24 hours notice; provided, however, that the Chair of the Commission shall use best efforts to assure that all Commissioners are notified of such meeting, with as much prior notice as possible under the circumstances.

(d) Meetings Open to the Public. All meetings of the Commission shall be open to the public; provided, however, that the Commission may, in its discretion, close any portion of any meeting to the public when discussing any information which the Commission deems confidential pursuant to the provisions of this Code.

31.11.10 Vacancies on the Commission shall be filled within thirty (30) days by a majority vote of the Council.

31.11.11 No Financial Interest in Gaming. No Commissioner shall have any direct or indirect financial interest in any Gaming Operation. For purposes of this section, "indirect financial interest" shall not include ownership of any mutual fund(s) which holds stock in a publicly traded company, but shall include direct ownership of such stock. No Commissioner may accept gratuities or any other thing of value from any Licensee or Applicant. Commissioners may not gamble in any Gaming Establishment.

31.11.12 Commission Offices. The Commission shall maintain an office in a location established by the Council. Such office shall serve as the Commission's main business office and shall be the site at which Commission records and documents are maintained and stored on a permanent basis. No individual except a Commissioner, or other authorized employee or agent of the Commission may possess a key to or may enter any Commission office without the permission of the Commission. No person may access such records except a Commissioner, a person duly authorized by the Commission, a Commission, or an attorney for the Commission.

31.11.13 Commission Record-Keeping. The Commission shall maintain complete records regarding the following:

(a) Applications, financial statements, fingerprints, contracts, Licenses, suspension and cancellation notices and correspondences of all Applicants, including Management Entities or Controlling Shareholders, Key Employees, Primary Management Officials, Gaming Establishments and Gaming Device Suppliers;

(b) Commission Licenses;

(c) Meeting minutes from all Commission meetings;

(d) Compact compliance;

(e) Reports relating to customer disputes, complaints or other issues that affect the integrity of the Gaming Operation;

(f) Commission budget and expenditures;

(g) Council communications and correspondences;

(h) Gaming Device list pursuant to Section 31.24 of this Code; and

(i) Any other records or documents the Commission deems necessary or appropriate.

31.11.14 Confidentiality. The Commission shall preserve as confidential all information provided by Applicants and Licensees, provided that the Commission may, in its discretion, advise the NIGC, or the authorized representatives of any federally recognized Indian tribe regarding the denial, revocation or withdrawal of any Application or License, or of any disciplinary action taken regarding any License or Licensee.

31.11.15 Reports. The Commission shall make quarterly reports to the Council within thirty (30) days after the end of each quarter. Such Reports shall contain the following information:

(a) number and types of Licenses issued during the previous year;

(b) information regarding License denials, suspensions or revocations;

(c) report of any events of non-compliance, breach or violations of this Code, the Rules, the Compact, IGRA, License or any other law or regulation; provided, however, that these reports are not the subject of or relating to a pending investigation of the Commission or hearing before the Commission;

(d) a report of Commission expenditures for the prior 30-day period;

(e) a summary of any Commission travel and training;

(f) the number of and purpose for any special Commission meeting(s); and

(g) all other information which the Commission deems relevant in order to keep the Council informed and current on all Gaming regulatory matters.

Nothing in this Section shall authorize or permit the Commission to provide the Council with any information pertaining to a pending investigation of the Commission, or hearing before the Commission. The Commission may find that any willful or negligent breach of this provision presents due cause for removal of the person from office or employment.

31.11.16 Tribal Court. The Tribal Court shall have the authority to impose civil penalties of up to $500.00 (five hundred dollars) for each violation. Claims of such disclosure may be presented by the Commission or the Licensee or Applicant affected, provided that any such claim shall be presented to the Tribal Court within 60 days of the act complained of, or within 60 days the disclosure becomes known, whichever is later.

31.11.17 Budget. The Commission shall establish a budget for its operations, including, but not limited to, acquisition of such furnishings, equipment, supplies, stationery, books and other items as it deems necessary or desirable to carry out its functions, and incur such other expenses, within the limit of funds available to it, as it deems necessary. Such Commission budget shall be subject to approval by the Council and, once approved by the Council, shall be funded from the Tribe's general revenues. Within the limits of its Council approved budget, the Commission shall employ and fix the salaries of, or contract for the services of, such professional, technical and operational personnel and consultants as the execution of the Commission's duties may require. The Commission budget may, at the Council's discretion, be reviewed and modified by the Council every four (4) months. Any surplus remaining in the Commission's budget at the end of any budget year shall be refunded to the Council.

31.11.18 Promulgation of Gaming Rules. The Commission may promulgate Rules governing the conduct of all games authorized by the Compact or IGRA, including Rules governing all equipment, (e.g. lottery terminals, computers computer programs, chips, cards, pull tabs, pull tab dispensers), used in such games. The Rules of each authorized game offered shall be posted in a conspicuous location in every licensed Gaming Establishment.

31.12 Audit

(A) The Chief Fiscal Officer for the Hoopa Valley 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 $5,000.00 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.

31.13 Protection of the Environment and Public Health and Safety. All gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

31.14 Gaming License Required. The Tribe, through the Hoopa Valley Tribal Gaming Commission shall ensure that the policies and procedures set out in this section are implemented with respect to all employees and primary management officials employed at any gaming enterprise operated on Indian lands. The Commission is hereby authorized to issue all Licenses for the conduct of all Gaming authorized under this Code or any other License related to Gaming which the Commission may by Rule require.

31.14.1 Gaming Establishments. Each place, facility, or location where Gaming is conducted must obtain a separate License from the Commission.

31.14.2 Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least $25,000 in Gaming Resources in any 12 month period shall be licensed by the Commission prior to the sale, lease or distribution of any such Gaming Resources to or in connection with the Gaming Operation. These licenses shall be reviewed at least every two years for continuing compliance.

31.14.3 Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Operation shall be licensed by the Commission prior to extending that financing. These licenses shall be reviewed at least every two years for continuing compliance. However, the Commission, at its discretion, may exclude from the licensing requirements of this Section, financing provided by a federally regulated or state-regulated bank, savings and loan, or other federally or state-regulated lending institution; or any agency of the federal, state or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

31.15 Standard for License. Licenses issued hereunder shall be issued according to requirements at least as stringent as those set forth at 25 C.F.R parts 556 and 558, and any amendments thereto, and also according to requirements at least as stringent as those set forth in the Compact.

31.16 Application for License.

31.16.1 No License shall be issued under this Code except upon a sworn Application filed with the Commission, in such form as may be prescribed by the Commission containing a full and complete showing, at a minimum, of the following:

(A) satisfactory proof that the Applicant is of good character and reputation, and is financially responsible;

(B) if applicable, a complete description of the premises at which Gaming will be conducted;

(C) agreement by the Applicant to abide by all conditions of the License, this Code, the Rules, the Compact and IGRA;

(D) a separately sworn statement that the Applicant has never been convicted of, or entered a plea of guilty or no contest to, any of the following criminal offenses:

(1) any felony, other than a felony conviction for an offense under (2), (3), or (4), within the preceding ten (10) years; provided, however, that this record limitation to the preceding ten (10) years shall not apply to any Applicant which is a Management Entity or Controlling Shareholder,

(2) any gaming-related offense,

(3) fraud or misrepresentation in any context, or

(4) a violation of any provision of this Code, the Rules, or any other Code or rules of the Tribe or any state agency regulating or prohibiting gaming; and

(E) the Applicant's fulfillment of all applicable requirements of IGRA, all provisions of this Code, and the Compact.

31.16.2 No License shall be issued to any Applicant who is determined by the Commission to be a Person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto.

31.16.3 The issuance of Licenses shall also be subject to the provisions of Section 31.28 of this Code regarding background investigations.

31.16.4 The following notices shall be placed on the application form for a Key Employee, Management Entity, Primary Management Official or Gaming Device Supplier before an Applicant completes such form:

(A) "In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by Chapter 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 the Commission, the State of

California, and/or the 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."

(B) "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)."

31.17 Required Application Forms.

31.17.1 Each individual applying for a License, whether as a Primary Management Official or Key Employee, and any person who is subject to a background investigation in connection with an entity application for a License, shall be required to complete the following forms:

(A) Application for Gaming License by Individual, if applicable;

(B) Personal History Record, with attached Personal Financial Questionnaire, including Statement of Assets and Statement of Liabilities;

(C) Two Complete Fingerprint Cards;

(D) Request to Release Information - Individual; and

(E) Release of All Claims - Individual.

31.17.2 Each individual in subsection (a) of this Section applying for a License renewal shall supplement the Personal History Record and shall also be required to complete the following forms:

(A) Application for Gaming License by Individual, if applicable;

(B) Request to Release Information - Individual; and

(C) Release of All claims -Individual.

31.17.3 Each entity, including a Management Entity and Gaming Device Supplier, applying for a License must complete the following forms:

(A) Application for Gaming License by Entity;

(B) Request to Release Information - Entity; and

(C) Release of All Claims - Entity.

31.17.4 The Commission may request any additional forms or information from an Applicant as it deems necessary or appropriate.

31.17.5 Pursuant to the Compact, upon request of the State of California, the Commission shall forward the Applicant's Personal History Record and all background information compiled by the Commission to the State.

31.18 Fingerprint Cards Required. All Applicants for a License are required to submit fingerprint cards. The Hoopa Tribal Police Department is hereby identified as the law enforcement agency with law enforcement authority to take fingerprints. Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an Applicant's fingerprint card to the Federal Bureau of Investigation National Criminal Information Center. The Commission may submit an Applicant's fingerprint card to any additional tribal, local or state criminal history check system or center as the Commission deems necessary or appropriate. Reports obtained from such fingerprint processing shall be incorporated into the Applicant's personnel file.

31.19 Withdrawal of Application. An Application may not be withdrawn without the permission of the Commission. An Applicant may request to withdraw an Application by submitting to the Commission a written request for withdrawal. The Commission shall retain the right, in its sole discretion, to grant or deny a request for withdrawal.

31.20 Continuing Duty to Provide Information. Applicants and Licensees shall have a continuing duty to provide any materials, assistance or other information required by the Commission, and to fully cooperate in any investigation conducted by or on behalf of the Commission. If any information provided on the Application changes or becomes inaccurate in any way, the Applicant or Licensee shall promptly notify the Commission of such changes or inaccuracies.

31.21 Term of License; License Fees; Parameters of License.

(a) Licenses, except Provisional Licenses, shall be for a term of one year, and shall expire on the anniversary of the effective date of such License(s).

(b) In order for the Tribe to recover the costs of complying with federal, Tribal, and state regulatory processes applicable to Class II Gaming and Class III Gaming, the costs for maintaining the Commission shall, to the maximum extent practical, be supported by fees paid by Applicants and Licensees. Application and License fees shall be required:

(1) in accordance with a fee schedule to be established by the Commission, annually from each party, other than the Tribe, to a Management Contract;

(2) in accordance with a fee schedule to be established by the Commission from any Person(s) required to obtain a License;

(3) in addition to the License fees imposed pursuant to subsection (b)(1) and (2) of this Section, the Commission may impose such fees on Applicants and Licensees as are reasonably related to costs of enforcement, including investigations and proceedings before the Commission, and which will in the aggregate be sufficient to enable the Tribe and the Commission to recover its reasonable costs of enforcing this Code. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular Licensee or Applicant. If the sum collected exceeds the actual costs of the matter, the excess shall be returned to the Applicant or Licensee.

(c) Violations of any provision of this Code or the Rules, or relevant License provision(s), by a Licensee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and the inhabitants of the Reservation, and shall be deemed grounds for refusing to grant or renew a License, suspension or revocation of a License. Acceptance of a License, or renewal thereof by a Licensee, constitutes an agreement on the part of the Licensee to be bound by the provisions of this Code and the Rules as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission. It is the responsibility of the Licensee to remain informed of the contents of this Code, the Rules and all other applicable regulations, amendments, provisions, and conditions.

31.22 Conditions of License. All Licensees shall comply with such reasonable conditions as may be fixed by the Commission, including but not limited to the following conditions:

(a) Facility Licensees:

(1) the Licensee shall at all times maintain an orderly, clean and neat Gaming Establishment, both inside and outside the premises of the Gaming Establishment;

(2) the Gaming Establishment shall be subject to patrol by the Tribe's security and law enforcement personnel and, when authorized, local and state law

enforcement, and the Licensee shall cooperate at all times with such security and law enforcement officials;

(3) the Gaming Establishment shall be open to inspection by authorized Tribal officials at all times during business hours;

(4) there shall be no discrimination in any Gaming Operations by reason of race, color, sex or creed; provided, however, that nothing herein shall prevent the Licensee from granting preferences to Indians as permitted by law; and

(b) Persons, Management Entities and Gaming Device Suppliers licensed by the Commission shall comply with such conditions of the License as the Commission, in its reasonable discretion, may require.

31.23 Facility License. The Commission may issue an annual Facility License to a Gaming Establishment, if the Gaming Establishment:

(a) is a sound physical structure with adequate and safe plumbing, electrical, heating, cooling and ventilation systems in place and operational;

(b) has been inspected and approved for safety by a building and fire inspector designated by the Commission;

(c) is adequate in all respects to accommodate the Gaming intended to be carried out within the structure;

(d) is equipped with security and surveillance equipment meeting or exceeding provisions set forth in the Tribal-State Compact and the Code;

(e) meets all requirements of applicable federal, tribal and state law; and

(f) has paid all applicable License fees and costs.

31.24 Certification of Gaming Devices. All Gaming Devices purchased, leased or otherwise acquired by the Tribe must meet the technical equipment standards of the Compact, if any. The Commission shall maintain a complete list of all Gaming Devices (whether or not such devices are in use) located at any Gaming Establishment.

31.25 Provisional License. The Commission may issue Provisional Licenses pending the satisfactory completion of all background investigations and other requirements of this Code, IGRA, or the Compact, and, if applicable, pending expiration of the thirty (30) day NIGC review period provided for at 25 C.F.R part 558. If such background investigations are not satisfactorily completed, a Provisional License shall have no further force or effect. In no event shall a Provisional License be valid for greater than ninety (90) days.

31.26 Provisional Employment Pending Issuance of License and During Temporary License Period. As provided in Section 31.25, Primary Management Officials and Key Employees may be employed in Gaming Operations prior to the issuance of a License hereunder and during the period that a License shall be effective on a provisional basis, but such employment shall be provisional only and subject to the requirements of this Section. Employment may begin prior to issuance of a License only if the Commission, or such other Tribal agency or official as may be authorized by the Council, has made a preliminary finding of eligibility for employment in Gaming Operations, which shall require a preliminary determination that the Primary Management Official or Key Employee in question is not a person whose prior activities, criminal record or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto. Provisional employment shall be terminated upon the occurrence of any of the following:

(a) denial of a relevant License by the Commission;

(b) unsatisfactory completion of a background investigation or NIGC review resulting in nullification of a provisional License, as described in Section 5.10; or

(c) to the extent required under 25 C.F.R part 558 and, at the end of thirty (30) days after the starting date of provisional employment, if at the end of such period no License has been issued hereunder or if a License issued hereunder remains effective only on a provisional basis, as provided in Section 31.25; provided, however, that provisional employees terminated for the reason described in this subsection shall be qualified for reemployment upon the satisfactory completion of background investigations and NIGC reviews.

31.27 Assignment or Transfer. No License issued under this Code may be assigned or transferred unless the proposed assignee or transferee would independently be qualified to hold the License proposed to be assigned or transferred and the Commission approves of such assignment or transfer.

31.28 Required Background Investigations. The Commission, or its designated agent under the supervision and direction of the Commission, shall conduct background investigations on all Persons specified in Section 31.14 of this Code.

31.28.1 Standards for Background Investigations. All background investigations shall be conducted to ensure that Gaming Operations shall not employ or contract with persons whose prior activities, or 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 5. Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation as well as that submitted by the Applicants. Any willful or

careless breach of this requirement may result in penalties as provided by Section 31.11.16 of this Code. Both the Commission and the Tribal Court shall have jurisdiction to hear and decide upon any such claims, but the jurisdiction of the Tribal Court shall be limited to those matters which have first been decided by the Commission, or which involve charges against a Commissioner, which cases shall not be within the jurisdiction of the Commission.

31.28.2 Information Required for Background Investigations.

31.28.2.1 Each Person subject to a background investigation under Section 31.14 of this Code shall be required to provide, subject to the Privacy Act of 1974, at a minimum, and in such form as designated in Section 31.16.4, or as may be prescribed by the Commission, all of the following information:

(a) full name, other names used, social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(b) currently and for the previous 10 years, all business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

(c) the names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the Applicant during each period of residence listed under subsection (d) of this Section;

(d) the address(es) for each residence during the last ten (10) years;

(e) current business and residence telephone numbers;

(f) a description of any existing and previous business relationships with any Native American Indian tribe, including but not limited to a description of the amount and type of ownership interest in those businesses;

(g) a description of any existing and previous business relationships with gaming, including but not limited to a description of the amount and type of ownership interest in those businesses;

(h) 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 any gaming or gambling, whether or not such license or permit was granted;

(i) for each felony for which there is an ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any;

(j) 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;

(k) for each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph 31.28.2.1(i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(l) The name and address of a 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;

(m) a photograph;

(n) any other information the Commission deems relevant; and

(o) fingerprints consistent with the provisions of Section 31.18.

31.28.2.2 Background investigations conducted by the Commission must be sufficient to make the determination described in Section 31.15. In conducting a background investigation, the Commission or its agents, shall make every reasonable effort to maintain the confidentiality of the identity of each Person interviewed in the course of the investigation. Willful or careless violations of this requirement are subject to penalties as provided by this Code.

31.28.3 Issuance of License. The Commission may, subject to the requirements of Section 31.15, issue a License only after it has determined that the following minimum requirements have been met:

(a) the Applicant has fully completed all required Application forms and has provided the Commission with all other information that the Commission has requested;

(b) the Applicant meets all of the licensing requirements of this Code;

(c) the Applicant meets all of the licensing requirements and criteria contained in the Compact;

(d) the Commission has reviewed the Applicant's criminal history record and deems the Applicant's criminal history to be satisfactory to hold a License; and

(e) all applicable License fees and costs have been paid.

The Commission shall not issue a license to any Applicant who is determined by the Commission to be a Person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto.

31.28.4 Denial of a License Application. The Commission, may deny an Applicant a License only after it has determined that the minimum requirements contained in Section 31.28.3 have not been met by the Applicant or the Applicant's Application, or if the Commission determines that the Applicant is a Person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto.

31.28.5 Cancellation or Suspension. Licensees and Applicants shall be legally responsible for any violation of this Code, any relevant License provisions, the Rules, the Compact or IGRA. Any License issued hereunder may be canceled, limited, revoked, suspended, terminated or modified by the Commission for the breach of any of the provisions of the License, this Code, or Rules. In addition:

(a) unless otherwise stated in this Code or the Rules, a Licensee's spokesperson has the right to be present and to participate in the hearing concerning the cancellation, limitation, revocation, suspension, termination or modification of a License;

(b) a License may be summarily suspended, without a prior hearing; and

(c) all decisions of the Commission regarding the cancellation, limitation, revocation, suspension, termination or modification of Licenses shall be final, unless appealed as provided in Section 31.24 of this Code. No Gaming shall be conducted by the Licensee after cancellation, even during the pendency of an appeal.

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

(a) The Commission shall review an Applicant's prior activities, criminal record, 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 Commission 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, the Gaming Operation shall not employ that Person.

(b) When a Key Employee or Primary Management Official commences work at a Gaming Operation, the Gaming Commission shall within a reasonable period of time forward to the NIGC a completed application for employment for such Key Employee or Primary Management Official, and shall conduct all necessary background investigations. The Commission shall make the eligibility determination referred to in subsection (a) of this Section.

(c) A report shall be submitted to the NIGC within sixty (60) days after a Key Employee or Primary Management Official commences work at a Gaming Operation or within sixty (60) days of the approval of this Code by the Chairman. Such report shall, at a minimum, include all of the following:

(1) steps taken in conducting the background investigation;

(2) results obtained;

(3) conclusions reached by the Commission;

(4) the Commission's basis for those conclusions; and

(5) a copy of the eligibility determination made pursuant to Section 31.28.6(s).

(d) No Gaming Operation shall continue to employ as a Key Employee or Primary Management Official any Person who does not have a License within ninety (90) days of commencing work at a Gaming Operation.

(e) If a License is not issued to an Applicant, the Commission:

(1) shall notify the NIGC; and

(2) may forward copies of its eligibility determination and any relevant report regarding a background investigation of the Applicant to the NIGC for inclusion in the Indian Gaming Individuals Records System.

(b) With respect to Key Employees and Primary Management Officials, applications for employment and reports of background investigations shall be retained by the Gaming Commission for inspection by the Chairman or his designee for no less than three (3) years from the date of termination of employment of each Key Employee or Primary Management Official.

31.28.9 Granting a Gaming License.

(a) If, within a thirty (30) day period after the NIGC receives all required Applications and reports, the NIGC 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, the Commission may issue a License to such Applicant.

(b) The Commission shall respond in a timely manner to requests for additional information from the Chairman concerning Key Employees or Primary Management Officials who are the subject of any report filed with the NIGC by the Commission. Any such request by the Chairman shall suspend the thirty (30) day period referred to in this Section until the Chairman receives the additional information requested.

(c) If, within a thirty (30) day period after the NIGC receives all required applications and reports, the NIGC 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 Commission has submitted an application and all required reports to the NIGC, the Commission shall reconsider the application, taking into account the itemized by the objections of the NIGC. The Commission shall make the final decision whether to issue a License to such Applicant.

31.28.10 License Revocation and Suspension Following Receipt of Information from NIGC.

(a) If, after the issuance of a License, the Tribe receives information from the NIGC indicating that a Management Entity or Controlling Shareholder, Key Employee, or Primary Management Official is not eligible for employment, the Commission shall suspend such License, shall notify the Licensee in writing of such suspension and the potential revocation of the Licensee's License, and shall conduct a hearing in accordance with the Rules regarding the proposed License revocation.

(b) After a hearing, the Commission shall revoke or reinstate a License suspended pursuant to subsection (a) of this Section. The Commission shall notify the NIGC of its decision. A decision of the Commission to revoke a License after the hearing called for by subsection (a) of this

Section shall be final and there shall be no appeal. A Management Entity whose License has been revoked or suspended pursuant to this Section may not operate a Gaming Operation.

31.28.11 Nothing herein shall create a property interest in the issuance or retention of a license provided for this Code.

31.28.12 Failure of an employee or primary management official to obtain or maintain a gaming license shall be grounds for immediate termination. Nothing herein shall grant or otherwise create any property interest in employment or continued employment at any gaming facility on Indian lands.

31.29 Scope of Rules of Procedure. All License hearings, enforcement hearings and exclusion hearings conducted pursuant to this Code shall be governed by this Chapter.

31.29.1 Hearings.

(a) The Commission shall afford an Applicant an opportunity for a hearing prior to any final action by the Commission on a Application, other than an unconditional grant of a License.

(b) The Commission shall afford a Licensee the opportunity for a hearing prior to taking final action resulting in the revocation of the License or the imposition of any penalties which the Commission is authorized to impose pursuant to these Rules and the Code.

(c) Nothing in this Section shall limit the Commission's authority to summarily suspend or revoke a License without a hearing pursuant to Section 31.28.5(b) of this Code.

31.29.2 Notice of Hearing.

(a) The Commission shall post notice of any hearing in a prominent, noticeable place in the Tribe's Executive Office at least seven (7) days prior to the hearing. The day the notice is posted shall be considered a full day's notice under this Section. The notice shall state the date, time and place of the hearing.

(b) The Commission shall also provide written notice to the Applicant or Licensee of the hearing at least seven (7) days prior to the date set for the hearing. The day the Applicant or Licensee receives the notice shall be considered a full day's notice under this Section. The notice shall be sent by registered or certified mail, or may be personally served upon the Applicant or Licensee. The notice shall state the date, time and place of the hearing. The notice shall also contain an indication of the action(s) being considered by the Commission, including, but not limited to:

(1) whether the Commission is holding the hearing for the purpose of obtaining further information from the Applicant;

(2) whether the Commission will be considering the grant or denial of the License Application;

(3) whether the Commission will be examining any alleged violations of the Code, the Compact, the IGRA, the conditions of any License issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements; or

(4) whether any other sanctions or penalties will be considered.

The notice shall also contain a short, plain statement of the reasons the Commission determines the hearing is necessary.

31.29.3 Ex Parte Communications.

(a) No ex parte communication relative to the action(s) being considered by the Commission, or a threat or offer of reward shall be made, before a decision is rendered, to any member of the Commission by or on behalf of the Applicant or Licensee, or any legal representative or counsel of the Applicant or Licensee.

(b) Nothing in this Section shall prohibit the Applicant, Licensee or its authorized agent from communicating with the Commission's legal counsel, its investigators or other authorized agents.

(c) Any member of the Commission who receives an ex parte communication shall immediately report such communication to the Commission's legal counsel.

(d) For purposes of this Section only, the action(s) being considered by the Commission shall be those matters identified in the written notice as provided in Section 31.29.2(b) of this Code, as well as any other matters that are actually considered by the Commission during a hearing. All matters identified in the written notice shall be subject to the prohibition against ex parte communications. All matters not identified in the written notice that are considered by the Commission during a hearing become subject to the prohibition against ex parte communications as soon as they are discussed during the hearing.

(e) The Commission shall have the power to impose any sanction pursuant to this Chapter upon its determination that an Applicant or Licensee has made an ex parte communication in violation of this Section.

31.29.4 Appearance through Spokesperson.

(a) Parties to all hearings governed by this Chapter may appear personally or through a spokesperson admitted to the Hoopa Valley Tribal Court Bar. Each party is responsible for the cost and expense of their respective spokesperson and in no event shall the Tribe bear responsibility for the fees or costs of a Licensee's or Applicant's spokesperson.

(b) When a party has appeared through a spokesperson, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the spokesperson, unless the party requests otherwise in writing.

(c) When a party is represented by a spokesperson, the spokesperson shall sign all motions, notices, requests, and other papers on behalf of the party, including a request for subpoena.

31.29.5 Discovery Procedures for Enforcement Hearings.

(a) No later than five work days prior to the hearing, each party shall submit in writing to the Commission and to the other party, a list of witnesses each intends to call on its behalf. Each witness shall be identified by name, if known, position, and business address. If no business address is available, a home address for the witness shall be provided. Any witness not identified in accordance with this Section may be prohibited from testifying at a hearing in the Commission's discretion.

(b) No later than five work days prior to the hearing, each party shall submit in writing to the Commission and the other party, a list of relevant documents and each document it intends to introduced during the hearing.

(c) Any party to the hearing may call and examine witnesses. The Commission shall exercise its discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.

(d) The Commission shall have the authority to eject from the hearings any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

(e) Any member of the Commission may ask questions of witnesses, and may request or allow additional evidence at any time.

(f) Any party to the hearing may conduct cross-examinations reasonably required for a full and true disclosure of the facts.

(g) All hearings held under this Code shall be held in executive session.

(h) The Commission shall have the initial burden of proof and shall present its case first.

31.29.6 Evidence

(a) In hearings governed by this Code, the Commission shall not be bound by technical rules relating to evidence and witnesses. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(b) All evidence, including records and documents in the possession of the Commission or which the Commission desires to avail itself, shall be duly offered and made a part of the record in the case. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

(c) The Commission may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity of the official notice.

(d) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

(e) The record in a hearing governed by these Rules shall include:

(1) All Applications, intermediate rulings and exhibits and appendices thereto.

(2) Evidence received or considered, stipulations and admissions.

(3) A statement of matters officially noticed.

(4) Questions and offers of proof, objections, and rulings thereon.

(5) Any decision, opinion, findings or report by the Commission.

(6) The transcript prepared by a duly certified court reporter.

31.29.7 Determination(s) by the Commission.

(a) The Commission shall make all determinations of issues before it by a majority vote of at least a quorum of the Commission.

(b) All determinations made by the Commission involving the grant, denial, cancellation or revocation of a License, a finding of a violation of this Code, the Rules, the Compact, IGRA, the conditions of any License issued by the Commission, any order by the Commission, or any other applicable laws, regulations or agreements, and the imposition of any sanctions or penalties shall be made in writing.

(c) A copy of the determination made pursuant to Section 31.29.7(b) of this Code shall be served upon the Applicant or Licensee by registered or certified mail, or may be served personally.

31.30 Right of Appeal; Appeals Procedures. A Person directly affected by any finding of the Commission pursuant to Section 31.29 of this Code, or any licensing decision of the Commission under this Code, shall have the right to appeal such finding to the Tribal Court. Any such appeal must be filed with the Tribal Court in writing on or before the tenth (10th) day following receipt by such affected Person of the written finding of the Commission.

31.31 Minimum Procedures for Control of Internal Fiscal Affairs. The Commission shall promulgate Rules governing the control of internal fiscal affairs of all Gaming Operations. At a minimum, such Rules shall require the consistent application of Generally Accepted Accounting Principles, and shall:

(a) prescribe minimum procedures for the safeguarding of a Gaming Operation's assets and revenues, including recording of cash and evidence of indebtedness, and mandatory count procedures. Such Rules shall establish a controlled environment, accounting system, and control procedures that safeguard the assets of the Gaming Operation, assure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to prescribed policies;

(b) prescribe minimum reporting requirements to the Commission;

(c) provide for the adoption and use of internal audits conducted in accordance with generally accepted accounting principles by internal auditors licensed or certified to practice public accounting in the State of California;

(d) formulate a uniform code of accounts and accounting classifications to assure the consistency, comparability and effective disclosure of financial information. Such a code shall require that records be retained that reflect statistical drop (amount of cash wagered by Patrons), statistical win (amount of cash won by the Gaming Operation), and the percentage of statistical win to statistical drop, or provide similar information for each type of game in each Gaming Operation;

(e) prescribe the intervals at which such information shall be furnished;

(f) provide for the maintenance of documentation, (i.e., checklists, programs, reports, etc.), to evidence all internal work performed as it relates to the requirements of this Section; and

(g) provide that all financial statements and documentation referred to in this Section be maintained for a minimum of five (5) years.

31.31.1 Oversight of Internal Fiscal Affairs. The Commission shall require independent audits of the financial statements of all Gaming Operations. Such independent audits must apply and require the consistent application of Generally Accepted Accounting Principles, and shall:

(a) be conducted by independent accountants, knowledgeable in casino audits and operations and licensed or certified to practice public accounting in the State of California;

(b) include an opinion, qualified or unqualified, or if appropriate, disclaim an opinion on the financial statements taken as a whole in accordance with standards of the accounting profession established by rules and regulations of the California State Council of Accountancy and the American Institute of Certified Public Accountants;

(c) disclose whether the accounts, records and control procedures maintained by the Gaming Operation conform with this Code and the Rules; and

(d) provide a review of the internal financial controls of the audited Gaming Operation to disclose any deviation from the requirements of this Code and the Rules and report such findings to the Commission and the management of the audited Gaming Operations; and

(e) provide such other information as the Commission deems necessary or appropriate.

31.31.2 Non-Compliance. Failure to comply with any of the requirements of this Chapter, or the Rules promulgated hereunder may be found to constitute a violation of this Code.

31.32 Prohibition Against Certain Individuals. It shall be a violation of this Code for any Licensee to knowingly fail to exclude or eject from a Gaming Establishment any individual who:

(a) is visibly under the influence of liquor, a drug or other intoxicating substance;

(b) is under the age of eighteen years;

(c) is displaying disorderly conduct;

(d) is a known felon;

(e) is known to have a reputation for cheating or manipulation of games; or

(f) has been personally excluded, or is a member of any group or type of persons which has been excluded, for cause from Gaming Establishments by a resolution of the Commission.

31.32.1 Right to Exclude or Remove. If the Commission deems it in the best interest of the Tribe, the Commission may exclude or remove any persons from the premises of any Gaming Operation. Any person so excluded shall be entitled to a hearing as provided for by Section 31.28 and shall have the rights provided to an "applicant" therein. The Manager of any Gaming Operation shall also have the authority to exclude or remove any person from the Gaming Establishment, and all such actions shall be reported to the Commission within 24 hours; the Commission may then ratify, reverse or condition the decision of the Manager.

31.33 Prohibited Acts. In addition to other civil and criminal acts that may be regulated or prohibited by this Code, the Compact, other Tribal law or applicable federal law, the following shall constitute prohibited activities and unauthorized Gaming under this Code and shall subject any perpetrator to Commission action, including, but not limited to, the imposition of civil penalties, referral to appropriate law enforcement authorities for criminal proceedings, and License suspension or revocation:

(a) altering or misrepresenting the outcome of Gaming or other event on which wagers have been made after the outcome of such Gaming or event has been determined but before such outcome is revealed to the players;

(b) placing or increasing a bet or wager after acquiring knowledge of the outcome of the Gaming or event which is the subject of the bet or wager, including past-posting and pressing bets;

(c) aiding anyone in acquiring such knowledge referred to in subsection (b) of this Section for the purposes of increasing or decreasing any bet or wager, or for the purpose of determining the course of play;

(d) claiming, collecting or taking, or attempting to claim, collect or take, money or anything of value in or from a game with intent to defraud or claiming, collecting or taking an amount greater than the amount actually won in such game;

(e) knowingly to entice or induce another to go to any place where Gaming is conducted or operated in violation of the provisions of this Code, with the intent that the other person play or participate in such Gaming;

(f) reducing the amount wagered or canceling a wager after acquiring knowledge of the outcome of the game or other event which is the subject of the bet or wager, including pinching bets;

(g) manipulating, with intent to cheat or defraud, any component or part of a game in a manner contrary to the designed and normal operational purpose for such component or part, with knowledge that such manipulation will affect the outcome of the game, or with knowledge of any event that affects the outcome of the game;

(h) defrauding the Tribe, any Licensee or any participant in any Gaming;

(i) participating in any Gaming not authorized by this Code;

(j) knowingly providing false information or making any false statement with respect to an application for employment or for any License, certification or determination provided for in this Code;

(k) knowingly providing false or misleading information or making any false or misleading statement to the Tribe or the Commission in connection with any contract for services or property related to Gaming;

(l) knowingly making any false or misleading statement in response to any official inquiry by the Commission or its agents;

(m) offering or attempting to offer any thing of value, to a Licensee in an attempt to induce the Licensee to act or refrain from acting in a manner contrary to the official duties of the Licensee under this Code, the Rules, or IGRA;

(n) acceptance by a Licensee of any thing of value with the expectation that receipt of such thing of value is intended, or may be perceived as intended, to induce the Licensee to act or refrain from acting, in a manner contrary to the official duties of the Licensee under this Code, the Rules, or IGRA;

(o) falsifying, destroying, erasing or altering any books, computer data, records, or other information relating to a Gaming Operation;

(p) taking any action which interferes with or prevents the Commission or the Council from fulfilling its duties and responsibilities under this Code, the Rules, or IGRA; and

(q) entering into any contract, or making payment on any contract for the delivery of goods or services to a Gaming Operation, when such contract fails to provide for or result in the delivery of goods or services of fair value for the payment made or contemplated.

31.33.1 Prohibition Against Electronic Aids. Except as specifically permitted by the Gaming Commission, no person shall possess, with the intent to use in connection with Gaming, either individually, or in concert with others, any calculator, computer, or other electronic or mechanical device to assist in projecting the outcome or odds of such Gaming, to keep track of or analyze cards, or to change probabilities of any game or the playing strategies regularly utilized in such Gaming.

31.34 National Indian Gaming Commission-Regulation. Notwithstanding any provision in this Code or the Rules, the Commission is hereby fully empowered to comply with all regulations promulgated by the NIGC, including, but not limited to, reporting requirements relating to Codes, contracts, license applications, background checks, and other information.

31.35 National Indian Gaming Commission-Assessment. Notwithstanding any provision in this Code or the Rules, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of the Tribe derived from Gaming Operation revenues.

31.36 Compact with the State of California. Notwithstanding any provision in this Code or the Rules, the Commission is hereby fully empowered to comply with the provisions of the Compact, including, but not limited to, any licensing, approval, or monitoring requirements contained in the Compact.

31.37 Security and Surveillance. Each Gaming Establishment must provide for reasonable security within the Gaming Establishment at all times. All security personnel in a Gaming Establishment must be licensed by the Commission.

31.38 Compliance with Other Laws. The construction, maintenance and operation of any Gaming Operation shall be in a manner which protects the environment, public health and safety, and shall comply with all applicable Tribal and federal laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. § 522.4(b)(7).

31.38.1 All Gaming Establishments constructed after March 7, 2000, and all expansions or modifications to a Gaming Establishment after said date shall meet the building and safety

codes of the Tribe and shall also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

31.39 Amendments. All provisions of this Code are subject to amendment by the Council in accordance with the Legislative Procedures Act currently in effect, or as hereafter amended. All Rules promulgated by the Commission are subject to proper revision, repeal, or amendment by the Commission. All amendments to this Code shall be effective upon the date of passage by the Council.

31.40 Severability. If any provision any of this Code, or any portion of any provision to this Code, is found to be invalid by any court of competent jurisdiction, the full remainder of such provision(s) shall not be affected.

31.41 Words and Terms. Tense, number and gender. In interpreting the provisions of this Code, save when otherwise plainly declared or clearly apparent from the context:

(a) words in the present tense shall include the future tense;

(b) words in masculine, feminine and neuter genders shall include all genders; and

(c) words in the singular shall include the plural, and words in the plural shall include the singular.

31.42 Repeal. To the extent that they are inconsistent with this Code, all prior gaming laws, rules, Codes or regulations of the Tribe are hereby repealed.

31.43 Unclaimed Winnings.

(a) Any winnings, whether property or cash, which are due and payable to a participant in any Gaming Activity, and which remain unclaimed at the end of a Gaming session, shall be held in safekeeping for the benefit of such participant if his or her identity is known. Such winnings shall be held for twelve months or such longer period as the Commission deems reasonable in consideration of all relevant facts and circumstances. The Commission shall make such efforts as are reasonable under the circumstances to locate such participant. At the end of the safekeeping period, such winnings shall revert to the ownership of the Tribe and shall be transferred to the account or place designated by the Council.

(b) In the event the identity of a participant entitled to unclaimed winnings is unknown, the Commission shall use its best efforts to learn the identity of such individual and shall follow the procedure set forth in Section 31.44 if the Commission is able to identify such individual with reasonable certainty; provided, however, if after six months from the time the winnings were payable, the Commission has been unable to identify the individual entitled thereto, such winnings shall revert to the ownership of the Tribe.

31.44 Patron Disputes. Any Person who has any dispute, disagreement or other grievance with the Gaming Operation that involves currency, tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order: (a) a member of the staff relevant of the Gaming Operation, (b) the supervisor in the area of the relevant Gaming Operation in which the dispute arose, (c) the manager of the relevant Gaming Operation, and (d) the Commission.

31.45 Patron Rights Regarding Disputes. When a Person brings a dispute for resolution pursuant to Section 31.46, the complainant has the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level as set forth in Section 31.46. Resolution of any dispute by the personnel of a Gaming Operation shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, or, in the case of the general manager of the Gaming Operation, to the Commission.

31.46 Gaming Commission Action on Patron Disputes. All disputes which are submitted to the Gaming Commission shall be decided by the Commission based on information provided by the complainant, including any witnesses for, or documents provided by or for, the complainant, and upon any information submitted on behalf of the Gaming Operation. The decision of the Commission shall be in writing, shall be issued within fourteen (14) days of submission of the matter to the Commission, and shall be provided to the general manager of the Gaming Operation and to the complainant.

31.47 Agent for Service of Process. The Council Chairman shall be designated agent for service of process for the Hoopa Valley Tribe. The Council Chairman shall promptly report any such service to the Commission and the Office of Tribal Attorney, and shall promptly provide the Commission with a copy of any complaints or other documents served.

31.48 Consent to Jurisdiction. Any person who applies for a License under this Code, applies for employment in any Gaming Establishment, enters into any contract or agreement related to Gaming, or participates in any Gaming on the Reservation, shall be deemed to consent to the civil jurisdiction of the Tribe, the Commission and the Tribal Court. Nothing in this Section shall limit the jurisdiction of the Tribe, the Commission or the Tribal Court under any circumstances not explicitly contemplated in this Code.

31.49 Sovereign Immunity. Except as provided herein, nothing in this Code shall be construed as a waiver of the sovereign immunity of the Hoopa Valley Tribe or any of its officers or entities.

31.50 Submission to Federal Agencies. Pursuant to the provisions of Article IX of the Tribal Constitution and the Indian Gaming Regulatory Act, this Ordinance shall be submitted to the Bureau of Indian Affairs and the National Indian Gaming Commission for review and approval.

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 members, of which seven (7) were present, constituting a quorum at a regular meeting thereof; duly and regularly called, noticed and convened, and held this 1st day of February, 2001; and that this Ordinance was duly adopted by a vote of six (6) for, none (0) against, and none (0) abstaining, and that said Ordinance has not been rescinded or amended in any way since adoption.

Dated this 1st day of February, 2001.

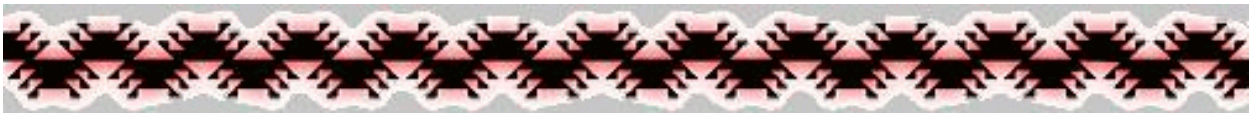
_____
DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 32 OF THE HOOPA TRIBAL CODE

PURPOSE: PROFESSIONAL ETHICS CODE

ADMINISTRATIVE RECORD: Adopted July 23, 1993



PROFESSIONAL ETHICS CODE FOR SPOKESPERSONS AND ATTORNEYS

HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 32
HOOPA VALLEY TRIBAL CODE

ORDINANCE NO: 2-93

DATE APPROVED: July 23, 1993

SUBJECT: PROFESSIONAL ETHICS CODE FOR SPOKESPERSONS AND ATTORNEYS

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 in section 8 of Pub. L. 100-580, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated tot he Hoopa Valley Tribal Council, acting by law; and

WHEREAS: The Tribal Council has concluded that it is necessary to exercise the authority granted by the Hoopa Tribal membership, through referendum election held March 1, 1983; the purpose and language thereof established the Hoopa Valley Tribal Court and Court of Appeals for the purposes of "protecting and promoting Tribal Sovereignty, strengthening Tribal Self-Government, providing for the judicial needs of the reservation, and thereby assuring the maintenance of the law and order on the reservation for the protection of Tribal resources and the rights of the members of the Hoopa Valley Tribe"; and

WHEREAS: The Hoopa Valley Law and Order Code, Title I, Chapter 2, § 1.2.14 provides for the development of a code of ethics "which all Court personnel must abide by" and that the "Tribal Council will adopt the Code of Ethics ... before it can be enforced"; and

WHEREAS: It is the desire of the Hoopa Valley Tribal Council to adopt and establish a code of ethics for professional conduct of attorneys and spokespersons who are admitted before the Tribal Court Bar; or are engaged in the practice of Federal,

Tribal or State law on the Hoopa Valley Reservation or within the jurisdiction of the Tribal Court pursuant to the Tribal Constitution and Bylaws Article IX, Sections 1(j); and

WHEREAS: Pursuant to the review process set forth in the Legislative Procedures Act, §§ 6.4, 6.7, and 6.8, the Council concludes that it is now appropriate to enact said Ordinance on a permanent basis, as modified by departmental comments and legal review developed during the review process.

THEREFORE BE IT NOW ORDAINED THAT: Pursuant to Section 6.9 of the Legislative Procedures Act, and the tribal constitutional and legal authorities recited herein, the Tribal Council hereby enacts the attached **Professional Ethics Code for Spokespersons and Attorneys**, in order to advance the purpose identified in Section 32.0.

BE IT FURTHER ORDAINED THAT: The Tribal Council hereby reaffirms its intent that the provisions of this Ordinance be enforceable against non-members of the Tribe who practice within any division of the Hoopa Valley Tribal Court.

BE IT FURTHER ORDAINED THAT: The Hoopa Valley Tribal Court will have regulatory authority governing the ethical conduct of all spokespersons or attorneys practicing before the Tribal Court Bar to the fullest extent of Tribal jurisdiction in order to properly regulate, manage, and provide for the ethical conduct of all spokespersons and attorneys who practice before the Tribal Court, pursuant to the provisions of the following Code:

32.0 SHORT TITLE AND PURPOSE

32.0.1 Short Title. This Ordinance shall be known as the **Professional Ethics Code for Spokespersons and Attorneys of the Hoopa Valley Tribe.**

32.0.2 Purpose. The purpose of this Ordinance is to exercise comprehensive tribal regulatory authority over the ethical conduct of spokespersons and attorneys practicing before the Hoopa Valley Tribal Court within the exterior boundaries of the Hoopa Valley Reservation.

32.1 JURISDICTION

32.1.1 Generally. The jurisdiction of this code is the same as the jurisdiction of the Tribal Court and the effective area of the Code shall include all territory within the Hoopa Valley Reservation, as defined by Article 1 of the Hoopa Tribal Constitution, including fee patent lands, allotments, assignments, roads, waters, bridges, and lands used for agency purposes, and existing and future lands outside the boundaries of the Reservation owned or controlled by the Hoopa Valley Tribe for the benefit of its members. This includes:

(a) All persons entering the Hoopa Valley Reservation as automatically subject to the jurisdiction of the Hoopa Tribal Court pursuant to the General Provisions of the Hoopa Valley Court, Chapter 11, § 1.11.01; and all persons within the geographical area referred to in Article I of the Tribal Constitution that are subject to the jurisdiction and governmental power of the Hoopa Valley Tribe, to the extent not prohibited by federal law; or

(b) All members of the Hoopa Valley Tribe, wherever located while exercising tribal rights pursuant to federal, tribal or state law; or

(c) All persons or property located outside the exterior boundaries of the Hoopa Valley Indian Reservation, as defined herein, within the jurisdiction of the Tribe pursuant to Federal or Tribal law; or

(d) The Court shall have no jurisdiction over any suit brought against the Hoopa Valley Tribe without the express consent of the Tribe.

32.1.2 Concurrent Jurisdiction. The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided however, this Code does not recognize or cede jurisdiction to any other

political or governmental entity in which jurisdiction does not otherwise exist in law.

32.2 CONSTRUCTION WITH OTHER LAWS OR ORDINANCES

32.2.1 Prior Inconsistent Codes or Ordinances Amended. Any and all codes and ordinances of the Hoopa Valley Tribe which conflict in any way with the provisions of this Code are hereby amended to the extent that they are inconsistent with, or are contrary to, the spirit and purposes of this Code of Professional Ethics for Spokespersons and Attorneys. When such discrepancies are noted, the Hoopa Valley Tribal Council shall take affirmative action to effect such amendments.

32.2.2 Amendment of Code of Professional Ethics. This Code may be amended in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Code of Professional Ethics shall become part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code. In no situation shall any enactment, ordinance, resolution or otherwise, apply to any pending cases before the Tribal Court at the time action is taken by the Tribal Council.

32.2.3 Codification. Any law, enactment, resolution, code or ordinance duly approved and adopted by this Tribal Council which are intended to be included in this Code and enforced by the Hoopa Tribal Court, shall be codified pursuant to the numbering and organization of this Code of Professional Ethics. Failure to codify for inclusion of any law, enactment, resolution, code or ordinances shall not effect its validity. Under no circumstances shall any duly approved and adopted measure remain uncodified for a period of more than six (6) months from date of adoption. It shall be the responsibility of the Hoopa Valley Tribal Council to assure the continued updating of the Code of Professional Ethics for Spokespersons and Attorneys.

32.2.4 Code of Federal Regulations No Longer Applicable. Any and all provisions for Title 25 of the Code of Federal Regulations (25 CFR) as presently constituted or hereafter

constituted which deal with the subject matter covered in this Code of Professional Ethics or are otherwise inconsistent with or in conflict with the provisions or the spirit of this Code are declared no longer applicable to the Hoopa Valley Indian Reservation.

32.3 INTERPRETATION OF THIS CODE

Any ambiguities, definitions, or clarifications of the rules included herein are to be decided according to Title III Rules of Court, Rule 3 Laws to be Applied.

32.4 DEFINITIONS

32.4.1 "Attorney" or "Lawyer" denotes any person who is duly admitted and recognized by any state bar created and authorized to license and/or discipline persons engaged in the practice of law in a business or professional capacity within a specific jurisdiction. For example, California State Bar Act, Chapter 4, Division 3 of the California Business and Professions Code, § 6060 et. seq.

32.4.2 "Spokesperson" denotes any person who is duly admitted and recognized by the Hoopa Tribal Court Bar pursuant to Title III, Rules of the Hoopa Tribal Court, Rule 6, sections A through F inclusive.

32.4.3 "Law Firm" means:

(a) two or more lawyers whose activities constitute the practice of law, and who share its profits, expenses, and liabilities; or

(b) a law corporation which employs more than one lawyer; or

(c) a division, department, office, or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or

(d) a publicly funded entity, which employs more than one lawyer to perform legal services.

32.4.4 "Associate" means an employee or fellow employee who is employed as an attorney or spokesperson.

32.4.5 "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "Secret Information" refers to other information gained in the confidence of a professional relationship that the client has requested be inviolate or the disclosure of which would be embarrassing or would likely be of detriment to the client.

32.4.6 "Consents in writing" or "written consent" means either (a) a written consent executed by the client, or (b) oral consent given by a client which the attorney or spokesperson confirms in writing in a manner which can be easily understood by the client and which is promptly transmitted to the client.

32.4.7 "Consult" or "Consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

32.4.8 "Reasonable belief" or "reasonably believes" when used in reference to an attorney or spokesperson denotes that the attorney or spokesperson believes the matter in question and that the circumstances are such that the belief is reasonable.

32.4.9 For the purpose of rule 1.8, "communication" means any message or offer made by or on behalf of an attorney or spokesperson concerning the availability for professional employment of an attorney or spokesperson or a law firm directed to any former, present, or prospective client, including but not limited to the following:

(a) Any use of firm name, trade name, fictitious name, or other professional designation of such spokesperson or attorney; or

(b) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such attorney, spokesperson, or law firm; or

(c) Any advertisement (regardless of medium) of such attorney or spokesperson or law firm directed at the general public or any substantial portion thereof; or

(d) Any unsolicited correspondence from an attorney, spokesperson, or law firm directed to any person or entity.

32.4.10 For purposes of rule 1.8, a "solicitation" means any communication:

(a) Concerning the availability for professional employment of an attorney, spokesperson, or law firm in which a significant motive is pecuniary gain; and

(b) which is:
(1) delivered in person or by telephone; or
(2) directed by any means to a person known to the sender to be represented by counsel in matter which is a subject of the communication.

32.4.11 For the purposes of Rule 2(c), a "tribunal" means any board, committee, hearing panel or commission duly appointed by the Hoopa Tribal Council or described in the Hoopa Valley Tribal Code.

32.5 RULES OF PROFESSIONAL CONDUCT

RULE 1.0 PROFESSIONAL CONDUCT IN GENERAL

(a) The following rules are intended to regulate professional conduct of members of the Hoopa Tribal Bar and members of the any state bar who are engaged in the practice of law, counselling, or advocacy within the jurisdiction of the Tribal Court through discipline.

(b) For any willful breach of any of these rules, the Hoopa Valley Tribal Court has the power to discipline the offending party through any means appropriate including, but not limited to, public reproval, the prohibition or suspension of the practice of law, legal counselling or advocacy before the Hoopa Tribal Court or within the physical boundaries of the Hoopa Valley Indian Reservation, or physical exclusion from

the exterior boundaries of the Hoopa Valley Indian Reservation.

(c) In the case of any willful breach of these rules or misconduct by an attorney practicing before the Hoopa Tribal Bar, the Hoopa Tribal Court reserves the right to notify the appropriate state bar association of the results of any disciplinary action for any misconduct or breach of these rules.

RULE 1.1 COMPETENCE

(a) An attorney or spokesperson shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, physical and mental capabilities, thoroughness and preparation reasonably necessary for representation.

(b) If the attorney or spokesperson does not have sufficient learning and skill when the legal service is undertaken, the attorney or spokesperson may nonetheless perform such services competently by:

(1) associating with or, where appropriate, professionally consulting another attorney or spokesperson reasonably believed to be competent; or

(2) by acquiring sufficient learning and skill before performance is rendered.

RULE 1.2 SCOPE OF REPRESENTATION

(a) An attorney or spokesperson shall abide by a client's decisions concerning the objectives of representation, pursuant to paragraphs c), d), and e), and shall consult with the client as to the means by which they are pursued. An attorney or spokesperson shall abide by a client's decision whether to accept an offer of settlement of a matter.

(b) An attorney's or spokesperson's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, spiritual, social or moral view or activities.

(c) An attorney or spokesperson may limit the objectives of the representation if the client consents after consultation.

(d) An attorney or spokesperson shall not counsel a client to engage, or assist a client, in conduct that the attorney or spokesperson knows to be criminal or fraudulent, but an attorney or spokesperson may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When an attorney or spokesperson reasonably knows that a client expect assistance not permitted by the rules of professional conduct or other law, the attorney or spokesperson shall consult with the client regarding the relevant limitations on the attorney's or spokesperson's conduct.

RULE 1.3 DILIGENCE

An attorney or spokesperson shall act with reasonable diligence and promptness in representing a client. Examples of diligence are: filing court papers in a timely manner, making timely and appropriate court appearances, making reasonable discovery efforts, preparing and providing the court with all pertinent documents including, but not limited to, receipts, personal and professional correspondence, and photographs, keeping the client reasonably informed about the status of a matter and prompt compliance with requests for information by either the court or client.

RULE 1.4 CONFIDENTIALITY

(a) An attorney or spokesperson shall not reveal confidences or secret information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in sections b) and c).

(b) An attorney or spokesperson may reveal such confidences or secret information to the extent that he/she reasonably believes necessary:

(1) To prevent the client from committing a crime; or

(2) To establish a claim or defense on behalf of an attorney or spokesperson involved in a controversy between the attorney or spokesperson and the client, to establish a defense to a criminal charge or civil claim against the attorney or spokesperson based upon conduct in which the client was involved, to respond to allegations in any proceeding concerning the attorney's or spokesperson's representation of the client, or pursuant to a court order.

(c) An attorney or spokesperson may reveal, to the tribunal, confidences or secret information which discloses any breach of fiduciary duty by a client who is a guardian, personal representative, receiver, or other court appointed fiduciary.

RULE 1.5 ASSISTING, SOLICITING OR INDUCING VIOLATIONS

An attorney or spokesperson shall not knowingly assist in, solicit, or induce any violation of these rules.

RULE 1.6 FALSE STATEMENT REGARDING ADMISSION TO STATE OR TRIBAL BAR

(a) An attorney or spokesperson shall not knowingly make a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for admission to the Hoopa Tribal Bar or with regard to admission to any state bar.

(b) Any spokesperson or attorney shall not further an application for admission to the Hoopa Tribal Bar of a person whom the spokesperson knows to be unqualified in respect to character, education, or other relevant attributes including that of said spokesperson or attorney.

RULE 1.7 UNAUTHORIZED PRACTICE OF LAW

(a) An attorney or spokesperson shall not aid any entity in the unauthorized practice of law.

(b) An attorney shall not practice law within the jurisdiction of the Hoopa Tribal Court where to do so would be a violation of the jurisdiction where said attorney is duly licensed and admitted before bar.

RULE 1.8 FINANCIAL ARRANGEMENTS WITH NON-LAWYERS AND NON-SPOKESPERSONS

(a) An attorney or spokesperson shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the attorney or spokesperson or the firm which employs said attorney or spokesperson by a client, or as a reward for having made a recommendation resulting in employment of the attorney or spokesperson or the firm which employs said attorney or spokesperson by a client. An attorney's or spokesperson's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in employment of the attorney or spokesperson or the firm which employs said attorney or spokesperson shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made to encourage them in the future.

(b) An attorney or spokesperson shall not compensate, give, or promise anything of value to any representative of the press, radio, television, or other communication medium in anticipation of or in return for publicity of the attorney or spokesperson, the law firm, or any other attorney or spokesperson as such in a news item, but the incidental provision of food or beverage shall not violate this rule.

RULE 1.9 ADVERTISING AND SOLICITATION

A solicitation shall not be made by or on behalf of an attorney, spokesperson, or law firm to a prospective client with whom the attorney, spokesperson, or law firm has no familial relation or prior professional relationship, unless

the solicitation is protected from abridgement by the Hoopa Tribal Constitution. A solicitation to a former or present client in the discharge of an attorney's, spokesperson's, or law firm's professional duties is not prohibited.
A communication or solicitation shall not:

(a) Contain any untrue statement; or

(b) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public; or

(c) Omit to state any fact necessary to make the statements or representations made, in light of the circumstances under which they are made, not misleading to the public; or

(d) Fail to indicate clearly, expressly, or by context, that it is a communication or solicitation, as the case may be; or

(e) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

RULE 2.0 CONFLICT OF INTEREST; GENERAL RULES

(a) An attorney or spokesperson shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The attorney or spokesperson reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents <u>in writing</u> after consultation and a full disclosure of material facts (following authorization from the other client to make such a disclosure).

(b) An attorney or spokesperson shall not represent a client if the representation of that client may be materially limited by the attorney's or spokesperson's responsibilities to another client or to a third person, or by the attorney's or spokesperson's own interests, unless:

(1) The attorney or spokesperson reasonably believes the representation will not be adversely affected; and

(2) The client consents in writing after consultation and a full disclosure of the material facts (following authorization from the other client to make such a disclosure). When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of common representation and the advantages and risks involved.

(c) No attorney or spokesperson shall take part of a tribunal or counsel to a tribunal in any cause of action, hearing, appellate review or the determination of, or in the deliberation of any matter affecting his or her: spouse, son, daughter, sister, brother, mother, father, grandfather, grandmother, grandson, granddaughter, and uncle, niece, nephew, and the following in laws: son, daughter, brother, sister, mother or father. Such attorney or spokesperson shall recuse himself/herself from the role of advocate from any such proceeding with respect to which he is disqualified.

RULE 2.1 CONFLICT OF INTEREST; FORMER CLIENT

An attorney or spokesperson who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interest are materially adverse to the interests of the former client unless the former client consents in writing after a consultation and a full disclosure of the material facts; or

(b) use of confidences or secret information relating to the representation to the disadvantage of the former client, except as the Confidentiality Rule would permit.

RULE 2.2 IMPUTED DISQUALIFICATION; GENERAL RULE

(a) Except as provided in section b), while attorneys are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.1., 1.3, 2.0, or 2.1.

(b) When an attorney or spokesperson becomes associated with a firm, the firm may not knowingly represent a person in the

same or substantially related matter in which that attorney or spokesperson ("the personally disqualified attorney or spokesperson"), or a firm with which the attorney or spokesperson was associated had previously represented a client whose interests are materially adverse to that person and about whom the attorney or spokesperson had acquired confidences or secret information as protected by rules 1.1 and 2.0 that are material to the matter; provided that the prohibition on the firm shall not apply if:

(1) The personally disqualified attorney or spokesperson is screened by effective means from participation in the matter and is apportioned no fee therefrom; and

(2) The former client of the disqualified attorney or spokesperson receives notice of the conflict and the screening mechanism used to prohibit dissemination of confidential and secret information; and

(3) The firm is able to demonstrate by convincing evidence that no confidences or secret information that are material were transmitted by the personally disqualified attorney or spokesperson before implementation of the screening mechanism and notice to the former client.

(4) The firm is counsel to a governing body, and said governing body apportions to each of its agencies necessary legal services. This requires that each attorney or spokesperson in the firm, whether representing the governing body or one of it's agencies, be able to describe the screening mechanism used to prohibit dissemination of confidential and secret information and demonstrate by convincing evidence no confidential or secret information that are material were transmitted by the personally disqualified attorney or spokesperson.

RULE 2.3 AVOIDANCE OF INTERESTS ADVERSE TO A CLIENT

An attorney or spokesperson shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to

a client, unless each of the following requirements has been satisfied:

(a) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and communicated in writing to the client in a manner which should reasonably have been understood by the client; and

(b) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(c) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

RULE 3.0 ATTORNEY OR SPOKESPERSON FEES

(a) An attorney's or spokesperson's fees shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount of the fees involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the attorney or spokesperson performing the services; and
(8) whether the fee is fixed or contingent.

(b) When the attorney or spokesperson has not regularly represented the client, the basis or rate of the fee shall be

communicated to the client in writing, before or within a reasonable time after commencing representation.

(c) A fee may be contingent on the outcome of a matter for which the service is rendered, except in the matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the attorney or spokesperson in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement explaining the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) An attorney or spokesperson shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon securing a divorce, the amount of alimony or support, or property or custody settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fees between attorneys or spokespersons who are not in the same firm may be made only if:

(1) the division is proportionate to the services performed by each attorney or spokesperson, or by written agreement with the client, each attorney or spokesperson assumes joint liability for the representation;

(2) the client is advised of and does not object to the participation of all of the attorneys or spokespersons involved and this is evidenced in writing; and

(3) the total fee is reasonable.

32.6 SEVERABILITY

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of the Code or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Code are severable.

32.7 SOVEREIGN IMMUNITY PRESERVED

Nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit or as authorization for a claim for monetary damages from the Tribe.

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 ___ (_) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held on this twenty-third (23rd) day of July, 1993; that this Ordinance was duly adopted by a vote of ___ (_) in favor, ___ (_) opposed, and ___ (_) abstaining; and that since its approval this Ordinance has not been rescinded, amended, or modified in any way.

DATED THIS 23RD DAY OF JULY, 1993.

_____

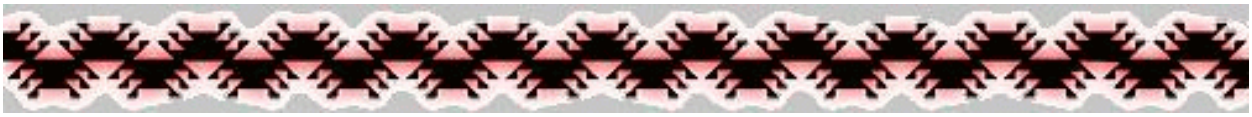
DALE RISLING, SR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____
KIM NORTON, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

TITLE 34 OF THE HOOPA TRIBAL CODE

PURPOSE: SUPPRESSION OF CULTIVATION OF MARIJUANA

ADMINISTRATIVE RECORD: Adopted November 3, 1999



MARIJUANA CULTIVATION SUPPRESSION ORDINANCE

HOOPA VALLEY TRIBE

Hoopa, California

Title 34

Ordinance No: 99-1

Date Approved: November 3, 1999

Subject: SUPPRESSION OF CULTIVATION OF MARIJUANA WITHIN THE EXTERIOR BOUNDARIES OF THE HOOPA VALLEY INDIAN RESERVATION

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe of California pursuant to authority contained in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws adopted on June 20, 1972, as approved by the Commissioner of Indian Affairs on August 18, 1972, subsequently confirmed and ratified by the United States Congress on October 31, 1988 in the Hoopa-Yurok Settlement Act (25 U.S.C. § 1300i et seq.) and as amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(g) authorizes the Hoopa Valley Tribal Council to negotiate with the federal, state and local governments;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(k) authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(l) authorizes the Hoopa Valley Tribal Council to safeguard, protect and promote the peace, safety, morals and general welfare of the Hoopa Valley Tribe;

WHEREAS: On November 6, 1996, the People of the State of California enacted the Compassionate Use Act of 1996 codified at Section 11362.5 of the California Health and Safety Code;

WHEREAS: The Compassionate Use Act of 1996 allows seriously ill residents of the State of California who have a written approval or recommendation of a licensed physician to use marijuana for

medical purposes despite the general state criminal prohibition against the cultivation and possession of marijuana;

WHEREAS: The Compassionate Use Act of 1996 lacks standards to implement its goals and is subject to abuse by those persons seeking to traffic in illicit drug sales;

WHEREAS: The current yield of marijuana plants cultivated in Humboldt County is higher than estimated yield reported by some of the proponents of the Compassionate Use Act of 1996;

WHEREAS: The lack of clear standards and other uncertainties in the Compassionate Use Act of 1996 regarding use, possession and cultivation of marijuana have impeded the ability of law enforcement officers to enforce applicable California criminal laws;

WHEREAS: The differing standards for enforcement of state criminal laws regarding the use, possession, and cultivation of marijuana within Humboldt County and the State of California after passage of the Compassionate Use Act of 1996 has rendered said laws civil-regulatory in nature;

WHEREAS: The open and notorious cultivation of marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation under the guise of permissive use in light of the Compassionate Use Act of 1996 is unacceptable and endangers the general welfare, health and safety of residents of the Hoopa Valley Indian Reservation;

WHEREAS: Federal law (21 USC 841(a)(1)) prohibits the cultivation of marijuana in any amount;

WHEREAS: The Humboldt Cannabis Center and other similar establishments in California are able to provide qualified persons with medicinal marijuana as necessary;

WHEREAS: The availability of medicinal marijuana from recognized cannabis suppliers alleviates the need to cultivate marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation;

WHEREAS: The open cultivation of marijuana poses a public health, safety and security risk for residents of the Hoopa Valley Indian Reservation;

WHEREAS: The Hoopa Valley Tribe annually engages in and supports the marijuana eradication efforts of the Hoopa Tribal Police Department, federal government and local law enforcement agencies;

NOW, THEREFORE, BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby enacts the following ordinance.

34.1 SHORT TITLE

This Ordinance may be cited as the Marijuana Cultivation Suppression Ordinance or Title 34.

34.2 PURPOSE

The purpose of this ordinance is to clearly describe the Hoopa Valley Tribe's policy regarding the implementation of the Compassionate Use Act of 1996 and suppression of cultivation of marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation.

34.3 DEFINITIONS

34.3.1 "Act" shall mean the Compassionate Use Act of 1996.

34.3.2 "Council" shall mean the Hoopa Valley Tribal Council, the governing body of the Hoopa Valley Tribe.

34.3.3 "Cultivate" for purposes of this Ordinance shall mean to permit to grow marijuana and also includes possession of any live marijuana plant within exterior boundaries of the Reservation.

34.3.4 "Ordinance" shall mean the Marijuana Cultivation Suppression Ordinance.

34.3.5 "Person" shall mean all persons whether or not members of the Hoopa Valley Tribe.

34.3.6 "Reservation" shall mean the Hoopa Valley Indian Reservation.

34.3.7 "State" shall mean the State of California.

34.3.8 "Tribal Court" shall mean the Hoopa Valley Tribal Court.

34.3.9 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

34.4 PROHIBITION AGAINST CULTIVATION OF MARIJUANA

No person shall cultivate marijuana within the exterior boundaries of the Reservation.

35.5 ENFORCEMENT OF ORDINANCE

a) This Ordinance shall be enforced by the Hoopa Tribal Police Department and any other law enforcement agency having jurisdiction on the Reservation. Any Tribal law enforcement officer, or any person officially appointed by the Hoopa Valley Tribal Council in consultation with the Chief of the Hoopa Tribal Police Department, may issue a citation for violation of this Ordinance, provided that nothing herein shall prohibit the Hoopa Tribal Police Department or any other authorized law enforcement agency from enforcement of any applicable criminal statutes, rules, regulations or ordinances, including those related to confiscation, seizure and forfeiture.

b) Nothing herein shall prohibit the Hoopa Valley Tribal Council or individual residents of the Reservation from instituting a civil action before the Tribal Court against a person alleged to be acting in violation of this Ordinance. Remedies available in such a private action include those described in sections 34.7.4 and 34.7.5. The prevailing party is entitled to recovery for court fees, costs and reasonable attorneys' fees from the non-prevailing party.

c) Should an individual described in section 34.5(b), above institute a private suit against an individual alleged to be violating this Ordinance, the Plaintiff shall provide written notice of the initiation of said action to the Office of Tribal Attorney of the Hoopa Valley Tribe, within five (5) days of the filing of such an action.

34.6 TRIBAL COURT JURISDICTION

Adjudication of violations of this Ordinance shall be within the jurisdiction of the Tribal Court.

34.7 PENALTIES

34.7.1 Civil Penalties

Any person who violates this Ordinance shall be fined a civil penalty not to exceed $500.00 or the reasonable costs of investigation, seizure, forfeiture, destruction, litigation, and payment of reasonable costs and fees associated with the enforcement of this Ordinance, whichever is greater.

34.7.2 Exclusion From Reservation

Any person who violates this Act may also be subject to exclusion from the Hoopa Valley Reservation in accordance with the Exclusion Ordinance of the Hoopa Valley Tribe.

34.7.3 Criminal Prosecution

Nothing herein shall prevent the Tribe from seeking criminal prosecution of any person who violates this Ordinance for violation of any applicable criminal law(s) by the appropriate authorities.

34.7.4 Injunction Prohibiting Cultivation of Marijuana

Upon application for a Temporary Restraining Order, preliminary injunction and/or permanent injunction prohibiting the cultivation of marijuana, the Tribal Court is authorized to issue the requested order in accordance with this Ordinance and applicable rules of court.

34.7.4.1 Content of Declaration In Support of Request for Injunctive Relief

Any declaration in support of a request for injunctive relief shall contain the following information:

a) The approximate number of marijuana plants under cultivation;

b) The date of any citation(s) issued pursuant to this Ordinance;

c) The name of the person issued the citation;

d) The name of the owner of the property where the marijuana is located;

e) The description of the physical location of the property where the marijuana is located;

f) Whether any photographs or video tapes were taken of the marijuana plants; and

g) Any other relevant information.

34.7.5 Seizure & Destruction of Marijuana

In addition to the remedies outlined above, the Tribal Court is authorized to issue appropriate orders to seize, forfeit and destroy marijuana plants cultivated in violation of this Ordinance.

34.7.5.1 Content of Declaration in Support of Request for Order of Seizure, Forfeiture and/or Destruction of Marijuana

Any declaration in support of a request for an order of seizure, forfeiture and/or destruction of marijuana plants shall contain the following information:

a) The approximate number of marijuana plants to be seized, forfeited and destroyed;

b) The date of any citation(s) issued pursuant to this Ordinance;

c) The name of the person issued the citation;

d) The name of the owner of the property where the marijuana is located;

e) The description of the physical location of the property where the marijuana is located;

f) Whether any photographs or video tapes were taken of the marijuana plants;

g) A statement that the law enforcement officer believes that the marijuana plant(s) may be removed by the Defendant prior to completion of the Tribal Court action;

h) A statement as to whether any marijuana samples are necessary for prosecution of a criminal action; and

i) Any other relevant information.

34.7.6 Notice and Service

All declarations and other pleadings filed with the Tribal Court in support of any requested order shall be served upon the Defendant(s) in accordance with the applicable rules of court.

34.7.7 Voluntary Destruction of Marijuana

No action instituted for alleged violation(s) of this Ordinance shall be rendered moot, including the imposition of appropriate civil penalties and/or injunctive relief, by voluntary destruction or removal of marijuana plants by a Defendant(s).

34.7.8 Involuntary Destruction of Marijuana

Upon receipt of a Tribal Court order, the Hoopa Tribal Police Department or other appropriate law enforcement agency is authorized to destroy the marijuana as appropriate. Should any funds be received as a result of destruction of the marijuana, said funds shall be distributed equally between the Hoopa Tribal Police Department and the Tribal Court.

34.8 MEDICINAL USE DEFENSE NOT AVAILABLE

The Tribal Court shall not recognize as a defense to the alleged violation of this Ordinance any defense based upon alleged medicinal use, recommendation by a physician, necessity or the application of the Act.

34.9 SEVERABILIITY

If any part of this Act is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

34.10 SOVEREIGN IMMUNITY

Nothing in this Ordinance is intended to, nor should it be construed as, a waiver of the protections of sovereign immunity of the Hoopa Valley Tribe or its officials or employees, including those against suit in any court.

CERTIFICATION

I, the undersigned, as Vice-Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five (5) were present constituting a quorum at a Special meeting thereof, duly and specially called, noticed and convened, and held this 3rd day of November, 1999; and that this resolution was duly adopted by a vote of four (4) for and none (0) against, none (0) abstaining and that said Ordinance has not been rescinded or amended in any way.

Dated this 3rd day of November, 1999.

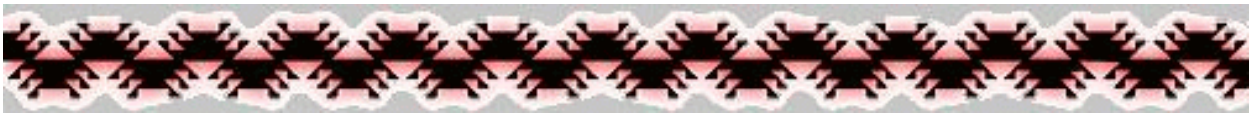
_____
Joseph LeMieux, Vice-Chairman
Hoopa Valley Tribal Council

Attest:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 35 OF THE HOOPA TRIBAL CODE

PURPOSE: RIPARIAN PROTECTION AND MINING PRACTICES

ADMINISTRATIVE RECORD: Adopted June 4, 1992



RIPARIAN PROTECTION AND MINING PRACTICES ORDINANCE
of the
HOOPA VALLEY TRIBE

HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 35
HOOPA VALLEY TRIBAL CODE

ORDINANCE NO. 3-92

DATE APPROVED: JUNE 4, 1992

SUBJECT: RIPARIAN PROTECTION AND MINING PRACTICES

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 in 1988 in section 8 of Pub. L. 100-580, and Article V of this Constitution establishes that the Hoopa Valley Tribal Council (Tribal Council or Council) is the governing body of the Tribe, and under Article IX, the Council is authorized to: administer all tribal property, § 1(a); enforce the protection of tribal property, wildlife, and natural resources, § 1(e); provide assessments or license fees upon persons doing business or obtaining special privileges within the Reservation, § 1(f); negotiate with the Federal, State, and local governments on behalf of the Tribe, § 1(g); prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets, § 1(i); exclude from the unallotted lands of the Reservation persons not legally entitled to reside or otherwise be present therein, § 1(j); safeguard and promote the safety and general welfare of the Tribe and the Reservation community by among other things regulating the conduct of trade and the use and disposition of property within the Reservation, § 1(l); and

WHEREAS: Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas and gravel bars adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hoopa Indians have always used these resources for cultural,

ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life; and

WHEREAS: It is the position of the Tribe that the bed of the Trinity River, as well as the gravel bars and riparian areas adjacent thereto which lie outside the stakelines of the allotments and former allotments near the River, continue to be unallotted lands of the Hoopa Valley Tribe held in trust for the Tribe by the United States; and

WHEREAS: The gravel resources in the Trinity River riparian area are a mineral resource within the meaning of federal and tribal law, and extraction or surface mining of these gravel resources has the potential both to generate revenues and create employment for the Tribe and to significantly harm fundamental tribal values in the Trinity River riparian area; and

WHEREAS: Various sites along the Trinity River are contaminated with toxic or hazardous materials as a result of previous land use activities, many of them having been authorized without adequate review of impacts or adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may pose significant risks to the public health; and

WHEREAS: The Tribal Council has concluded that it is necessary to exercise comprehensive tribal regulatory authority over surface mining and other activities in the Trinity River riparian area, and in the riparian areas of tributary creeks and streams, in order to protect fundamental tribal ceremonial, fishery, and property interests, and the public health and safety; and

WHEREAS: Pursuant to federal law as determined by the U.S. Supreme Court in such cases as Montana v. United States, 450 U.S. 544 (1981), the Hoopa Valley Tribe possesses inherent sovereign authority to regulate on-Reservation surface mining and gravel extraction operations, and other activities that affect fundamental tribal interests and the public health and safety, including when such activities are conducted by non-

members of the Tribe on privately owned lands within the Reservation; and

WHEREAS: Under 1988 amendments to the Clean Water Act, 33 U.S.C. § 1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency (EPA) as authorized to exercise exclusive jurisdiction (tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Trinity River, that also flow through other jurisdictions; and

WHEREAS: EPA has authorized the Tribe to proceed with the assumption of primacy over on-Reservation water quality, and that authorization has been recognized by the North Coast Regional Water Quality Control Board, which regulates water quality within the Trinity River basin outside of the Reservation; and

WHEREAS: In the past, and continuing to the present, various non-members of the Hoopa Tribe, who own private land within the Reservation, have extracted gravel from and engaged in surface mining operations upon gravel bars along the Trinity River, with serious adverse impacts to ceremonial and fisheries values and to water quality in the Trinity River, and purported regulation of these activities has been ineffective to address these impacts; and

WHEREAS: Currently the operator of Hoopa Valley Ready Mix, a surface mining operation within the Reservation, is seeking approval from the County of Humboldt to continue his operation in a manner that, based on the Tribe's review of the operator's application, will harm the fundamental interests of the Tribe as recited hereinabove; and

WHEREAS: The County of Humboldt lacks any jurisdiction to issue permits to Hoopa Valley Ready Mix, or in any way authorize said operation to continue, because such purported jurisdiction would infringe upon the Tribe's authority to regulate such activities to insure the protection of fundamental tribal interests, and would interfere with the Tribe's relationship with EPA; and

WHEREAS: Because the County may soon purport to act to approve the continued operation of Hoopa Valley Ready Mix, because Hoopa Valley Ready Mix may well attempt to continue to operate under color of County approval, and because such continued operation could result in riverbed and river flow alteration and could cause the release of contamination from an abandoned landfill along the Trinity River that was formerly maintained by Humboldt County, a genuine emergency exists within the meaning of Section 6.10 of the Legislative Procedures Act.

THEREFORE BE IT NOW RESOLVED THAT the Hoopa Valley Tribal Council hereby approves the Riparian Protection and Mining Practices Ordinance, to take effect immediately pursuant to the emergency procedures set forth in Section 6.10 of the Legislative Procedures Act (LPA), and further directs that this Ordinance be routed to tribal departments pursuant to the procedures set forth in Section 6.3 of the LPA, so that, subject to any modifications that may be determined necessary or appropriate as a result of comments received during the routing process, it can be adopted on a permanent basis within 30 to 60 days.

BE IT FURTHER RESOLVED THAT: Pursuant to the legal authorities recited above, it is the intent of the Council that the provisions of this Ordinance be enforceable against non-members of the Tribe and upon private lands within the Reservation, and accordingly the Tribal Chairman is authorized and directed, in consultation with the Office of Tribal Attorney, to transmit this Ordinance to the Bureau of Indian Affairs and the EPA for any review and approval that may be necessary, and to seek the support of those agencies for this important assertion of tribal jurisdiction.

BE IT FURTHER RESOLVED THAT: It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance, and to resist any assertion of jurisdiction by Humboldt County, or by the State of California or any of its agencies, that purports to regulate the matters herein regulated by tribal authority.

35.0 SHORT TITLE, FINDINGS, AND PURPOSE

35.0.1 Short Title. This Ordinance shall be known as the **Riparian Protection and MIning Practices Ordinance of the Hoopa Valley Tribe.**

35.0.2 Findings. The Tribal Council hereby finds as follows:

(a) Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas and gravel bars adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hoopa Indians have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.

(b) It is the position of the Tribe that the bed and banks of the Trinity River, as well as the gravel bars and riparian areas adjacent thereto, which lie outside the stakelines of the allotments and former allotments near the River, continue to be unallotted lands of the Hoopa Valley Tribe held in trust for the Tribe by the United States.

(c) The gravel resources in the Trinity River riparian area are a mineral resource within the meaning of federal and tribal law, and extraction or surface mining of these gravel resources has the potential both to generate revenues and create employment for the Tribe and to significantly harm fundamental tribal values in the Trinity River and its riparian area.

(d) Various sites along the Trinity River are contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may, if not properly contained and cleaned up, pose significant risks to the public health.

(e) Pursuant to federal law as determined by the U.S. Supreme court in such cases as Montana v. United States, 450 U.S. 544 (1981), the Hoopa Valley Tribe possesses inherent sovereign authority to regulate on-Reservation surface mining and gravel extraction operations, and other activities that affect fundamental tribal interests and the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned lands within the Reservation.

(f) Under 1988 amendments to the Clean Water Act, 33 U.S.C. § 1377, Indian Tribes are entitled to be certified by the U.S. Environmental Protection Agency (EPA) as authorized to exercise exclusive jurisdiction (tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Trinity River, that also flow through other jurisdictions.

(g) In the past, and continuing to the present, various non-members of the Hoopa Valley Tribe, who own private lands within the Reservation, have extracted gravel from and engaged in surface mining operations upon gravel bars along the Trinity River, with serious adverse impacts to ceremonial and fisheries values and to water quality in the Trinity River, and purported regulation of these activities by agencies of the State and Federal governments has been ineffective to address these impacts.

35.0.3 Purpose. The purpose of this Ordinance is to exercise comprehensive tribal regulatory authority over surface mining and other activities in the Trinity River riparian area, and in the riparian areas of tributary creeks and streams, in order to protect fundamental tribal cultural, ceremonial, fishery, and property interests, and the public health and safety.

35.1 DEFINITIONS

35.1.1 Angle of Repose means the maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material. The angle is generally a few degrees less than the angle of internal friction of the same material. The angle of repose commonly ranges between 33# and 37# on natural slopes and is rarely less than 30# or more than 39#.

35.1.2 Backfill means earth, overburden, mine waste or imported material used to replace material removed during mining.

35.1.3 Bench means a flat surface from which a pit or quarry is worked. The height of the slope between benches is the bench interval. The benches that are left on a final cut are generally termed retaining benches, and serve to retain or limit rock falls from the surface above.

35.1.4 Borrow Pit means excavations created for the mining of rock, unconsolidated geologic deposits or soil which are not on-site construction as defined in this section, are considered to be surface mines unless exempted under Section 35.3(b) of this Ordinance.

35.1.5 Committee means the **Interim Review Committee**, as established under the provisions of Section 35.2 hereof.

35.1.6 Council means the Hoopa Valley Tribal Council.

35.1.7 Cut Slope (Face) means a bank or slope that has been created by removing material below the pre-existing ground surface.

35.1.8 Critical Gradient means the maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

35.1.9 Fill Slope means a bank or slope that has been built up by the placing of material on top of the existing ground surface.

35.1.10 Grading means to bring an existing surface to a designed form by cutting, filling and/or smoothing operations.

35.1.11 Mined Lands means the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations, are located.

35.1.12 Minerals means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes or organic substances, and includes but is not limited to gravel resources in the areas riparian to the Trinity River and its tributary streams and creeks.

35.1.13 Mining Waste means the residual soil, rock, mineral, liquid, vegetation, mill tailings, equipment, machines, tools or other materials or property directly resulting from, or displaced by, surface mining operations.

35.1.14 On-site Construction means those earth material moving activities (such as excavation, grading, compaction, and the creation of fills and embankments) which are required to prepare a site for construction of structures, landscaping or other land improvements. Such activities are not deemed to be surface mining operations if the resulting excavations, fills, grades, or embankments are beneficially modified by such construction of structures, landscaping, or other land improvements. Excavations, fills, grades, or embankments that of themselves constitute engineered works such as dams, road cuts, fills, catchment basins, or levees are not considered to be surface mining operations. Earth material moving activities in areas either on or off-site where the resulting excavations, fills, grades, or embankments will not be beneficially modified by the construction of structures, landscaping or other land improvements, and that do not of themselves consist of engineered works are deemed to be

surface mining operations unless exempted under Section 35.3(b) of this Ordinance.

35.1.15 Operator means any person or entity engaged in surface mining operations, including any person or entity contracting with another person entity for the performance of surface mining operations.

35.1.16 Overburden means soil, rock, or other material that lies above a natural mineral deposit or in-between mineral deposits, before or after its removal by surface mining operations.

35.1.17 Permit means any formal authorization from, or approval by, the Tribe or its entities and agencies, the absence of which would preclude surface mining operations.

35.1.18 Person means, but shall not be limited to, an individual, trust, firm, company, corporation, partnership, association, agency, municipality, commission, department, or other entity.

35.1.19 Reclamation means a comprehensive process of land treatment and restoration that minimizes water quality degradation, riverbed or river flow alteration, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to under ground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health and safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization or other measures.

35.1.20 Reclamation Plan means the applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after enactment of this Ordinance, as required and described in Sections 35.5 and 35.6 of this Ordinance.

35.1.21 Reservation means the Hoopa Valley Reservation as it exists as of the date of enactment of this Ordinance or as it hereafter may be enlarged.

35.1.22 Resoiling means the process of artificially building or reconstructing a soil profile.

35.1.23 Subsoil means that part of the soil which is below the topsoil.

35.1.24 Topsoil means the upper part of the soil profile that is relatively rich in humus, which in the field of agronomy is known as the A-horizon of the soil profile.

35.1.25 Toxic Substance means any organic compound, certain metal cations, certain anions, and other inorganic substances, including biostimulants, which singly, or upon combining with other substances, create a condition that will inhibit or destroy the growth or function of any living organism.

35.1.26 Tribe means the Hoopa Valley Tribe acting through the Tribal Council and its authorized entities and programs.

35.2 ESTABLISHMENT OF INTERIM REVIEW COMMITTEE; DUTIES, FUNCTIONS, AND AUTHORITIES

35.2.1 There is hereby established an Interim Review Committee for purposes of carrying out the environmental review process, permit issuance, and reclamation plan review process established by this Ordinance. The Interim Review Committee shall consist of the Tribal Chairman or his representative, one member of the Tribal Council, the Water Quality Specialist from the Planning Department, a representative of the Fisheries Department, and a representative of the Office of Tribal Attorney, and such other persons as designated by the Council in writing.

35.2.2 The Interim Review Committee has authority to specify record keeping requirements which shall be adhered to by all permitted operators.

35.2.3 The Interim Review Committee shall administer mining and mineral development permits and review procedures, as set forth in this Ordinance.

35.2.4 Upon adoption and implementation of this Ordinance, the Review Committee shall establish a listing of categorically exempt projects; such list shall be subject to the concurrence of the Council, subject to annual review and revision, and shall be readily available to the interested public.

35.2.5 The Review Committee shall conduct an Environmental Assessment of any surface mining activity or any other non-exempt activity proposed for the Trinity River riparian area to determine its potential to affect, at a minimum, the river bed, river flow, fishery values, water quality, and ceremonial and cultural values and activities, and to determine whether an Environmental Impact Statement is necessary. No permit shall be issued, nor Reclamation Plan approved, for any activity that does not comply with the requirements of this Section.

35.3 SCOPE

(a) The provisions of this Ordinance shall apply to all proposed mining or mineral development activities within the Trinity River riparian area and elsewhere within the exterior boundaries of the Reservation, including those conducted by non-members of the Tribe or on privately owned lands, subject to exemptions pursuant to paragraph (b) of this section, including but not limited to:

(1) surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses, unless exempted by the Review Committee and Council under (b) below;

(2) all prospecting activities involving removal of soil or rock material, including operations

involving the reopening of existing mine pits, tunnels, or quarries;

(3) Sand and gravel operations.

(4) Any activities in the Trinity River riparian area with potential to affect the riverbed or river flow, ground or surface water quality, or fishery cultural or ceremonial values.

(b) Some projects may be exempted from the requirements of this Ordinance if the Interim Review Committee determines that no adverse environmental effects will occur due to the limited size or scale of a proposed project. Such exemptions may include but are not limited to:

(1) Excavations or grading conducted for farming, or onsite construction, or for the purpose of restoring land following a flood or natural disaster.

(2) Such other mining or excavation operations that the Review Committee and Council determine to be of an infrequent nature or insignificant impact, and which involve only minor surface disturbances;

(3) Categorically exempt projects as identified by the Review Committee pursuant to Section 35.2.4 of this Ordinance.

35.4 PERMIT REQUIREMENTS

(a) Any person who proposes to engage in surface mining operations as defined in this Ordinance shall, prior to the commencement of such operations:

(1) Apply for and obtain a valid permit from the Tribal Council, subject to the review and recommendations of the Interim Review Committee;

(2) Obtain approval of a Reclamation Plan, in accordance with the provisions set forth in Section 35.6 of this Ordinance.

(b) A fee, as established by the Review Committee and approved by the Council, for the permitted uses shall be paid to the Tribe at the time of filing.

(c) All submissions of a Reclamation Plan for approval shall be made on forms provided by the Interim Review Committee.

(d) Permit applications, any required environmental documents, and Reclamation Plan proposals must demonstrate compliance with applicable Tribal and federal regulations, including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations, and stream bed alterations.

(e) The applicant is responsible for compliance with applicable federal permit requirements and regulations.

35.5 RECLAMATION PLAN PURPOSE

(a) The basic purpose and objectives of the reclamation of mined lands are to ensure protection of fundamental tribal interests in the riverbed, river flow, water quality, and ceremonial and cultural values, and to provide for continued beneficial alternative uses of mined and reclaimed lands. The purpose of the reclamation plan is to provide a program by which to attain these objectives.

(b) New mining operations offer the greatest opportunity for planning and designing for, and carrying out effective reclamation activities. In determining the degree or level of reclamation to be effected, the applicant shall consider a number of factors, including but not limited to those set forth in Section 35.6 of this Ordinance.

35.6 RECLAMATION PLAN REQUIREMENTS

(a) The applicant shall be responsible for preparing and submitting to the Review Committee a Reclamation Plan which, as a minimum, conforms to the requirements of this Ordinance; applicant shall also be responsible for making any revisions, modifications, or conditions for approval deemed necessary by the Review Committee and Council.

(b) At a minimum, the following factors shall be taken into account in determining the level, character, and detail of the reclamation plan design:

(1) The size and area of the proposed mined lands;

(2) The complexity of the operation and the manner and degree to which the mines are disturbed;

(3) The site potential for mineral and other uses;

(4) The environmental setting of the operation site and the effect that reclaimed site conditions may have upon the existing and future uses of surrounding lands;

(5) The effect that the proposed reclamation activity may have upon the site's remaining unmined resources and/or upon continued mining on adjacent lands;

(6) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site, including but not limited to:

(i) likelihood of direct contact with safety hazards or toxic substances;

(ii) potential for contamination of drinking water by toxic substances, due to groundwater or surface water contamination;

(iii)potential for public exposure to toxic substances in dust from ore pilings, tailings, waste piles, or other project-related sources.

(7) The potential for impacts to the riverbed, river flow, ground and surface water quality, fishery values, and ceremonial and cultural values and uses.

(c) The longevity of mining operations varies greatly. In some operations the reclaiming of mined areas will be undertaken concurrently with the mining of adjoining lands, whereas in many operations much of the reclamation can be effected only after the mining is completed. In those cases where concurrent reclamation is possible, the Review Committee shall require:

(1) a time table for commencing such operations;

(2) periodic submittal of updated progress reports for concurrent reclamation operations.

(d) The operator shall, in the Reclamation Plan, propose what the end condition of the site will be, and propose reasonable and practicable uses of the reclaimed site. Such proposals shall be in conformance with the policies and regulations contained herein, and with the policies and regulations of other applicable Tribal ordinances.

(e) Instructions for preparation of Reclamation Plans and Reclamation Plan Forms shall be provided by the Interim Review Committee..

35.7 REVIEW PROCEDURE

(a) The Interim Review Committee shall review the permit application and the Reclamation Plan and shall schedule a public hearing within 30 days of the filing of both the permit application and the Reclamation Plan, and all necessary environmental documents. Such public hearing shall be held by the Review Committee for the purpose of

consideration of the issuance of a permit for the proposed surface mining operation.

(b) As a condition of approval for a Permit or Reclamation Plan, or both, a schedule for periodic inspections of the site shall be established to evaluate continuing compliance with the Permit Reclamation Plan, and applicable regulations. The Review Committee may, however, conduct unannounced spot checks pursuant to the provisions of Section 35.10 of this Chapter.

35.8 PERFORMANCE BOND

Upon a finding by the Review Committee that a supplemental guarantee for the reclamation of the mined land is necessary, and upon the determination by the Review committee of the cost of the reclamation according to the Reclamation Plan, a surety bond, lien, or other security guarantee conditioned upon the faithful performance of actions as described in the Reclamation Plan shall be filed with the Review Committee. Such surety shall be executed in favor of the Hoopa Valley Tribal Council, and reviewed and revised, as necessary, biannually. Such surety shall be maintained in an amount equal to the cost of completing the remaining reclamation of the site as prescribed in the approved Reclamation Plan.

35.9 MINING AND RECLAMATION PRACTICES

The following subsections set forth minimum acceptable practices to be followed in mining and reclamation operations:

35.9.1 Soil Erosion Control

(a) The removal of vegetation and overburden in advance of mining shall be kept to the minimum.

(b) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion. This may include, but is not limited to covering stockpiles with netting,

canvas, or other materials to prevent detachment and transport loose material by water or wind.

(c) Erosion control facilities such as retarding basins, settling ponds, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(d) Grading and revegetation shall be designed to both prevent excessive erosion and to convey surface runoff to natural drainage devises or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent downward erosion of spillways when these basins have outlet to lower ground.

35.9.2 Water Quality and Watershed Control

(a) A method of compliance with the U.S. Environmental Protection Agency, Tribal, and other applicable regulations and requirements is hereby incorporated into the review process under this Ordinance.

(b) Settling ponds or basins shall be constructed downstream from areas of potential erosion at operations where they are necessary to protect water quality and comply with tribal water quality regulations, or where they will provide significant benefit to water quality.

(c) Temporary stream or watershed diversion shall be restored in final reclamation in a manner which will prevent undue erosion and water quality degradation.

(d) At sites where ground-water recharge is a significant consideration, operations shall be conducted to substantially prevent siltation of recharge areas.

(e) Infiltration of toxic substances into groundwater basins shall be prevented where such basin may contribute to domestic or agricultural water supplies.

35.9.3 Flood Control

Compliance with the applicable requirements of other agencies in addition to the Review Committee, including the Tribal Fisheries Department and federal flood control agencies is required when operations occur in or near streams and other drainage channels.

35.9.4 Protection of Fish and Wildlife Habitat

All reasonable measures shall be taken to protect the habitat of fish and wildlife, and to prevent alteration of the river channel and river flow. The Interim Review Committee and Fisheries Departments shall prescribe measures as deemed necessary to better protect such resources.

35.9.5 Disposal of Mine Waste Rock and Overburden

(a) Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.

(b) Stable slopes at angle of repose shall be permitted as a final slope.

(c) Old equipment and other similar inert mining wastes shall be removed or buried.

(d) Toxic material shall be removed or protected to prevent leaching.

(e) Under some conditions, covering of part or all of the mine waste piles with overburden, fine waste and soil may be desirable.

(f) Where reasonable choices exist, dumps shall be located in least visible location. "Controlled placement" of this material with relationship to topography, hydrology, and end use features can greatly enhance the results of a reclamation program.

35.9.6 Soil Salvage

(a) The salvage of existing topsoil is an important factor in revegetation and thus is a crucial part of the reclamation process.

(b) A detailed soil survey may be necessary to determine soil type, and soil chemistry. The complexity of such a survey will depend upon site geology, vegetation, areal extent, and post-mining uses.

(c) In areas of good soil development, topsoil is a valuable asset and should be segregated for future use in revegetation. In some areas, because of poor or very limited soil conditions, it may be impractical or impossible to salvage soil.

(d) When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material and weathered waste. A soil layer shall then be placed on this prepared surface.

(e) Mining operations that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining native materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

35.9.7 Final Slope Gradient

(a) The designed steepness and proposed treatment of the final slopes of the mined lands shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other pertinent factors.

(b) The maximum stable slope angle might range from 90# in a sound limestone, igneous rock, or similar hardrock to less than 20# in highly expansive clay. In all cases,

reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. The Review Committee may require an engineering analysis of the slope stability. Special emphasis on slope stability and design will be necessary when public safety or adjacent property may be affected.

35.9.8 Backfilling and Grading

(a) Most backfilling and grading is undertaken to store mine waste rock and overburden, to produce designed slopes, to establish drainage, or to raise the ground surface above the local water table. Any area mined to produce additional materials for backfilling and grading must also be included in the reclamation plan.

(b) Settlement of filled areas must be considered in all reclamation plans. Where probable ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice to avoid excessive settlement. Fill placement shall conform to local grading ordinances or, in their absence, the Uniform Building Code.

35.9.9 Revegetation

Before final revegetation is undertaken, the operator shall make use of the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the area. Native species are required wherever possible. Reclamation plans may also include development of screens and roadside plantings at mines currently in operation, where such screens and plantings are practicable and desirable.

35.10 AUTHORITY TO ENTER AND INSPECT PREMISES AND RECORDS

(a) In order to carry out the purposes of this Ordinance, any duly authorized representative of the Tribe, has the

authority to enter and inspect any property, premises, or facility involved in any mining or other activities on any lands within the exterior boundaries of the Reservation. Such inspection may include:

(1) Obtaining samples or soil, rock, vegetation, air, water, or other substances deemed necessary;

(2) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with applicable regulations, or health or safety hazards.

(3) Photographing any equipment, sample, activity, or environmental condition, provided that:

(i) the Review Committee shall notify the person whose operation was photographed prior to public disclosure of such photographs;

(ii) upon request of that person, the Department shall allow such person to inspect any such photograph prior to public disclosure to determine whether trade secret information would be revealed by the photograph.

(4) Reviewing and obtaining copies of required records.

(b) The Review Committee or Tribal Council on behalf of the Tribe are authorized to obtain from the Tribal Court a warrant for such entry and inspection if necessary, including for inspection of premises that may be located on lands privately owned by non-members of the Tribe.

35.11 ENFORCEMENT

The provisions of this Chapter shall be enforced by the Department of Public Safety and Emergency Services. It shall be an civil offense, for which a fine of not less than $100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe.

35.12 APPEALS AND JUDICIAL REVIEW

(a) Any person aggrieved by any act or decision of the Interim Review Committee or Council shall have the right to seek administrative review before the Review Committee, provided that any appeal or complaint must be filed within thirty (30) days after effective date of written decision. The Committee shall conduct a hearing on any appeal, and develop a decision record that is adequate for judicial review.

(b) Any person may seek judicial review of an order or decision by the Review Committee pursuant the rules of the Tribal Court. The Court shall sustain the decision of the Review Committee if based on substantial evidence in the record before the Review Committee. The Court shall issue any and all orders reasonably necessary to carry out the provisions of this Ordinance, and may assess civil fines for conduct of operations in violation of permit or reclamation plan terms and conditions. The Court may also order the impoundment of equipment used in persistent or serious violation of the requirements of this Ordinance.

35.13 SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

35.14 SOVEREIGN IMMUNITY PRESERVED

Except as judicial review is authorized in this Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

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 seven (7) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held on this fourth (4th) day of June, 1992; that this Ordinance was duly adopted by a vote of six (6) in favor, none (0) opposed, and none (0) abstaining; and that since its approval this Ordinance has not been rescinded, amended, or modified in any way.

DATED THIS 4TH DAY OF JUNE, 1992.

_____

DALE RISLING SR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____
CHRISTINA PHILLIPS, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

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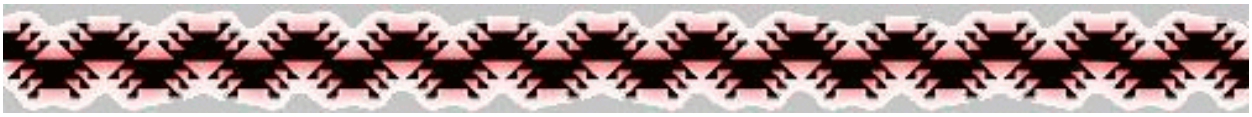
hvt ord. 3-92

TITLE 36 OF THE HOOPA TRIBAL CODE

PURPOSE: FORECLOSURE AND EVICTION ORDINANCE

ADMINISTRATIVE RECORD: Adopted in 1995 amended October 6, 1997



FORECLOSURE AND EVICTION ORDINANCE

of the
Hoopa Valley Tribe
Hoopa Valley Indian Reservation

Title 36
Hoopa Valley Tribal Code

ORDINANCE NO.: 5-95

DATE APPROVED: Amended October 6, 1997

SUBJECT: **FORECLOSURE AND EVICTION ORDINANCE**

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 in section 8 of Pub. L. 100-580, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law; and

WHEREAS: The Tribal Council has concluded that it is necessary to exercise tribal authority over foreclosure and eviction actions within the exterior boundaries of the Hoopa Valley Reservation, and over other activities in order to protect tribal property interests and the public health and safety; and

WHEREAS: Pursuant to the review process set forth in LPA Section 6.3, the Council concludes that it is now appropriate to enact said Ordinance on a permanent basis, as modified by departmental comments and legal review developed during the review process.

THEREFORE BE IT NOW ORDAINED THAT: Pursuant to Section 6.3 of the Legislative Procedures Act, and the tribal constitutional and legal authorities recited herein, the Tribal Council hereby enacts the attached Foreclosure and Eviction Ordinance, in order to protect the fundamental tribal values identified in Article IX § (l) thereof and the Tribe's sovereign governmental authority.

BE IT FURTHER ORDAINED THAT: The Tribal Council hereby reaffirms its intent that the provisions of this Ordinance be

enforceable against Tribal members and non-members and upon private lands within the Reservation, and accordingly the Tribal Chairman is authorized and directed, in consultation with the Office of Tribal Attorney, to transmit this Ordinance to the Bureau of Indian Affairs for any review and approval that may be necessary, and to seek the support of that agency, if necessary, for this assertion of tribal jurisdiction.

BE IT FURTHER ORDAINED THAT: It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance, and to oppose any assertion of jurisdiction by Humboldt County, or by the State of California or any of its agencies, that purports to regulate the matters herein regulated by tribal authority.

TITLE 36

SECTION I. SHORT TITLE, FINDINGS, AND PURPOSE

1.1 Short Title. This Ordinance shall be known as the **Foreclosure and Eviction Ordinance** of the Hoopa Valley Tribe.

1.2 Findings. The Tribal Council hereby finds that adequate and clear foreclosure and eviction procedures are a necessity for conducting tribal business. Some tribal entities, as part of their ongoing duties, must act as a landlord or a creditor or both. Some federal programs require foreclosure and eviction procedures as a condition of funding. A single uniform code would enhance the operations of tribal government.

1.3 Purpose. The purpose of this Ordinance is:

A. To promote greater understanding between landlords and tenants about their respective rights; and,

B. To preserve and protect the rights of landlords and tenants in the peaceable use of their property.

SECTION II. SCOPE

2.1 The provisions of this Ordinance shall apply to all real or personal property, held in trust or held in fee, by members of the Tribe or by non-members, within or without the exterior boundaries of the Reservation.

SECTION III. SECURED TRANSACTION DEFINITIONS

3.1 **Debtor.** A "debtor" is the person who owes payment or other performance of an obligation secured, whether or not such person owns or has rights in the collateral. If the debtor and the owner of the collateral are not the same person, the term refers to the owner in any provision of the governing law dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context requires. The term "debtor" includes a seller of accounts or chattel paper.

3.2 **Secured Party.** A "secured party" is a lender, seller or other person in whose favor there is a security interest. The term includes a person to whom accounts or chattel paper have been sold. When the holders of obligations issued—under an indenture of trust, equipment trust agreement, or the like—are represented by a trustee or other persons, their representative is the secured party.

3.3 **Security Agreement.** A "security agreement" is an agreement which creates or provides for a security interest.

3.4 **Security Interest.** A "security interest" is an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a buyer of accounts or chattel paper.

3.5 **Purchase Money Security Interest.** A "purchase money security interest" results when a security interest is taken or retained by the seller of the collateral to secure all or part of its price. It also results when a security interest is taken by a person who, by making advances or incurring an obligation, gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

3.6 **Collateral.** "Collateral" is property subject to a security interest. It includes accounts and chattel paper which have been sold.

3.7 **Proceeds.** The term "proceeds" includes whatever is received on the sale, exchange, collection, or other disposition of collateral proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to someone other than a party to the security agreement. Money, checks, deposit accounts, and the like are termed "cash proceeds." All other types of proceeds are "noncash proceeds."

SECTION IV. FORECLOSURE OF SECURED TRANSACTIONS

4.1 **Self-Help Remedies Eliminated.**

A. All self help remedies for the recovery of real or personal property secured to insure payment of obligations are hereby declared unavailable except as otherwise specifically provided herein.

B. This section shall not be construed to prevent the voluntary surrender of secured property to a creditor by a debtor, provided, however, that such voluntary surrender occurs at the time of such surrender. All contractual provisions for such executed in advance of the need shall be of no effect.

4.2 **One Action to Foreclose Security Interest.**

A. There can be but one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on non-trust real or non-trust personal property situated or located within the boundaries of the Hoopa Valley Indian Reservation, on trust property, or land located within Hoopa Indian Country, which action must be in accordance with the procedures outlined herein.

B. Notwithstanding the provisions next above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance may be foreclosed, at the election of the holder thereof, for the installment or installments due or other charges which are to be paid by the mortgagor, and the Court may by its judgment, direct the sale of the encumbered property or the equity of the defendants therein, or so much thereof as may be necessary to satisfy the amount

due, and such encumbrance shall otherwise remain in full force and effect and the holder thereof shall the right to foreclose on the balance or any part thereof.

4.3 **Action to Foreclose Interest in Personal Property.**

A. An action to foreclose a security interest in non-trust personal property shall be commenced by filing a complaint in the Hoopa Valley Tribal Court.

B. The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property, or so much thereof as may be necessary, and direct the application of proceeds of the sale to the payment of the costs of the Court, the expenses of such sale and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the court can direct entry of a judgment for such balance against the defendant or defendants.

C. If it is reasonably made to appear after the complaint is filed that the collateral is in imminent danger of being concealed, removed from the Reservation, or otherwise disposed of in a manner inconsistent with the security interest, the Court may order the person in possession or control over such property to appear and show cause why such property should not be taken into the custody of the Court or other security provided to prevent the improper disposal of the collateral.

D. Sale of property under the Courts judgment shall be conducted in the manner provided for in such judgment or any subsequent court order.

4.4 **Action to Foreclose Mortgage.**

A. An action to foreclose a mortgage or other security interest in trust and non-trust real property shall be commenced by filing a complaint of foreclosure in the Tribal Court.

B. A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property as a result of a proper

recordation of such interest in Tribal, federal or county records, or any or all, as applicable. No interest of the Hoopa Valley Tribe, whether recorded or not, my be affected in any action in which the Tribe is not a party by its own affirmative action or consent. Interests in the secured property which are not recorded may be affected as if recorded and the owner thereof made a party.

C. The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property or so much thereof as is necessary, and direct the application of the proceeds to the costs of court, the expenses of sale, and to the amount due the plaintiff, except that in all cases where the mortgage secures a loan provided pursuant to Section 184 Indian Housing Loan Guarantee Program, said mortgage shall be satisfied before any other obligations are satisfied (other than any Tribal leasehold taxes against the property assessed thereto after the property was mortgaged). If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court can direct the entry of a judgment for such balance against the defendant or defendants as provided below.

4.5 **Sale of Property—Notice.**

A. Before the sale of real property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows: by posting written notice of the time and place of the sale giving a specific legal and general description of the property for 20 days in at least four public places on the Reservation, including one copy posted at the Tribal Offices in the Neighborhood Facilities Building, one copy posted on the property to be sold, and one copy posted at the Tribal Court.

B. If ever there is a sale of property conducted without at least good faith, substantial compliance with the notice requirements as set forth herein, said sale may be declared void and of no effect by the Tribal Court.

4.6 **Conduct of Sale.**

A. All sales of property under decrees of foreclosure and orders for sale must be made at auction conducted at the Tribal Court, to the highest bidder between the hours of 9:00 A.M. and 5:00 P.M. on any tribal business day.

B. Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

C. The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

D. If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third person claims an interest in part of the property sold, he may require that such part be sold separately.

E. If a purchaser refuses to pay the amount bid by him for the property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder and if any loss be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

4.7 **Return on Sale.**

A. The tribal law enforcement officer conducting the sale shall make a return thereon to the Tribal Court reciting all of the details of the sale.

B. A certified copy of such return together with a certified copy of the Court's order directing said sale shall be filed by the purchaser in the appropriate county recorder's office, the tribal real property office, and in the real property office of the nearest Bureau of Indian Affairs' Agency or Area Office.

4.8 **Title to Real Property.**

A. On a sale of real property, the purchaser is substituted to, and acquires all of the right, title, interest and claim of the judgment debtors thereto.

B. The property so acquired is subject to redemption as provided herein.

C. At the time payment for the sale is made, the officer conducting such must give to the purchaser a Certificate of Sale containing: (a) the name of the purchaser; (b) the name of the judgment debtor; (c) the particular legal description of property sold; (d) the price bid for each particular lot or parcel (if applicable); (e) the total price paid; and, (f) a statement that the sale is subject to redemption.

D. The officer conducting the sale shall provide the purchaser with sufficient certified copies of the Certificate of Sale that the purchaser may file one copy with the office of the Recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.

E. If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, should be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may receive the price paid plus interest at the rate of 8% per annum from the judgment creditor.

F. If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, fails to obtain possession of the property as a consequence of irregularity in the proceedings related to the sale, or because the property sold was not subject to execution and sale, the Tribal Court must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum, and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

4.9 **Redemption.**

A. All real property sold as provided herein is subject to redemption, in the manner hereinafter provided, by the judgment debtor or his successor in interest in the whole or any part of the property.

B. The judgment debtor or redemptioner may redeem real property from the purchaser within six months after the sale by paying the purchaser for the amount of his purchase together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or reasonable additional costs which the purchaser may have paid thereon after the date of purchase.

C. Written notice of redemption must be given to the tribal real property office and a duplicate filed with the office of the County Recorder, and the real property office of the local Bureau of Indian Affairs' Agency or Area Office.

D. If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.

E. Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a Certificate of Redemption acknowledged and proved before a Notary Public authorized to take acknowledgments of conveyances of real property. Copies of such certificates shall be filed at the tribal real property office, the appropriate county recorder's office and the Bureau of Indian Affairs real property offices.

F. If no redemption is made within six months, the purchaser or his assignee is entitled to a conveyance by means of a Deed to be issued upon the order of the Tribal Court. Such Deeds shall be recorded at the tribal real property office, the appropriate county recorder's office, and the Bureau of Indian Affairs' real property offices. Such deed shall be prepared by the tribal real property office.

G. Redemption payment must be made in U.S. currency or by certified or Cashier's check and be made to the purchaser or his successor.

H. A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem 1) a certified copy of the judgment and order of sale under which he claims a right to redeem, and 2) his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.

I. Until expiration of the time for the redemption, the Tribal Court may restrain the commission of waste or changing the character of the property, but it shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or use it in the ordinary course of husbandry, or to make necessary repairs thereon, or to make a reasonable use of the wood and timber thereon for the benefit of the property or the possessor in his reasonable enjoyment of the property.

J. The purchaser from the time of sale until redemption is entitled to receive from the tenants in possession, the rents of the property sold, or the value of the use and occupation thereof. However, when any rents or profits have been received by the purchaser, or his assigns from the property thus sold prior to redemption, the amount of such rents and profits shall be a credit on the redemption money to be paid. If the judgment debtor or person entitled to redeem, prior to the expiration of the time for redemption, demands of the purchaser or his assigns a written and verified statement of the amount of such rents and profits received, and assessments or costs paid by the purchaser, the period of redemption is extended until five days after such sworn statement is received by the redemptioner. If such purchaser or his assign fails or refuses for a period of one month to give such statement, the redemptioner may, within 60 days of such demand, bring an action in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days after the final determination of such action, the right of redemption is extended to such redemptioner.

K. If the purchaser of real property sold pursuant to sale, or his successor in interest be evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal

or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at the sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the Tribal Court must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at sale, with interest thereon from the time of payment at the same rate that the original judgment was for; and the judgment so revived has the same force and effect as would the original judgment of the date of revival and no more.

4.10 **Surpluses and Deficiencies from Sales.**

A. If there remains surplus money remaining after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds shall be distributed by the Tribal Court to the judgment debtor or other person entitled thereto.

B. A deficiency judgment may be entered by the tribal Court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of court and of the sale exceed the reasonable value of the property at the time of sale. The Tribal Court is not bound by the price for the property received at the sale but my take evidence to determine the actual reasonable value.

SECTION V. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY - EVICTIONS

5.1 **Definitions.**

A. **Forcible Entry.** A person commits a "forcible entry" whenever he either:

(1.) Breaks open or by any other type of unauthorized opening of the doors, windows, or other parts of a house or other residential dwelling or by fraud, intimidation or stealth, or by any kind

of violence or circumstances of terror, enters upon or into any real property; or

(2.) After entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in actual possession.

B. **Forcible Detainer**. A person commits a "forcible detainer" whenever he:

(1.) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(2.) In the nighttime or in the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to the former occupant. The occupant of real property within the meaning of this subsection is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such property.

C. **Unlawful Detainer**. A person commits an "unlawful detainer" if, being a tenant of real property with a term of less than his life, he either:

(1.) Continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specified term or period, or by express or implied contract, whether written or parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

(2.) Having leased or rented property for an indefinite time with monthly or other periodic rent reserved, he continues in possession thereof in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period, or in cases of tenancies at will, where he remains in

possession of such premises after the expiration of a notice of not less than five days; or

(3.) When he continues in possession, either in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises shall have remained uncomplied with a for a period of three days; or

(4.) When he assigns or sublets the leased or rented property contrary to the covenants in the lease or contract, or commits or permits waste thereon, or when he sets up or carries on thereon any unlawful business, or when he suffers, permits or maintains on or about said premises any nuisance and remains in possession after service upon him of a notice to surrender the premises within three days; or

(5.) Continues in possession in person or by subtenant, after a neglect or failure to perform any material condition or covenant of the lease or rental agreement under which the property is held, other than those hereinbefore mentioned, and after notice in writing requiring in the alternative the performance of such conditions or covenants or the surrender of the property served upon him, and, if there is a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplied with for five days after service thereof. Within the five-day period, any subtenant, or mortgagee of the term, or other person interested in the continuance of the terms may perform such condition or covenant and thereby save the lease or agreement from forfeiture, unless such condition or covenant cannot then be performed or cannot be performed by anyone except the original tenant. If the broken covenant or condition is not capable of remedial performance after its breach, the required notice need not list such performance as an alternative.

5.2 **Self Help Remedies Forbidden.**

Except in the case where a person in possession voluntarily surrenders such possession to another claiming a paramount right to such possession, all self help remedies to recover possession of real property are forbidden except as otherwise provided herein.

5.3 **Notices—How Served.**

The notices required by the preceding section may be served either:

A. By delivering a copy to the tenant personally; or

B. If he is absent from his place of residence, or from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy thereof through the mail addressed to the tenant at his place of residence or place of business; or

C. If such place of residence or business cannot be ascertained or a person of suitable age or discretion cannot be found there, then by fixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the leased property is situated.

D. Service on a subtenant may be made in the same manner.

5.4 **Action to Regain Possession.**

A. The Tribal Court shall have jurisdiction to hear and decide actions to recover possession of both trust and non-trust property as a result of an alleged forcible entry, forcible detainer or unlawful detainer in an accelerated manner as provided herein. Any other action to regain possession of property may at the discretion of the judge, but need not, be handled in an accelerated manner as provided herein.

B. In any accelerated proceeding allowed herein, the Court shall endorse on the summons the number of days within which the defendant has to answer, which shall not be less than three nor more than twenty days from the date of service. The time for reply to a

counterclaim, if any, shall be deemed likewise shortened.

C. At the close of the pleadings, the Court may advance hearing the matter on its trial calendar.

D. The plaintiff's complaint, in addition to setting forth the facts and allegations on which he seeks to recover, may also set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefore or compensation for the occupation of the premises, or both. When unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of such rent owed.

E. At the trial or any proceeding for forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in the actual possession of the premises in question or was entitled to the possession at the time of the forcible detainer.

F. In cases of tenancy of agricultural land where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord or his successor in estate, the tenant shall be deemed to have the permission of the landlord or his successor in estate to hold over for a full year under the same terms and conditions as the original tenancy, and such tenant shall not be guilty of an unlawful detainer for such period by reason of his holding over.

G. The remedies available herein shall be available to a tenant to regain possession from a subtenant in appropriate cases.

H. No person other than the tenant of the premises and subtenant if there is one in actual occupation of the premises at the time the action is commenced need be made a party defendant. Any person entering into possession with the consent of the tenant after an action is commenced for forcible entry or forcible or

unlawful detainer shall be bound by such action, whether made a party or not.

5.5 **Judgment.**

A. If at trial, whether with or without a jury, the finding is in favor of the plaintiff and against defendant, judgment shall be entered for the restitution of the premises to the plaintiff.

B. In a proceeding for unlawful detainer for neglect of failure to perform any condition or covenant under a lease or agreement under which property is held, or after default of the payment of rent, the judgment shall declare the forfeiture of such lease or agreement.

C. At trial, the finder of fact, whether the jury or the judge without a jury, shall also assess damage caused to the plaintiff by the forcible entry or forcible or unlawful detainer, including damage for waste by the defendant during the tenancy, if proved, and shall also find the amount of rent due if such is in issue.

D. When the action is for unlawful detainer after defaulting in the payment of rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until five days after the entry judgment, within which time the tenant or any subtenant, or other party interested in the continuance of the term may pay into the court of the landlord the amount of the judgment and costs and thereupon that portion of the judgment shall be satisfied and the tenant's estate shall be restored. However, if such payment is not made within five days, the judgment may be enforced in its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately.

5.6 **Time for Appeal.**

A. The time in which an appeal, if any, shall be taken from an action for forcible entry or forcible or unlawful detainer shall be ten days and the appellate court may, but need not, allow expedited handling of such appeal.

B. Appeals in other actions to recover possession of real property shall be handled in the usual manner.

SECTION VI. SEVERABILITY

6.1 If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

SECTION VII. SOVEREIGN IMMUNITY PRESERVED

7.1 Nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

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 seven (7) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held on this 6th day of October, 1997; that this Ordinance was duly adopted by a vote of six (6) in favor, none (0) opposed, and none (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 6th day of October 1997.

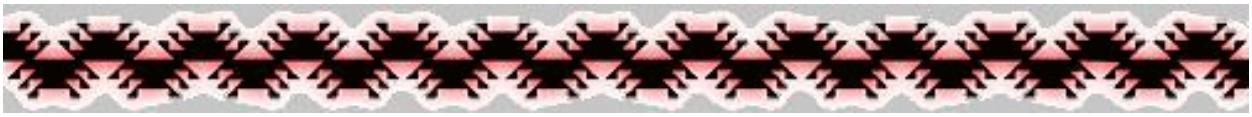
_____
DUANE SHERMAN, SR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____
DARCY BALDY, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL

TITLE 37 OF THE HOOPA TRIBAL CODE

PURPOSE: PROHIBITING THE DISCHARGE OF POLLUTANTS

ADMINISTRATIVE RECORD: August 3, 1995



TITLE 37
POLLUTANT DISCHARGE PROHIBITION ORDINANCE
OF THE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 3-95

DATE APPROVED: August 3, 1995

SUBJECT: PROHIBITING THE DISCHARGE OF POLLUTANTS IN THE HOOPA VALLEY INDIAN RESERVATION.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified and confirmed by Congress in 1988 in Section 8 of Public Law 100-580, and Article V of this Constitution establishes that the Hoopa Valley Tribal Council is the governing body of the Tribe, and under Article IX, the Council is authorized to: enforce the protection of Tribal property, wildlife, and natural resources, Section 1 (e); safeguard and promote the safety and general welfare of the Tribe and the Reservation community, Section 1 (l); and

WHEREAS: Prohibiting the discharge of pollutants in the Reservation is consistent with the goals of the Hoopa Valley Tribe and the Federal Government for the protection and enhancement of the quality of the waters of the Reservation, and

WHEREAS: The Tribal Council has concluded that it is necessary to exercise Tribal authority over wellhead protection within the exterior boundaries of the Hoopa Valley Indian Reservation, and over other activities in order to protect fundamental Tribal ceremonial, property interests, water quality, and the public health and safety; and

THEREFORE BE IT NOW RESOLVED THAT: It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance and the Water Quality Control Plan; continue technical and legal efforts pertaining to Trinity and Klamath River water rights and flow allocations; monitor off

Reservation waters which flow into the Reservation for pollutants; and to coordinate with the off-reservation jurisdiction of the North Coast Regional Water Quality Control Board, State Water Quality Control Board, or the State of California or any of its agencies, with regard to matters herein regulated by the Tribal authority.

BE IT FURTHER RESOLVED THAT: The Tribal Council hereby reaffirms its intent that the provisions of this Ordinance be enforceable equally against Tribal members, non-members of the Tribe and upon private lands within the exterior boundaries of the Reservation, and accordingly the Tribal Chairman is authorized and directed, in consultation with the Office of Tribal Attorney and the Planning Department, to transmit this Ordinance to the Bureau of Indian Affairs, Indian Health Service, North Coast Regional Water Quality Control Board, Humboldt County Board of Supervisors, Inter Tribal Fish and Water Commission, Karok Tribe, Yurok Tribe, Klamath River Task Force, Trinity River Task Force, and the Environmental Protection Agency, and to seek the support of those agencies through a Memorandum of Agreement, Memorandum of Understanding, or Cooperative Agreement, if appropriate for this important assertion of Tribal jurisdiction.

BE IT FURTHER RESOLVED THAT: The Tribal Council hereby reaffirms its previous decisions in Resolutions 81-80, 81-90, 81-91, 81-93, and 94-19; and that it is the intent of the Hoopa Tribe to prohibit the commercial use of herbicides, pesticides, and insecticides within the exterior boundaries of the Reservation unless specifically exempted; and to oppose the use of such chemicals outside the exterior boundaries of the Reservation within watersheds affecting Tribal resources.

BE IT FURTHER RESOLVED THAT: Under the authority contained in the Constitution of the Hoopa Valley Tribe, the Hoopa Valley Tribal Council hereby enacts this Ordinance prohibiting the discharge of pollutants in the Hoopa Valley Indian Reservation,

Section 1. SHORT TITLE, FINDINGS, AND PURPOSE

1.1 Short Title: This Ordinance shall be known as the **Pollutant Discharge Prohibition Ordinance** of the Hoopa Valley Tribe.

1.2 Findings: The Hoopa Valley Tribal Council hereby finds as follows:

(A) Since time immemorial, the Trinity River, its tributary streams, the streambeds thereof, and the riparian areas adjacent thereto, have been natural resources of the most profound significance to the Hoopa Valley Tribe, and Hupa people have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.

(B) The people of the Hoopa Valley Tribe have a primary interest in the protection, control, and conservation of the water resources which flow into and through the Hoopa Valley Indian Reservation, and the quality of such waters must be protected to insure the health, economic, aesthetic, and cultural well-being of the Hupa People.

(C) Various sites along the Trinity River are or may be contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were authorized without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may, if not properly contained and cleaned up, pose significant risks to water quality and public health.

(D) The Tribal Council hereby finds that wellhead protection is a pro-active approach to managing public groundwater supplies focusing on preventing contaminants from entering recharge areas to public water supply wells. Protecting wellheads involves: knowing the location and boundaries of the recharge area; identifying any potential sources of contamination in the recharge area; controlling those potential sources to prevent the release of contaminants; and, controlling future land use in the recharge area to prevent activities which are known to threaten groundwater quality.

(E) Pursuant to federal law as determined by the US Supreme Court in such cases as Montana v. United States, 450 US 544 (1981), the Hoopa Valley Tribe possesses inherent sovereign authority to regulate on-Reservation pollution discharges that affect fundamental Tribal interests and the public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the Reservation.

(F) Under 1988 amendments to the Clean Water Act, 33 U.S.C. 1377, Indian Tribes are entitled to be certified by the US Environmental Protection Agency as authorized to exercise exclusive jurisdiction (Tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Trinity and Klamath Rivers, that also flow through other jurisdictions.

(G) Regulation or elimination of all discharges of pollutants into the waters of the Hoopa Valley Indian Reservation is necessary at this time in order to maintain the quality of those waters for their beneficial uses by members of the Hoopa Valley Tribe and residents of the Reservation.

(H) Such protection of Reservation waters is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption, and implementation of this Ordinance.

1.3 Purpose: The purpose of this Ordinance is to exercise comprehensive Tribal regulatory authority over all surface and groundwater matters, and to protect fundamental Tribal cultural, ceremonial, religious, fisheries, seasonal residential, public health and safety, and water quality issues by ensuring adequate drinking water, protecting beneficial uses, prohibiting all point source discharges and restricting non-point source discharges of pollutants within the exterior boundaries of the Hoopa Valley Reservation.

1.4 Scope: The provisions of this Ordinance shall apply to all existing and proposed point and non-point pollution discharges into surface or ground waters, and to all activities which have the potential to affect cultural, ceremonial, religious, fisheries, seasonal residential, public health and safety, water quality, and other fundamental interests of the Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

(A) Landfills and open dumps;

(B) Storage of animal waste;

(C) Automobile graveyards and junkyards;

(D) Landfilling of sludge or septic system waste;

(E) Individual, residential, industrial, commercial, or agricultural sewage treatment facilities;

(F) Individual, residential, industrial, commercial, fire protection, or agricultural water control devices including but not limited to treatment facilities or systems, dams, reservoirs, ponds, pools, tanks, wells, pipelines, flumes, canals, and intake or diversion systems;

(G) Underground and above-ground liquid storage containers;

(H) Surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses;

(I) All prospecting activities involving removal of soil or rock materials, including operations involving the reopening of existing mine pits, tunnels, or quarries;

(J) Sand and gravel operations;

(K) Activities such as suction dredging, that have the potential to affect the riparian area, water quality, or channel morphology;

(L) Potential non-point source pollution problem areas including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification, and residential activities;

(M) Identified point source pollution problem areas such as, but not limited to, Copper Bluff Mine, Celtor Chemical Works, Cal-Pacific site, Meskat Masonite Mill.

(N) Application of herbicide, insecticide or other pesticide or toxic material or fertilizer for non-domestic use.

(O) The provisions of this Ordinance shall apply to all wellhead protection areas within the exterior boundaries of the Reservation, to all persons and businesses on the Hoopa Valley Indian Reservation, to all land, trust or fee, and to all activities in areas with the potential to affect water quality, public health and safety, and other fundamental interests of the Tribe.

Section 2. DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the following meanings:

"**Aquifer**" means any geologic formation capable of yielding a significant amount of potentially recoverable water.

"Beneficial uses" means all lawful uses of waters identified in the Water Quality Control Plan. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural, recreational uses, and use by fish and wildlife for habitat or propagation.

"Tribal Council" means the Hoopa Valley Tribal Council.

"**Designated use**" means a use that is specified in water quality standards as a goal for a waterbody segment, whether or not it is currently being attained.

"**Existing uses**" means all uses actually attained in the waterbody on or after November 28, 1975, whether or not they are explicitly stated as designated uses in the water quality standards or presently existing uses.

"Forest management activity" means any activity conducted on or directly pertaining to forest land or relating to growing, harvesting, or processing timber.

"Hazardous Materials" means 1. any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive, or chemically reactive. 2. Any substance named by EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or if otherwise emitted into the environment.

"Herbicide" means any chemical compound designed to control or destroy plants, weeds, or grasses.

"**Historical uses**" means all uses that have historical significance for the Hoopa Valley Tribe.

"Insecticide" means any compound designed or used to kill or control the growth of insects.

"**Impervious Barrier**" means any material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

"**Mining**" means any activities designed for the extraction of minerals.

"**Mitigation**" means a measure taken to reduce adverse impacts on the environment.

"**Non-point source**" means any pollution sources which are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet.

"**Person**" means any individual, corporation, partnership, association, agency, municipality, commission, or department, including the Hoopa Valley Tribe or other federally recognized Tribal government.

"**Pesticide**" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Also, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"**Point source**" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, culvert, well, discrete fissures, containers, rolling stock, concentration animal feeding operation, vessel or other floating craft.

"**Pollutant**" means any substance that will alter the quality of the waters of the Reservation.

"**Potential uses**" means all uses attainable in the waterbody, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

"**Quality of the water or waters**" means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

"**Reservation**" means all land, air, and water located within the exterior boundaries of the Hoopa Valley Indian Reservation.

"**Toxic Materials**" means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

"**Recharge Area**" means any areas that collects precipitation or surface water and carries it to aquifers. Recharge areas may include areas designated as wellhead protection areas.

"Variance" means an authorized written permission for a delay or exception in the application of a given law, ordinance, or regulation.

"Waste" includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man's activities including producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

"Waters of the Reservation" or **"Reservation waters"** means any water, surface or underground, contained within, flowing through or bordering upon the Hoopa Valley Indian Reservation or any portion thereof.

"Water Quality Control Plan" is a document designating or establishing for the waters within a specified area (1) beneficial uses to be protected, (2) water quality objectives, and (3) a program of implementation needed for achieving and maintaining water quality objectives.

"Water Quality Criteria" means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

"**Wellhead protection area**" means the surface and subsurface area surrounding a water well or well field, supplying a domestic water system, through which contaminants are reasonable likely to move toward and reach such water well or well field.

Section 3. ESTABLISHMENT OF DUTIES, FUNCTIONS, AND AUTHORITIES

3.1 Tribal Planning Department: the Tribal Planning Department of the Hoopa Valley Tribe, shall be responsible for:

(A) The designation of beneficial uses for the waters of the Reservation;

(B) Developing a Water Quality Control Plan for the waters of the Reservation. The Water Quality Control Plan shall contain sections pertaining to beneficial uses, water quality criteria, and anti degradation policy, where the Hoopa Valley Tribal Forest Management Plan will act as the antidegradation policy for all silvicultural activities on the Reservation;

(C) Identifying water bodies or sections of water bodies which do not support beneficial uses;

(D) Establishing and overseeing the Tribe's water quality monitoring, enforcement, and compliance programs;

(E) Establishing and overseeing the Tribe's point and non-point source permit review system;

(F) Conducting biannual assessments of the Tribe's Water Quality Control Plan for review by the Tribal Council.

(G) Develop regulation to further the purposes of this Ordinance

3.2 Riparian Review Committee: The Riparian Review Committee established under Tribal Code section 35.3, consisting of three persons the Water Quality Coordinator or his representative; Tribal Fisheries Director or his representative; and the Tribal Forestry Director or his representative, shall be responsible for:

(A) Reviewing the Water Quality Control Plan, Biannual Water Quality Assessments, National Pollution Discharge Elimination System Permits, other permits and review procedures, as set forth in this Ordinance;

(B) Specifying document submission and record keeping requirements to be adhered to by all potential dischargers or applicants for permits;

(C) Establishing criteria for the assessment of application and processing fees.

(D) Issuing permits, as required by this Ordinance, after approval by the Tribal Council. The Riparian Review Committee shall provide a recommendation with proposed findings on each permit for Tribal Council approval.

(E) Entering and inspecting any property, premises, or facility involved in any activity which may affect water

quality on any lands within the exterior boundaries of the Reservation. Such inspections may include but are not limited to:

(1) Obtaining samples of soil, rock, vegetation, air, water or other substances deemed necessary;

(2) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with beneficial uses, water quality criteria, anti degradation policy, applicable regulations, best management practices, or health or safety hazards;

(F) Obtaining from the Tribal Court a warrant or other order which may be necessary to carry out its responsibilities under this ordinance.

(G) Reviewing and recommending regulation for Tribal Council approval to further the purposes of this ordinance; following notice and hearings or written opportunity for public comment.

3.3 Department of Public Safety and Emergency Services: The provisions of this Ordinance shall be enforced by the Department of Public Safety and Emergency Services. Any Tribal Law Enforcement Officer, or any person officially appointed by the Hoopa Valley Tribal Council in consultation with the Director of the Department of Public Safety may issue the following for violations:

(A) Cease Orders or Citations: Upon determination that any person is discharging or causing to be discharged or is about to discharge into any Reservation waters, directly or indirectly, any pollutant which constitutes a violation of this Ordinance, a Cease Order or Citations will be served.

(B) It shall be a civil offense, for which a fine of not less than $100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this ordinance.

3.4 Tribal Court: The Hoopa Valley Tribal Court shall have jurisdiction of all cases and controversies arising under this ordinance.

(A) Upon failure of any person to comply with provision of this Ordinance, the Riparian Review Committee, by and through an attorney, may petition the Tribal Court for an injunction or other order requiring the person to comply herewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines as the facts may warrant and at a minimum to cover all clean-up and administrative costs;

(B) Any person who in violation of this ordinance discharges any pollutant into the waters of the Reservation shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the waters of the Reservation and restore the quality of the waters of the Reservation to their condition as they existed immediately prior to the discharge.

Section 4. PERMITTING

4.1 Permits Required: Any person who intends to alter or enlarge an existing activity described in section 1.4 of this ordinance, or to commence a new such activity, or who intends to cause or direct such alteration, enlargement or commencement of such activities, shall prior to alteration, or enlargement or commencement of such activities, apply for and obtain a valid permit from the Riparian Review Committee after approval by the Tribal Council.

(A) A processing and monitoring fee, as established by the Riparian Review Committee shall be paid to the Tribe at the time of filing. These fees may be used as an honorarium for the Riparian Review Committee.

(B) Five (5) copies of the application and any proposed mitigation plan shall be furnished by the applicant. Upon receipt of a permit application, the Riparian Review Committee shall transmit one copy to the Public Utilities District, and the Hoopa Valley Tribal Council for their written recommendations. Failure of the departments to respond in writing to the Riparian Review Committee within thirty (30) days of receipt shall indicate approval or no desire to comment by the department.

(C) Permit application shall indicate whether activities are proposed within certain wellhead protection areas consisting of aquifers or recharge areas.

(D) Except as otherwise provided in this Ordinance, permit applicants shall demonstrate that the proposed alteration, enlargement or new regulated activity will not adversely affect water quality and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water related natural characteristics of the site.

(E) Permit applications, any required environmental documents, and mitigation plan proposals must demonstrate compliance with applicable Tribal regulations including but not limited to those pertaining to water quality, hazardous substances, environmental impact evaluations, and riparian protection.

4.2 Categorical Exclusions: The Tribal Council may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for one or more of the following reasons:

(A) Naturally occurring pollution;

(B) Natural low-flow conditions;

(C) Irretrievable human-caused conditions;

(D) Substantial and widespread economic and social impacts.

Variances to established water quality objectives may be granted by the Riparian Review Committee after approval by the Tribal Council, only when the applicant satisfactorily demonstrates that:

(A) Water quality will not be permanently impaired;

(B) Public health will not be threatened;

(C) No significant adverse environmental effects will occur due to the limited size or scale of a proposed activity;

(D) A mitigation plan approved by Riparian Review Committee demonstrates that all discharges will be below established water quality standard as set forth in the Water Quality Control Plan before the expiration of the variance;

(E) The variance does not exceed one year from the date of issuance; and

(F) A 30 day public review period has passed with at least one public meeting.

Section 5. WELLHEAD PROTECTION

5.1 Establishment and Delineation of Wellhead Protection Areas: For the purpose of this Ordinance, there are hereby established within the exterior boundaries of the Hoopa Valley Indian Reservation certain wellhead protection areas, consisting of aquifers and/or recharge areas with minimum zoning radii of 100 feet for groundwater extraction of 1,000 gallons per day (gpd); 200 feet for 5,000 gpd; 300 feet for 20,000 gpd; 400 feet for wells pumping 100,000 gpd or more. These wellhead protection areas are delineated on a map at a scale of 1 inch to 1,000 feet and is entitled "Wellhead Protection Overlays." This map and additional wellhead protection criteria are to be included in the Water Quality Control Plan.

5.2 Wellhead Protection Boundary Disputes: If the location of the wellhead protection area in relation to a suspected prohibited use is in doubt, resolution of boundary disputes shall be through the Hoopa Valley Realty Department in conjunction with the Hoopa Valley Planning Department.

Disputants shall be afforded notice and an opportunity to be heard after prima facie showing by the Tribe as to the prohibited activities occurring in the wellhead protection area, the burden of proof shall be upon the owner(s) of the land in question to show where the boundary should properly be located. At the request of the owner(s), the Hoopa Valley Tribe may engage a professional engineer (civil or sanitary), hydrologist, geologist, or surveyor to determine more accurately the boundaries of the wellhead protection area with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

5.3 Use Regulation: In the wellhead protection area the following regulations shall apply:

5.3.1 Permitted Uses: The following uses are allowed within the designated wellhead protection area, provided that all necessary permits, orders, or approvals required by the Hoopa Valley Tribe are obtained:

(A) Conservation of soil, water, plants, and wildlife;

(B) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally allowed;

(C) Foot, bicycle and/or horse paths, and bridges;

(D) Normal operation and maintenance of existing water bodies and dams. Splash boards, and other water control, supply, and conservation devices;

(E) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing;

(F) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

5.3.2 Uses and Activities Requiring a Wellhead Protection Area Use Permit: The following uses and activities are permitted within the wellhead protection area only upon the issuance of a wellhead protection area use permit by the Riparian Review Committee after approval by the Tribal Council:

(A) Landfills and open dumps;

(B) Storage of liquid petroleum products, except when used for normal household use, outdoor maintenance, and the heating of a structure;

(C) Landfilling of sludge or septic system waste;

(D) Storage of chemicals unless such storage, including loading areas, is within a structure designated to fully contain any accidental spills;

(E) Storage of over 25 yards of animal manure;

(F) Automobile graveyards and junkyards;

(G) Installation of new private or public cesspools or septic tanks or other wastewater disposal system. However, the following activities are allowed:

(1) The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;

(2) The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);

(H) Industrial and commercial uses which discharge processed wastewater directly to septic tanks;

(I) Storage of commercial fertilizers, as defined in the Hoopa Valley Tribal Code, unless such storage is within a structure designed to fully contain any accidental spills;

(J) The use of septic system cleaners which contain toxic or hazardous chemicals, as defined by EPA guidelines;

(K) The application of pesticides, including herbicides, insecticides, fertilizers, fungicides, and rodenticides, for non-domestic or non-agricultural uses.

(L) Enlargement or alteration of existing uses that do not conform to this Ordinance;

(M) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use;

(N) The construction of ponds, pools or other water control devices.

(O) The construction of sewage disposal system that do not meet septic tank sizing, leachfield sizing and soil percolation requirements as will be established in the Water Quality Control Plan.

5.4 Procedures for Issuance of Wellhead Protection Area Use Permits: The applicant shall file five(5) copies of environmental documents, site plans, and all other attachments required by the Riparian Review Committee. The site plan shall be drawn of professional quality and at a proper scale as determined by the Riparian Review Committee. All additional submittals shall be prepared by qualified professionals. The site plan and all attachments shall at a minimum include the following information where pertinent:

(A) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous

materials to be used or stored within the wellhead protection area;

(B) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the hazardous materials coordinator of the Hoopa Volunteer Fire Department, fire chief of the Hoopa Volunteer Fire Department, and the Riparian Review Committee. The plan shall include:

(1) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean up procedures;

(2) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.

(C) Proposed down-gradient location(s) for groundwater monitoring well(s), should the Riparian Review Committee deem the activity a potential groundwater threat.

Section 6. Surface Water Quality Standards

The Water quality standards described in this section apply to all waters of the reservation. Water quality standards described in this section designate beneficial uses and water quality for the waters of the reservation. Any subsequent standards that may be described in the Water Quality Control Plan must be at least as stringent as the standards provided below.

6.1 Designated Uses: For the purpose of this Ordinance, there are hereby established the following designated uses for the waters of the Reservation. A waterbody that is not listed in Section 6.1.1 but that is a tributary to a listed waterbody shall be protected by the water quality standards that have been established for the nearest downstream waterbody listed in Section 6.1.1. Water bodies within the Reservation which do not have beneficial uses designated for them are assigned wildlife habitat designations. These wildlife habitat designations in no way affect the presence or absence of other beneficial use designations in these water bodies. Further classification will be based on the size of the waterbody and its historic and environmental significance. Further, if a waterbody has more than one designated use listed in Section 6.1.1, the applicable water quality criterion for a pollutant

is the most stringent of those prescribed to protect the designated uses of the waterbody

The codes used in Section 6.1.1 are as follows:

(A) Municipal and Domestic Supply (MUN) includes usual uses in community water systems and domestic uses from individual water supply systems.

(B) Agricultural Supply (AGR) includes crop, orchard and pasture irrigation, stock watering, support of vegetation for range grazing and all uses in support of farming and ranching operations.

(C) Industrial Service Supply (IND) includes uses that do not depend primarily on water quality such as mining, cooling water supply, hydraulic conveyance, gravel washing, and fire protection.

(D) Industrial Process Supply (PROC) includes process water supply and all uses related to the manufacturing of products.

(E) Groundwater Recharge (GWR) includes natural or artificial recharge for future extraction for beneficial uses.

(F) Hydropower Generation (POW) means used for hydropower generation.

(G) Cold Freshwater Habitat includes uses of water that support cold water econsystems including, but not limited to, preservation,or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.

(H) Water Contact Recreation (REC-1) includes all recreational uses involving actual body contact with water, such as swimming, wading, water-skiing, skin-diving, surfing, sport fishing, uses in therapeutic spas and other uses where ingestion of water is reasonably possible.

(I) Non-Contact Water Recreation (REC-2) includes recreational uses which involve the presence of water but do not require contact with water, such as picnicking, sunbathing, hiking, beach combing, camping, pleasure boating, hunting, and aesthetic enjoyment.

(J) Preservation of Areas of Special Biological Significance (BIOL) includes aquatic and wildlife refuges, ecological reserves and designated areas of special biological significance.

(K) Wildlife Habitat (WILD) provides a water supply and vegetative habitat for the maintenance of wildlife.

(L) Preservation of Threatened and Endangered Species (T&E) provides an aquatic habitat necessary, at least in part, for the survival of certain species established as being threatened and endangered species.

(M) Fish Migration (MGR) provides a migration route and temporary aquatic environment for anadromous or other fish species.

(N) Fish Spawning (SPWN) provides a high quality aquatic habitat especially suitable for fish spawning.

(O) Cultural (CUL) has religious, ceremonial, subsistence significance or provides a role in Hoopa Tribal culture.

6.1.1 Use Classification Key

The use classification key is as follows:

P = Potential Use
E = Existing Use
H = Historical Use
N/A = Not Applicable

Full protection will be afforded to existing, potential and historical uses of the Reservation waters.

	Inter								
Unit	State	MUN	AGR	IND	PROC	GWR	POW	COLD	REC-1
Mill Creek	X	E	E	P	H	E	P	E	E
Tish Tang	X	P	P	P	P	E	P	E	E
Pine Creek	X	P	P	N/A	N/A	E	P	E	E
Campbell Creek	X	E	E	P	P	E	H/P	E	E
Supply Creek	X	E	E	P	P	E	H/P	E	E
Trinity River	X	P	P	E	E	E	P	E	E
Klamath River	X	P	P	P	P	E	N/A	E	E
Soctish Creek		P	E	P	P	E	P	E	E
Hostler Creek		P	E	P	P	E	H/P	E	E
Hospital Creek		P	E	P	P	E	N/A	E	E
Captain John		E	E	P	P	E	N/A	E	E
Big Creek		P	P	P	P	E	P	E	E
Gibb Gulch		E	E	P	P	E	N/A	E	E

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Unit	Inter State	REC-2	BIOL	WILD	T&E	MGR	SPWN	CUL
Mill Creek	X	E	N/A	E	E	E	E	H
Tish Tang	X	E	N/A	E	E	E	E	H
Pine Creek	X	E	N/A	E	E	E	E	H
Campbell Creek	X	E	N/A	E	E	E	E	H
Supply Creek	X	E	N/A	E	E	E	E	H
Trinity River	X	E	N/A	E	E	E	E	E
Klamath River	X	E	N/A	E	E	E	E	H
Soctish Creek		E	N/A	E	E	E	E	H
Hostler Creek		E	N/A	E	E	E	E	H
Hospital Creek		E	N/A	E	N/A	N/A	N/A	H
Captain John		E	N/A	E	N/A	N/A	N/A	H
Big Creek		E	N/A	E	N/A	N/A	N/A	H
Gibb Gulch		E	N/A	E	E	E	E	H

6.2 General Water Quality Criteria: The following criteria set forth limits or levels of water quality characteristics for surface waters to ensure the reasonable protection of beneficial uses from degradation or unreasonable effect of point and nonpoint pollution which may be a result of any cause including agricultural, mining, construction, urban runoff, silviculture, salt water intrusion, hydrological modification and residential activities. The water quality standards included in this Ordinance are developed on a Reservation wide basis.

(A) Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

(B) Tastes and Odors: Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance or adversely affect beneficial uses.

(C) Floating Material: Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance, adversely affect beneficial uses, or degrade water quality.

(D) Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

(E) Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.

(F) Oil and Grease: Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

(G) Biostimulatory Substances: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

(H) Sediment: The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

(I) Turbidity: Turbidity shall not be increased more than twenty (20) percent above naturally occurring background levels.

(J) pH: The pH shall not be depressed below 7.0 nor raised above 8.5.

(K) Dissolved Oxygen: Dissolved oxygen concentrations shall not be reduced below the following minimum levels at any time.

Waters designated COLD 6.0 mg/1
Waters designated SPWN 7.0 mg/1
Waters designated SPWN during critical
spawning and egg incubation periods 9.0 mg/1

(L) Bacteria: The bacteriological quality of waters of the Reservation shall not be degraded beyond natural background levels. In waters designated for contact recreation (Rec1), the median fecal coliform concentration based on a minimum of not less than five samples for any 30-day period shall not exceed 50/100 mi, nor shall more than ten percent of total samples during any 30-day period exceed 400/100 ml.

(M) Temperature: The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Tribal Council that such alteration in temperature does not adversely affect beneficial uses.

At no time or place shall the temperature of any water be increased by more than 5^0 F above natural receiving water temperature.

(N) Toxicity: All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth anomalies, bioassays of appropriate duration or other appropriate methods as specified by the Riparian review Committee.

(1) The survival of aquatic life in surface waters subjected to a waste discharge, or other controllable water quality factors, shall not be less than that for the same water body in areas unaffected by the waste discharge, or when necessary for other control water that is consistent with the requirements for "experimental water" as described in Standard Methods for the Examination of Water and Waste Water, latest edition. As a minimum, compliance with this objective as stated in the previous sentence shall be evaluated with a 96-hour bioassay.

(2) Effluent limits based upon acute bioassays of effluents will be prescribed where appropriate, additional numerical receiving water standards for specific toxicants will be established as sufficient data become available, and source control of toxic substances will be encouraged.

(O) Pesticides: No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no bioaccumulation in pesticide concentrations found in bottom sediments or aquatic life.

(P) Radioactivity: Radionuclides shall not be present in concentrations which are deleterious to human, plant, animal or aquatic life nor which result in the accumulation of radionuclides in the food web to an extent which present a hazard to human, plant, animal or indigenous aquatic life.

Constituent	Maximum Contaminant Level, pCi/1
Combined Radium-226 and Radium-228	5
Gross Alpha particle activity (including Radium-226 but excluding Radon and Uranium)	15
Tritium	20,000
Strontium-90	8
Gross Beta particle activity	50

6.3 Water Quality Criteria for Toxic Pollutants: The potential benefits to human health of establishing toxic criteria include: (1) Reducing the potential health risks to persons eating fish contaminated with toxic pollutants, (2) reducing the potential health risks to persons drinking contaminated drinking water, and (3) reducing the potential health risks to swimmers from dermal exposure to contaminated surface waters. The criteria listed below consist of two measures. The "Water and Organisms" measure represents the maximum ambient water concentration for consumption of both contaminated water and fish or aquatic organisms and to all water designated MUN. The "Organisms Only" measure represents the maximum ambient water concentration for consumption of fish or other aquatic organisms and applies to all waters without an MUN designation. The exposure to concentrations above the following specified criteria shall not exceed a thirty (30) day duration. All concentrations are micrograms per liter (❍g/L), except asbestos which is million fibers per liter (MFL).

	Human Health (10^{-6} risk for carcinogens)		
	For consumption of:		
"Priority" Pollutant	**Water & Organisms**	**Organisms Only**	**Chemical CAS No.**
Acenapthene			83-32-9
Acrolein	320	780	107-02-8
Acrylonitrile	0.059	0.66	107-13-1
Aldrin	0.00013	0.00014	309-00-2
Anthracene	9,600	110,000	120-12-7
Antimony	14	4,300	7440-36-0
Arsenic	0.018	0.14	7440-38-2
Arsenic V			17428-41-0
Arsenic III			22569-72-8
Asbestos	7MFL		1332-21-4
Benzene	1.2	71	71-43-2
Benzidine			92-87-5
Benzo(a)Anthracene	0.0028	0.031	56-55-3
Benzo(a)Pyrene	0.0028	0.031	50-32-8

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	Human Health (10^{-6} risk for carcinogens)		
	For consumption of:		
"Priority" Pollutant	Water & Organisms	Organisms Only	Chemical CAS No.
Benzo(b)Fluoranthene	0.0028	0.031	205-99-2
Benzo(k)Fluoranthene	0.0028	0.031	207-08-9
BHC-Alpha	0.0039	0.013	319-84-6
BHC-Beta	0.014	0.046	319-85-7
BHC-Gamma	0.019	0.063	58-89-9
Bromoform	4.3	360	75-25-2
Cadmium			7440-43-9
Carbon tetrachloride	0.25	4.4	56-23-5
Chlordane			57-74-9
Chlorinated benzenes	488		
Chlorinated naphthalenes			
Chloroalkyl ethers			
Chlorobenzene	680	21,000	108-90-7
Chlorodibromomethane	0.41	34	124-48-1
Chloroethyl Ether (Bis-2)	0.031	1.4	111-44-4
Chloroform	5.7	470	67-66-3
Chloroisopropyl Ether (Bis-2)	1400	170,000	108-60-1
Chloromethyl Ether (Bis)	$3.6x10^{-7}$	0.000184	542-88-1
Chlorophenoxy Herbicide (2,4,5,-Tp)	10		
Chlorophenoxy Herbicide (2,4,-D)	100		
Chrysene	0.0028	0.031	218-01-9
Cyanide	700a	220000	57-12-5
DDT 4,4'	0.00059	0.00059	50-29-3
DDT metabolite: DDD	0.00083	0.00084	72-54-8
DDT metabolite: DDE	0.00059	0.00059	72-55-9
Dibenzo(a,h)Anthracene	0.0028	0.031	53-70-3
Di-n-butyl Phthalate	2,700	12,000	84-74-2
Dichlorobenzenes	400	2,600	25321-22-6
Dichlorobenzene,1,2-	2,700	17,000	95-50-1
Dichlorobenzene,1,3-	400	2,600	541-73-1
Dichlorobenzene,1,4-	400	2,600	106-46-7
Dichlorobenzidine	0.01	0.02	
Dichlorobenzidine,3,3-	0.04	0.077	91-94-1

	Human Health (10^{-6} risk for carcinogens)		
	For consumption of:		
"Priority" Pollutant	Water & Organisms	Organisms Only	Chemical CAS No.
Dichlorobomomethane	0.27	22	75-27-4
Dichloroethane,1,2-	0.38	99	107-06-2
Dichloroethylenes	0.0033	0.0185	25323-30-3
Dichloroehtylene,1,1-	0.057	3.2	75-35-4
Dichloropropane	87	14,100	26638-19-7
Dichloropropylene,1,3-	10	1,700	542-75-6
Dieldrin	0.00014	0.00014	60-57-1
Diethyl Phthalate	23,000	120,000	84-66-2
Dimethyl Phthalate	313,999	2,900,000	131-11-3
Dinitrophenol,2,4-	70	14,000	51-28-5
Dinitrophenol,2-,Methyl,4,6-	13.4	765	534-52-1
Dinitro-o-cresol,2,4-	13.4	765	
Dinitrotoluene,2,4-	0.11	9.1	121-14-2
Dioxin [2,3,7,8-TCDD]	1.3×10^{-8}	1.4×10^{-8}	1746-01-6
Diphenylhydrazine, 1,2-	0.04	0.54	122-66-7
Di-2-ethylhexyl Phthalate	1,500	50,000	
Endosulfan	0.93	2.0	115-29-7
Endosulfan-alpha	0.93	2.0	959-98-8
Endosulfan-beta	0.93	2.0	33213-65-9
Endrin	0.76	0.81	72-20-8
Endrin Aldehyde	0.76	0.81	7421-93-4
Ether, Bis(2-Chloroethyl)	0.031	1.4	111-44-4
Ether, Bis(2-Chloroisopropyl)	1,400	170,000	108-60-1
Ethylbenzene	3,100	29,000	100-41-4
Fluoranthene	300	370	206-44-0
Fluorene	1,300	14,000	86-73-7
Halomethanes	0.19	15.7	
Heptaclor	0.00021	0.00021	76-44-8
Heptachlor epoxide	0.00010	0.00011	1024-57-3
Hexachlorobenzene	0.00075	0.00077	118-74-1
Hexachlorobutadiene	0.44	50	87-68-3
Hexachlorocyclohexane-Alpha	0.0039	0.013	
	Human Health (10^{-6} risk for carcinogens)		

	For consumption of:		
"Priority" Pollutant	**Water & Organisms**	**Organisms Only**	**Chemical CAS No.**
Hexachlorocyclohexane-Beta	0.014	0.040	
Hexachlorocyclohexane-Gamma	0.019	0.063	58-89-9
Hexachlorocyclopentadiene	240	17,000	77-47-4
Hexachloroethane	1.9	8.9	67-72-1
Indeno (1,2,3-cd) Pyrene	0.0028	0.031	193-39-5
Iron	300		13463-40-6
Isophorone	8.4	600	78-59-1
Manganese	50		7439-96-5
Mercury	0.14	0.15	7439-97-6
Methoxyclor	100		72-43-5
Methyl Bromide	48	4,000	74-83-9
Methylene Chloride	4.7	1,600	74-87-3
Monochlorobenzene	488		
Nickel	610	4,600	7440-02-0
Nitrite	1,000		
Nitrobenzene	17	1,900	98-95-3
Nitrosamines	0.0008	1.24	35576-91-1
Nitrosodibutylamine,N-	0.0064	0.587	924-16-3
Nitrosodiethylamine,N-	0.0008	1.24	55-18-5
Nitrosodimethylamine,N-	0.00069	8.1	62-75-9
Nitrosodiphenylamine,N-	5.0	16	86-30-6
Nitrosopyrolidine,N-	0.016	91.9	930-55-2
PCBs	0.000044	0.000045	1336-36-3
Pentachlorobenzene	74	85	608-93-5
Pentachlorophenol	0.28	8.2	87-86-5
Phenol	21,000	4,600,000	108-95-2
Phthalate, Bis(2-Ethylhexyl)	1.8	5.9	117-81-7
Polynuclear aromatic hydrocarbons	0.0028	0.0311	
Pyrene	960	11,000	129-00-0
Tetrachlorobenzene,1,2,4,5-	38	48	95-94-3
Tetrachloroethane,1,1,2,2-	0.17	11	79-34-5
Tetrachloroethylene	0.8	8.85	127-18-4
Thallium	1.7	6.3	7440-28-0
Toluene	6,800	200,000	108-88-3

	Human Health (10^{-6} risk for carcinogens)		
	For consumption of:		
"Priority" Pollutant	**Water & Organisms**	**Organisms Only**	**Chemical CAS No.**
Toxaphene	0.00073	0.00075	8001-35-2
Trichloroethylene	2.7	81	79-01-6
Trichlorophenol,2,4,5-	2,600		95-95-4
Trichlorophenol,2,4,6-	2.1	6.5	88-06-2
Vinyl Chloride	2.0	525	75-01-4

6.4 Aquatic Life Criteria: The concentration for each compound listed below is a criteria not to be exceeded in waters for aquatic life. The Acute criteria or Criteria Maximum Concentration (CMC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour average concentration does not exceed that CMC value more than once every three years on average. The Chronic criteria or Criteria Continuous Concentration (CCC) is the threshold value at or below which there should be no unacceptable effects to freshwater aquatic life and their uses if the four-day average concentration does not exceed that CCC value more than once every three years on average. Where no criteria has been established the lowest observable adverse effect level m(LOAEL0 shall apply.

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	Acute CMC		Chronic CCC		
"Priority" Pollutant	**Criterion**	**LOAEL**	**Criterion**	**LOAEL**	**Chemical CAS No.**
Acenapthene		1,700		520	83-32-9
Acrolein		68		21	107-02-8
Acrlonitrile		7,550		2600	107-13-1
Aldrin	3.0				309-00-2
Arsenic V		850			17428-41-0
Arsenic III	360		190		22569-72-8
Benzene		5,300			71-43-2
Benzidine		2,500			92-87-5
Beryllium		130		5.3	7440-41-7
BHC		100			680-73-1
Cadmium	3.9[1]		1.1[a]		7440-43-9
Carbon tetrachloride		35,200			56-23-5
Chlordane	2.4		0.0043		57-74-9
Chlorinated benzenes		250		50	
Chlorinated naphthalenes		1,600			
Chloroalkyl ethers		238,000			
Chloroform		28,900		1,240	67-66-3
2-Chlorophenol		4,380			95-57-8
3-Methyl-4-chlorophenol		30			59-50-7
Chromium VI	16		11		7440-47-3
Chromium III	1,700[a]		210[a]		
Copper	18[a]		12[a]		7440-50-0
Cyanide	22		5.2		57-12-5
DDT	1.1		0.001		50-29-3
DDT metabolite: TDE		0.6			72-54-8
DDT metabolite: DDE		1,050			72-55-9
Dichlorobenzenes		1,120		763	25321-22-6
1,2-Dichloroethane		118,000		20,000	107-06-2
Dichloroethylenes		11,600			25323-30-3
2,4-Dichlorophenol		2,020		365	120-83-2
Dichloropropane		23,000		5,700	26638-19-7
Dichloropropane		6,060		244	26952-23-8

	Acute CMC		Chronic CCC		
"Priority" Pollutant	**Criterion**	**LOAEL**	**Criterion**	**LOAEL**	**Chemical CAS No.**
2,4-Dinitrotoluene		330		230	121-14-2
Dioxin [2,3,7,8-TCDD]		<0.01		<0.00001	1746-01-6
1,2-Diphenyl hydrazine		270			122-66-7
Endosulfan	0.22		0.056		115-29-7
Endosulfan-alpha	0.22		0.056		959-98-8
Endosulfan-beta	0.22		0.056		33213-65-9
Endrin	0.18		0.0023		72-20-8
Ethylbenzene		32,000			100-41-4
Fluoranthene		3,980			206-44-0
Haloethers		360		122	
Halomethanes		11,000			
Heptaclor	0.52		0.0038		76-44-8
Heptachlor epoxide	0.52		0.0038		1024-57-3
Hexachlorobutadiene		90		9.3	87-68-3
♑-HCH/Lindane	2.0		0.08		58-89-9
Hexachlorocyclopentadiene		7.0		5.2	77-47-4
Hexachloroethane		980		540	67-72-1
Isophorone		117,000			78-59-1
Lead	83[a]		3.2[a]		7439-92-1
Mercury	2.4		0.012		7439-97-6
Napthalene		2,300		620	91-20-3
Nickel	1,400[a]		160[a]		7440-02-0
Nitrobenzene		27,000			98-95-3
Nitrophenols		230		150	
Nitrosamines		5,850			35576-91-1
PCBs	2.0		0.014		1336-36-3
Pentachlorophenol	20[2]		13*		87-86-5
Phenol		10,200		2,560	108-95-2
Phthalate esters		940		3.0	
Selenium	20		5.0		7782-49-2
Silver	4.1[3*]			0.12	7440-22-4

	Acute CMC		Chronic CCC		
"Priority" Pollutant	**Criterion**	**LOAEL**	**Criterion**	**LOAEL**	**Chemical CAS No.**
1,1,2,2-Tetrachloroethane				2,400	79-34-5
Tetrachloroethanes		9,300			25322-20-7
Tetrachloroethylene		5,280		840	127-18-4
2,3,5,6-Tetrachlorophenol					935-95-5
Thallium		1,400		40	7440-28-0
Toluene		17,500			108-88-3
Toxaphene	0.73		0.0002		8001-35-2
Trichlorinated ethanes		18,000			25323-89-1
1,1,2-Trichloroethane				9,400	79-00-5
Trichloroethylene		45,000		21,900	79-01-6
2,4,6-Trichlorophenol				970	88-06-2
Zinc	120[a]		110[a]		

6.5 Biological Criteria: The following biological criteria shall apply to the waters of the Reservation.

(A) All surface waters shall be of sufficient quality to support aquatic biota without detrimental changes in the resident aquatic communities.

(B) Waters of the Reservation shall be free from substances, whether attributable to point source discharges, nonpoint sources, or instream activities, in concentrations or combinations which would impair the structure or limit the function of the resident aquatic community as it naturally occurs.

(C) The structure and function of the resident aquatic community shall be measured by biological assessment methods approved by the Riparian Review Committee.

(D) Determination of impairment or limitation of the resident aquatic community may be based on comparison with the aquatic community found at an appropriate reference site or region.

6.6 Wildlife Criteria: All surface waters shall be of sufficient quality to protect and support all life stages of resident or migratory wildlife species which live in, on, or near the waters of the Reservation.

6.7 Wetlands Criteria: The following wetlands criteria shall apply to all waters of the Reservation.

(A) Water quality in wetlands shall be maintained at naturally occurring levels, within the natural range of variation for individual wetlands.

(B) Physical and biological characteristics shall be maintained and protected by:

(1) Maintaining hydrological conditions, including hydroperiod, hydrodynamics, and natural water temperature variations;

(2) Maintaining the natural hydrophitic vegetation; and

(3) Maintaining substrate characteristics necessary to support existing and characteristic uses.

(D) Wetlands shall not be used in lieu of stormwater treatment. Stormwater shall be treated before discharge to a wetland.

Section 7. NOTICE OF DISCHARGES

7.1 Notice of Discharge: Except as permitted pursuant to this Ordinance, any person that discharges any pollutant into the waters of the Reservation shall immediately notify the Riparian Review Committee of such discharge and shall fully disclose the information regarding the discharge including the type of pollutant, the amount, the location and other information required by the Riparian Review Committee.

Section 8. APPEALS

8.1 Administrative Review: Any person adversely affected by any act or decision of the Tribal Council shall have the right to seek administrative review hearing before the Tribal Council, provided that any such appeal is filed within thirty (30) days after the effective date of the written decision. The Tribal Council shall conduct a hearing on any appeal, and develop a decision record that is adequate for judicial review. The Tribal Council shall, in its sound discretion, have the authority to uphold, reverse or modify the action which is the subject of appeal, including ordering the matter to be reviewed by the Riparian Review Committee for acquisition of

further facts and proposed findings. Following remand to the Riparian Review Committee, there shall be a subsequent further hearing before the Tribal Council.

8.2 Judicial Review: Any person adversely affected by action or inaction of the Tribal Council may seek judicial review pursuant to the Hoopa Valley Code and the Rules of the Tribal Court. If administrative review proceedings have not already occurred, the Tribal Court shall remand for such proceedings unless irreparable injury would result. Upon review of an adequate decision record prepared by the Riparian Review Committee, the Tribal Court shall sustain the Committee's decision if it is not arbitrary and capricious or contrary to law.

Section 9. SEVERABILITY

9.1 Severability: If any part of this Ordinance or its application to any person or circumstance is held to be invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

Section 10. SOVEREIGN IMMUNITY PRESERVED

10.1 Sovereignty: Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council is composed of eight members of which six (6) were present constituting a quorum at a Regular meeting thereof; duly and regularly called, noticed, convened and held this 3rd day of August, 1995; and that this Ordinance was duly adopted by a vote of five (5) for and none (0) against and none (0) abstentions; and that said Ordinance has not been rescinded or amended in any way.

Dated this 3rd day of August, 1995.

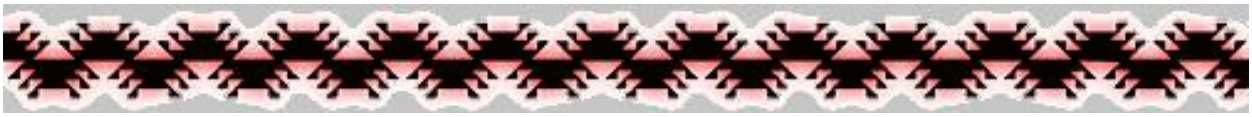
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 38 OF THE HOOPA TRIBAL CODE

PURPOSE: FIREARMS ORDINANCE

ADMINISTRATIVE RECORD: Adopted March 6, 1995



FIREARMS ORDINANCE

OF THE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

TITLE 38
HOOPA VALLEY TRIBAL CODE

ORDINANCE NO: 2 - 95

DATE APPROVED:

SUBJECT: **Firearms in Populated Locations**

WHEREAS the Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, and ratified and confirmed by Congress, § 8, PL 100-580 [1988];

WHEREAS Article V of the Hoopa Constitution establishes a 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 Tribe, through its governing body, retains the inherent sovereign authority to regulate the location and manner of using firearms on the Hoopa Valley Indian Reservation;

WHEREAS the Tribal Council has received numerous complaints of discharging, brandishing and carrying loaded firearms in or nearby populated locations of the Hoopa Valley Indian Reservation;

WHEREAS the Humboldt County Sheriff's Department and the Humboldt County District Attorney's Office have not invoked California law to assure the safety, health, welfare and economic security of persons resident on the Hoopa Valley Indian Reservation at risk and in harm's way by the actions of irresponsible persons discharging, brandishing and carrying loaded firearms

in or nearby populated locations of the Hoopa Valley Indian Reservation;

WHEREAS the unregulated discharging, brandishing and carrying of loaded firearms in or nearby populated locations of the Hoopa Valley Indian Reservation presents a continuing threat to the safety, health, welfare and economic security of Tribal members and the Tribe;

WHEREAS the reported incidents of discharging, brandishing and carrying of loaded firearms in or near populated locations of the Hoopa Valley Indian Reservation have lately increased and are reasonably likely to so continue;

WHEREAS the vast majority of population on the Hoopa Valley Indian Reservation resides or carries on business within one mile on either side of the Trinity River's course through the Hoopa Valley Indian Reservation; and

WHEREAS in light of the recitals herein and the information on which they are grounded, the Tribal Council finds and hereby determines that there is an immediate threat to the Tribe, its Enrolled tribal members and its resources and assets, and further that emergency regulation is called for to eliminate or to at least reduce the risk of harm to Hoopa children, women and men by the unregulated discharge, brandishing and carrying of loaded firearms within one mile of either side of the Trinity River's course through the Hoopa Valley Indian Reservation.

THEREFORE BE IT RESOLVED THAT it shall be a civil offense for any person, while within the exterior boundaries of the Hoopa Valley Reservation:

1. to discharge a firearm in a grossly negligent manner which could result in injury or death to a person or to property not his own; or

2. to discharge a firearm at an inhabited dwelling house, an inhabited mobile home, an inhabited camper, an occupied building, an occupied motor vehicle, an occupied aircraft; as used in this section "inhabited" means currently being used for dwelling purposes, whether occupied or not;

THEREFORE BE FURTHER RESOLVED THAT the Hoopa Tribal Department of Public Safety shall enforce this Ordinance by citing

alleged violators to the Hoopa Valley Tribal Court and by impounding the subject firearms pending a hearing; the Hoopa Valley Tribal Court shall afford the alleged violator notice and an opportunity to be heard no later than 45 days following issuance of the citation; if the Hoopa Valley Tribal Court finds by a preponderance of the evidence that a violation of this Ordinance has occurred, then the violator shall be subjected to a civil fine not to exceed $2,000 and a confiscation of the subject firearms for not less than 90 days.

THEREFORE BE IT FINALLY RESOLVED THAT this Ordinance is not intended, nor shall it be so interpreted, to infringe on the right of Hoopa Tribal members either to fish and hunt or to defend their children, spouses or themselves against intruders.

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 five (5) were present, constituting a quorum by regular meeting thereof; duly and regularly called, noticed, convened and adopted by a vote of four (4) in favor, zero (0) opposed and zero (0) abstaining, and that said resolution has not been rescinded or amended or modified in any way.

Dated this 6th day of March, 1995.

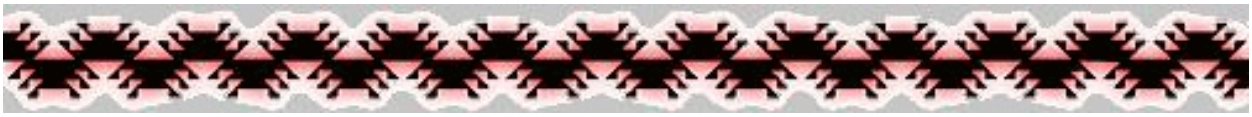
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

Attest:_____
Pamela Hammond
Interim Executive Secretary
Hoopa Valley Tribal Council

TITLE 39 OF THE HOOPA TRIBAL CODE

PURPOSE: CONSTRUCTION TAX ORDINANCE

ADMINISTRATIVE RECORD: Adopted November 7, 1995



CONSTRUCTION TAX ORDINANCE
OF THE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

TITLE 39
HOOPA VALLEY TRIBAL CODE

ORDINANCE NO: 4-95

DATE APPROVED: November 7, 1995

SUBJECT: Construction Tax

WHEREAS the Hoopa Valley Tribe adopted a Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, subsequently ratified and confirmed by Congress on October 31, 1988, § 8, PL 100-580 [1988];

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

WHEREAS the Tribal Council has the power to administer Tribal property [§ 1.a, Art. IX, Hoopa Valley Tribe Constitution], to collect funds within the control of the Tribe [§ 1.c, Art. IX, Hoopa Valley Tribe Constitution], to provide assessments or license fees on non-members doing business or obtaining special privileges within the reservation [§ 1.f.1, Art. IX, Hoopa Valley Tribe Constitution], to promulgate and enforce assessments or license fees on members exercising special privileges or profiting from the general resources of the reservation [§ 1.f.2, Art. IX, Hoopa Valley Tribe Constitution], to promulgate and enforce ordinances governing the conduct of enrolled members of the Hoopa Valley Tribe [§ 1.k, Art. IX, Hoopa Valley Tribe Constitution], to safeguard and promote the peace, safety, and general welfare of enrolled members of the Hoopa Valley Tribe by regulating the conduct of trade and the use and disposition of property upon the reservation and thereby directly affecting non-members of the Tribe [§ 1.l, Art. IX, Hoopa Valley Tribe Constitution], to establish a Tribal Court [§ 1.m, Art. IX, Hoopa Valley Tribe Constitution] and to create subordinate bodies for the operation of economic enterprises to benefit the Tribe [§ 1.p, Art. IX, Hoopa Valley Tribe Constitution];

WHEREAS the Hoopa Valley Tribe, on its own initiative and carrying out comprehensive federal trust obligations by reason of a self-governance compact between the Hoopa Valley Tribe and the United States of America, has endeavored to construct health care facilities, residential housing, governmental offices, roads and similar infrastructure construction projects;

WHEREAS the Hoopa Valley Tribe, through its Credit Office, has offered tribal and federally financed loans, loan guarantees and similar credit instruments to assure that residential and business construction occurs on the Hoopa Valley Indian Reservation;

WHEREAS the regulation and taxation of construction contractors and subcontractors furthers the paramount intent of Tribal government to make the Hoopa Valley Indian Reservation a safe, healthy and civil place to live, do business and travel to; and

WHEREAS the Hoopa Valley Tribe provides significant services to construction contractors and subcontractors operating on or near the Hoopa Valley Indian Reservation, including without limitation fire suppression, public safety, clean water and dispute resolutions; and

THEREFORE BE IT RESOLVED that the Hoopa Valley Tribal Council hereby ordains and passes a Construction Tax Ordinance, following herewith, Title 39 to the Hoopa Valley Tribal Code;

THEREFORE BE IT FINALLY RESOLVED that this Construction Tax Ordinance supersedes inconsistent conflicting provisions of the Hoopa Valley Tribal Code, Tribal charters and any other Tribal Council ordinances, resolutions or actions whatever.

Title 39

Section 1. Title - this ordinance shall be known as the Hoopa Valley Tribe Construction Tax Ordinance.

Section 2. Tax Commission - there shall be a Hoopa Valley Tribal Tax Commission; the Hoopa Valley Tribal Council shall serve as the Tax Commission;

Section 3. Construction Tax - construction contractors carrying on construction within the exterior boundaries of the Hoopa Valley Indian Reservation shall pay to the Hoopa Valley Tribal Tax Commission a Tribal construction tax in an amount equal to the California State Board of Equalization tax applicable - but for 18 CCR § 1616, this Construction Tax Ordinance and binding federal Court decisions affirming inherent Indian Tribal sovereign authority and exemption from state taxes - to acquiring or leasing construction materials, fixtures, machinery, equipment and other tangible personal property obtained to complete construction projects; construction shall encompass, but not be limited to, offices, residential housing, health facilities, roads and water and sanitation;

Section 4. Collection - the Tribal Chief Fiscal Officer shall be responsible, on behalf of the Tax Commission, for collecting the Tribal construction tax; in the instance of construction contracts between construction contractors and the Hoopa Valley Tribe, or components and instrumentalities thereof, the Tax Commission shall collect the Tribal construction tax by retaining an equivalent amount of the contract payment; in the instance of private construction contracts, construction contractors shall pay to the Tax Commission the Tribal construction tax quarterly;

Section 5. Revenue Allocation - Tribal construction tax revenues received by the Tax Commission shall be allocated in the sound discretion of the Hoopa Valley Tribal Council; Tribal construction tax revenues shall not, subject to subsequent Tribal Council deliberation and action, be a source of funding to be utilized in the Tribal annual budget process;

Section 6. Floor - the Tribal construction tax shall not apply to construction contracts in a total amount - labor and materials - less than $150,000;

Section 7. Records - the Tax Commission shall keep records in a secure and highly confidential setting consistent with the privacy of taxpayers, but mindful of the accountability of the Tax Commission to enrolled members of the Hoopa Valley Tribe; taxpayers can access their own records, the Tribal Council, the Chief Fiscal Officer, the Tribal Treasurer and independent auditors can access Tax Commission records;

Section 8. Reporting - the Tax Commission shall issue a public quarterly report presenting an accurate and comprehensive fiscal statement pertaining to the Tribal construction tax, accompanied by identification of weaknesses and plans to address said weaknesses;

Section 9. Standard Forms - the Tax Commission shall from time to time issue standard forms to secure compliance with the Construction Tax Ordinance; including but not limited to:

- Taxpayer Information Disclosure
- Notice of Assessment
- Delinquency Notice
- Dispute Hearing Notice
- Tax Exemption Certificate
- Standard Tribal Construction Contract Language
- Supply Delivery and Ownership Transfer Statement

Section 10. Natural Person-Local Address - each construction contractor shall supply to the Tax Commission the on-reservation name, address and telephone no. of a natural person who shall be responsible and accountable to the Tax Commission for receiving notices; supplying information; and service of process;

Section 11. Failure to File - failure to timely file required returns or other forms shall result in a further assessment of 10% of the Tribal construction tax due;

Section 12. Failure to Pay - failure to timely pay Tribal construction taxes shall result in a further assessment of 5% of the Tribal construction tax due, increasing .5% monthly thenafter;

Section 13. Liens - the Tax Commission shall have the authority to create a tax lien against delinquent taxpayers' real and personal property and to foreclose on any such

property;

Section 14. Tax Disputes - disputes respecting this Tribal construction tax shall be heard before the Tax Commission; the Tax Commission shall issue hearing rules no later than 90 days following passage of this Ordinance;

Section 15. Effective Date - the Tribal Council reaffirms that this Construction Tax Ordinance took effect on August 22, 1995 and applies to construction occurring thenafter; this Tribal construction tax shall remain in effect indefinitely;

Section 16. Not Affecting Tribe - nothing herein is intended to, or shall be so interpreted to, subject the Hoopa Valley Tribe, or its chartered components and instrumentalities, to this construction tax;

Section 17. Policies and Rules - the Tax Commission may from time to time draft and issue policies and rules to carry out the intent of this Construction Tax Ordinance;

Section 18. Transmission to Secretary of Interior - in conformance with § 16.b, Article II of the Self-Governance Compact between the Hoopa Valley Tribe and the United States of America, this Tribal Construction Tax shall be transmitted by the Chairman to the Secretary of the Interior.

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) were present, constituting a quorum by regular meeting thereof; duly and regularly called, noticed, convened and adopted by a vote of five (5) in favor, none (0) opposed and none (0) abstaining, the Chairman not voting, and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 9th day of November, 1995.

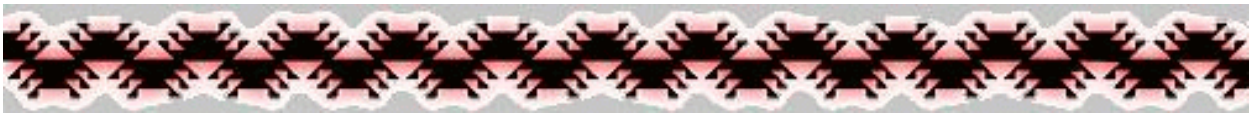
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

Attest:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 40 OF THE HOOPA TRIBAL CODE

PURPOSE: PER CAPITA ORDINANCE

ADMINISTRATIVE RECORD: Adopted September 19, 1996



PER CAPITA ORDINANCE

of the
HOOPA VALLEY TRIBE
Hoopa Valley Indian Reservation

Title 40

Ordinance No: 5-96

Date Approved: September 19, 1996

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe in California, by the authority of Article V, Section 1 of the Constitution and Bylaws of the Tribe as approved on August 18, 1972, by the Commissioners of Indian Affairs and on October 31, 1988, by Congress; and

WHEREAS, the Council is authorized by Article IX, Section (c), of the Constitution and By-laws to "collect and expend any Hoopa Valley Tribal funds within the exclusive control of the tribe and to recommend the expenditure of any other tribal funds"; and

WHEREAS, the funds requested to be used for these per capita payments do not involve funds transferred pursuant to Section 4(c) of Public Law 100-580.

NOW, THEREFORE, BE IT RESOLVED that the following Ordinance governing per capita payments to members of the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Tribal Council.

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SECTION 1. PURPOSE

The purpose of this Ordinance is to make the process of issuing per capita payments to Tribal members fair, equal and fiscally responsible, to set out standards that balance and harmonize the objective of the Tribal government to offer services, seek economic opportunities and protect and enhance the rights and natural resources of Tribal members, with the objective of the Tribal government to assure that Tribal members receive sufficient financial support to assist them in caring for their children and grandchildren and for whatever their requirements may be from time to time. This Ordinance is not intended, nor shall it be so interpreted, to create a right to any specific Tribal government service or to create a right to any specified payment to Tribal members.

SECTION 2. DEFINITIONS

2.1 "Council" shall mean the Hoopa Valley Tribal Council.

2.2 "Cut-off date" shall mean that date before each per capita payment used to determine eligibility to receive the payment and which shall fall on the Friday before each Wednesday payment. To be eligible for a per capita payment, a person must be alive and enrolled by 11:59 p.m. on the Friday before the Wednesday payment.

2.3 "Emancipated minor" shall mean a person under eighteen (18) years of age who is or has been married, who is on active duty with the armed forces of the U.S., or who has received a declaration of emancipation as defined by the California Family Code, Section 7122.

2.4 "Enrolled Tribal member" shall mean any living member of the Hoopa Valley Tribe whose name is lawfully placed on the Tribal roll, in accordance with Title 9 of the Hoopa Valley Tribal Code.

2.5 "Foster parent" shall mean that individual assigned the temporary legal custody of a minor child by court action, including the right to the care, custody and control of the child and the duty to provide, among other things, food, clothing and shelter.

2.6 "Guardian" shall mean that individual assigned the legal custody of a minor child, either by court action or agreement of the natural parents, including the right to the care, custody and control of the child and the duty to provide, among other things, food, clothing and shelter.

2.7 "Individual Indian Money Account" or "IIM Account" shall mean those interest-bearing accounts administered by the Bureau of Indian Affairs, pursuant to 25 C.F.R. Section 115.

2.8 "Married" shall mean being in the state of legal matrimony as recognized by the written laws of the Hoopa Valley Tribe or a State.

2.9 "Minor's residency" shall mean that residence where the minor has been living for at least three (3) consecutive months prior to the per capita payment date.

2.10 "Parent" shall mean the biological parent, the legal parent, or the adoptive parent of a minor child.

2.11 "Per Capita Administrator" shall mean that person employed by the Tribal Council to administer the per capita payments.

2.12 "Proof of residency" shall mean that evidence which may support a claim of residency and which shall include the affidavit of a custodial parent or guardian and one of the following items: a second supporting affidavit from a family member or friend, evidence of the receipt of welfare benefits, a court order, a letter from a social services agency, or other items as may be determined acceptable by the Per Capita Administrator.

2.13 "Restricted portion" shall mean that portion of a per capita payment that is required by this Ordinance to be deposited in an IIM Account.

2.14 "Unrestricted portion" shall mean that portion of a per capita payment that is not required by this Ordinance to be deposited in an IIM Account.

2.15 "Trust account" shall mean that account as defined in 25 U.S.C. Section 162a.

SECTION 3. ELIGIBILITY

Every enrolled member of the Hoopa Valley Tribe is entitled to receive per capita payments, provided that the Tribal member is alive and enrolled on the cut-off date, as set forth in Section 4.3.1(c) or Section 4.3.2(c).

SECTION 4. DISTRIBUTION

4.1 Dates. Per capita payments shall be made four times annually, on the second Wednesday of the months of March, June, August and December.

4.2 Debt Collection. As set forth in the Debt Collection Ordinance, Title 28, Section 28.11.2, Hoopa Valley Tribal Code, per capita payments are authorized to be applied toward any debt of any Tribal member to any Tribal entity; provided that:

4.2.1 The Tribal Entity has a completed Per Capita Withholding Form indicating the Tribal member's consent to the per capita withholding, pursuant to Title 28, Section 28.11.3, or the Tribal entity has mailed a Per Capita Withholding Form to the Tribal member at least thirty (30) days prior to the payment date, pursuant to Title 28, Section 28.11.5; and

4.2.2 The Official of the Tribal entity has submitted a list in Tribal roll number order to the Fiscal Department ten (10) business days prior to the Wednesday payment identifying those individuals whose per capita payments, or a portion thereof, will be withheld, including on that list the name, roll number, birthdate, and amount owed by each person.

4.3 Notice. Tribal members shall receive notice of per capita payments via the U.S. Mail by October 15 of each year. Subsequent notices of payments throughout the year shall be made in the Tribal Newsletter thirty (30) days prior to the payment date.

4.3.1 Annual Notice: The annual notice sent to each Tribal member at the start of each fiscal year shall include the following:

(a) The total amount to be distributed by the Tribe over the upcoming year, based on the calculations set forth in Section 5;

(b) The dates certain for the per capita payments in that year;

(c) The dates certain for the cut-off for eligibility for the per capita payments, which shall be 11:59 p.m. on the Friday prior to the Wednesday payment dates; and

(d) The dates certain for the deadline for submitting written notice to the Per Capita Administrator of (1) change in guardianship for minor children, (2) change of address for adults or emancipated minors, or (3) name changes, which shall be by 5:00 p.m. ten (10) business days prior to the Wednesday payment dates;

4.3.2 Published Notice: The notice provided to Tribal members in a special insert in the Tribal Newsletter thirty (30) days prior to a payment date shall include the following information as a reminder:

(a) The amount to be distributed for that payment, to be determined based on the number of members from the prior per capita payment;

(b) The date certain for that payment;

(c) The date certain for the cut-off for the eligibility for that per capita payment, which shall be 11:59 p.m. on the Friday prior to that Wednesday payment date; and

(d) The date certain for the deadline for submitting written notice to the Per Capita Administrator of (1) change in guardianship for minor children, (2) change of address for adults or emancipated minors, or (3) name changes, which shall be by 5:00 p.m. ten (10) business days prior to the Wednesday payment date.

4.4 Payment.

4.4.1 To Adults and Emancipated Minors: The per capita payment shall be made by the Tribe directly to each competent adult Tribal member whose current address is known to the Tribe, and to each competent minor Tribal member who has provided the Tribe with proof that he or she is an emancipated minor and whose current address is known to the Tribe.

4.4.2 To Adults and Emancipated Minors Whose Address is Unknown: If the current address for an adult Tribal member is unknown at the time of payment, the per capita payment shall be held by the Tribe as the Per Capita Administrator makes reasonable efforts to ascertain the member's current address. If no current address is determined within ten (10) business days after the date of the payment, the payment shall be sent to an IIM account created on behalf of the missing Tribal member. Subsequent per capita payments shall continue to be made to the same IIM account until a written change of address is submitted at least ten (10) business days prior to the subsequent per capita payment.

4.4.3 To Adults and Emancipated Minors Who Are Incarcerated: Unless an incarcerated Tribal member provides the Tribe with a power of attorney and a correct address or account in which to deposit his or her per capita payment within ten (10) days of the date of payment, the Tribe shall deposit that per capita payment into an IIM account. Subsequent per capita payments shall be made to the same IIM account until a written change of address is submitted at least ten (10) business days prior to the subsequent per capita payment.

4.4.1 To Adults Non Compos Mentis: The Tribe shall deposit into an IIM account the full amount of each per capita payment to be made to adult Tribal members who have been legally determined not competent to manage their own affairs.

4.4.2 To Unemancipated Minors in Foster Care: The Tribe shall deposit into an IIM account the full amount of each per capita payment to be made to an unemancipated minor in foster care, pursuant to a valid court order.

4.4.6 To All Other Unemancipated Minors: Nothing set forth below shall serve to limit the Tribal Council's ability to exercise its authority pursuant to other, duly enacted laws of the Hoopa Valley Indian Tribe.

4.4.6.1 For each per capita payment made to a minor Tribal member who has not demonstrated proof of emancipation, the Tribe shall deposit into an IIM account at least one-half of each payment of less than or equal to $1,500.00 and at least two-thirds of each payment of more than $1,500.00. The Tribe reserves the right to deposit any additional amount of the payment, up to and including the entire amount. This deposited money shall be held in trust in the IIM account and shall be administered by the BIA under applicable regulations. The money is not to be released until such minor reaches the age of eighteen (18) or otherwise becomes emancipated.

4.4.6.2 Where there is no dispute as to the minor's place of residence, the remaining unrestricted portion of each per capita payment to each unemancipated minor shall be paid, for the benefit of the minor, to the parent or guardian with whom the child resides. Unless requested otherwise, the payments shall be made in the following manner:

(a) If the parents are married and both parents are Tribal members, the payment shall be made to the father;

(b) If the parents are married and only one parent is a Tribal member, the payment shall be made to the Tribal member parent;

(c) If the parents are unmarried, the payment shall be made to the mother; and

(d) If the parent or guardian with whom the minor resides instructs the Tribe to transmit the unrestricted portion payment to the IIM account, the Tribe shall so transmit.

4.4.6.3 When there is a dispute as to the minor's place of residence, unrestricted portion payments shall be made as indicated:

(a) If the minor has been with the current parent or guardian for less than three (3) months, the Tribe shall make the unrestricted portion payment to the minor's IIM account.

(b) If the non-custodial parent alleges the minor has not been with the named custodial parent or a guardian for at least three (3) months and the custodial parent or guardian claims otherwise, the non-custodial parent or guardian must submit written notice of the residency dispute with the Per Capita Administrator ten (10) business days prior to the Wednesday payment. The Per Capita Administrator shall inform the custodial parent or guardian, who must then submit proof of residency to rebut the non-custodial parent's assertion. If proof of residency cannot be obtained within ten (10) business days after the Wednesday payment, the Tribe shall make the unrestricted portion payment to the minor's IIM account.

(c) If the minor is the subject of a case before the Hoopa Valley Tribal Court and involving the Hoopa Valley Tribe Division of Human Services, that Division shall advise the Per Capita Administrator of a change in the minor's guardianship so the payment may be placed in the minor's IIM account.

(d) If there is a pending private custody matter in either Tribal or State Court, either parent or a guardian may obtain a Tribal Court order indicating that the minor's residency is in dispute and ordering that the unrestricted portion payment be held by the Tribe, pursuant to Section 4.4.6, pending resolution of the case.

(e) If a dispute has arisen as to the identity of the parent or the guardian, the Tribe shall make the unrestricted portion payment to the IIM account of the minor child.

4.4.7 The Tribe shall not hold checks, except as provided above, unless ordered to do so by the Hoopa Valley Tribal Court. If so ordered, the Per Capita Administrator shall establish a custodial, interest-bearing account to hold such checks pending resolution of the dispute. Upon resolution, the Court shall order the transfer of the payment, including interest calculated to the date of transfer.

4.5 Minor Request. No unemancipated minor may request that his or her full per capita payment be sent to his or her IIM account.

4.6 Pick Up of Payments. No checks will be held at the Tribal Office for pick-up; all checks will be mailed.

SECTION 5. AMOUNT OF PAYMENTS

5.1 Basis of Revenue. Per capita distributions shall be based upon the revenue earned in the fiscal year two (2) years prior; for example, the distribution for fiscal year 1997 shall be based on the revenue of fiscal year 1995, using the accrual method of accounting. The revenue for a single fiscal year shall be derived from the following accounts and activities:

stumpage payments received into the Trust account;
interest income on stumpage payments received into the Trust account;
royalty payments;
interest income on the Trust account;
interest income from the General Fund account;
miscellaneous payments (e.g., business, residential); and
fifteen percent (15%) of Tribal entities' net profits.

5.2 Computation. The total revenue derived from the sources listed in Section 5.1 establishes the Gross Revenue for determination of per capita payments. Forty percent (40%) of the Gross Revenue shall be distributed to the Hoopa Tribal membership, as set forth in Section 3 of this Ordinance. Payments shall be made in accordance with Section 4 of this Ordinance.

5.3 Other Revenue Sources. Distribution of funds from settlements, lawsuit awards, and various other sources will be determined by the Tribal Council on a case-by-case basis.

SECTION 6. FISCAL CONTROLS

6.1 Written Report Required. The Tribal Treasurer shall submit to the Tribal Council, by September 1 of each year, a written report, based on audited financial statements, indicating the total amount of revenue received for the fiscal year two (2) years prior, as set forth in Section 5.1, and the amount available for the per capita payments for the upcoming year.

6.2 Stop Payment, Reissuance of Per Capita Checks

6.2.1 Upon written or oral request by a Tribal member that a per capita check be reissued by reason of being lost, stolen, or otherwise made

unavailable to that Tribal member, the Per Capita Administrator shall immediately request that the Chief Fiscal Officer initiate a stop payment order with the issuing bank. Provided that the issued check has not cleared the bank, the Chief Fiscal Officer shall initiate that order. Once the stop payment is completed, the Fiscal Department shall reissue a replacement per capita check no sooner than ten (10) business days following the issuance of that stop payment order on the original per capita check. After the required ten (10) day waiting period, the new per capita check shall be transmitted to the Tribal member or the individual to whom the check rightfully belongs.

6.2.2 In the event that the original per capita check is located or received after the stop payment order has issued, that original check shall immediately be returned to the Fiscal Department. If a check on which a stop payment order has been issued is cashed, the Fiscal Department reserves the right to hold the next per capita payment to cover any costs incurred by the Tribe and/or its entities as a result.

6.3 Voided Checks. Any per capita check more than six (6) months old shall be considered void. The Chief Fiscal Officer shall initiate the stop payment process immediately and deposit those funds into an IIM account created for that Tribal member.

6.4 Cashing of Checks. Neither the Tribal Council, the Tribal Chairman, nor any Tribal employee may authorize the cashing of any individual Tribal member's per capita check.

SECTION 7. TAX AND RESOURCES EXEMPTION

Pursuant to federal law, 25 U.S.C. Section 1407, none of the funds which are distributed per capita shall be subject to Federal or State income taxes, nor shall such funds, nor their availability, be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, 42 U.S.C.A. Section 301, et seq., or, except for per capita shares in excess of $2,000.00, any Federal or federally assisted program.

SECTION 8. APPEALS

A Tribal member or the parent or guardian of a minor Tribal member not satisfied with the application of this Ordinance may pursue his or her appeal through the Hoopa Valley Tribal Court, as provided in Title 2 of the Hoopa Valley Tribal Code. The Court's review shall be *de novo* and the Tribal member bringing the claim must prove the case by a preponderance of the evidence.

SECTION 9. EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Article IV, Section 3 of the Constitution and Bylaws.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Indian Tribal Council, do hereby certify that the Hoopa Tribal Council is composed of eight (8) members of which at least seven (7) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 19th day of September, 1997; and that this Ordinance was duly adopted by a vote of six (6) in favor, none (0) opposed, and none (0) abstaining and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 19th day of September, 1996.

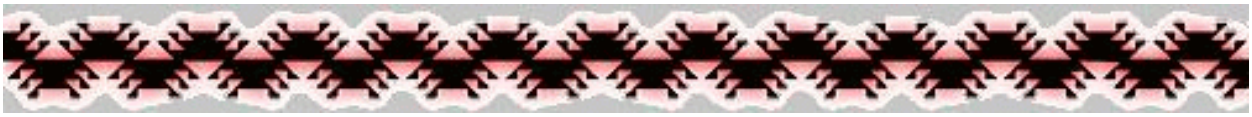
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 41 OF THE HOOPA TRIBAL CODE

PURPOSE: YOUTH PROTECTION CURFEW ORDINANCE

ADMINISTRATIVE RECORD: Adopted February 1, 1996



YOUTH PROTECTION CURFEW ORDINANCE

of the
HOOPA VALLEY TRIBE
Hoopa Valley Indian Reservation

Title 41
Hoopa Valley Tribal Code

ORDINANCE NO: 2-96

DATE APPROVED: February 1, 1996

SUBJECT: Youth Protection Curfew Ordinance of the Hoopa Valley Indian Reservation.

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, and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: The Tribal Council has concluded that it is necessary and proper to exercise tribal authority over minors' actions in public places within the exterior boundaries of the Hoopa Valley Reservation between the hours of 10:00 p.m. and 5:00 a.m., in order to protect tribal property interests and the public health and safety; and

WHEREAS: Pursuant to the process set forth in the Legislative Procedures Act § 6.9, the Tribal Council concludes that it is now appropriate to enact said Ordinance on a permanent basis, as modified by departmental comments and legal review developed during the review process.

THEREFORE BE IT NOW ORDAINED THAT: Pursuant to Section 6.9 of the Legislative Procedures Act, and the tribal constitutional and legal authorities recited herein, the Tribal Council hereby enacts the attached Youth Protection Curfew Ordinance, in order to protect the fundamental tribal values identified in Article IX § (l) thereof and the Tribe's sovereign governmental authority.

Section 1. Short Title, Findings and Purpose

41.1.1 **Short Title:** This Ordinance shall be known as the **Youth Protection Curfew Ordinance** of the Hoopa Valley Tribe.

41.1.2 **Findings**: The Hoopa Valley Tribal Council hereby finds as follows:

(a) That a critical need exists for a minor curfew ordinance. Minors under the age of eighteen possess a particular vulnerability to crime and harmful influence under certain circumstances or when not supervised or accompanied by a parent or legal guardian at night;

(b) That minors under the age of eighteen often lack the ability to make critical decisions in an informed and mature manner when exposed to night time influences.

41.1.3 **PURPOSE**: The purpose of this Ordinance is to regulate and protect the activities of minors between the hours of 10:00 p.m. at night and 5:00 a.m.

A Curfew Ordinance can help to ensure that a minor's parent or legal guardian is able to play an important role in the minor's development and upbringing.

41.1.4 **SCOPE:** The provisions of this Ordinance shall apply to all minors, living within the exterior boundaries of the Hoopa Valley Indian Reservation.

41.1.5 **EFFECTIVE DATE**: This Ordinance will become effective and in force 30 days after passage.

Section 2. Definitions

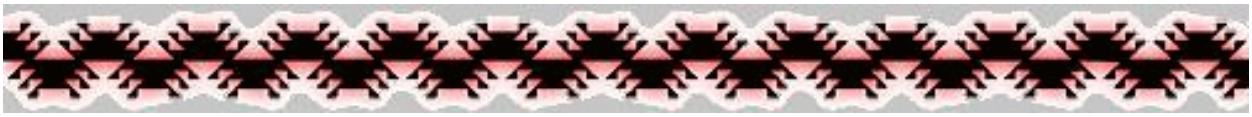
The definitions set forth in this part shall govern the application and interpretation of this Ordinance.

41.2.1 CURFEW HOURS - shall mean the hours between 10:00 p.m. and 5:00 a.m. for minors under the age of eighteen years old.

TITLE 42 OF THE HOOPA TRIBAL CODE

PURPOSE: OVERSIGHT AND ADMINISTRATIVE RESTRUCTURING

ADMINISTRATIVE RECORD: Adopted February 1, 1996 amended July 22, 1999



OVERSIGHT AND ADMINISTRATIVE RESTRUCTURING ORDINANCE
Hoopa Valley Indian Reservation
Hoopa, California

Title 42

Hoopa Valley Tribal Code

ORDINANCE NO: 1-96

DATE APPROVED: February 1, 1996, as amended July 22, 1999

SUBJECT: Oversight and Administrative Restructuring

WHEREAS: the Hoopa Valley Tribe adopted a Constitution and Bylaws June 20, 1972, approved by the Commissioner of Indian Affairs August 18, 1972, and ratified and confirmed by Congress, 25 USC § 1300i-7, Pub.L. 100-580 § 8 [1988];

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

WHEREAS: Article IX of the Hoopa Valley Tribal Constitution grants to the Tribal Council the power and the duty: to administer tribal property [Section 1(a)]; to safeguard and promote the peace, safety, morals and general welfare of enrolled members of the Hoopa Valley Tribe [Section 1(l)]; to create subordinate bodies for operation of economic enterprises to benefit the Tribe [Section 1(p)]; to expend Hoopa Valley Tribal funds within the control of the Tribe [Section 1(c)]; and to establish a Housing Authority [Section 1(o)];

WHEREAS: the Hoopa Valley Tribe, through its governing body, retains the inherent sovereign authority to regulate the internal affairs of Tribal government;

WHEREAS: the Hoopa Valley Tribe must operate efficiently and be responsive to the paramount concerns of Tribal members affected by the operation of Hoopa Valley Development Enterprise, Hoopa Health Association, Public Utilities Department, Hoopa Valley Education Association, Hoopa Telecommunications, and Hoopa Valley Indian Housing Authority;

WHEREAS: the continuing instability of the Federal government and associated fiscal consequences and the compelling importance of restructuring tribal government to assure speedy, accurate oversight and responsive administration require a strategic restructuring of Tribal government;

WHEREAS: pursuant to the process set forth in the Legislative Procedures Act, the Tribal Council concludes that it is now appropriate to enact said ordinance.

42.1 Purpose. The purpose of this ordinance is to ensure effective, efficient, accurate oversight and responsive administration of the Hoopa Valley Tribe and its entities.

42.2 Definitions. For purposes of this Ordinance, the following terms shall be defined as follow:

A) "Tribal Council" shall mean the Hoopa Valley Tribal Council, the governing body of the Hoopa Valley Tribe pursuant to the Constitution and Bylaws of the Hoopa Valley Tribe;
B) "Tribe" shall mean the Hoopa Valley Tribe, a federally recognized Indian tribe;
C) "Chairman" shall mean the Chairman of the Hoopa Valley Tribe;
D) "Charter" shall mean the method by which the Hoopa Valley Tribal Council creates, or otherwise forms, regulates and authorizes an entity of the Hoopa Valley Tribe to operate or transact business or otherwise engage in various enumerated acts.

42.3 Administration by Chairman. The chief administrative officer of each entity created by the Tribal Council shall provide a quarterly report directly to and be directly administered and overseen by the Tribal Council, by and through its Chairman.

42.4 Tribal Council shall not appoint itself to any previously revoked positions. The Tribal Council shall not be appointed to serve as the trustees, board members, commissioners and committee members the seats of whom have been previously abolished hereby.

42.5 Chairman's Report. The Chairman of the Tribal Council shall from time to time report to the Tribal Council respecting the performance of duties set out herein.

42.6 Effective Date. This Ordinance shall take effect as of close of business, May 6, 1999.

41.7 Establishment of Boards, Committees or Commissions. Nothing herein shall abridge the authority of the Tribal Council to establish or otherwise re-establish or abolish or disestablish any board, committee or commission as deemed necessary by the Tribal Council in the best interests of the Hoopa Valley Tribe.

41.8 Ratification of Boards, Committees or Commissions. The Tribal Council hereby ratifies, approves and adopts all of the Boards, Committees and/or Commissions created by the Tribal Council after February 1, 1996 including the K'ima:w Medical Center, and the Hoopa Valley Public Utilities District, among others.

41.8.1 No Property Interest In Appointment. No trustee, board member, committee member or commissioner shall have a property interest in any position appointed by the Tribal Council and may be removed at any time in accordance with the applicable charter, bylaws or other applicable document, if any.

42.8.2 Except to the extent provided in the governing charter, bylaws or other governing document, the Personnel Policies and Procedures of the Hoopa Valley Tribal Council shall apply to all Tribal entities.

42.9 Charters. Nothing herein shall abridge the authority of the Tribal Council to charter or otherwise re-charter or revoke a charter of any entity of the Hoopa Valley Tribe in the best interests of the Hoopa Valley Tribe.

42.10 Ratification of Charters. The Tribal Council hereby ratifies, approves and adopts all charters of tribal entities chartered by the Tribal Council after February 1, 1996, including Hoopa Forest Industries, K'ima:w Medical Center, and Hoopa Valley Public Utilities District, among others. All charters approved and adopted before February 1, 1996 are void and of no effect.

42.11 Sovereign Immunity. Nothing herein shall waive the sovereign immunity of the Hoopa Valley Tribe, Hoopa Valley Tribal Council, its officials or employees from unconsented suit in any federal, state or tribal court.

C E R T I F I C A T I O N

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) were participating at a regular meeting thereof on July 22, 1999, constituting a quorum by thereof; duly called and noticed and adopted by a vote of five (5) in favor, zero (0) opposed and zero (0) abstaining, and that said Ordinance has not been rescinded or amended or modified in any way.

Dated this 22nd day of July, 1999.

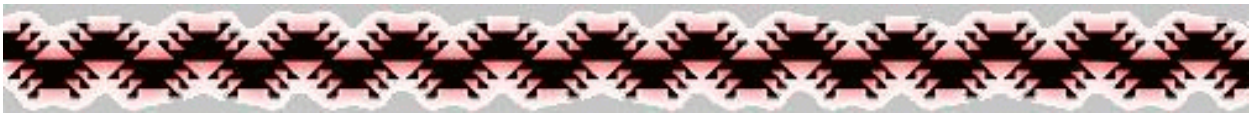
_____
Duane Sherman, Sr., Chairman
Hoopa Valley Tribal Council

Attest:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 43 OF THE HOOPA TRIBAL CODE

PURPOSE: CIVIL TRESPASS AND LOITERING ORDINANCE

ADMINISTRATIVE RECORD: Adopted June 14, 1996



CIVIL TRESPASS AND LOITERING ORDINANCE
of the
HOOPA VALLEY TRIBE
Hoopa Valley Indian Reservation
Title 43

ORDINANCE NO.: 4-96

DATE APPROVED: June 14, 1996

SUBJECT: Civil Trespass and Loitering Ordinance 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 8, 1972, and ratified and confirmed by Congress on October 31, 1988, § 8 of Pub. L. 100-580, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law; and,

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 and safety, morals and general welfare of enrolled members of the Hoopa Valley Tribe [Section 1(1)];

WHEREAS: The Tribal Council finds that the presence of transients and persons occupying land illicitly presents a clear and present danger to the safety and health of our Tribal members; the Tribal Council has received numerous reports of dangerous and violent incidents traceable to trespass and loitering;

WHEREAS: The State of California prohibitions respecting trespass and loitering are not in fact enforced;

WHEREAS: The Tribal Council finds this state of affairs to constitute an emergency sufficient to justify immediate effective legislation in conformance with 6 Hoopa Tribal Code, Legislative Procedures Act § 6.10.1.

NOW THEREFORE BE IT RESOLVED that it shall be a civil offense for any person within the exterior boundaries of the Hoopa Valley Indian Reservation to trespass or loiter on Tribal, residential or business property, trust or fee;

BE IT FURTHER RESOLVED that Trespass shall be defined as entering and occupying real property or structures of any kind absent the written consent of the owner, the owner's agent or a person in lawful possession;

BE IT FURTHER RESOLVED that Loitering shall be defined as accosting other persons in a public place, prowling, or wandering on roads or in public places in circumstances such as to indicate to a reasonable person that the public safety

requires that they identify themselves and account for their presence and they refuse to do so when requested by a Tribal Police Officer;

BE IT FURTHER RESOLVED that the Tribal Police are authorized to issue a civil citation to persons found to be trespassing or loitering, requiring their appearance in Tribal Court; and

BE IF FINALLY RESOLVED that the Tribal Council shall have jurisdiction to find persons to have committed civil trespass or loitering, subjecting them to a fine not in excess of $2000 or community service requiring cleaning and beautification of the Hoopa Valley Indian Reservation, minimum 8 hours, or both.

C E R T I F I C A T I O N

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 eight (8) were present, constituting a quorum of regular meeting thereof; duly and regularly called, noticed convened and held on this 14th day of June, 1996; that this Ordinance was adopted by a vote of seven (7) in favor, none (0) opposed and none (0) abstaining, and that said Ordinance has not been rescinded or amended or modified in any way.

Dated this 14th day of June 1996.

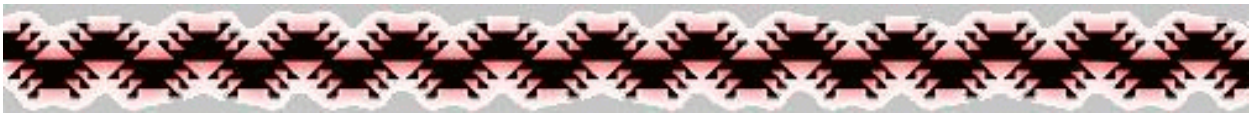
_____
Dale Risling Sr., Chairman
Hoopa Valley Tribal Council

Attest:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 45 OF THE HOOPA TRIBAL CODE

PURPOSE: WAGE GARNISHMENT ORDINANCE

ADMINISTRATIVE RECORD: Adopted June 5, 1997



WAGE GARNISHMENT ORDINANCE

HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

TITLE 45

Ordinance No: 1-97

Date Approved: June 5, 1997

Subject: Wage Garnishment Ordinance of the Hoopa Valley Tribe

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1301 *et seq.*);

WHEREAS, the Hoopa Valley Tribal Council is authorized to negotiate with federal, state and local governments on behalf of the Tribe; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council deems a Wage Garnishment Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe.

NOW, THEREFORE BE IT RESOLVED, that the following Ordinance governing wage garnishments of individual employees' wages of the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

§ 1. PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform procedure for garnishment of wages of employees of the Hoopa Valley Tribe or a tribal entity pursuant to orders of the Hoopa Valley Tribal Court recognizing foreign judgments of judgment creditors in a fair, equal and fiscally responsible manner. This Ordinance shall also establish a systematic and uniform procedure for garnishment of wages of employees of the Hoopa Valley Tribe or a tribal entity pursuant to orders of the Hoopa Valley Tribal Court arising out of original proceedings in such court. This Ordinance is not intended to prohibit judgment debtors and judgment creditors from reaching alternative agreements/settlements of their claims. This Ordinance is not intended to alter or diminish the rights of the Hoopa Valley Tribe to collect debts owed to the Hoopa Valley Tribe or its entities pursuant to Title 28, Tribal Debt Collection Ordinance of the Hoopa Valley Tribe.

§ 2. DEFINITIONS

A. **"Council"** means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

B. **"Creditor"** means a person to whom a debt is owing by another person who is the debtor.

C. **"Debt"** means a sum of money due by certain and express agreement, including a specified sum of money owing to one person from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.

D. **"Debtor"** means a person who owes a debt to another and may be compelled to pay a claim or demand by a creditor.

E. **"Disposable Wages"** means that part of the wages of an individual left after deduction of federal tax withholding, and any other amounts required by applicable law to be withheld by the employer.

F. **"Employee"** means a person employed by or in the service of the Hoopa Valley Tribe or one of its subordinate entities under any contract of hire, express or implied, oral or written, where the Hoopa Valley Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance,

"employee" shall also include Council members, commission members and committee members.

G. **"Employer"** means the Hoopa Valley Tribe or one of its subordinate entities.

H. **"Foreign Judgments"** means a judgment rendered by the Courts of the State of California, any other state of the United States or federal court which is politically and judicially distinct from the Hoopa Valley Tribal Court.

I. **"Garnishment"** - shall mean the method to obtain satisfaction of a judgment by reaching the unpaid past or future wages of an employee of the Hoopa Valley Tribe or a tribal entity. Garnishment shall not include voluntary wage assignments by employees of the Hoopa Valley Tribe.

J. **"Judgment Creditor"** means a person in whose favor a money judgment has been entered by a Court of law and who has not yet been paid.

K. **"Judgment Debtor"** means a person against whom judgment has been recovered, and which remains unsatisfied.

L. **"Tribal Entity"** means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.

M. **"Wages"** means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise. For purposes of this Ordinance, "otherwise" includes Council and committee honoraria.

§ 3. APPLICABILITY

This Ordinance applies to any foreign judgment against an employee of the Hoopa Valley Tribe or of a tribal entity that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

§ 4. RECOGNITION AND ENFORCEMENT

A foreign judgment against an employee of the Hoopa Valley Tribe or of a tribal entity meeting the requirements of section 6 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

§ 5. ORIGINAL ACTIONS IN THE HOOPA VALLEY TRIBAL COURT

A creditor may seek appropriate relief in the Hoopa Valley Tribal Court against a debtor pursuant to the rules of the Hoopa Valley Tribal Court outlined at Title 1 through Title 3 of the Hoopa Valley Tribal Code.

§ 6. ENFORCEMENT OF FOREIGN COURT ORDERS, JUDGMENTS OR DECREES

a) The Hoopa Valley Tribal Court shall recognize, implement and enforce the orders, judgments and decrees of foreign courts against an employee of the Hoopa Valley Tribe or of a tribal entity in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to a foreign court under the laws of the United States or the State in which the foreign court is situated unless the Hoopa Valley Tribal Court finds the foreign court that rendered the order, judgment or decree:

1) lacked jurisdiction over a party or the subject matter;

2) denied due process as provided by the Indian Civil Rights Act of 1968; or

3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the Hoopa Valley Tribal Courts.

b) A foreign judgment is not conclusive if:

1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2) the foreign court did not have jurisdiction over the subject matter; or

3) the foreign court did not have personal jurisdiction over the defendant.

c) A foreign judgment need not be recognized if:

1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

2) the judgment was obtained by extrinsic fraud;

3) the cause of action or defense on which the judgment is based is repugnant to the public policy of the Hoopa Valley Tribe;

4) the proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

5) the judgment conflicts with another final and conclusive judgment; or

6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

§ 7. PERSONAL JURISDICTION

The foreign judgment against an employee of the Hoopa Valley Tribe or tribal entity shall not be refused recognition for lack of personal jurisdiction if:

a) the defendant was served personally in the foreign state;

b) the defendant personally appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

c) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved

§ 8. NOTICE AND OPPORTUNITY TO BE HEARD

The judgment creditor shall afford notice of the action in the Hoopa Valley Tribal Court to the judgment debtor and shall also request a hearing pursuant to the rules of the Hoopa Valley Tribal Court at which the debtor will be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

§ 9. GARNISHMENT OF WAGES FOR SATISFACTION OF JUDGMENT

a) In a civil action for garnishment filed by a judgment creditor, the court may order garnishment of unpaid past or

future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Hoopa Valley Tribal Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered. In an action for garnishment, the judgment debtor shall be named as a defendant. In no case shall the Hoopa Valley Tribe, tribal entity, Council, or officials of the Hoopa Valley Tribe be named as Defendants, unless such individual is the debtor or judgment debtor. Nothing contained herein shall prohibit recognition of judgments against individual debtors or judgment debtors merely because of their position with the Hoopa Valley Tribe.

b) The maximum amount of wages subject to garnishment in any one pay period shall be twenty five percent (25%) of the judgment debtor's disposable wages for one pay period consistent with applicable federal law.

c) A garnishment order recognized by and/or rendered by the Hoopa Valley Tribal Court against an employee of the Hoopa Valley Tribe or tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment with the Hoopa Valley Tribe or tribal entity provided that if the judgment debtor is rehired by the Hoopa Valley Tribe or a tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

d) No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

§ 10 ADMINISTRATIVE PROCESSING FEE

The Tribe's Fiscal Department shall have the right to assess a $2.00 processing fee upon the Judgment Debtor for each pay period of garnishment of wages of an employee of the Hoopa Valley Tribe or tribal entity.

§ 11. CHILD SUPPORT ORDERS

All child support orders rendered against an employee of the Hoopa Valley Tribe or tribal entity issued by the Superior Court of the State of California are exempt from section 6 through section 9, subsections (a) and (b), and shall be enforced upon presentation to the Hoopa Valley Tribe, or one of its subordinate entities, by which the judgment debtor is employed.

§ 12. SAVING CLAUSE

This Ordinance does not prevent the recognition or non-recognition of a foreign judgment in situations not covered by this Ordinance.

§ 13. STAY IN CASE OF APPEAL

If the judgment debtor satisfies the court either that an appeal is pending or that he is entitled to and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the judgment debtor to prosecute the appeal.

§ 14. EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Article IV, section 3 of the Hoopa Valley Tribal Constitution and Bylaws.

§ 15. SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 16. SOVEREIGN IMMUNITY NOT WAIVED

Nothing in this Ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Hoopa Valley Indian Tribe from unconsented suit in State, Federal or Tribal Court against the Hoopa Valley Tribe, any Tribal entity or any official acting in his or her official capacity.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Indian Tribal Council, do hereby certify that the Hoopa Tribal Council is composed of eight (8) members of which at least five (5) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 5th day of June, 1997; and that this Ordinance was duly adopted by a vote of four (4) in favor, none (0) opposed, and none (0) abstaining and

that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 5th day of June, 1997.

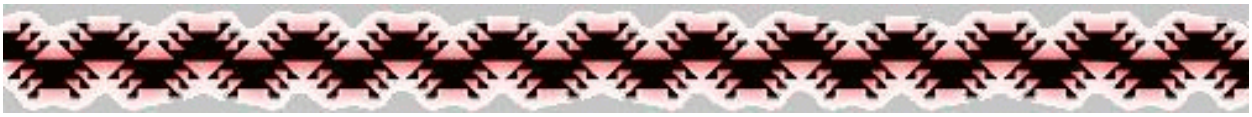
_____
Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 46 OF THE HOOPA TRIBAL CODE

PURPOSE: WORKERS' COMPENSATION ORDINANCE

ADMINISTRATIVE RECORD: Adopted November 6, 1997 amended July 20, 2000



WORKERS' COMPENSATION ORDINANCE

HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

TITLE 46

DRAFT

ORDINANCE NO: 2-97

DATE APPROVED: July 20, 2000, as amended _____.
SUBJECT: Workers' Compensation Ordinance of the Hoopa Valley Tribe

WHEREAS: the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1300i *et seq*.);

WHEREAS: The Hoopa Valley Tribal Council on March 28, 1994 approved the Protected Self-Insurance proposal submitted by Arthur J. Gallagher and Company for the Hoopa Valley Tribal Lands which consisted of Property, Casualty and Workers' Compensation insurance.

WHEREAS: The Hoopa Valley Tribal Council approved the new insurance plan effective April 1, 1994.

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council deems a Workers' Compensation Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe and Employees of the Hoopa Valley Tribe.

NOW, THEREFORE, BE IT RESOLVED, that the following Ordinance governing workers' compensation administration by the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Ordinance expressly revokes all versions of Resolution 95-116 and such Resolutions shall no longer be of any force or effect.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Ordinance is to have retroactive effect to October 12, 1995 and shall apply to all worker's compensation cases pending as of the date of the adoption of this Ordinance.

§ 1 PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform procedure for administration of workers' compensation benefits to Employees of the Hoopa Valley Tribe or a tribal entity. This Ordinance shall also establish a systematic and uniform procedure to administer and define the Hoopa Valley Tribal Council's self-funded Workers' Compensation program, under the direction of Tribal Risk Management, for meeting and resolving its industrial injury liabilities, risk assessment, prevention of abuse and fraud, cost control, medical and vocational rehabilitation of Tribal Employees and provision of a program that is equitable to both Tribal Employees and the Tribe.

§ 2 SCOPE

This policy applies to all Employees of the Hoopa Valley Tribe, its departments and its subordinate entities and is the exclusive method for compensation liability against the Hoopa Valley Tribe for Employee injury sustained in the course of employment including emotional distress arising from the employment relationship including, but not limited to, discharge and work-related disability discrimination.

§ 3 DEFINITIONS

A. **"Claimant"** for the purposes of this ordinance shall mean any person who is employed by the Hoopa Valley Tribe, except for independent contractors, who suffers an injury either specific or cumulative, arising from that employment or occurring in the course of that employment. "Claimant" shall also include anyone claiming through the employee as against the Employer, Tribe or Tribal Entity.

B. **"Council"** means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

C. **"Days"** shall mean calendar days unless otherwise expressly provided.

D. **"Employee"** means a person, other than an independent contractor, employed by or in the service of the Hoopa Valley Tribe or one of its subordinate entities under any contract of hire, express or implied, oral or written, where the Hoopa Valley Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, "Employee" shall also include Council members, commission members and committee members.

E. **"Employer"** means the Hoopa Valley Tribe, its departments or one of its subordinate entities.

DRAFT

F. **"Environmental Tobacco"** shall mean the by-products of the ingestion of any tobacco product that is exhaled, ejected, or transmitted through the medium of ambient air or which is brought into physical contact by any means.

G. **"Occupational Disease"** shall mean any disease resulting from exposure during employment to conditions or substances detrimental to the claimant's health which impairment of health is not caused by accident but by exposure to conditions incidental to and arising out or in the course of the claimant's employment with the Hoopa Valley Tribe.

H. **"Third Party Administrator"** shall mean the agency that is responsible for managing the Workers' Compensation Program of the Hoopa Valley Tribe. Responsibilities include, but are not limited to, determining the compensability of claims, determining the reasonableness and necessity of medical care and charges, approving or disapproving changes in physicians, determining the compensation rate payable for disability and dependency (whether temporary or permanent), determining the length of time for payments, determining the amount of benefits payable, determining eligibility of dependents and term for payment, allocating dependency benefits among dependents, making payments to injured workers, medical providers and others; managing a trust account for the purpose of dispensing the Hoopa Valley Tribe's workers' compensation liabilities; and, making reports to the Hoopa Valley Tribe regarding their program and individual claims.

I. **"Tribal Entity"** means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.

J. "**Work injury**" shall include any injury or disease arising out and in the course of the employment, including injuries arising out of the employment, including injuries to artificial members, dentures, hearing aids, eyeglasses, and medical braces all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability.

Work injuries under this section shall be either:

1. "Specific" occurring as a result of one incident or exposure which causes disability or need for medical treatment; or

2. "Cumulative" occurring as a result of repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative trauma injury is the date upon which the Employee first suffered disability therefrom and knew or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

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K. **"Written Decision"** shall mean the following:

1. That any finding, decision, award, arbitration result, response to Petition, or response to Appeal shall be reduced to written form by the Arbitrator appointed for the purposes of hearing, adjudicating, litigating or deciding any issue before the appointed Arbitrator(s); or

2. The finding(s) and decision(s) of the Third Party Administrator to accept in full or in part or deny in full or in part any claim submitted by a claimant regarding a work injury.

L. **"Compromise & Release"** means an agreement between a Tribal Entity and a Claimant to compromise and settle any liability which is claimed to exist under this Ordinance on account of injury or death. Any such agreement shall be approved in accordance with Section 5(R) of this Ordinance.

§ 4 POLICY

It is the policy of the Hoopa Valley Tribal Council:

A. To self-fund the Tribe's Workers' Compensation liabilities and to administer the program in accordance with accepted Tribal law, unless amended by Tribal resolution.

B. To provide Employees with Workers' Compensation benefits to which they are entitled under Tribal resolution and Tribal Risk Management procedures, regulations and schedule of benefits, said benefits being defined as follows:

1. Medical Costs Covered. Usual and customary medical costs will be approved by Tribal Risk Management.

2. Medical Service Providers. Medical Services and providers will be approved by Tribal Risk Management.

3. Universal Benefits. All Employees will be entitled to the same benefits under the same rules.

4. Claim Filing Period. All Employees are required to file claims in accordance with this section.

a. An Employee shall report any Work Injury, regardless of severity, to their supervisor within twenty-four (24) hours of the accident causing the Work Injury. A supervisor receiving a report or notice of Work Injury shall promptly report the claim to the Tribe's Insurance Department.

b. No compensation or medical benefits will be paid if a Work Injury

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is not reported by the Employee to their supervisor within fifteen (15) days of the date the Employee knew or reasonably should have known of the Work Injury. If the Work Injury incapacitates the Employee, the fifteen day period will not commence to run until the incapacity ends. A Work Injury may be reported by another person on behalf of the Employee.

c. Claims for injury shall be filed with the Hoopa Valley Tribe's Insurance Department within sixty (60) days of the injury.

d. Claims for occupational disease shall be made within one year from the date of injury. The date of injury is that date the claimant knew or reasonably should have known of the occupational nature of the disease.

e. Any claim not filed within the applicable period outlined in section four (4) shall not be covered and is hereby barred.

§ 5 DISPUTED CLAIMS ADJUDICATION

A. The Tribe's Third Party Administrator shall receive all claims and make a written decision on all claims. Written notice of the determination of the Third Party Administrator shall be forwarded to the claimant and the Hoopa Valley Tribe within 90 calendar days of the date the claim was filed.

1. The written decision shall be delivered via U.S. Mail to the last known address of the Claimant and the Hoopa Valley Tribe's Insurance Department and shall contain a proof of service reflecting the date the written decision was mailed to the claimant and the Hoopa Valley Tribe's Insurance Department.

B. THIRD PARTY ADMINISTRATOR REVIEW. In the event that a Claimant is not satisfied with the initial decision rendered by the Third Party Administrator regarding the Employee's claim, the Claimant may appeal in writing to the Third Party Administrator within thirty (30) days of the initial notice of decision issued by the Third Party Administrator pursuant to Section 5(A), above. Failure to file a written request for reconsideration shall render the Third Party Administrator's determination final and non-reviewable. The Third Party Administrator shall reconsider and respond in writing to the Claimant's appeal within thirty (30) days of actual receipt of the Claimant's written appeal.

C. INDEPENDENT ARBITER. In the event that the Claimant is dissatisfied with the outcome of the Third Party Administrator's review, the Employee may request in writing a hearing before an arbitrator. The Employee's request must be received by the Hoopa Valley Insurance Department within thirty (30) days of the date of the Third Party Administrator's decision rendered pursuant to Section 5(B), above. Failure to file a

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written request for a hearing before an arbitrator shall render the Third Party Administrator's determination final and non-reviewable. The arbitrator shall be experienced in Workers' Compensation practice and shall control the final proceedings. The arbitrator shall take whatever action is necessary to ensure an equitable, order and expeditious hearing, provided that a hearing before the Arbitrator shall be held within 90 days of the filing Employee's appeal. The Employer and Claimant shall abide by the arbitrator's ruling.

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D. SELECTION OF ARBITRATOR

1. The Hoopa Valley Insurance Department shall maintain a list of at least seven (7) potential Arbitrators that are admitted to practice law in the State of California and / or the Hoopa Valley Tribal Court Bar and who practice in the area of workers' compensation law. Each party shall select an arbitrator. If the parties cannot agree on a single arbitrator, the matter will be determined by a panel of three arbitrators, one selected by each party and a third, neutral arbitrator mutually selected by the first two arbitrators. Any decision by the panel of arbitrators shall be made by majority vote of the panel. Each member of the panel of arbitrators must be selected from the list of potential arbitrators maintained by the Hoopa Valley Insurance Department. For purposes of this Ordinance, the term "arbitrator" includes the singular as well as the plural.

2. The Arbitrator shall have the authority to:

a. Administer oaths or affirmations;

b. Regulate the course of the hearing;

c. Rule on offers of proof and the admissibility of documents;

d. Limit the number of witnesses when testimony would be unduly repetitious;

e. Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing; and

f. In accordance with Section 5(O) of this Ordinance, render a decision on the claimant's appeal, including a statement of facts and conclusions of law.

3. The Arbitrator shall be paid at an hourly rate of $125 for research, drafting and bench time. The Arbitrator shall be paid at an hourly rate of $50 per hour for travel time to and from Hoopa, California. All expenses related to the Arbitrator's services shall be covered by the Arbitrator.

3. The parties may not disqualify or recuse the Arbitrator selected by the Hoopa Valley Insurance Department.

E. STANDARD OF PROOF; BURDEN OF PROOF

1. The Arbitrator shall weigh the evidence, testimony of witnesses, and exhibits and will make the decision on the basis of the preponderance of the evidence.

2. The Employee shall have the initial burden of proof by a preponderance of the evidence.

2. The burden of proof shall rest upon the Employee, or Employee's dependents in cases of death, to prove:

a. that the injury complained of was a result of an accident or occupational disease;

b. that the injury arose out of claimant's employment with the Hoopa Valley Tribe;

c. that the injury arose while in the course of claimant's employment; and

d. the nature and extent of disability.

F. WITNESSES

1. All parties shall file and serve a witness list showing the names and addresses of all witnesses each party intends to call in the matter 10 days prior to the initial scheduled date for arbitration.

2. Written statements of witnesses shall be admitted into evidence only when a witness cannot appear in person and only when all parties so stipulate.

3. The Hoopa Valley Tribal Court may issue subpoenas to compel a witness' attendance at a hearing consistent with the Hoopa Valley Tribal Code.

G. DOCUMENTS

All parties shall prepare a joint exhibit list of relevant documents each party wishes to introduce at the time of hearing in this matter and file same 10 days prior to the initial scheduled date for arbitration.

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H. MOTIONS

All procedural motions shall be filed with the Arbitrator and served upon all parties no later than 15 days prior to the initial scheduled date for hearing and shall be heard by the Arbitrator no later than 10 days prior to the initial scheduled date for hearing by the Arbitrator.

I. CONTINUANCES

All requests for continuance shall be requested of the arbitrator(s), served upon all parties and the Arbitrator and heard by the Arbitrator no later than 10 days prior to the initial scheduled date for hearing by the Arbitrator.

J. PARTIES AND REPRESENTATIVES

1. All parties are entitled to be present for the entire hearing.

2. Any party may be represented by an attorney, a spokesperson admitted to practice before the Hoopa Valley Tribal Court or may represent themselves, in propria persona.

K. REPORTING

1. All hearings shall be reported by a licensed stenographic reporter, i.e., Certified Shorthand Reporter.

2. Payment for the Certified Shorthand Reporter shall be borne by the Hoopa Valley Tribe. However, any party requesting a transcript of the proceedings shall pay for the requested transcript(s).

3. The Hoopa Valley Tribe shall be responsible for retaining the Certified Shorthand Reporter to provide services at the time of the hearing.

L. EVIDENCE

1. The Hoopa Valley Tribal Rules of Evidence as established in Title 2 of the Hoopa Valley Tribal Code shall apply in workers' compensation proceedings. Should a question be left unanswered by said Rules, the Federal Rules of Evidence shall be used as a guideline in workers' compensation proceedings.

M. AUDIENCE

1. All hearings involving workers' compensation disputes shall be held in executive session.

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N. ORDER OF PROOF

1. The Employee has the burden of proof and shall present its case first.

2. Opening Statements. Parties shall be afforded the opportunity to present opening statements to explain what they intend to prove during the hearing. The Employer may make their opening statement either immediately after the other party's opening statement or immediately before their own presentation of evidence.

3. Presentation of Evidence. Parties may present evidence through the introduction of documents and the testimony of witnesses. Both parties may examine their own witnesses and cross-examine the witnesses of the other parties. The Arbitrator may examine witnesses at any point in their testimony.

4. Closing statements. Parties shall be afforded the opportunity to present closing statements to explain how the evidence supports what they intended to prove.

O. DECISION

1. The Arbitrator's decision shall be in writing and served upon the parties no later than 30 calendar days after the close of the hearing.

2. The written decision shall include:

a. The procedural and substantive issues presented;
b. Findings of fact and the basis for same;
c. Conclusions of law and the basis for same; and
d. The order.

3. The Arbitrator's decision shall be binding upon the parties.

P. LAW TO APPLY

The Arbitrator shall follow the Hoopa Valley Tribal Code to determine which law to apply. California case law shall not be followed, but may be used for guidance. Any use of California statutory law for guidance shall be liberally construed in favor of the Employer.

Q. NOTICE TO STATE

Any applicant that received disability benefits from the State of California shall immediately notify the State of California of the institution of an arbitration proceeding.

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R. APPROVAL OF SETTLEMENT; COMPROMISE & RELEASE

1. Any Settlement, Stipulation for Award, or Compromise and Release shall be approved in writing by the Hoopa Valley Tribal Council.

S. CLAIM CLOSURE

1. An Employee's claim shall be closed at the point in time that the Third Party Administrator determines that the injured employee has reached the point where not further material improvement would reasonably be expected from medical treatment or for other reasons provided in this Ordinance or the Insurance plan.

2. Where a claim has been filed and where benefits have been provided by the Employer, the Third Party Administrator shall close an Employee's claim if there has been no activity for the previous 180 days. Such closure shall be deemed to occur by operation of law. The Third Party Administrator shall serve written notice of the closure of the claim after expiration of the 180 day period.

T. AGGRAVATION OF PRE-EXISTING INJURY/DISEASE

1. In case of aggravation of any disease or injury existing prior to a compensable Work Injury, compensation shall be allowed only for the proportion of the disability due directly to the aggravation of such prior disease or injury which is reasonably attributed to Employee's Work Injury.

U. EFFECT OF FILING FOR ARBITRATION

1. During the pendency of the action, Claimant shall continue to receive all benefits approved by the Third Party Administrator in its original written decision, but shall not receive any new benefits claimed before the Arbitrator.

2. Payments made to claimant during the pendency of the action shall not be recouped or recovered by the Third Party Administrator or the Hoopa Valley Tribe, except in cases of fraud.

V. ATTORNEY'S FEES

1. No award of attorney's fees shall be made to either the claimant or the Hoopa Valley Tribe due to success in a proceeding before the Arbitrator.

2. Each party is responsible for their respective attorneys' fees including, but not limited to, representation at depositions.

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W. CONTINGENCY FEE LIMIT

A claimant may be represented by any spokesperson or attorney admitted to practice before the Hoopa Valley Tribal Bar. The fees paid to a spokesperson or attorney shall be limited to twenty five percent (25%) of the permanent disability stipulated to or awarded. However, nothing herein shall prohibit payment of an hourly fee to an attorney or spokesperson on a services provided basis.

X. SUBROGATION

The claim of an Employee for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the Employer. Any Employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation may likewise make a claim or bring an action against the third person.

If either the Employee or the Employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If either the Employer or Employee brings the action, the other may, at anytime before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

If the action is prosecuted by the Employer alone, evidence of any amount which the Employer has paid or become obligated to pay by reason of the injury or death of the Employee is admissible, and such expenditures or liability shall be considered as proximately resulting from such injury or death in addition to any other items of damage proximately resulting therefrom.

If the Employee joins in or prosecutes such action, either the evidence of the amount of disability indemnity or death benefit paid or to be paid by the Employer or the evidence of loss of earning capacity by the Employee shall be admissible, but not both. Proof of all other items of damage to either the Employer or Employee proximately resulting from such injury or death is admissible and is part of the damages.

In the event of suit against such third party:

If the action is prosecuted by the Employer alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employer's attorney in effecting recovery both for the benefit of the Employer and the Employee. After the payment of such expenses and attorney's fees, the

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court shall apply out of the amount of such judgment an amount sufficient to reimburse the Employer for the amount of his expenditure for compensation together with any amounts to which he may be entitled as special damages and shall order any excess paid to the injured Employee or other person entitled thereto.

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If the action is prosecuted by the Employee alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employee's attorney in effecting recovery both for the benefit of the Employee and the Employer. After the payment of such expenses and attorney's fee the court shall, on application of the Employer, allow as a first lien against the amount of such judgment for damages, the amount of the Employer's expenditure for compensation together with any amounts to which he may be entitled as special damages.

If the action is prosecuted both by the Employee and the Employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys' fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys' fees the court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the Employer for the amount of his expenditures for compensation together with any other amounts to which he may be entitled as special damages.

The amount of reasonable litigation expenses and the amount of attorneys' fees under subdivisions (a), (b), and (c) of this section shall be fixed by the court. Where separate attorneys represent the Employer and Employee they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.

The court shall, upon further application at any time before the judgment is satisfied, allow as a further lien the amount of any expenditures of the Employer for compensation subsequent to the original order.

After payment of litigation expenses and attorneys' fees fixed by the court pursuant to this Section and payment of the Employer's lien, the Employer shall be relieved from the obligation to pay further compensation to or on behalf of the Employee under this division up to the entire amount of the balance of the

judgment, if satisfied, without any deduction. No satisfaction of such judgment in whole or in part, shall be valid without giving the Employer notice and a reasonable opportunity to perfect and satisfy his lien.

The Arbitrator is empowered to and shall allow, as a credit to the Employer to be applied against his liability for compensation, such amount of any recovery by the Employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees, pursuant to the provisions of this Ordinance, or has not been applied to reimburse the Employer.

Any Employer entitled to and who has been allowed and has perfected a lien upon the judgment or award in favor of an Employee against any third party for damages occasioned to the same Employer by payment of compensation, expenses of medical treatment, and any other charges under this act, may enforce payment of the lien against the third party, or, in case the damages recovered by the Employee have been paid to the Employee, against the Employee to the extent of the lien, in the manner provided for enforcement of money judgments generally.

If an action as provided in this chapter prosecuted by the Employee, the Employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the Employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in absence of a written agreement so to do executed prior to the injury.

Any judgment or settlement of an action as provided for in this Ordinance is, upon notice to the court, subject to the same lien claims of the Employment Development Department and shall be allowed by the court as it determines necessary to avoid a duplication of payment as compensation to the Employee for lost earnings.

Y. THIRD PARTY CREDIT / COLLATERAL SOURCE DEDUCTION

The Arbitrator shall off-set any monies received by the Employee during the relevant period, from other employment, unemployment compensation, disability benefits, welfare or otherwise, including any monies received as described in Section 5(X) of this Ordinance, as a credit to the Employer to be applied against his liability for compensation.

Z. INDEPENDENT MEDICAL EXAMINATION

Whenever the right to compensation under this division exists in favor of an Employee, he shall, upon the written request of his Employer, submit at reasonable intervals to examination by a practicing physician, provided and paid

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for by the Employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the Arbitrator.

The request or order for the medical examination shall fix a time and place therefor, due consideration being given to the convenience of the Employee and his physical condition and ability to attend at the time and place fixed.

The Employee may employ at his own expense a physician, to be present at any examination required by his Employer.

So long as the Employee, after written request of the Employer, fails or refuses to submit to such examination or in anyway obstructs it, his right to begin or maintain any proceeding for the collection of compensation shall be suspended.

If the Employee fails or refuses to submit to examination after direction by the Arbitrator, or in anyway obstructs the examination, his right to the disability payments that accrue during the period of such failure, refusal or obstruction, shall be barred.

Any physician who makes or is present at any such examination may be required to report or testify as to the results thereof.

Any party who subpoenas medical records in any proceeding under this division shall concurrent with service of the subpoena upon the person who has possession of the medical records, send a copy of the subpoena to all parties of record in the proceeding.

No compensation is payable in case of the death or disability of an Employee when his death is caused, or when and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, if the risk of the treatment is, in the opinion of the Arbitrator, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

§ 6 ACTS OUTSIDE COURSE OR SCOPE OF EMPLOYMENT

A. Employees determined to be acting outside of the course or scope of their employment shall be afforded no coverage under the Hoopa Valley Tribe's Workers' Compensation plan.

B. An accident occurring to an Employee while on the way to or from work is not within the due course or scope of employment unless such travel is in direct connection with the Employee's work.

C. Liability for compensation shall not exist against the Hoopa Valley Tribe for any

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injury sustained by an Employee if the injury is caused by any of the following:

1. Where the injury is caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured Employee;

2. Where the injury is self-inflicted;

3. Where the Employee has willfully and deliberately caused his or her own death;

4. Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor;

5. Where the injury is caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of section 17 of the California Penal Code, by the injured Employee and the Employee is found to have committed such act by a preponderance of the evidence; or

6. Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

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§ 7 CHOICE OF PHYSICIAN; CHANGE IN PHYSICIAN

Once an Employee has made a second visit to a physician, that physician is the Employee's Primary Physician under this Ordinance. After the second visit, the Employee may not change Primary Physicians without the approval of the Third Party Administrator.

§ 8 REFUSAL OF EMPLOYEE TO SUBMIT TO TREATMENT

No compensation shall be payable for the death or disability of an Employee if the Employee's death is caused by, or insofar as the Employee's disability may be aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable medical aid, advice or surgical treatment.

§ 9 INCOME BENEFITS FOR TEMPORARY OR NO INCREASED COMPENSATION TOTAL DISABILITY

A. Temporary Disability

1. If the injury causes temporary partial or temporary total disability, the disability payment is two-thirds (2/3) of the average weekly earnings. No payment is due during the first three days after the Employee leaves work as a

result of the injury.

2. Average weekly wage will be determined in accordance with California Labor Code section 4453 in effect as of January 1, 1997, and as thereafter amended.

3. Such payments will be reduced by the sum of unemployment compensation benefits and extended duration benefits received by the Employee during the period of such disability. The injured Employee shall report any pensions, disability payments or earnings to the Third Party Administrator within ten (10) days of receipt of such funds.

B. Permanent Disability

1. In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured worker, and the Employee's age at the time of the injury, and consideration being given to the diminished ability of the Employee to compete in an open labor market.

2. The schedule of the administrative director of the California Department of Workers' Compensation may be used as guidance in determining the percentages of permanent disability, but is not prima facie evidence of a percentage of disability.

3. Average weekly wage will be determined in accordance with California Labor Code section 4453 in effect on January 1, 1997, and as thereafter amended. Computation of permanent disability will be in accordance with California Labor Code section 4658 in effect on January 1, 1997, and as thereafter amended.

C. Permanent Total Disability

1. Permanent total disability is a disability that precludes the injured Employee from any and all gainful employment. There shall not be any presumptions of permanent total disability.

2. Compensation shall be paid at the appropriate weekly rate for temporary disability subject benefits.

D. No compensation in this section shall be payable subsequent to the death of the injured Employee.

§ 10 FATALITY INCOME BENEFITS

A. When an injury causes death within five years from the date of the injury, the

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Employer will be liable for compensation to the dependents of the injured Employee as provided for in this section. The dependent must be a spouse or a minor child, totally or partially dependent upon the injured worker, at the time of the injury and at the time of death in order to qualify for benefits.

B. The death benefit will be four times the annual earnings from the Hoopa Valley Tribal Council, not to exceed the following maximums:

1. Spouse plus minor child or children: $115,000.00;

2. Spouse only: $95,000.00;

3. Minor Child or Children Only: $95,000.00; or

4. Additional Maximum Burial Allowance: $5,000.00.

C. The death benefit will be paid at a weekly rate of two-thirds of the average weekly salary of the deceased Employee while employed by the Hoopa Valley, subject to a maximum compensation rate $406.00 and a minimum rate of $224.00.

D. The weekly compensation will be divided between the qualifying dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying dependent received equal support from the deceased Employee.

§ 11 LIMIT ON MEDICAL BENEFITS

Employer will pay the cost of all reasonable and necessary first aid, medical, surgical and hospital services incurred by the Employee as a direct result of a Work Injury up to a maximum benefit of $100,000 for any Work Injury. Benefits available from other sources such as auto insurance or Veterans Administration shall be the primary benefits payable pursuant to this Ordinance.

§ 12 RECURRENCE

If, within one year from the date on which an Employee has returned to full-time, light, restricted or modified work, the Employee, while in the course of employment for the Tribe or a Tribal Entity, suffers a Recurrence of the original Work Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to the monetary and time limitations of the initial claim. A Recurrence occurring from some other cause, including employment with an entity other than the Tribe or a Tribal Entity, is not compensable under this Ordinance.

A. Subject to Section 12(B) of this Ordinance, if, within one year from the date on which an Employee has returned to full-time, light, restricted or modified work, the Employee,

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while in the course of employment for the Tribe or a Tribal Entity, suffers a Recurrence of the original Work Injury, the Recurrence will be considered a continuation of the earlier claim and injury and subject to the monetary and time limitations of the initial claim. A Recurrence occurring from some other cause, including employment with an entity other than the Tribe or a Tribal Entity, is not compensable under this Ordinance.

B. COMPROMISE & RELEASE; RECURRING CLAIM. Any Claimant who enters into a Compromise & Release for a compensable Work Injury or Occupations Disease and subsequently is employed by or returns to work for an Employer shall be prohibited from making a subsequent claim for and receipt of benefits from a recurring Work Injury or recurring Occupational Disease that is the subject of the Compromise & Release.

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§ 13 ENVIRONMENTAL TOBACCO

Coverage shall be denied and benefits shall not be paid to any claimant claiming injury or disease due to environmental tobacco.

§ 14 STRESS CLAIMS

Coverage shall be denied and benefits shall not be paid to any claimant claiming injury or disease due to stress related work injuries.

§ 15 CHIROPRACTIC TREATMENT

Coverage shall be denied and benefits shall not be paid to any claimant who seeks treatment from a Chiropractor for any work related injury, except upon the written referral of a Medical Doctor (MD) licensed by the Board of Medical Quality Assurance of California. Medical expenses incurred by claimant for treatment by a Chiropractor will not be covered unless prior written referral is made by a Medical Doctor licensed by the Board of Medical Quality Assurance of California.

§ 16 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended in accordance with the Legislative Procedures Act of the Hoopa Valley Tribe.

§ 17 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 18 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Hoopa Valley Tribe from unconsented suit in Tribal, Federal or State court.

CERTIFICATION

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I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which ____ (__) members were present, constituting a quorum, at a regular meeting thereof; duly called, noticed, convened and held this ____ day of ___, 2003; and that this Ordinance was adopted by a vote of ___(__) for, none (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated this _____ day of ____, 2003

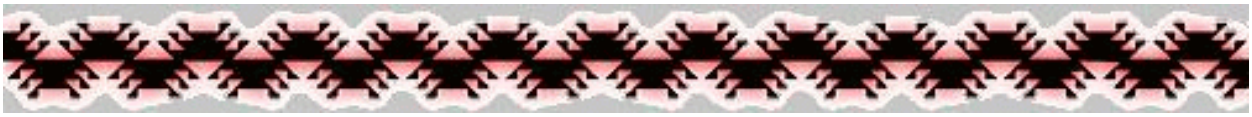
_____
Clifford "Lyle" Marshall, CHAIRMAN
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 47 OF THE HOOPA TRIBAL CODE

PURPOSE: REGISTRATION OF SEX OFFENDERS

ADMINISTRATIVE RECORD: Adopted March 5, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 47

ORDINANCE NO.

DATE APPROVED: March 5, 1998

SUBJECT: REGISTRATION OF SEX OFFENDERS RESIDING WITHIN THE EXTERIOR BOUNDARIES OF THE HOOPA VALLEY INDIAN RESERVATION AND EXCLUSION OF SEX OFFENDERS

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority of the Constitution and Bylaws of the Hoopa Valley Tribe, Article V, Section 1, as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 in the Hoopa-Yurok Settlement Act (25 U.S.C. § 1300i et seq.);

WHEREAS: The Hoopa Valley tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The United States Congress, in the Hoopa-Yurok Settlement Act, confirmed and ratified the Hoopa Valley Tribe’s Constitution and Bylaws which authorizes the promulgation and enforcement of ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe;

WHEREAS: The Hoopa Valley Tribal Council has the inherent authority to exclude persons from the Hoopa Valley Indian Reservation;

WHEREAS: The Hoopa Valley Tribal Council’s authority to

exclude persons from the Hoopa Valley Indian Reservation is expressly recognized in Article IX, section 1(j) of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The Indian Civil Rights Act of 1968 (25 U.S.C. 1301 *et seq*.) provides for imposition of civil penalties for violations of Tribal ordinances; and

WHEREAS: The Hoopa Valley Tribal Council is concerned that various state agencies are not providing the required notice of the residency of known sex offenders to the Hoopa Valley Tribal Police Department pursuant to the California Penal Code and related codes.

NOW, THEREFORE, BE IT RESOLVED: that the following Ordinance governing registration of sex offenders is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

§ 1 SHORT TITLE

The short title of this Ordinance shall be the Hoopa Valley Sex Offender Registration Act, HVSRA or Title 47, and may be cited in legal documents as 47 Hoopa Valley Tribal Code § [ ].

§ 2 SCOPE

This Ordinance applies to all residents of the Hoopa Valley Indian Reservation.

§ 3 PURPOSE

The purpose of this Ordinance is to ensure the health, safety and well-being of all residents of the Hoopa Valley Indian Reservation.

§ 4 REGISTRATION OF SEX OFFENDERS

A. Every person described in section 4(B), for the rest of his or her life while residing within the exterior boundaries of the Hoopa Valley Indian Reservation, shall be required to register with the Chief of the Hoopa Valley Tribal Police Department within five working days of coming to the exterior boundaries of the Hoopa Valley Indian Reservation with the purpose of temporarily

residing or establishing a domicile within the exterior boundaries of the Hoopa Valley Indian Reservation. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the Hoopa Valley Tribal Police Department, including, verifying his or her name and address on a form as may be required by the Hoopa Valley Tribe.

B. The following persons shall be required to register pursuant to Section 4(A):

1. Any person who, since July 1, 1944, has been or is hereafter convicted in any court of the State of California, in any tribal court, in any federal or military court of a violation of subdivision (b) of Section 207 of the California Penal Code, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220 of the California Penal Code, except assault to commit mayhem, Section 243.4 of the California Penal Code, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 of the California Penal Code or paragraph (1) of subdivision (a) of Section 262 of the California Penal Code involving the use of force or violence for which the person is sentenced to the state prison, Sections 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289 of the California Penal Code, subdivision (b), (c), or (d) of Section 311.2 of the California Penal Code, Sections 311.3, 311.4, 311.10, 311.11, or 647.6 of the California Penal Code, former Section 647a, subdivision (d) of Section 647 of the California Penal Code, subdivision 1 or 2 of Section 314 of the California Penal Code, any offense involving lewd and lascivious conduct under Section 272 of the California Penal Code, or any felony violation of Section 288.2 of the California Penal Code; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above mentioned offenses.

2. Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in Section 4(B)(1).

3. Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code.

4. Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any tribal, federal or military court, of any offense which, if committed or attempted in the State of California, would have been punishable as one or more of the offenses described in Section 4(B)(1).

5. Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

C. Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in Section 4(B)(1) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Hoopa Valley Tribe, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Hoopa Valley Tribal Police Department. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside

upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release. The official in charge of the place of confinement shall retain one copy.

D. Any person who, after August 1, 1950, is convicted in the State of California of the commission or attempted commission of any of the offenses specified in Section 4(B)(1) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Hoopa Valley Tribe, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Hoopa Valley Tribal Police. The court shall give one copy of the form to the person and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

E. Youth Offenders

1. Any person who, on or after January 1, 1986, is discharged or paroled from the California Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the California Welfare and Institutions Code because of the commission or attempted commission of any offense described in Section 4(E)(3) shall be subject to registration under the procedures of this section.

2. Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the California Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in California, would have been punishable as one or more of the offenses described in

Section 4(E)(3) and (4), shall be subject to registration under the procedures of this section.

3. The following offenses shall apply for the purpose of this subdivision:

a. Assault with intent to commit rape, sodomy, oral copulation, or any violation of Sections 264.1, 288, or 289 under Section 220 of the California Penal Code.

b. Any offense defined in Sections 288 or 288.5 of the California Penal Code, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286 of the California Penal Code, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a of the California Penal Code, paragraph (2) of subdivision (a) of Section 261 of the California Penal Code, subdivision (a) of Section 289 of the California Penal Code, subdivision (b) of Section 207 of the California Penal Code, or kidnapping, as punishable pursuant to subdivision (d) of Section 208 of the California Penal Code.

c. Any offense under Section 264.1 of the California Penal Code involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

4. Any person who is discharged or paroled from the California Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the California Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

5. Prior to discharge or parole from the California Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. California Department of the Youth Authority officials shall transmit the required forms

and information to the Hoopa Valley Tribal Police Department.

6. All records specifically relating to registration, in the custody of the Hoopa Valley Tribal Police Department and other agencies or public officials, shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the California Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Hoopa Valley Tribal Police Department, Hoopa Valley Tribal Court or other agencies and public officials, unless ordered by the Hoopa Valley Tribal Court.

§ 5 CONTENT OF REGISTRATION

A. The registration shall consist of the following:

1. A statement in writing signed by the person, giving information as may be required by the Hoopa Valley Tribal Police Department.

2. The fingerprints and photograph of the person.

3. The license plate number of any vehicle owned by or registered in the name of the person.

B. If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform the Hoopa Valley Tribal Police Department in writing within five working days.

§ 6 PENALTIES FOR FAILURE TO REGISTER

A. Any person who is required to register under this section based on a misdemeanor conviction and violates this section is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

B. Notwithstanding Section 6(A), any person who has been convicted of assault with intent to commit rape, oral

copulation, or sodomy under Section 220 of the California Penal Code, any violation of Section 264.1 or 289 under Section 220 of the California Penal Code, any violation of Section 261 of the California Penal Code, any offense defined in paragraph (1) of subdivision (a) of Section 262 of the California Penal Code involving the use of force or violence for which the person is sentenced to state prison, any violation of Sections 264.1, 286, 288, 288a, 288.5, or 289 of the California Penal Code, subdivision (b) of Section 207 of the California Penal Code, or kidnapping, as punishable pursuant to subdivision (d) of Section 208 of the California Penal Code, and who is required to register under this section who violates this section is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

C. Any person required to register under this section based on a felony conviction who violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently commits that offense is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

§ 7 RESTRICTIONS ON INSPECTION OF CERTAIN INFORMATION

Except as provided in Section 290.4 of the California Penal Code, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

§ 8 TEMPORARY RELEASE OF CONFINED PERSON

In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within the exterior boundaries of the Hoopa Valley Indian Reservation including firefighting, disaster control, or of whatever nature the assignment may be, the Hoopa Valley Tribal Police Department shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the

institution where he or she is confined.

§ 9 MENTALLY DISORDERED SEX OFFENDER

As used in this ordinance, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the California Welfare and Institutions Code.

§ 10 RELEASE OF INFORMATION

A. When a peace officer reasonably suspects, based on information that has come to his or her attention by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4 of the California Penal Code, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

1. Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

2. Other community members at risk.

B. The information that may be disclosed pursuant to this section includes the following:

1. The offender's full name.

2. The offender's known aliases.

3. The offender's gender.

4. The offender's race.

5. The offender's physical description.

6. The offender's photograph.

7. The offender's date of birth.

8. Crimes resulting in registration under this section.

9. The offender's address, which must be verified prior to publication.

10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

11. Type of victim targeted by the offender.

12. Relevant parole or probation conditions, such as one prohibiting contact with children.

13. Dates of crimes resulting in classification under this section.

14. Date of release from confinement.

C. Information disclosed pursuant to this subdivision shall not include information that would identify the victim.

D. If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

E. For purposes of this section, "likely to encounter" means (a) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (b) the types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

F. For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts

that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

G. For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

H. The Hoopa Valley Tribal Police Department may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4 of the California Penal Code.

I. In addition to the procedures set forth elsewhere in this section, the Hoopa Valley Tribal Police Department may advise the public of the presence of high risk sex offenders in its community pursuant to this subdivision.

1. For purposes of this subdivision:

a. A high risk sex offender is a person who has been convicted of an offense for which registration is required under section 4 and also meets one of the following criteria:

i. Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

ii. Has been convicted of two violent sex offenses and one or more violent non-sex offenses, at least two of which were brought and tried separately.

iii. Has been convicted of one violent sex offense and two or more violent non-sex offenses, at least two of which were brought and tried separately.

iv. Has been convicted of either two violent sex offenses or one violent sex offense and one violent non-sex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex

offenses, violent non-sex offenses, or associated offenses.

b. A violent sex offense means any offense defined in Section 220 of the California Penal Code, except attempt to commit mayhem, sections 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6 of the California Penal Code, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8 of the California Penal Code.

c. A violent non-sex offense means any offense defined in Section 187 of the California Penal Code, subdivision (a) of Section 192 of the California Penal Code, sections 203, 206, 207, 236 of the California Penal Code, provided that the offense is a felony, subdivision (a) of Sections 273a, 273d, or 451 of the California Penal Code, or attempted murder, as defined in Sections 187 and 664 of the California Penal Code.

d. An associated offense means any offense defined in Section 243.4 of the California Penal Code, provided that the offense is a felony, Sections 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459 of the California Penal Code, provided the offense is of the first degree, 597 of the California Penal Code, 646.9 of the California Penal Code, subdivision (d), (h), or (i) of Section 647 of the California Penal Code, 653m of the California Penal Code, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7 of the California Penal Code.

e. For purposes of subparagraphs (b) to (d), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high risk sex offender.

f. For purposes of subparagraphs (b) to (d), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the California Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high risk sex offender.

g. Notwithstanding subparagraphs (a) to (d), inclusive, an offender shall not be considered to be a high risk sex offender if either of the following apply:

i. The offender's most recent conviction or arrest for an offense described in subparagraphs (b) to (d), inclusive, occurred more than five years prior to the high risk assessment by the Hoopa Valley Tribal Police Department, excluding periods of confinement.

ii. The offender notifies the Hoopa Valley Tribal Police Department, on a form approved by the Department and available at the Hoopa Valley Tribal Police station, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the Department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

h. "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code, or confinement in a facility designated by the California Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code.

i. "Law enforcement agency" means any of the following: the Hoopa Valley Tribal Police Department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

§ 11 EXCLUSION OF NON-MEMBER SEX OFFENDERS

A. In accordance with all applicable Tribal ordinances, regulations and laws, known non-member sex offenders residing within the exterior boundaries of the Hoopa Valley Indian Reservation shall be excluded from the Hoopa Valley Indian Reservation after receiving notice as provided in Title 5, Hoopa Valley Tribal Code, section II(1)and(2).

B. For purposes of this section, "non-member" shall mean any person that is not an enrolled member of the Hoopa Valley Tribe.

§ 12 RECORD OF DISSEMINATION OF INFORMATION

A. If the Hoopa Valley Tribal Police Department disseminates information pursuant to this Ordinance, the Hoopa Valley Tribal Police Department shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

§ 13 IMMUNITY OF LAW ENFORCEMENT AGENCY AND EMPLOYEES

Law enforcement agencies and employees of law enforcement agencies shall be immune from liability for good faith conduct under this section.

§ 14 CIVIL PENALTIES FOR MISUSE OF INFORMATION

Any person who uses information disclosed pursuant to this section to commit a felony or misdemeanor shall be subject to civil penalties consistent with the Indian Civil Rights Act and exclusion from the Hoopa Valley Indian Reservation consistent with applicable Hoopa Valley Tribal ordinances.

§ 15 APPLICATION OF REGISTRATION AND PUBLIC NOTIFICATION PROVISIONS

The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

§ 16 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended in accordance with applicable tribal ordinances of the Hoopa Valley Tribe.

§ 17 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 18 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Hoopa Valley Tribe from unconsented suit in Tribal, Federal or State court.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this 5th day of March, 1998; and that this Ordinance was adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated: March __, 1998

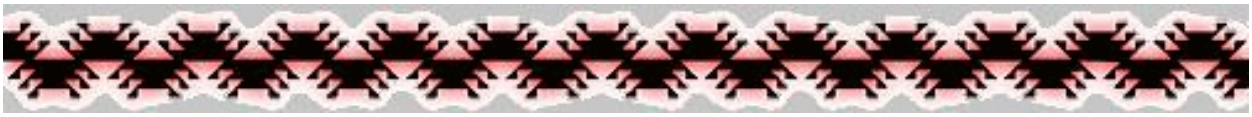
_____
Merv George, Jr., Chairman
Hoopa Valley Tribal Council

_____
ATTEST: Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 48 OF THE HOOPA TRIBAL CODE

PURPOSE: LAND MANAGEMENT COMMISSION

ADMINISTRATIVE RECORD: Adopted March 5, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 48

ORDINANCE NO: 02-98

DATE APPROVED: March 5, 1998

SUBJECT: LAND MANAGEMENT COMMISSION, PLANNING AND ZONING ORDINANCE OF THE HOOPA VALLEY TRIBE

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Constitution and Bylaws of the Hoopa Valley Tribe as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1300I *et seq.*);

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Reservation within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe; and

WHEREAS: The Hoopa Valley Tribal Council is authorized to negotiate with the federal, state and local governments on behalf of the Hoopa Valley Tribe pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe.

NOW, THEREFORE, BE IT RESOLVED, that the following Ordinance is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

ORDINANCE OF THE HOOPA VALLEY TRIBE
LAND MANAGEMENT COMMISSION
DIVISION 1. PLANNING AND ZONING

Article 1. Local Planning

The Hoopa Valley Tribe hereby establishes a planning agency with the powers necessary to carry out the purposes of this title. The Tribal Council further assigns the functions of the planning agency to the Hoopa Land Management Division as the Land Management Commission, the Tribal Council itself, or any combination thereof, as it deems appropriate and necessary. In the absence of an assignment, the Tribal Council shall carry out all the functions of the planning agency.

The Land Management Commission shall report directly to the Hoopa Valley Tribal Council. The Hoopa Valley Tribal Council shall specify the membership of the commission. In any event, the Land Management Commission shall consist of at least five members, all of whom shall act in the public interest. Three members of the Land Management Commission shall be enrolled members of the Hoopa Valley Tribe and two members shall be appointed from the community at large representing the interests of fee land owners within the Hoopa Valley Indian Reservation.

The Hoopa Valley Tribal Council, as the governing body of the Hoopa Valley Indian Tribe, may participate as legislative body, pursuant to the California Government Code under subdivision (b) of Section 65101 on the Humboldt County Association of Governments and for that purpose may enter into a joint powers agreement with the parties thereto and shall be deemed to be a public agency for purposes of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1. The California legislature finds and declares that the unique circumstances of Humboldt County necessitated this special law. (Added by Stats. 1987, Ch. 73)

The Hoopa Valley Tribal Council may establish for its planning agency any rules, procedures, or standards which do not conflict with federal laws.

The Land Management Commission shall perform all of the following functions:

(a) Prepare, periodically review, and revise, as necessary the land-use plan.
(b) Implement a general plan within one year of its initial establishment through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
(c) Annually review the capital improvement program of the Tribe and the local public works projects of other local agencies for their consistency with the general plan.
(d) Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.
(e) Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens generally concerning implementation of the general plan.
(f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.
(g) Perform other functions as the Hoopa Valley Tribal Council provides, including conducting studies and preparing plans other than those required or authorized by this title.
(h) Advise the Land Management Division in the issuance of land leases pursuant to the Tribal Land Assignment/Lease Ordinance.

The Hoopa Valley Tribal Council shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the Hoopa Valley Tribal Council establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The Hoopa Valley Tribal Council shall impose the fees pursuant to Tribal policy.

In the performance of their functions, planning agency personnel may enter upon any land and make examinations and surveys, provided that the entries, examinations and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession thereof.

Upon request all public officials shall furnish to the planning agency within a reasonable time any available information as may be required for the work of the planning agency.

Article 2. Authority for and Scope of General Plans

The Land Management Commission shall prepare and the Hoopa Valley Tribal Council shall adopt a comprehensive, long-term general plan for the physical development of the Hoopa Valley Indian Reservation, and of any land outside its boundaries which in the Land Management Commission judgment bears relation to its planning.

In construing the provisions of this article, the Hoopa Valley Tribal Council intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.

The general plan shall be so prepared that all or individual elements may be adopted by the Hoopa Valley Tribal Council, and so that it may be adopted by the Hoopa Valley Tribal Council for all or part of the territory of the Reservation and such other territory outside its boundaries which in its judgment bears relation to its planning. The general plan may be adopted in any format deemed appropriate or convenient by the Hoopa Valley Tribal Council, including the combining of elements. The Hoopa Valley Tribal Council may adopt all or part of a plan of another Tribal or public agency is sufficiently detailed and its contents are appropriate, as determined by the Hoopa Valley Tribal Council.

(a) The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area.

(b) The general plan shall address each of the elements specified in this Section to the extent that the subject of the elements exists in the planning area. The degree of specificity and level of detail of the discussion of each such element shall reflect local conditions and circumstances. However, this section shall not be construed to expand or limit the authority of the Hoopa Valley Indian Housing Authority to review housing need assessments pursuant to Native American Housing and Self-determination Act of 1996.

The adoption of the general plan or any part or element thereof or the adoption of any amendment to such plan or any part or element thereof is a legislative act which shall be adopted pursuant to the Legislative Procedures Act.

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to those areas. The land use element shall designate, in a broad land use category that provides for timber production pursuant to the Forest Management Plan.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan as required by the Intermodal Surface Transportation Efficiency Act (ISTEA).

(c) A housing element as provided in the Native American Housing and Self Determination Act.

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with The Water Quality Control Plan of the Tribe and any long-range planning documents of the Hoopa Valley Public Utilities District. The conservation element may also cover:

(1) The reclamation of land and waters.
(2) Prevention and control of the pollution of streams and other waters.
(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.
(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.
(5) Protection of watersheds.
(6) The location, quantity and quality of the rock, sand and gravel resources.
(7) Flood control.

The conservation element shall be prepared and adopted no later than June 15, 1999.

(e) An open-space element. Open space is used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the U.S. Department of Housing and Urban Development in the Noise Assessment Guidelines manual and shall analyze and quantify, to the extent practicable, as determined by the Hoopa Valley Tribal Council, current and projected noise levels for all of the following sources:

(1) Highways and freeways.
(2) Primary arterials and major local streets.

(3) Commercial, general aviation, heliport, aircraft overflights, and all other ground facilities and maintenance functions related to the Hoopa airport operation.
(4) Local industrial plants.
(5) Other ground stationary noise sources identified by Tribal agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (Ldn). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (5), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards, and other geologic hazards known to the Hoopa Valley Tribal Council; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

The general plan may include any other elements or address any other subject which, in the judgment of the Hoopa Valley Tribal Council, relate to the physical development of the Reservation.

Article 3. Preparation, Adoption, and Amendment of the General Plan

The Hoopa Valley Tribal Council shall prepare, adopt, and amend the general plan and elements of the general plan in the manner provided in this article.

During this preparation or amendment of the general plan, the Land Management Commission shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the Tribal Council deems appropriate.

(a) Prior to action by a Hoopa Valley Tribal Council to adopt or substantially amend the general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Humboldt County, within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action, as determined by the Land Management Commission.

(2) The Klamath Trinity Joint Unified School District within the area covered by the proposed action.
(3) The Local Agency Formation Commission (LAFCO).
(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the Land Management Commission.
(5) Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the Land Management Commission.
(6) The Hoopa Valley Public Utilities District.
(7) Hoopa Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

The Hoopa Valley Tribal Council finds and declares that it is vital that there be close coordination and consultation between the Hoopa Valley Public Utilities District to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies. It is, therefore, the intent of the Hoopa Valley Tribal Council to provide a standardized process for determining the adequacy of existing and planned future demands on these water supplies.
Upon receiving notification of the Tribe's proposed action to adopt or substantially amend the general plan, the Hoopa Valley Public Utilities District shall provide the Land Management Commission with the following information, as is appropriate and relevant:

(1) A description of the source or sources of the total water supply currently available to HVPUD by water right or contract, taking into account historical data concerning wet, normal, and dry runoff years.
(2) A description of the quantity of surface water that was purveyed by the HVPUD in each of the previous five years.
(3) A description of the quantity of groundwater that was purveyed by the HVPUD in each of the previous five years.
(4) A description of all proposed additional sources of water supplies for the HVPUD, including the estimated dates by which these additional sources should be available and the quantities of additional water supplies that are being proposed.
(5) A description of the total number of customers currently served by the HVPUD, as identified by the following categories and by the amount of water served to each category:

(A) Agricultural users.
(B) Commercial users.
(C) Industrial users.
(D) Residential users.

(6) Quantification of the expected reduction in total water demand, identified by each customer category associated with future implementation of water use reduction measures identified in HVPUD's water management plan.

(7) Any additional information that is relevant to determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

The Land Management Commission shall make a written recommendation on the adoption or amendment of the general plan. A recommendation for approval shall be made by the affirmative vote of not less than a majority of the total membership of the commission. The Land Management Commission shall send its recommendation to the Hoopa Valley Tribal Council.

The Hoopa Valley Tribal Council shall adopt or amend that general plan by resolution, which resolution shall be adopted by the affirmative vote of not less than a majority of the total membership of the Hoopa Valley Tribal Council. The Hoopa Valley Tribal Council may approve, modify, or disapprove the recommendation of the Land Management Commission, if any. However, any substantial modification proposed by the Hoopa Valley Tribal Council not previously considered by the commission during its hearings, shall first be referred to the Land Management Commission for its recommendation. The failure of the commission to report within 45 calendar days after the reference, or within the time set by the Hoopa Valley Tribal Council, shall be deemed a recommendation for approval.

A copy of the adopted general plan or amendment to the general plan shall be sent to all Tribal entities and any other public entities that submitted comments on the proposed general plan or amendment to the general plan during its preparation. Failure to send the adopted general plan or amendment as provided in this section shall not affect its validity in any manner.

Copies of the documents adopting or amending the general plan, including the diagrams and text, shall be made available to the general public as follows:

(a) Within one working day following the date of adoption, the Executive Secretary of the Hoopa Valley Tribal Council shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(b) Within two working days after receipt of a request for a copy of the documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the Executive Secretary shall furnish the requested copy to the person making the request.

If it deems it to be in the public interest, the Hoopa Valley Tribal Council may amend all or part of the adopted general plan. An amendment to the general plan shall be initiated in the manner specified by the Hoopa Valley Tribal Council. Notwithstanding the Legislative Procedures Act, the Hoopa Valley Tribal Council may permit persons to request an amendment of the general and may require that an amount equal to the estimated cost of preparing the amendment be deposited with the Land Management Commission prior to the preparation of the amendment.

(b) Except as otherwise provided in subdivision (c), no mandatory element of the general plan shall be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time, as determined by the Hoopa Valley Tribal Council. Each amendment may include more than one change to the general plan.

(c) The limitation on the frequency of amendments to a general plan contained in subdivision (b) does not apply to amendments of the general plan requested and necessary for a single development of residential units, at least 25 percent of which will be occupied by or available to persons and families of low or moderate income, as defined by U.S. Department of Housing and Urban Development. The specified percentage of low- or moderate-income housing may be developed on the same site as the other residential units proposed for development, or on another site or sites encompassed by the general plan, in which case the combined total number of residential units shall be considered a single development proposal for purposes of this section.

Article 4. Administration of General Plan

After the Hoopa Valley Tribal Council has adopted all or part of a general plan, the Land Management Commission shall do both of the following:

(a) Investigate and make recommendations to the Hoopa Valley Tribal Council regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of Tribal funds relating to the subjects addressed in the general plan.

(b) Provide an annual report to the Hoopa Valley Tribal Council on the status of the plan and progress in its implementation, including the progress in meeting its share of housing needs determined pursuant to the Native American Housing and Self Determination Act.

Article 5. Open-Space Lands

Open space is for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks or rivers and streams, and watershed lands.

Open space is used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

Open space used for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

Open space is also used for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

The Hoopa Valley Tribal Council finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the Reservation, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.
(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage non-contiguous development patterns which unnecessarily increase the costs of community services to community residents.
(c) That the anticipated increase in the population of Reservation demands that at the earliest possible date the Tribe will make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.
(d) That in order to assure that the interests of all its people are met in the orderly growth and development of the Reservation and the preservation and conservation of its resources, it is necessary to provide for the development by the Tribe plans for the conservation and preservation of open-space lands.
(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.

It is the intent of the Hoopa Valley Tribal Council in enacting this article:

(a) To assure that Reservation residents recognize that open-space land is a limited and valuable resource which must be conserved wherever possible.
(b) To assure that every Tribal or public agency will accomplish the objectives of a comprehensive open-space program.

Article 6. Housing Elements
The Hoopa Valley Tribal Council finds and declares as follows:

(a) The availability of housing is of vital importance, and the early attainment of decent housing and a suitable living environment for every Reservation family is a priority of the highest order.
(b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of residents of all economic levels.
(c) The provision of housing affordable to low-and moderate-income households requires the cooperation of all levels of government.
(d) The Hoopa Tribal government has a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and

mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of handicapped, elderly, large families, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this 5th day of March, 1998; and that this Ordinance was adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED THIS FIFTH DAY OF MARCH 1998.

_____

Merv George Jr., Chairman
Hoopa Valley Tribal Council

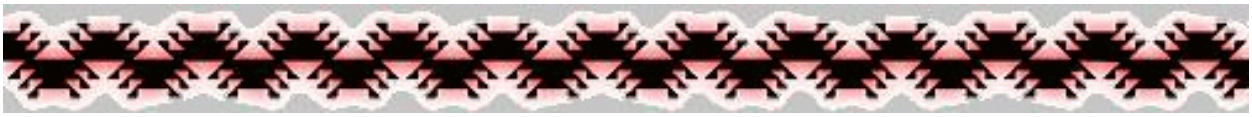
_____

ATTEST: Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 50 OF THE HOOPA TRIBAL CODE

PURPOSE: COMPREHENSIVE BUSINESS POLICY CODE

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 03-98

DATE APPROVED: June 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL COMPREHENSIVE BUSINESS POLICY CODE, TITLE 50 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Comprehensive Business Policy Code as Title 50 of the Hoopa Tribal Code.

TITLE 50 - TRIBAL COMPREHENSIVE BUSINESS POLICY CODE

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TITLE 50 - TRIBAL COMPREHENSIVE BUSINESS POLICY CODE50.101. Short Title.

The short title of this Code shall be the Tribal Comprehensive Business Policy Code of the Hoopa Valley Tribe.

50.102. Definitions.

As used in Titles 50-60, unless intended otherwise by the context used, the following means:

1. "Jurisdiction" means the jurisdiction of the Hoopa Valley Tribe, whether within or without the exterior boundaries of the Reservation.
2. "Reservation" means the Hoopa Valley Indian Reservation, as presently and hereafter constituted.
3. "Tribe" means the Hoopa Valley Tribe.
4. "Tribal Comprehensive Business Codes" means Title 50ñ60 of the Tribal Code.
5. "Tribal Council" means the Hoopa Valley Tribal Council
6. "Tribal Court" means the Hoopa Tribal Court.
7. "Tribal Constitution" means the Constitution and Bylaws of the Hoopa Valley Tribe, and any amendments thereof.
8. "Tribal law" means the Tribal Constitution and all laws now or hereafter duly enacted by the Tribal Council.

50.103. Purpose and Construction.

1. The purpose of the Tribal Comprehensive Business Codes are to establish the policy framework through which the Tribe, its entities, private businesses and individuals may conduct business activities within the territorial and governmental jurisdiction of the Tribe. The policies set forth in this Code shall apply to each of the Codes contained in Titles 50-60 of the Hoopa Tribal Code. The provisions of this Code shall be liberally construed and applied to promote its underlying purposes and policies.
2. Individual Titles of the Tribal Comprehensive Business Codes apply individually and collectively to Titles 50-60.
3. The Tribal Court has jurisdiction to adjudicate matters arising from the Tribal Comprehensive Business Codes.

50.104. Tribal and Private Sector Business Policy.

The Tribe recognizes that a strong Reservation economy must include both tribal and private sector development. It is the policy of the Tribal Council to promote both tribal and private sector development within the exterior boundaries of the Reservation and elsewhere within the jurisdiction of the Tribe. It shall be the policy of the Tribe to interpret laws, policies, regulations, procedures, etc., in a manner that facilitates the development and promotion of businesses on the Reservation to the greatest commercial potential possible.

50.105. Employment In Lieu of Tax Policy.

1. It is the policy of the Tribe to facilitate and enhance job stability, career opportunities and use of inherent Tribal powers to create and maintain a sound business environment within the within the Tribeís jurisdiction. Consistent with these goals, it is the policy of the Tribe to promote the least restrictive and most cost effective business environment within which a business environment can be promoted. As part of this policy, the Tribe hereby establishes an "employment in lieu of tax" policy for businesses operating pursuant to the authority prescribes in the Tribal Comprehensive Business Codes.
2. The policy contained in 50.105(a) is intended to stimulate and promote local employment and business opportunities. While it is anticipated that local business development will generate the need to improve services, facilities and infrastructure to support business and employment opportunities, consistent with the policy of employment in lieu of tax, the Tribal Council will conduct direct and open discussions with businesses within the Tribeís jurisdiction to address community and governmental infrastructure needs and will strive to develop alternative methods for addressing infrastructure needs in lieu of imposing taxes on businesses.

50.106. Private Business Non-Interference Policy.

1. It is the policy of the Tribal Council that, to the greatest extent feasible, and without waiving authorities over such business activities, the Hoopa Tribal Government, its entities and its employees, while conducting affairs under the authorities of such offices shall not knowingly and unnecessarily interfere, obstruct, hinder, nor negatively impact private sector business(es) being properly and lawfully carried out in accordance with the provisions of the Tribal Comprehensive Business Codes, without first determining that the Tribe has an overriding interest in doing so.
2. It is the policy that the Tribe will not knowingly and unnecessarily create unfair business practices or unfair competition, nor interfere, obstruct, hinder or negatively impact, any private sector business that generates less than one-hundred thousand dollars ($100,000.00) in net profits, as determined by the financial statements of such business, without first demonstrating that the Tribe has an overriding tribal interest in doing so.
    1. For the purposes of 50.106(b), unfair business practices means taking governmental

actions that create difficulties or burdens on private sector businesses, enact additional regulatory or administrative requirements, or cause additional costs to be incurred, without first demonstrating that the Tribe has an overriding interest in doing so.
2. For the purpose of 50.196(b), unfair competition means taking governmental action that favors one business over another, or that results in the Tribe creating governmental entities that unfairly compete against private sector business(es) without first demonstrating that the Tribe has an overriding interest in doing so.
3. Nothing in this section shall be construed as creating a financial claim against the Tribe, the Tribal Council, or its officers and employees.

50.107. Use of Tribal Lands and Resources to Promote Business.

1. It is the policy of the Tribe to allow the use of tribal land, natural and financial resources and opportunities for the promotion of economic benefits to create jobs, expand business opportunities and secure business independence in order to achieve the goals prescribed in this Code, consistent with applicable regulations and statutes.
2. Under the policy prescribed in 50.107(a), the Tribal Council may entertain proposals from private sector business interests for privatizing Tribal Governmental activities. If approved, the Tribal Council will enter into a contractual agreement with such business interests for carrying out such contracted services.
3. For grant and other programs for which the Tribe is eligible, and that the Tribe or any of its departments does not express an interest in applying for, the Tribe hereby authorizes businesses operating pursuant to the Tribeís Comprehensive Business Codes to apply for and operate such programs within the Tribeís jurisdiction.

50.108. Not a Waiver of Authority or Jurisdiction.

Nothing in this Code shall be construed as a waiver by the Tribe of its authority or jurisdiction over businesses operating within its jurisdiction.

50.109. Local Purchasing Policy.

It is the policy that Hoopa Tribal Governmental purchasing power generated by both tribal and other funds be used to support local businesses and that every effort be made by Tribal departments to purchase from local vendors and businesses. When comparing the cost for non-local purchases, all costs associated with a non-local purchase are to be taken into consideration, including mileage, wages, per diem, taxes and freight. In addition, written documentation must be submitted along with a request for non-local purchases which explain why it is not feasible to make such purchase(s) locally. In implementing this policy, non-local purchases may be authorized under the following situations:

1. Urgent Need for Services of Goods. The need for the services or goods is so urgent that time will not permit the purchase from a local vendor or business.
2. One-Source Availability/Not Available Locally. The goods or services to be procured, or a like equal, are not available from a local vendor or business.
3. Intertwined Segments. When segments of goods or services are so intertwined that it is impossible to accomplish the objectives if all or parts of the segments were to be procured locally.
4. Prior Approval. The contemplated purchase received prior approval for a non-local purchase.

50.110. Department of Commerce Business Tax.

There is hereby enacted a one percent (1%) business tax on gross revenues for all business

operating under the authority of this Code, except Tribal Entities operating pursuant to Title 52, for the purpose of maintaining the Tribal Department of Commerce (Department). The Department shall submit to the Tribal Council an annual plan which includes a budget, goals, staffing plan, and other requirements, for the Departmentís operations. The Departmentís annual plan will be incorporated into the

Tribeís annual overall budget.

50.111. Severability.

In the event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which ____ were present constituting a quorum at a regular (special) meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of ____ for and ____ against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS EIGHTH DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

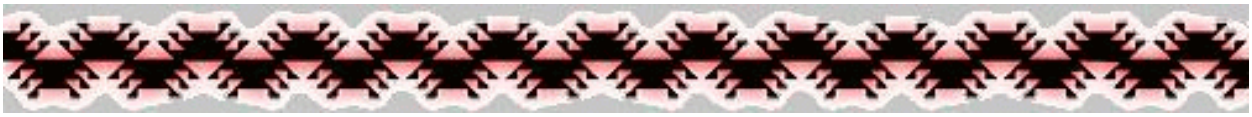
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 51 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL CORPORATIONS AND ENTITIES CODE,

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 04-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL CORPORATIONS AND ENTITIES CODE, TITLE 51 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Corporations and Entities Code as Title 51 of the Hoopa Tribal Code.

TITLE 51: CORPORATIONS AND TRIBAL ENTITIES

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TITLE 51: CORPORATIONS AND TRIBAL ENTITIES

CHAPTER ONE -- GENERAL PROVISIONS

51.101. Short Title.

This Title shall be known and may be cited as the Corporations and Tribal Entities Code.

51.102. Scope.

The provisions of this Title shall apply to all corporations authorized herein and formed under the laws and sovereign power of the Tribe, whether before or after the enactment hereof, and more specifically prescribed in Titles 52, 53 and 54 of Tribal Code. The Tribal Department of Commerce established herein shall have such authority as prescribed individually and collectively in Titles 50-60 of the Tribal Comprehensive Business Codes.

51.103. Purpose and Construction.

(a) The purposes of this Title are:

(1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;

(2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;

(3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and

(4) to simplify, clarify and modernize the laws applicable to businesses created under the sovereign powers of the Tribe.

(b) The provisions of Title shall be liberally construed and applied to promote its underlying purposes and policies.

51.104. Definitions.

In the Chapters of this Title:

(a) "Articles" means the articles of incorporation, charter or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.

(b) "Close Corporation" means a corporation, the shares of which are not publicly traded and are subject to restrictions on transfer.

(c) "Controlled" as used in reference to corporations controlled by the Tribal Council, includes any corporation where the majority of its Board of Directors are chosen by the Tribal Council, as well as entities of the Tribe without boards of directors.

(d) "Deliver" includes delivery by mail.

(e) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or the incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or otherwise.

(f) "For-Profit Corporation" means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.

(g) "Individual" includes the estate of an incompetent or decease individual.

(h) "Interrogatories" means formal written questions seeking information in the form of a written response.

(i) "Non-Profit Corporation" means one in which no part of the income of the corporation is distributable to any person by reason of that person's status as a member, director, officer or employee, except for reasonable wages for work performed.

(j) "Notice" means written notice unless oral notice is reasonable under the circumstances.

(k) "Quorum" means the number of members of a board or other body which must be

present in order to make the board or other body competent to transact business in the absence of the other members.

(l) "Shares" means the units into which the proprietary interests in a for-profit corporation are divided.

(m) "Shareholder" means the person in whose name shares are registered in the records of the corporation.

(n) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

51.105. Tribal Department of Commerce.

(a) The Tribal Department of Commerce is hereby established and shall oversee implementation of the Tribal Comprehensive Business Codes. All actions of the Department of Commerce shall be subject to review by the Tribal Council, including those prescribed in the Tribal Comprehensive Business Policy Code, Title 50.

(b) The Director of Commerce shall oversee the operations of the Department of Commerce and shall have authority to perform functions that are necessary and proper in order to administer and enforce the provisions of this Title, including but not limited to the power:

(1) To review and approve applications for incorporation and grant certificates of incorporation under Titles 53 and 54;

(2) To review and approve amended articles of incorporation and issue certificates of amendment;

(3) To review and approve proposed articles of dissolution and to dissolve corporations administratively;

(4) To accept for filing such other notices, reports and other documents from corporations for the purpose of making such documents available to the public upon request;

(5) To furnish, on request, copies of articles of incorporation, notices, reports and other documents to the public upon the payment of reasonable fees;

(6) To issue interrogatories and demands for inspection or production of documents to corporations in accordance with the provisions of this Title;

(7) To supervise the orderly dissolution of corporations formed under tribal law;

(8) To bring actions or participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of the Tribal Comprehensive Business Codes;

(9) To promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to the Comprehensive Business Codes, and take other actions necessary for the administration of the provisions of the Comprehensive Business Codes;

1. Functions as the Filing Office pursuant to Title 57, the Tribal Secured Transactions Code;
2. Upon approval by the Tribal Council, to enter into agreements or contracts with Indian tribes, businesses, and other parties to implement the Tribal Comprehensive Business Codes.

Provided, however, that the Director of Commerce shall not have authority to regulate with respect to for-profit entities which are owned, in whole or in part, directly by the Tribe, nor shall it have the authority to regulate with respect to nonprofit entities which are controlled by the Tribal Council.

51.106. Status of Corporations.

(a) For the sole purposes of taxation, regulatory jurisdiction and civil jurisdiction, the following corporate entities shall be entitled to all of the privileges and immunities of members of federally-recognized Indian tribes:

(1) All for-profit corporations formed pursuant to the sovereign powers of the Tribe which are managed by members of federally recognized Indian tribes and which are at least 51% owned by Indians who are members of federally-recognized tribes.

(2) All non-profit corporations formed pursuant to the sovereign powers of the Tribe which are managed by members of federally recognized Indian tribes and which have as their primary purpose benefitting the people of the Reservation or any group of people which comprises primarily members of federally-recognized Indian tribes.

(b) In the case of any corporation having its principal place of business on the Reservation which has been incorporated under the laws of any state and also pursuant to the sovereign powers of the Tribe, the ordinances and resolutions of the Tribal Council, the Constitution of the Tribe and the tribal charter documents shall take precedence over any conflicting state laws or charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.

(c) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of corporations formed pursuant to the sovereign powers of the Tribe.

51.107. Reporting Requirements.

The Director of Commerce may propound to any corporation subject to the provisions of the Tribal Comprehensive Business Codes, such interrogatories or demands to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all of the provisions of the Codes. Such interrogatories or demands for inspection shall be answered within 30 days after the mailing thereof, and the answers thereto shall be full and complete and shall be under oath.

51.108. Jurisdiction of Tribal Court.

(a) To the maximum extent consistent with due process of law, all corporations formed pursuant to the sovereign power of the Tribe and all directors, officers and shareholders of such corporations shall be subject to the jurisdiction of the Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the Tribe or which are controlled by

the Tribal Council, or to the directors or officers of such corporations.

(b) This section shall not be construed as a waiver of sovereign immunity.

51.109. Registered Agent.

All corporations formed pursuant to the sovereign power of the Tribe shall appoint a person to accept the service of judicial process on the corporation. All corporations shall notify the Director of Commerce of any change in the name or address of the corporation's registered agent. All corporations formed pursuant to the sovereign powers of the Tribe are hereby deemed to consent to the appointment of the Director of Commerce as their agent for the acceptance of service of process in the event the corporation shall have failed to notify the Director of Commerce of any change in the name or the address of its registered agent. In such cases, service upon the Director of Commerce shall be deemed to be service on such corporation within 10 days thereof, provided, the Director of Commerce shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation at the most recent address noted in the files of the Director of Commerce.

51.110. Liability of Shareholders or Members.

No shareholder or member of any corporation formed pursuant to the sovereign powers of the Tribe, including those formed pursuant to Titles 51, 52, 53 and 54 of the Tribal Comprehensive Business Code, shall be liable to any creditor of the corporation by reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

51.111. Corporate Name.

(a) The name of any for-profit corporation shall contain the words, "Corporation", "Incorporated ", or "Limited", or shall contain an abbreviation of one of such words.

(b) The name of any non-profit corporation may contain the words "Incorporated", "Corporation", "Limited", "Association", "Fund", "Society", "Club", "Foundation", or 'A Non-profit Corporation."

(c) No corporation formed under Titles 53 and 54 shall use any corporate name which is the same as, or deceptively similar to, any other corporation formed pursuant to the sovereign powers of the Tribe.

(d) No corporation which is privately owned or controlled shall use any name or make any representation which implies that it is a subdivision or enterprise of the Tribe.

51.112. Fees.

The Director of Commerce shall charge:

(a) for filing an application for incorporation and proposed articles of incorporation, $50.00;

(b) filing an application for an amendment to the articles of incorporation, $25.00;

(c) filing a statement of change of name or address of registered agent, $10.00;

(d) filing any other statement or report of a corporation, $10.00;

(e) for furnishing a certified copy of any document, instrument report or other paper relating to a corporation, $5.00;

(f) for furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations, $25.00; and

(g) for copies to any person or group that exceed 25 pages in length, a charge of $.10 per page

51.113. Savings Clause.

In event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

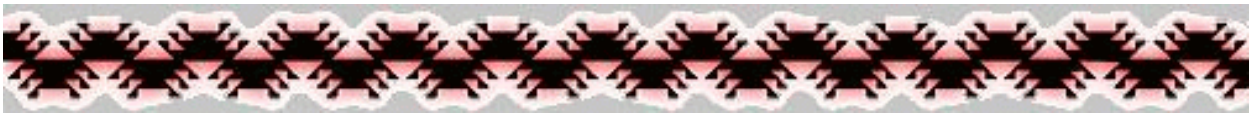
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 52 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL ENTITIES CODE,

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 05-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL ENTITIES CODE, TITLE 52 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Entities Code as Title 52 of the Hoopa Tribal Code.

TITLE 52 -- TRIBAL ENTITIES CODE

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TITLE 52 -- TRIBAL ENTITIES CODEPART I. GENERAL PROVISIONS.

52.101. Scope.

The provisions of this Title shall apply to each tribal entity formed under the laws and sovereign powers of the Tribe, whether before or after the passage of this Title. The provisions of the Tribal Comprehensive Business Codes apply to tribal entities operating pursuant to this Code where not inconsistent with the provisions contained herein.

52.102. Purpose and Construction.

(a) The purposes of this Title are:

(1) to establish a uniform system of creation and regulation of tribal entities for both economic and governmental purposes;

(2) to preserve the sovereign immunity and protect the credit of the Tribe;

(3) to address the status of Tribal sovereign immunity with respect to tribal entities, as required by economic and governmental necessity;

(4) to provide for insulation of tribal economic entities from shifts of policy of tribal politics;

(5) to provide stability and increase the stature of tribal entities in the commercial world; and

(6) to ensure that tribal entities comply with tribal law.

(b) The provisions of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

52.103. Definitions.

The following terms, whenever used or referred to in this Title, shall have the following respective meanings, unless different meanings clearly appear from the context:

(a) "Charter" means the charter of a tribal entity, and includes approved articles of incorporation.

(b) "Tribal entity" includes any cooperative formed by the Tribal Council pursuant to the authority of the Tribal Constitution and Bylaws for economic or governmental purposes and any entity which is controlled by the Tribal Council. For the purposes of this Title, an entity shall be deemed to be controlled by the Tribal Council if the majority of its Directors are chosen, selected or appointed by the Tribal Council. Entities governed by this Title include, but are not limited to, organizations entitled "authority", "enterprise", "corporation", "agency", "commission", or terms of like import, as deemed necessary by the Tribal Council, provided, however, that general committees, programs, departments, projects, of the Tribal Council shall not be deemed "tribal entities" for the purposes of this Title.

52.104. Status of a Tribal Entity.

(a) For purposes of taxation, regulatory jurisdiction and civil jurisdiction, a tribal entity

created pursuant to the sovereign powers of the Tribe shall be deemed to be a subordinate arm of the government of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

(b) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of a tribal entity formed pursuant to the sovereign powers of the Tribe.

52.105. Preexisting Tribal Entities.

A tribal entity preexisting passage of this Title shall continue to exist and to perform its several functions.

52.106. Sovereign Immunity and Waiver.

(a) Sovereign Immunity of Tribal Entity.

A tribal entity is clothed by federal law with all the privileges and immunities of the Tribe, except as specifically limited by the tribal entity charter, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Title shall be deemed or construed to be a waiver of sovereign immunity of a tribal entity from suit or to be a consent of the tribal entity or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or to any cause of action, case or controversy, except as provided herein.

(b) Waiver of Sovereign Immunity of the Tribal Entity.

Sovereign immunity of the tribal entity may be waived only by express resolution of the Tribal Council. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the tribal entity. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the tribal entity subject thereto. Neither the power to sue and be sued provided in the charter of the tribal entity, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgement, lien or attachment upon any property of the tribal entity other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit in respect

to any land within the exterior boundaries of the Reservation or consent to the alienation, attachment or encumbrance of any such land.

(c) Sovereign Immunity of the Tribe.

All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence of the tribal entity are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business affairs of the tribal entity or the Tribe or any cause of action, case or controversy, except as provided herein.

(d) Credit of the Tribe.

Nothing in a tribal entity charter, not any activity of any tribal entity, shall implicate or in

any way involve the credit of the Tribe.

(e) Inclusion in Charter.

The provisions of subsections (a)-(d) of this Section shall be included in the charter of each tribal entity by effect of this Title.

52.107. Assets of a Tribal Entity.

A tribal entity shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with whatever assets it acquires from other sources. No activity of a tribal entity nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned in writing to the tribal entity.

PART II. CREATION AND REGULATION OF A TRIBAL ENTITY.

52.108. Tribal Entity Charter.

The charter for a tribal entity formed under this Title shall set forth:

(1) The name of the tribal entity.

(2) The purposes for which the tribal entity is organized.

(3) Provisions for establishment of a governing body and determining membership thereof, if applicable.

(4) The powers of the tribal entity.

(5) The provisions of Section 52.106 providing for sovereign immunity and waivers thereof.

(6) Provisions and bylaws directing management of the tribal entity and regulation of its affairs.

(7) Provisions designed to insulate the tribal entity from shift of tribal politics.

(8) Provisions, if any, describing the tribal entity's to use of the tribal attorneys or other attorneys approved by the Tribal Council.

1. If applicable, a compensation and administrative schedule for determining how administrative support and compensation will be distributed for Dual-Purpose Governmental/Business Entities, as provided in section 52.109.

    52.109. Dual-Purpose Governmental/Business Entities, Election to Have No Board of Directors.

2. Any department or programs of the Tribe may establish for-profit business divisions within their department or program, if approved by the Tribal Council. When approved, such department or

program must develop for Tribal Council approval a Charter, as prescribed in 52.108, for the for-profit division.

3. The tribal entity established pursuant to 52.109(a) may propose for Tribal Council approval that the for-profit division not have a board of directors for the entity. In such situation, the charter shall describe the governing structure of the entity in lieu of the board of directors.

52.110. Delegation of Essential Governmental Functions of Tribal Entities.

For purposes of allowing a tribal entity to utilize the provisions of the Indian Tribal Governments Tax Status Act of 1982, as amended, the Tribal Council may delegate one or more essential governmental functions to the tribal entity, provided, however, that exercise of any such power shall be subject to periodic review by the Tribal Council.

52.111. Liability of Members of Governing Body of Tribal Entities.

No member of the governing body or officers of any tribal entity formed pursuant to the sovereign powers of the Tribe shall be liable to any creditor of the tribal entity by reason of his or her status or service as a member or officer, or by reason of acts done in the course of his or her official duties.

52.112. Disposition of Assets.

Upon dissolution of a tribal entity, its assets shall be distributed at the direction of the Tribal Council, or its designee, as follow:

(a) Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly;

(b) Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;

(c) Claims of creditors of the tribal entity approved by the Tribal Council shall be paid accordingly from the assets or funds of the entity; and

(d) Remaining assets shall be transferred to another tribal entity, to the Tribe, or distributed or transferred as the Tribal Council directs.

52.113. Amendment of Tribal Entity Charter.

Any tribal entity charter formed under the laws and sovereign power of the Tribe may be amended only by the Tribal Council.

PART III. FACILITATION OF BUSINESS OPPORTUNITIES.

52.114. Authority to Enter Into Partnerships.

(a) A tribal entity shall have such authority to entering into partnerships with private and public persons, corporations, entities and agencies that are beneficial to carrying out the

purposes of the Tribal entity.

(b) Partnerships entered into pursuant to this section shall be governed in accordance with the terms contained in written agreements, and as defined by applicable business codes, and by regulations and laws of the Tribe.

52.115. Multiple-year and Long Term Leases and Permits For Tribal Entities.

(a) In order to facilitate the creation and maintenance of business and employment opportunities for tribal entities, the Tribe, Tribal members and Reservation residents, the Tribal Council may issue multiple-year and long term leases and permits for use of tribal financial and natural resources, property, or may enter into other agreements with tribal entities as provided by tribal laws and regulations.

(b) The contents of leases and permits issued pursuant to this section shall include provisions for:

(i) The date by which the resource will become available;

(ii) For permits and leases for resources that require annual quantities, the date each year by which such quantities will become available;

(iii) The total volume of resources covered by the lease or permit by total or annual amounts;

(iv) If applicable, the price of the resource covered by the lease and permit (taking into consideration the employment in lieu of taxing policy); and

(v) Applicable environmental considerations that may be made part of the lease or permit.

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PART IV. SEVERABILITY.

52.116. Severability.

In the event that any provision of this Title is found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS EIGHTH DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

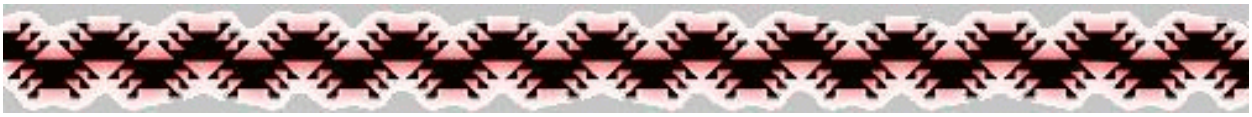
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 53 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL BUSINESS CORPORATIONS CODE

ADMINISTRATIVE RECORD: June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 06-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL BUSINESS CORPORATIONS CODE, TITLE 53 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts this Business Corporations Code as Title 53 of the Hoopa Tribal Code.

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TITLE 53 — TRIBAL BUSINESS CORPORATIONS CODE

Part I. Formation of Corporations.

53.101. Scope of Title.

1. Unless otherwise provided, the provisions of this Title apply to all for-profit corporations formed under the sovereign powers of the Tribe, except those corporations owned in whole or in part by the Tribe. Only close corporations may be formed under the provisions set forth in this Title, and provisions which are stated to be applicable only to "corporations formed under this Title" refer only to close corporations which comply with subsection (b) below.
2. Any Indian, as defined in 51.106 of Title 51, over the age of 18 years wishing to incorporate a for-profit business or for-profit cooperative may apply to the Director of Commerce for the issuance of a certificate of incorporation under this Title, provided that the articles of incorporation shall provide that all of the issued shares of the corporation are to be subject to one or both of the following restrictions on transfer:

    (1) Obligating a shareholder to offer to the corporation or to one or more shareholders of the corporation or to any designated person or to any combination of the foregoing, a prior opportunity to acquire such shares; or

    (2) Requiring the corporation, or the holders of shares of a particular class of the corporations, to consent to any proposed transferee to the shares.

3. The Tribal Council retains the authority to issue corporate charters for business corporations not eligible to be formed under this Title. The Tribal Council may approve the formation of a tribal corporation under the provisions of this Title if it so chooses.

1. The provisions of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

53.102. General Powers of Business Corporations.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

1. to sue and be sued, complain and defend in its corporate name;
2. to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing of affixing it or in any other manner reproducing it;
3. to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing the business and regulating the affairs of the corporation;
    1. to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hole, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
    2. to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
    3. to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares of other interest in, or obligations of any other entity;
    4. to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge or any of its property, franchises or income;
    5. to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
    6. to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other entity;
    7. to conduct its business, structure and restructure its operations, locate offices, and exercise the powers granted by this Title within or without the Reservation;
    8. to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
    9. to make donations for the public welfare or for charitable, scientific, or educational purposes;
    10. to transact any lawful business that will aid government policy;
    11. to make payments or donations, or do any other act, not inconsistent with law, that furthers the business affairs of the corporation;
    12. to cease its corporate activities and surrender its corporate franchise.

53.103. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss of damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance or such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In a proceeding by the Director of Commerce, as provided in this Title, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

53.104. Articles of Incorporation.

The articles of incorporation for any corporation formed under this Title shall set forth:

(a) The name of the Corporation.

(b) The period of duration, which may be perpetual or for a stated term of years.

(c) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Title.

(d) The aggregate number of shares which the corporation shall have authority to issue, such shares to be divided into classes, and the number of shares in each class.

1. If the shares to be divided into classes, the designation of each class and a statement to the preference, limitation and relative rights in respect of the shares of each class.
2. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(g) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(h) The name and address of its initial registered agent and the address of its principal office.

(j) A description of any election to operate without a board of directors under Section 53.122 of this Title.

(k) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify; provided, however, that it all persons who have agreed to purchase shares shall enter into a written agreement under Section 53.122 of this Title to operate the corporation without a board of directors, that fact shall be recited in the articles of incorporation and the names and addresses of the persons who are to be voting shareholders shall be listed instead.

(l) The name and address of each incorporator.

(m) One or more of the restrictions on the transfer of shares described in Section 53.101 of this Title and all other restrictions on the transfer of shares.

(n) The following notice, conspicuously displayed:

"THIS IS A CLOSE CORPORATION FORMED PURSUANT TO THE TRIBAL BUSINESS CORPORATIONS CODE, TITLE 53 OF THE HOOPA VALLEY TRIBAL CODE. THE RIGHTS OF SHAREHOLDERS IN THIS CORPORATION MAY DIFFER MATERIALLY FROM THE RIGHTS OF SHAREHOLDERS IN OTHER CORPORATIONS. COPIES OF DOCUMENTS WHICH RESTRICT TRANSFERS AND AFFECT VOTING AND OTHER RIGHTS MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

1. The direction of the management of the business and the regulation of the affairs of the corporation;
2. The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders;
3. The par value of any authorized shares of class of shares; and
4. Any provision which under this Title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Title.

53.105 Filing of Articles of Incorporation.

Duplicate originals of the articles of incorporation shall delivered to the Director of Commerce. If the Director of Commerce finds that the articles of incorporation conform to this Title, he/she shall, when all the fees have been paid as in this Title described:

(a) Endorse on each of such originals the work "Filed" and the effective date of the filing thereof.

(b) File one of such originals.

(c) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original articles of incorporation affixed thereto shall be returned to the incorporators or their representatives.

53.106 Effect of Filing the Articles of Incorporation — Certificate of Incorporation.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

53.107 Organization Meeting of Directors.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws not inconsistent with this Title, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument which states the action so taken.

Part II. Shares, Shareholders and Distributions.

53.108 Authorized Shares.

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights of or provide special voting rights for the shares os any class to the extent not inconsistent with the provisions of the Tribe. Unless otherwise provided in the articles of incorporation, such shares shall carry preemptive rights.

Without limiting the authority herein contained, a corporation, when so provided in its articles or incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.

(c) Having preference over other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class of shares of classes of shares upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

53.109 Certificates Representing Shares.

1. Shares of a corporation may but need not be represented by certificates. Unless this Title of another statute expressly provides otherwise, the rights and

   obligations of shareholders are identical whether or not their shares are represented by certificates.

2. At a minimum each share certificate must state on its face:

   (1) the name of the issuing corporation and that it is organized under the laws of the Tribe;

   (2) the name of the person to whom issued; and

   1. the number and class of shares and the designation of the series, if any, the certificate represents.
3. If the issuing corporation is authorized to issue different classes of shares of different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
4. Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.
5. If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.
6. No certificate shall be issued for any share until the consideration established for its issuance shall have been received by the corporation.
7. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by this section.

53.110 Subscription For Shares.

A subscription for shares of a corporation to be organized shall be in writing and shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all subscribers consent to the revocation of such subscription.

53.111 Determination of Price -- Payment For Shares.

(a) The powers granted in this section are subject to restriction by the articles of incorporation.

(b) Shares may be issued at price determined by the board of directors, or the board may set a minimum price or establish a formula or method by which the price may be determined.

(c) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration.

(d) Shares issued when the corporation receives the consideration determined by the board are validly issued, fully paid, and non-assessable.

(e) A good faith judgement of the board of directors as to the value of the consideration received for shares is conclusive.

(f) The corporation may place shares issued for a contract for future services of a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

53.112 Expenses of Organization, Reorganization and Financing.

The reasonable charges and expenses of organization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares assessable.

53.113 Stockholder's Liability -- Consideration For Shares.

A holder of or subscriber to shares of a corporation shall be under obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the fill consideration for which such shares were issued or were to be issued, except that he or she may become personally liable by reason of his or her own acts or conduct.

53.114 Stated Capital; Determination of Amount.

1. The consideration received by a corporation for its shares shall constitute stated capital. If the shares have been assigned a par value, the consideration received shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.
2. The stated capital of a corporation may be increased form time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.
3. Dividends shall not be paid out of stated capital.

53.115 Payment of Deficits Out of Capital Surplus or Earned Surplus.

A corporation may, by resolution of its board of directors, apply any or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

53.116 Insolvent Corporation Prohibited From Purchasing Own Shares.

No purchase of or payment for its own shares shall be made by a corporation at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

53.117 Shares Transfer Restrictions.

1. Except as otherwise provided in the articles of incorporation, no interest in shares of a corporation formed under this Title may be transferred, by operation of law or otherwise, whether voluntary or involuntary.
2. Subsection (a) above shall not apply to a transfer:

(1) to the corporation or to any other holder of the same class of shares;

(2) to members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include his or her spouse, parents, lineal descendants (including any adopted children and stepchildren) and spouse of any lineal descendants, and brother and sisters;

(3) which has been consented to in writing by all of the holders of the corporation's common shares having voting rights;

(4) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as a result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(5) by merger, consolidation or a share exchange of existing shares for other shares of a different class or series in the corporation;

(6) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

53.118. Offer to Sell Shares.

1. Any person desiring to transfer shares in a transaction which is prohibited by Section 53.117 (a) and is not exempt under Section 53.117 (b) shall obtain a written offer from a third party who meets the requirements in paragraphs (1) and (2) of this subsection to purchase such shares for cash and shall deliver written notice of the third party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer, and the name and address of the third party offeror. No transfer shall be made to a third party unless:

(1) the third party is eligible to become a qualified shareholder under the provisions of any federal,, state or Tribal tax statute that the corporation has elected to be subject to and the third party shall agree in writing not to take any action to terminate the election without the approval of the remaining shareholders;

(2) the transfer to the third party will not result in the imposition of the personal holding company tax or any similar Tribal, state or federal penalty tax on the corporation.

2. Thee notice specified in subsection (a) shall constitute an offer to sell the shares to the corporation on the terms of the third party offer. Within 20 days after the corporation receives the notice, the corporation shall call a special meeting of shareholders which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all (but not less than all) of the offered shares. Approval of action to purchase shall be by affirmative vote of the holders of a majority of the shares entitled to vote excluding the offered shares. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation, in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.
3. Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in his notice to the corporation, or in the absence of any specification, at his last known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by U.S. mail shall be timely if it is deposited in the mail prior to midnight of the 75th day following the date the offer from the shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms shall be deemed a counter offer and unless the shareholder wishing to transfer his or her stock accepts in writing the counter offer, or the shareholder and the purchaser(s) otherwise resolve by written agreement the differences between the offer and counter offer within 15 days of receipt by the shareholder of the notice of acceptance, the notice containing the counter offer shall be ineffective as an acceptance.
4. If a contract to sell is created under subsection (c), the shareholder shall make delivery of all the certificates for the stock so sold, duly endorsed, within 20 days of receipt of the notice of acceptance, or in the case of un-certificated securities, shall within the 20 day period or deliver to the corporation the required instruction requesting that the transfer be made. Breach of any of the terms of the contract shall entitle the non-breaching party to any remedy at law or equity allowed for breach of a contract, including, without limitation, specific performance.
5. If the offer to sell is not accepted pursuant to subsections (c) and (d), the shareholder shall be entitled to transfer to the third party offeror all (but not less than all) of the offered shares within 120 days after delivery of the shareholder's notice specified in subsection (c) in accordance with the terms specified in the shareholder's notice.

53.119. Notice of Transfer Restrictions on Issued Shares.

1. If the summary of share transfer restrictions required by Section 53.109 (c) of this Title to be printed on share certificates is too long to fit practicably on the certificates, the following notice may be used instead:

> CAUTION: SHARES IN THIS CORPORATION CANNOT BE TRANSFERRED (BY SALE GIFT OR OTHERWISE) EXCEPT AS ALLOWED BY THE ARTICLES OF INCORPORATION, BYLAWS, AND SHAREHOLDERS AGREEMENTS. COPIES OF DOCUMENTS WHICH DESCRIBES HOW SHARES CAN BE TRANSFERRED MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

2. All persons claiming an interest in shares of a statutory close corporation complying with the notice requirements of Section 53.109 (c) or the notice requirement of subsection (a) above shall be bound by the documents referred to in the notice. All persons claiming an interest in shares of a statutory close corporation not complying with the requirement of this section shall be bound by any documents of which they, or any person through whom they claim, have knowledge or notice.

53.120 Transfer of Shares in Breach of Transfer Restrictions.

Any attempted transfer of shares in a corporation formed under this Title in violation of any transfer restriction binding on the transferee shall be ineffective. Any attempted transfer of share in a corporation formed under this Title in violation of any transfer restriction not binding on the transferee because the notice required by Sections 53.109 or 53.119 of this Title has not been given shall; give the corporation the option, exercisable buy notice and payment within 30 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

53.121 Sale of Assets.

Unless otherwise provided in the articles of incorporation, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation formed under this Title, if not made in the usual and regular course of its business, shall require the affirmative vote of all of the holders of outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote thereon.

53.122 Election Not to Have a Board of Directors.

1. A corporation formed under this Title may operate without a board of directors if the articles of incorporation contain a statement to that effect. While this statement is effective:

    (1) All corporate powers shall be exercised by or under his/her authority of and the business affairs of the corporation shall be managed under the direction of the shareholders of the corporation, and all powers and duties conferred or imposed upon the board or directors by this Title shall be exercised by the shareholders.

    (2) No liability that would otherwise be imposed on the directors shall be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

    (3) Any requirement that an instrument filed with any government agency contain a statement that a specified action has been taken by the board of directors shall be satisfied by a statement that the corporation is formed under this Title having no board of directors and that the action was duly approved by the shareholders.

    (4) The shareholders by resolution may appoint one or more shareholders to sign any documents as "Designated Directors".

    (5) Unless the articles of incorporation otherwise provide, any action requiring director approval or both director and shareholder approval shall be sufficiently authorized by shareholder approval and any action otherwise requiring vote of

a majority or greater percentage of the board of directors shall require the affirmative vote of the holder of a majority, of such greater percentage, if the shares entitled to vote thereon.

2. Any amendment to the articles of incorporation to include provisions authorized by subsection (a) must be approved by the holders of all the shares of the corporation whether or not they are otherwise entitled to vote thereon, or all the subscribers to such shares, or the incorporators, as the case may be. Any amendment to the articles of incorporation to delete the election must be approved by the affirmative vote of the holders of all of the shares of the corporation whether or not they are otherwise entitled to vote thereon.

53.123 Agreements Among Shareholders.

1. The shareholders of a corporation formed under this Title may by unanimous action enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation.
2. Any agreement authorized by this section shall be valid and enforceable according to its terms notwithstanding the elimination of the board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as

if it were a partnership of that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

1. If the corporation has a board of directors, the effect of an agreement authorized by this section restricting the discretionary powers of the directors shall be to relieve the directors of, and impose upon the person or persons on whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion of powers of the directors are controlled by the agreement.
2. Any election not to have a board of directors is an agreement authorized by this section shall not be valid unless the articles of incorporation contain a statement to that effect in accordance with Section 53.122 of this Title.
3. A shareholder agreement authorized by this section shall not be amended except by the unanimous written consent of the shareholders unless otherwise provided in the agreement.
4. Any action permitted by this section to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by the section.
5. Provisions otherwise required to be stated in corporate bylaws may be contained with equal effect in a shareholder's agreement.
6. This section shall not prohibit any other agreement among two or more shareholders not otherwise prohibited by law.

53.124 Shareholders' Right to Inspect Records.

1. A corporation shall keep at least the following records:

(1) minutes of all shareholders, meetings and board of director's meetings;

(2) appropriate accounting records;

(3) names and addresses of all shareholders and the number and class of shares held;

(4) current articles of incorporation, bylaws and shareholders' agreements described in Section 53.123;

(5) resolutions adopted by the board of directors.

2. Upon five days written notice, a shareholder of the corporation is entitled to inspect and copy records referred to in subsection (a) above, subject to the following requirements:

(1) the shareholder's demand must be made in good faith and for a proper purpose;

(2) the shareholder must describe with reasonable particularity his or her purpose and the records he or she desires to inspect;

(3) the records must be directly connected with his or her purpose;

(4) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents made for the shareholder; provided, however, that the charge may not exceed any estimates of such costs provided to the shareholder.

3. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he or she represents.
4. A corporation may take reasonable steps to prevent the dissemination of trade secrets, propriety information or other commercially-sensitive information to persons other than shareholders.

53.125 Annual Meeting.

A corporation formed under this Title may establish in its articles of incorporation or bylaws, or in shareholders' agreement authorized by Section 53.123, a date at which an annual meeting of shareholders shall be held, if called, and if not so established the date shall be the first business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request thereof is delivered to the corporation by any shareholder not less than 30 days before the date specified for the meeting.

53.126 Special Meetings of Shareholders.

1. A corporation shall hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purposes for which it is to be held.

2. Special shareholders’ meetings may be held on or off the Reservation, at the place stated in

accordance with the bylaws, special meetings shall be held at the corporation's principal office.
3. Only business within the proposes described in the notice sent to shareholders may be conducted at a special shareholders' meeting.

53.127 Notice of Shareholders, Meeting.

1. A corporation shall notify shareholders of the date, time and place of each annual and special shareholders I meeting no fewer than 10 nor more than 60 days before the meeting. Unless this Title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each shareholder.
2. If an annual or special shareholders' meeting is adjourned to a different date, time and place, notice need not be given of the new date, time or place it that information is announced before meeting adjournment before meeting adjournment.

53.128. Shareholder Sale Option at Death.

1. If the articles of incorporation of a corporation formed under this Title provide that this section shall apply to the corporation, the executor or administrator of the estate of any deceased shareholder shall, subject to any directions in the deceased shareholder's last will and testament, have the right to require the corporation to elect either to purchase or cause the purchase of all, but not less than all, of the shares of the decedent pursuant to subsection (d) through (f), or to be dissolved..
2. A modification of the provisions in this section shall be valid if it is set forth or referred to in the articles of incorporation.
3. Any amendment to the articles of incorporation to provide that this section shall apply or to delete or modify the provisions of this section shall be approved by the unanimous vote of the holders of each class of shares of the corporation affected by the proposed deletion on modification, whether or not they are otherwise entitled to vote thereon; but if the corporation has not shareholders at the time of the proposed amendment, by the unanimous vote of all the subscribers of all of the incorporators, as the case may be.
4. A person exercising rights under this section shall, within six months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying that number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase such shares is being solicited pursuant to this section. Within 20 days after receipt of the notice, the president of the corporation shall call a special meetings of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whither to offer to purchase the shares. Approval of action to offer to purchase the shares shall be by affirmative vote of the holders of a majority of shares entitled to vote, excluding the shares covered by the notice. With the consent of all the shareholders entitled to vote for approval, the corporation may allocate some for all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising his or her rights under this section within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's balance sheets as of the end of, and profit and loss statements for, its proceeding two accounting years and any available interim balance sheet and profit and loss statement.
5. To the extent the price and other terms for purchasing shares of a transferring shareholder by

the corporation or remaining shareholders are fixed or are to be determined pursuant to provisions in the articles of incorporation, the bylaws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due, subsection (h) shall apply and the person exercising his or her rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days.

6. If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this section may commence an action in the Tribal Court. The jurisdiction of the court shall be plenary and exclusive. The corporation shall be made a part defendant in such action and shall, at its expense, give notice of the commencement of the action to all of its shareholders and such other persons as the court may direct. The court shall proceed to determine the fair value of the shares of the person exercising the rights under this section in accordance with Section 53.129(e) of this Title and enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give such person the right to have the corporation dissolved.
7. Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or sure any default by any purchaser shall be entitled to recover the excess payment from the defaulting person.
8. If the corporation or other purchaser fails for any reason to make any payment specified in the court decree within 30 days after the due date for such payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter a decree dissolving the corporation.

(1) If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation prior to the commencement of an action brought pursuant to subsection (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, vexatious, or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against such person.

(2) If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation prior to the time a petition was filed pursuant to subsection (f) and the court finds that the corporation's last offer was arbitrary, vases, or was otherwise not made in good faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.

(3) Expenses assessable under subsections (1) and (2) shall include reasonable compensation for and reasonable expenses of any appraisers appointed by the court, and the reasonable feeds and expenses of counsel for and experts employed by any party.

(4) Except as provided in subsections (1) and (2), the legal costs of an action filed pursuant to subsection (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

9. Any shareholder may waive his or her and his or her estate's and heirs' rights under this section by a signed writing.

10. This section shall not be construed to prohibit any other agreement not prohibited by law that provides for the purchase of shares of the corporation, nor shall it prevent a shareholder from enforcing any other remedy he or she may have.

53.129 Actions by Shareholders of Close Corporations.

1. Any shareholder of record, the beneficial owner of share held by a nominee, or the holder of voting trust certificates of a corporation formed under this Title may file a petition in the Tribal Court for relief on the grounds that:

   (1) The directors of those in control of the corporation have or will have conducted the business and affairs of the corporation in a manner which is not in good faith and which is unfair or oppressive as to the petitioner. Such conduct shall include, but shall not be limited to unfairly depriving the shareholder of the benefit of his or her investment in preference to other shareholders by failing to pay dividends which in

   good faith ought to be paid, or using the payment of wages as an unfair device to divert income from the petitioner.

   (2) Conditions exist that would be grounds for judicial dissolution of the corporation under Section 53.163.

2. In determining whether one or more of the conditions specified in subsection (a) above exist, the court shall give due consideration to the strict fiduciary duty which shareholders of corporations formed under this Title owe to one another, with is the duty of good faith, fairness and loyalty.
3. The jurisdiction of the court shall be plenary and exclusive. If the court finds that one or more of the conditions specified in subsection (a) exist, it shall grant such relief as in its discretion is deems appropriate, including, without limitation, orders granting one or more of the following types of relief:

   (1) Canceling, altering or enjoining any resolution or other act of the corporation;

   (2) Directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action;

   (3) Canceling or altering any provision contained in the articles of incorporation or by-laws of the corporation;

   (4) Removing from off ice any director or officer, or ordering that a person be appointed a director of officer;

   (5) Requiring an accounting with respect to any matters in dispute;

   (6) Appointing a custodian to manage the business and affairs of the corporation;

   (7) Appointing a provisional director who shall have all the rights, powers, and duties of a duly elected director and shall serve for the term and under conditions established by the court;

(8) Ordering the payment of dividends;

(9) If the court finds the relief specified in paragraph (1) through (8) is or would be inadequate or inappropriate, ordering that the corporation is liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined as provided by subsection (e). In the event the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the court.

(10) Awarding damages to any aggrieved party in addition to or in lieu of any other relief granted.

In determining whether to enter a judgement under paragraph (9), the court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

4. If the court determines that any party to a proceeding brought under this section has acted arbitrarily, capricious, or otherwise not in good faith, it may award reasonable expenses, including attorneys, fees and the costs of any appraisers of other experts, to one or more of the other parties.
5. If the court orders relief pursuant to subsection (c)(9), the court shall:

(1) Proceed to determine the fair value of the shares to be purchased, considering the going concern values of the corporation, any agreement among the same or all of the shareholders fixing a price or specifying a formula for determining the value of the corporation's shares for any purpose, the recommendations of any appraiser appointed by the court, any legal constraints on the ability of the corporation to acquire the shares to be purchased, and other relevant evidence.

(2) Enter a decree specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including such provisions as are deemed proper concerning payment of the purchase price in two or more installments, payment of interest on the installments, subordination of the obligation to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to complete or other restriction on the selling shareholder.

(3) Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an installment purchase concurrently with the payment of the initial payment called for in the order make delivery of all his or her shares and from that date have no rights or claims against the corporation or its directors, officers, or shareholders by reason of his or her having been a director, officer, or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this section and any amounts due under any agreement with the corporation for the remaining shareholders that are not terminated by the court's order.

(4) Order that it the purchase is not completed in accordance with the court's decree, the corporation shall be liquidated.

6. Except as otherwise provided in subsection (g), the rights of a shareholder to file a proceeding under this section are in addition to and not in lieu of any other rights or remedies the shareholder may have.

1. No shareholder shall be eligible to file an action under this section until he or she shall have exhausted any non-judicial remedy for resolution of the issues in disputed to which the shareholder has agreed in writing.

53.130 Limited Liability.

The failure of a corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs shall not be grounds for imposing personal liability on the shareholders for obligations of the corporation.

Part III. Directors and Officers.

53.131 Duties of Board of Directors.

Unless the election under Section 53.122 of this Title to operate without a board of directors has been made, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitations set forth in the articles of incorporation.

53.132 Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the state of a shareholder of the corporations unless the articles of incorporation or bylaws so prescribe. A director shall be at least 18 years of age.

53.133 Terms of Directors.

1. The terms of the initial directors of the corporations expire at the first shareholders’ meeting at which directors are elected.
2. The terms of all other directors expire at the next annual shareholders' meting following their election unless the articles of incorporation provide that their terms be staggered.
3. A decease in the number of directors does not shorten an incumbent director's term.
4. The term of a director elected to fill a vacancy expires at the next shareholders’ meeting at which directors are elected.
5. Despite the expiration of a director's term, he or she continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

53.134 Removal of Directors by Shareholders.

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.
3. A director may be removed by the shareholders only at a meeting called for that purpose and

the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

53.135 Removal of Directors by Judicial Proceeding.

1. The Tribal Court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class it the court finds that:
    1. the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation: and

        (2) removal is in the best interest of the corporation.

2. If the court removes the director it may bar the director from reelection for a period prescribed by the court.
3. If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

53.136 Meetings.

1. The board of directors may hold regular or special meetings on or off the Reservation.
2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person a the meeting.

53.137 Action Without Meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Title to be taken at the board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.
2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

53.138 Notice of Meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice to directors of the date, time, place, or purpose of the meeting.
2. Unless the articles of incorporation or bylaws provide fora longer or shorter period, special meeting of the board or directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meting unless required by the articles of incorporation, bylaws or the provisions of this Title.

53.139 Waiver of Notice.

1. A director may waive any notice required by this Title, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by Subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.
2. A director's attendance at or participation in a meeting waives any required notice to him or her unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

53.140 Quorum and Voting.

1. Unless the articles of incorporation or bylaws require a greater number, a quorum of the board of directors consists of a majority of the number of directors.
2. The articles of incorporation or bylaws may authority a quorum of a board of directors to consist of no fewer than one-third of the number of directors.
3. If a quorum is present when a vote is taken, the affirmative majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
4. A director who is present at a meeting of the board of directors of a committee of the board of directors when corporate action is taken is deemed to have assented to the action unless:

    (1) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting;

    (2) his or her dissent or abstention f rom the action is taken in the minutes of the meeting; or

    (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

53.141 General Standards for Directors.

1. A director shall discharge his or her duties as a director, including duties as a member of a committee;

    (1) in good faith;

    (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

    (3) in a manner he or she reasonably believes to be in the best interests of the corporation.

2. In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence, or

(3) a committee of the board of directors of which he or she is not a member if the director reasonably believes to committee merits confidence.

1. A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
2. A director is not liable for any action taken as a director, of any failure to take any action, if he or she performed the duties of office in conjunction with this section.

53.142 Director Conflict of Interest.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. Any conflict of interest transaction is voidable by the corporation because of the director's interest in the transaction unless any one of the following is true:

   (1) the material f acts of the transaction and the director’s interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

   (2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

   (3) the transaction was fair to the corporation.

2. For the purposes of this section, a director of the corporation has an indirect interest in the transaction if:

   (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction; or

   (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

3. For the purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct of indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the

transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

4. For the purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether a transaction is approved under other sections of this Title. A majority of shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum fort the purpose of taking action under this section.

53.143 Liability for Unlawful Distributions.

1. Unless he or she complies with the applicable standards of conduct described in Section 142, a director who votes for or assents to a distribution made in violation of this Title or the articles of incorporation is personally liable to the corporation for the amount of distribution that exceeds what could have been distributed without violating this Title or the articles of incorporation.
2. A director held liable for an unlawful distribution under subsection (a) is entitled to contributions:

    (1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 53.141; and

    (2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this Title or the articles of incorporation.

53.144. Officers.

1. A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
2. A duly appointed officer may appoint one or more officers or assistant officers it authorized by the bylaws or the board of directors.
3. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors, and shareholders, meetings and for authenticating records of the corporation.
4. The same individual may simultaneously hold more than one office in the corporation.

1. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an offer authorized by the board of director to prescribe the duties of other officers.

53.145. Standards of Conduct for Officers.

1. An officer with discretionary authority shall discharge his or her duties under that authority:

    (1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

1. In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

   (1) one or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented; or

   (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence.

2. An officer is not acting in good faith it he or she has knowledge concerning the mater in question that makes reliance otherwise permitted by subsection (b) unwarranted.
3. An officer is not liable for any action taken as a director, of any failure to take any action, if he or she performed the duties of office in conjunction with this section.

53.146. Resignation and Removal of Officers.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifics a later effective date. If resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
2. A board of directors may remove any officer at any time with or without cause.

53.147. Indemnification of Corporate Agents.

1. A corporation may indemnify any person who was a party or is threatened to be made a party to any threatened pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust, or other enterprise, against expenses including attorneys' fees, judgements, fines and amounts paid in settlement actually of reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation or, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.
2. No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.
3. No person shall be indemnified under this section in respect to any proceeding charging improper personal benefit to him or her, whether of not involving action in his or her capacity, in which he or she have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

53.148. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director of offer who was wholly successful, on it merits or otherwise, in the defense of any proceeding to which he of she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

50.149. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, of other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Title.

Part IV. Amendment of Articles of Incorporation.

53.150. Resolution of Proposed Amendment.

The board of directors shall adopt a resolution setting forth a proposed amendment to the articles of incorporation and directing that it be submitted to a vote at a meeting of the shareholders, which may be either an annual or a special meeting. Any number of amendments may be submitted to shareholders, and voted upon by them, at one meeting.

53.151. Notice of Proposed Amendment.

Written notice setting forth a proposed amendment to the articles of incorporation or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

53.152. Vote of Shareholders Meeting.

At the meeting described in Section 53.151 a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. Except as otherwise provided in this Title, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon. If any class of shares is entitled to vote thereon as a class pursuant to Section 53.153, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote enteron, unless a greater majority is required by the provisions of this Title.

53.153. Classes of Shares Entitled to Vote.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, it the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class;

2. Increase of decrease the par value of the shares of such class;
3. Effect an exchange, reclassification or cancellation of all or parts of the shares of such class;
4. Effect an exchange, or create a right of exchange, of all or any party of the shares of another class into the shares of such class;
5. Change the designations, preferences, limitations or relative rights of the shares of such class;
6. Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;
7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;
8. In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;
9. Limit or deny the existing preemptive rights of shares of such class;
10. Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

53.154. Articles of Amendment.

1. Articles of amendment shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 53.144 of this Title for authenticating corporate records, and shall bet forth:

(1) The name or the corporation;

(2) The amendment so adopted;

(3) The date of the adoption of the amendment by shareholders;

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon on each such class;

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and it the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the sane shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars, of the amount of stated capital as changed by the amendment.

2. The articles of amendment shall be sent to the Director of Commerce with fees as provided in this Title. If the Director of Commerce approves the amendments, he or she issue a certificate of amendments.

Part V. Dissolution.

53.155. Dissolution By Board of Directors and Shareholders.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.
2. For a proposal to dissolve to be adopted:

   (1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

   (2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

3. The board of directors may condition its submission of the proposal for dissolution on any basis.
4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 53.127. The notice must also state that the purposed, or one of the purposes, of the meeting is to consider dissolving the corporation.
5. Unless the articles of incorporation or the board of director (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, in order for the proposal to dissolve to be adopted it must be approved by a majority of all the votes entitled to be case on that proposal.

53.156. Shareholder Option To Dissolve The Corporation.

1. Unless a shareholder's agreement or the articles of incorporation provide otherwise, any shareholder of a corporation formed under this Title has an option to have the corporation dissolved at will. Whenever any such option to dissolve is exercised, the shareholder exercising the option shall give written notice thereof to all other shareholders. The corporation or one or more shareholders of the corporations may offer to purchase the shares at their fair market value from the person exercising the option to dissolve. If the parties cannot agree on the price for the shares or other terms of the sale, any party may bring an action in Tribal Court to oversee the terms of the sale, utilizing the procedures set forth in Section 53.129(e) of this Title. If no such written offer to purchase is received within 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented pursuant to Section 155.
2. Unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include, or delete a provision authorized by subsection (a) shall be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote thereon, or all of the subscribers of all of the incorporators, as the case may be.

53.157. Articles of Dissolution.

1. At any time dissolution is authorized, the corporation may dissolve by delivering to the Director of Commerce for filing articles of dissolution setting forth:
   1. the name of the corporation;
   2. the date dissolution was authorized;

3. if dissolution was approved by the shareholders:
    1. the number of votes entitled to be cast on the proposal to dissolve; and
    2. either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

1. If voting by voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the proposal to dissolve.
2. If the dissolution resulted from the exercise of an option to dissolve authorized by Section 53.156 a copy of the notice required by that section shall be attached.

1. A corporation is dissolved upon the effective date of its articles of dissolution.

53.158. Effect of Dissolution.

1. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
    1. collecting its assets;
    2. disposing of its properties that will not be distributed in kind to its shareholders;
    3. disposing property of the Tribe in accordance with the appropriate procedures;
    4. discharging of making provisions for discharging of its liabilities;
    5. distributing its remaining property among its shareholders according to their interests; and
    6. doing every other act necessary to wind up and liquidate its business and affairs.
2. Dissolution of a corporation does not:

(1) transfer title of the corporation's property;

3. transfer title of the Tribe's property that was controlled by the corporation;
4. prevent transfer of its shares of securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
5. subject its directors of officers to standards of conduct different from those prescribed in Section 53.141 and 53.145,
6. change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;
7. prevent commencement of a proceeding by or against the corporation in its corporate name;
8. abate or suspend a proceeding pending by or against the corporation in its corporate name; or
9. terminate the authority of the registered agent of the corporation.

53.159. Known Claims Against Dissolved Corporation.

1. A dissolved corporation may dispose of the known claims against it by following the procedures prescribed in this section.
2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive a claim; and

(4) state that the claim will be barred it not received by the deadline.

3. A claim against the dissolved corporation is barred:

(1) if the claimant was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

4. For the purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

53.160. Unknown Claims Against Dissolved Corporation.

1. A dissolved corporation may also publish notice and request that persons with claims against the corporation present them in accordance with the notice.

1. The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located, and in newspaper of general circulation on the Reservation;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

2. If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under Section 53.159;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

3. A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent to its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent the his or her pro-rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

53.161. Grounds For Administrative Dissolution.

The Director of Commerce may proceed under Section 53.162 to administratively dissolve a corporation if:

(a) the corporation's period of duration stated in the articles of incorporation expires;

(b) responses to interrogatories under Section 53.107 of this Title show that the corporation has been inactive for a period of at least one year, and there are no plans to reactivate the corporation in the future; or

(c) interrogatories under Section 53.107 of this Title have not been answered by any persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Commerce shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

53.162. Procedure For and Effect of Administrative Dissolution.

1. If the Director of Commerce determines that one or more grounds exist under Section 53.161 for dissolving a corporation, it shall serve the corporation with written notice of its determination.
2. If the corporation does not correct each ground for dissolution or demonstrate to a reasonable satisfaction of the Director of Commerce that each ground determined by the Director of Commerce does not exist within 60 days after service of the notice is perfected, the Director of Commerce shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Commerce shall file the original of the certificates and serve a copy on the corporation.
3. A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 158 and notify claimants under Sections 53.159 and 53.160.
4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

53.163. Grounds For Judicial Dissolution.

The Tribal Court may dissolve a corporation:

(a) in a proceeding brought on behalf of the Director of Commerce or other agency or official of the Tribe if it is established that:

1. the corporation obtained its articles of incorporation through fraud; or

2. the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) in a proceeding by a shareholder if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs; the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

3. the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;
4. the corporate assets are being misapplied or wasted; or
5. the shareholder has duly exercised an option described in Section 53.156 of this Title to dissolve the corporation, and the corporation has failed to proceed with filing articles of dissolution or winding up corporate affairs as required by this Title.

(c) in proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgement, the execution on the judgement returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

53.164. Procedure for Judicial Dissolution .

1. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
2. The Tribal Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

50.165. Decree of Dissolution.

1. If after a hearing the Tribal Court determines that one or more grounds for judicial dissolution described in Section 53.163 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the court shall deliver a certified copy of the decree to the Director of Commerce, who shall file it.
2. After entering the decree of dissolution, the court shall direct the windup and liquidation of the corporation's business and affairs in accordance with Section 53.158 and the notification of

claimants in accordance with Sections 53.159 and 53.160.

53.166. Deposit With Tribal Treasurer .

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or shareholder of the corporation who cannot be found, is a minor, or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount

deposited, the Tribal Treasurer shall pay to the individual the amount due.

53.166. Severability.

In the event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall be in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR.,
CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

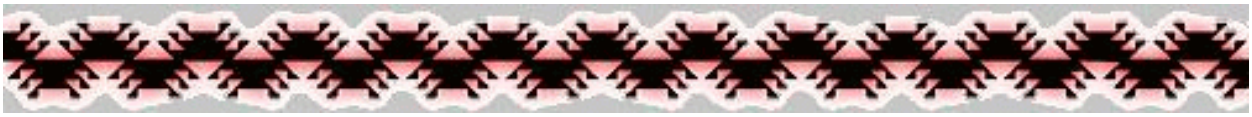
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 54 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL NON-PROFIT CORPORATIONS CODE

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 07-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL NON-PROFIT CORPORATIONS CODE, TITLE 54 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has established the promotion of business development and job creation as major goals for the Tribe and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Non-Profit Corporations Code as Title 54 of the Hoopa Tribal Code.

TITLE 54 -- NON-PROFIT CORPORATIONS

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TITLE 54 - NON-PROFIT CORPORATIONS

PART I: FORMATION

54.101. Scope of Title

1. Unless otherwise provided, the provisions of this Title apply to all non-profit corporations formed under the sovereign powers of the Tribe, except those corporations which are controlled by the Tribal Council.
2. Any non-profit corporation that is pre-existing as of the date of enactment of this Code is not effected by this and other Title, unless such business elects to utilize the provisions of the Code.
3. Any non-profit corporation that elects not to utilize the Tribal Comprehensive Business Codes shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis.
4. Unless otherwise agreed, the provisions of this Title shall not apply to any non-profit organization, entity, club, or otherwise, or any individual whose annual proceeds are $5,000.00 or less.
5. Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safely, morals, and general welfare of the Tribe and Reservation as prescribed by law.

54.102. Definition of Terms Used in this Title

In this Title:

1. "Corporation" means a non-profit corporation formed under the sovereign powers of the Tribe, except for those corporations controlled by the Tribal Council;
2. "Director" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other terms of like import;
3. "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:

    (1) any rights such person has as a member of the staff or student body of any school or college to vote for a director;

    (2) any rights such person has to designate a director or directors; or

(3) any rights such person has as a director.

1. "Mutual Benefit Corporation" means any corporation, including any non-profit cooperative, which is not a public benefit corporation."
2. "Public Benefit Corporation" means:

    (1) any corporation which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code,-or any successor section;

    (2) any corporation, unless its articles or incorporation provide that it is a mutual benefit corporation, which is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals; or

    (3) any corporation organized primarily for a public purpose and which is designated in its articles of incorporation as a public benefit corporation.

54.103. Purposes and Powers of Non-Profit Corporations

(a) Every corporation incorporated under the sovereign powers of the Tribe has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation power:

(1) to sue and be sued, complain and defend in its corporate name.

(2) to have a corporate seal, which may be altered at will, and-to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) to-sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in

and with shares or other interests in, or obligations of, any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by I mortgage or pledge of any of its property, franchises or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 54.104 of this Title;

(9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Reservation and the State of California;

(11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that further the corporate interest;

(14) to impose dues, assessments, admission and transfer fees upon its members;

(15) to establish conditions for admission to membership, admit members and issue memberships;

(16) to carry on a business;

(17) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;

(18) to cease its corporate activities and surrender its corporate franchise.

54.104. Limitations.

(a) A corporation:

(1) shall not have or issue shares of stock;

(2) shall not pay dividends or make any disbursement of income to its members, directors or officers;

(3) shall not loan money or credit to its officers or directors;

(4) may pay compensation only up to a reasonable amount to its members, directors, officers or agents for services rendered; and

(5) may confer benefits upon its members only in conformity with its purposes.

(b) A mutual benefit corporation, unless its articles of incorporation or bylaws provide otherwise:

(1) upon dissolution or final liquidation may make distributions to its members as permitted by this Title, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and

(2) may periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.

(c) A public benefit corporation shall, upon dissolution, have its assets distributed for one

or more purposes listed in the definition of 'Public Benefit Corporation" contained in Section 54.102 of this Title, or to the federal government, or to a state, tribe or other local government, for a public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

54.105. Limitations on Private Foundations.

A corporation which is a private foundation as defined in Section 509(a) of the Internal Revenue Code of 1954:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the corporation to tax under Section 4942 of the Code;

(b) Shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code;

(c) Shall not retain any excess business holdings as defined in Section 4943(c) of the Code;

(d) Shall not make any taxable expenditures as defined in Section 4944 of the Code;

(e) Shall not make any taxable expenditures as defined in Section 4945(d) of the Code;

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

54.106. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or director against the doing of any act or acts or the transfer of real or personal property by or to the corporation. If any unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a

representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the Director of Commerce, as provided in this Chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

54.107. Articles Of Incorporation.

(a) Articles of incorporation shall set forth:

(1) a corporate name for the corporation that satisfies the requirements of this Title;

(2) One of the following statements:

(i) This corporation is a Public benefit corporation.

(ii) This corporation is a mutual benefit corporation.

(3) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(4) the names and addresses of the individuals who are to serve as the initial directors;

(5) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(6) the name and address of each incorporator;

(7) whether or not the corporation will have members; and

(8) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) provisions not inconsistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(2) any provision that under this Title is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Title.

54.108. Filing of Articles of Incorporation.

Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation he or she shall, when all the fees have been paid as in this Title described:

(l) Endorse on each of such originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such originals.

(3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

54.109. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

54.110. Organization Meeting of Directors.

After the issuance of the certificate of incorporation, an organization meeting, of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice thereof by mail to each director, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting, if each director signs an instrument which states the action so taken.

PART II: MEMBERS.

54.111. Admission of Members.

(a) A corporation is not required to have members.

(b) A corporation may admit any person as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.

(c) Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

54.112. Differences in Rights and Obligations of Members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. Members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

54.113. Transfers.

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit corporation may transfer a membership or any right arising therefrom.

(c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

54.114. Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation.

54.115. Termination.

(a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable under the circumstances and is carried out in good faith.

(b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.

(c) A procedure which departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

54.116. Purchase of Memberships.

(a) A public benefit corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set

forth in or authorized by its articles or bylaws.

(c) A mutual benefit corporation shall not purchase its memberships unless after the purchase is completed:

(1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) the corporation's total assets would at least equal the sum of its total liabilities.

54.117. Annual Meeting of Members.

A corporation with members shall establish in its articles of incorporation or by-laws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business day after May 3Ist. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefor is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

54.118. Special Meetings of Members.

(a) A corporation shall hold a special meeting, of members:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if at least 10 percent of all the members entitled to vote on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting, describing the purposes for which it is to be held.

(b) Special meetings of members may be held on or off of the Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(c) Only business within the purposes described in the notice sent to members may be conducted at a special meeting of members.

54.119. Notice of Members' Meetings.

(a) A corporation shall notify its members of the date, time and place of each annual and special meeting of members no fewer than 15 nor more than 60 days before the meeting. Unless this Title or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

(b) Notice of members' meetings shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each member; provided, however, that if it is consistent with the corporation's articles or bylaws, notice may be given by posting and publishing notices instead of mailing or telephoning if the directors determine in good faith that notice so given is reasonably calculated to actually inform all voting members of the meeting.

(c) If annual or special members' meeting is adjourned to a different date, time or place,

notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

54.120. Waiver of Notice.

(a) A member may waive any notice required by this Title, the articles, or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b) below, the waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting, that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

54.121. Action by Written Ballot.

Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken by a vote without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

54.122. Voting Rights of Members in General.

(a) Each member shall have no more than one vote with respect to any matter he or she is entitled to vote upon according to the corporation's bylaws or articles.

(b) Cumulative voting for directors shall not be allowed unless provided for in the corporation's bylaws or articles.

(c) The bylaws or articles of a corporation may provide for any reasonable method to fill individual positions on its board of directors, including but not limited to: voting by all members; voting among members living in a particular community; voting among any other class of members; appointment by the Tribal Council or any other person or entity; and voting among persons who are not considered "members" under Section 54.102 of this Title.

54.123. Inspection of Corporate Records.

(a) A corporation shall keep at least the following records:

(1) minutes of all members' meetings and board of director's meetings and actions of members or of the board of directors without a meeting;

(2) appropriate accounting records;

(3) detailed records of the use of any money donated to a public benefit corporation;

(4) names and addresses of all members and the class of voting rights held by each;

(5) current articles of incorporation and bylaws;

(6) resolutions adopted by the board of directors.

(b) Upon five days written notice, the Director of Commerce or his or her duly authorized representative or a member of the corporation is entitled to inspect and copy the records referred to in subsection (a) above. In the case of inspection by a member, the right is subject to the following requirements:

(1) the member's demand must be made in good faith and for a proper purpose;

(2) the member must describe with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(3) the records must be directly connected with his or her purpose.

(c) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents; provided, however, that in the case of copies made for a member, the charge may not exceed any estimates of such costs provided to the member.

(d) A member's agent or attorney has the same inspection and copying, rights as the member he or she represents.

(e) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to other persons than corporate members or representatives of the Director of Commerce.

54.124. Limitations on use of Membership Lists.

(a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) used for any commercial purpose; or

(3) sold to or purchased by any person.

(b) This section shall not be construed to limit the use of membership lists by the Director of Commerce or other tribal officials in the course of any official investigation of the operation of a corporation.

PART III. DIRECTORS AND OFFICERS.

54.125. Duties of Board of Directors.

(a) Except as provided in subsection (b) below, all corporate powers shall be exercised by or under the authority of and the

affairs of the corporation managed under the direction of its board of directors.

(b) The articles may authorize a person or persons to exercise some or all of the powers would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of directors, and the directors shall be relieved to that extent from such duties and responsibilities.

54.126. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the Reservation or a member of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be an individual who is least 18 years of age.

54.127. Terms of Directors.

(a) If the corporation has members:

(1) the terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected; and

(2) the terms of all other directors expire at the next annual members' meeting following their election, unless the articles of incorporation provide that their terms are staggered or are longer than one year in duration.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) Except as provided in the articles or bylaws:

(1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) the term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

(e) Despite the expiration of a director's term he or she continues to serve until a successor is elected or appointed and qualifies or until there is a decrease in the number of directors.

54.128. Removal of Elected Directors.

(a) The members may vote to remove one or more directors with or without cause.

(b) If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him or her.

(c) A director may be removed by the members only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(d) An entire board of directors may be removed under subsections (a)-(c).

(e) The board of directors of a corporation may, without cause, remove a director who has been elected by the board by the vote of a two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws.

(f) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

54.129. Removal of Designated or Appointed Directors.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed Directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

54.130. Removal of Directors by Judicial Proceeding.

(a) The Tribal Court may remove a director of the corporation from office in a proceeding commenced by the corporation, or by at least 33 percent of the members or in an action brought on behalf of the Director of Commerce, if the court finds that :

(1) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation or that the director received a loan of the corporation's money or credit; and

(2) removal is in the best interest of the corporation.

(b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.

(c) If either the corporation's members or the Director of Commerce commences a proceeding under subsection (a), the corporation shall be made a party defendant.

54.131. Vacancy on Board.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the members, if any, may fill the vacancy if the vacant office was held by a director elected by a specific voting class, only members of the class are entitled to vote to fill the vacancy if it is filled by the members;

(2) the board of directors may fill the vacancy; or

(3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in of@ice.

(b) Unless the articles or bylaws provide other-wise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

54.132. Meetings.

(a) The board of directors may hold regular or special meetings or off the Reservation.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication by which a directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

54.133. Action Without Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Title to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting, vote and may be

described as such in any document.

54.134. Notice of Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Title.

54.135. Waiver of Notice.

(a) A director may waive any notice required by this Title, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

54.136. Quorum and Voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he or she objects at the beginning, of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

54.137. General Standards for Directors.

(a) A director shall discharge his or her duties as a director, including duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she- reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he or she is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property, and notwithstanding that the corporation may be a trustee with respect to the property.

(e) A director is not liable for any action taken as a director, or any failure to take any action, if he or she per-formed the duties of office in compliance with this section.

54.138. Director Conflict of Interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).

(b) A transaction in which a director of a public benefit corporation has a conflict of interest may be approved:

(1) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) before or after it is consummated, by obtaining approval of the:

(i) Director of Commerce; or

(ii) Tribal Court in an action of which the Director of Commerce is given notice.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if-

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board of committee of the board authorized, approved, or ratified the transaction; or

(2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction or (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(e) For purposes of subsections (b) and (c), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b) and (c) if the transaction is otherwise authorized, approved, or ratified as provided in subsections (b) or (c).

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Title. A majority of the voting members, whether or not present, entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

54.139. Liability for Unlawful Payments.

(a) Unless he or she complies with the applicable standards of conduct described in Section 54.137, a director who votes for or assents to any payment of money by the corporation to a member, officer or director made in violation of Section 104 of this Title or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been distributed without violating this Title or the articles of incorporation.

(b) A director held liable for an unlawful payment under subsection (a) is entitled to contribution:

(1) from every other director who voted for or assented to the payment without complying with the applicable standards of conduct described in section 54.137; and

(2) from each member, officer or director who received an unlawful payment, for the amount of the unlawful payment, whether of not he or she accepted the payment knowing it was made in violation of this Title or the articles of incorporation.

54.140. Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

(e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

54.141. Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared

or presented by:

(1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

54.142. Resignation and Removal of Officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

54.143. Indemnification of Corporate Agents.

(a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.

(c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

54.144. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or

she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

54.145. Advance for Expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director or officer furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 54.143;

(2) the director or officer furnishes the corporation a written undertaking, executed personally or by a surety or guarantor, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Section.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director or officer but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 54.147.

54.146. Court-Ordered Indemnification.

Unless limited by a corporation's articles of incorporation, a director or officer of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding, to the Tribal Court or to another court of competent jurisdiction. On receipt of an application the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines:

(1) the director or officer is entitled to mandatory indemnification under Section 54.144, in which case the court shall also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 54.143 or was adjudged liable as described in Section 54.143(b) or (c),

but if the director or officer was adjudged so liable indemnification is limited to reasonable expenses incurred.

54.147. Determination and Authorization of Indemnification.

(a) A corporation may not indemnify a director or officer under Section 54.143 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the director or officer has met the standard of conduct set forth in Section 54.143.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(ii) if a quorum of the board cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board (in which selection directors who are parties may participate);

(4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceedings may not vote on the determination.

(c) Authorization of identification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

(d) A director or officer of a public benefit corporation may not be indemnified until 20 days after written notice is given to the Director of Corporations of the proposed indemnification.

54.148. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or anent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Title.

PART IV: AMENDMENT OF ARTICLES OF INCORPORATION.

54.149. Amendments to Bylaws and Articles of Corporations Without Members.

If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws and articles, subject to any approvals required by the articles or bylaws. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with Section 54.134. The notice must also state that a purpose of the meeting is to consider a proposed amendment to the articles or bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. In addition to any requirements in the bylaws or articles concerning voting on proposed amendments, the amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

54.150. Amendments to Bylaws and Articles of Corporations With Members.

If the corporation has members, then:

(1) Unless this act, the articles, bylaws or the board, of directors (acting pursuant to subsection (b)(2)) require a greater vote or voting by class, an amendment to a corporation's articles or bylaws to be adopted must be approved:

(i) by the board if the corporation is a public benefit corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(ii) by the members by two-thirds of the votes cast or by a majority of the voting power, whichever is less; and

(iii) in writing by any person or persons whose approval is required by a provision of the articles or bylaws.

(2) If the board initiates an amendment to the articles or bylaws, or board approval is required by subsection (1) to adopt an amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(3) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 54.119. The notice must state that a purpose of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(4) If the board seeks to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

54.151. Approval by Third Persons.

The articles or bylaws may require an amendment to the articles or bylaws to be approved in writing

by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

54.152. Articles of Amendment.

(a) A corporation amending its articles shall prepare articles of amendment, which shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 54.140 of this Title for authenticating corporate records, and shall set forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors;

(5) if approval by members was required, the number of memberships out standing and the total number of votes cast for and against the amendment.

(6) if approval of the amendment by some person or persons other than the members or the board is required pursuant to section 54.151, a statement that the approval was obtained.

(b) The articles of amendment shall be sent to the Director of Commerce with the fees as provided in this Title. If the Director of Commerce approves the amendments, he or she shall issue a certificate of amendment.

PART V: DISSOLUTION.

54.153. Dissolution of Corporations Without Members.

(a) The board of directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Director of Commerce articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 54.134. The notice must also state that a purpose of the meeting is to consider dissolution of the corporation.

(c) Dissolution shall be approved by a vote of a majority of the directors in office at the time the transaction is approved.

(d) The directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

54.154. Voting on Dissolution by Directors and Members.

(a) Unless this Title, the articles, bylaws or the board of directors or members (acting

pursuant to subsection (b) require a greater vote, dissolution is authorized if it is approved:

(1) by the board;

(2) by the members, if any, by two-thirds of the votes cast or a majority of the members, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by Section 54.151 for an amendment to the articles or bylaws.

(b) The board may condition its submission of the proposed dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 54.119. The notice must also state that a purpose of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

54.155. Distributions by Public Benefit Corporations.

(a) A public benefit corporation shall give the Director of Commerce written notice that it intends to dissolve 10 days before the time it delivers articles of dissolution to the Director of Commerce. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given written notice as required by subsection (a) to the Director of Commerce or until the Director of Commerce has consented in writing to, or indicated in writing that it will take no action with respect to, the transfer or conveyance, whichever is earlier.

(c) Prior to the expiration of the 20-day period described in subsection (b), the Director of Commerce may bring an action in Tribal Court to challenge the planned distribution of assets, and the Tribal Court may enjoin any distribution pending the outcome of the action.

(d) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Director of Commerce a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

54.156. Articles of Dissolution.

(a) Subject to any waiting period prescribed by Section 54.155, at any time after

dissolution is authorized, the corporation may dissolve by delivering to the Director of Commerce articles of dissolution setting forth:

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) a statement that dissolution was approved by a sufficient vote of the board;

(4) if approval of members was not required, a statement to that effect;

(5) if approval by members was required, the number of memberships outstanding and the total number of votes cast for and against dissolution.

(6) if approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to Section 54.154(a)(3), a statement that the approval was obtained; and

(7) the effective date of the articles of dissolution.

(b) After its articles of dissolution have been accepted for filing by the Director of Commerce, a corporation is dissolved upon the effective date stated in its articles of dissolution.

54.157. Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) preserving and protecting its assets and minimizing its liabilities;

(2) discharging or making provision for discharging its liabilities and obligations;

(3) disposing of its properties that will not be distributed in kind;

(4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) if the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets in accordance with section 54.104(c);

(7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and

(8) doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) subject its directors or officers to standards of conduct different from those prescribed in sections 54.137 and 54.141;

(3) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(6) terminate the authority of the registered agent of the corporation.

54.158. Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim, and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

54.159. Unknown Claims Against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claim against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located and in a newspaper of general circulation on the Reservation;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under Section 54.158;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributes.

54.160. Grounds for Administrative Dissolution.

The Director of Corporations may a proceed under Section 54.161 to dissolve a corporation administratively if:

(1) the corporation's period of duration stated in its articles of incorporation expires;

(2) responses to the interrogatories under the Tribal Comprehensive Business Codes of this Title show that the Corporation has been inactive for a period of

at least one year, and there are no plans to reactive the corporation in the future; or

(3) interrogatories under the Tribal Comprehensive Business Codes have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Commerce shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

54.161. Procedure for and Effect of Administrative Dissolution.

(a) If the Director of Commerce determines that one or more grounds exist under Section 54.160 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Commerce that each ground determined by the Director of Commerce does not exist within 60 days after service of the notice is perfected, the Director of Commerce shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Commerce shall file the original of the certificate and serve a copy on the corporation.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 54.157 and notify claimants under Sections 54.158 and 54.159.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

54.162. Grounds for Judicial Dissolution.

(a) The Tribal Court may dissolve a corporation:

(1) in a proceeding brought on behalf of the Director of Commerce or other agency or official of the Tribe if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse, the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes.

(2) in a proceeding by members holding 25 per cent of the voting power, or by a director, or by any person specified in the articles, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(3) in a proceeding by a creditor if it is established that;

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

(1) there are reasonable alternatives to dissolution;

(2) dissolution is in the public interest, if the corporation is a public benefit corporation;

(3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

54.163. Procedure for Judicial Dissolution.

(a) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) The tribal court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(c) A person who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the Director of Commerce, which may intervene.

54.164. Receivership or Custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) During a receivership the court may re-designate the receiver a custodian, and during a custodianship may re-designate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) From time to time during the receivership or custodianship the court may order compensation paid and reimbursements made to the receiver or custodian and to his or her counsel and accountant from the assets of the corporation or proceeds from the sale of the assets.

54.165. Decree of Dissolution.

(a) If after a hearing the tribal court determines that one or more grounds for judicial dissolution described in section 162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Director of Commerce, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 157 and the notification of claimants in accordance with Sections 54.158 and 54.159.

54.166. Deposit With Tribal Treasurer.

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.

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54.167. Severability.

In the event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

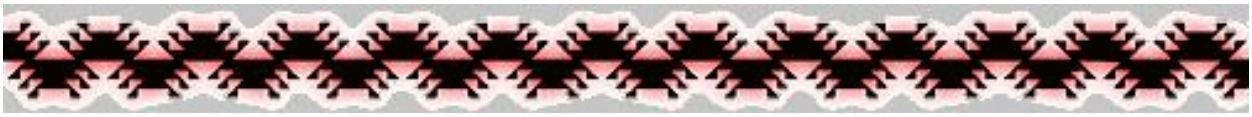
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 55 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL BUSINESS PARTNERSHIP CODE

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 08-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL BUSINESS PARTNERSHIP CODE, TITLE 55 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals of the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Sole Proprietorship and Partnership Code as Title 55 of the Hoopa Tribal Code.

TITLE 55 - TRIBAL BUSINESS PARTNERSHIP CODE

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TRIBAL PARTNERSHIP CODEGENERAL PROVISIONS55.101. Short Title.

This Title may be cited as the Business Partnership Code of the Hoopa Valley Tribe.

55.102. Purpose:

The purpose of this Title is to provide general regulations that apply to Business Partnerships created for business purposes within the Tribe's jurisdiction. Unless otherwise provided in an executed Partnership Agreement between the business partnership and has been properly filed with the Tribal Department of Commerce, the of this Title shall apply to all Business Partnerships operating within the Tribe's jurisdiction.

55.103. Contents of Partnership Agreements.

Partnership Agreements must include the following provisions:

1. The name and place of the partnership business;
2. Identification of all partners;
3. The duration of the partnership;
4. Capital contributions made individually by each partner to the partnership;
5. Terms with respect to partnership property interests;
6. The rights, duties and liabilities of partners;
7. Indemnification agreements among the partners;
8. Management structure of the partnership, partnership decision making and meetings, and management responsibilities of each partner;
9. Financial agreements, including control of bank accounts, profits and losses, accounting matters, record and bookkeeping, audits, income accounts and distributions, payments of taxes, and wages;
10. Admission of new partners, transfers of partnership status, withdrawal of partners, and expulsion;
11. Dissolution and liquidation agreements;
12. dispute resolution, and
13. Provisions for amending the partnership agreement.

55.104. Standard Partnership Provisions.

Unless otherwise agreement in a written partnership agreement, the following provisions apply to business partnerships operating pursuant to the Tribal Comprehensive Business Codes:

1. Capital Contributions, Partnership Property.
    1. Capital Contributions. Each partner is responsible for providing equal amount of initial capital contributions to the partnership. Subsequent capital contributions, as such are needed by the partnership, shall be made by each partner in proportion to his respective distributive share .(as defined in Article IX(a)). In the event any partner fails to make such subsequent capital contribution, the partners who have contributed their shares may consider the sums so advanced as loans to the partnership.
2. Partnership Property. Subject to the provisions of Article VI (b) and (d) , all property originally paid or brought into, or transferred to, the partnership as contributions to capital by the partners, or subsequently acquired by purchase or otherwise, on account of the partnership, shall be partnership property.

3. Property To Be In Partnership Name. The title to all partnership property shall be held in the name of the partnership.
4. Rights, Duties, and Liabilities of Partners.
    1. Other Business Activities Prohibited.. No partner, during the continuance of the partnership, shall pursue, or become directly or indirectly interested in, any business or occupation which is in conflict either with the business of the partnership or with the duties and responsibilities of such partner to the partnership.
    2. Time Partners to Devote to Business. Each partner shall devote to the business of the partnership his and her time sufficient to insure the success of the business.
    3. Salaries. Each partner, for his time devoted to the business of the partnership, shall receive, in addition to his share in any profits. The salary of each partner will be determined after the first six months of business operation.
    4. Vacations and Leave of Absence. Each partner shall be entitled to 30 days of vacation and 12 days of leave of absence for illness or disability per annum.
    5. Partnership Obligations. The partnership is not bound by any pervious obligations of any individual partner that has not been agreed to by all partners.
    6. Payment of Separate Debts of Partners, Indemnification. Each partner is responsible for payment of his or her separate debts punctually and shall indemnify the other partners and the capital and property of the partnership against the same and all expenses on account thereof.
5. Management of Partnership.
    1. Participation in Management. All partners shall have equal rights in the management and conduct of the partnership. Decisions shall be by majority vote (each partner having one vote), except as provided in 55.104(c)(2).
    2. Matters Requiring Unanimity. During the continuance of the partnership, no partner shall, without the consent of all partners, do any of the following:
6. Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of. the partnership;
7. Dispose of the good will of the business;
8. Submit a partnership claim or liability to arbitration or reference;
9. Confess a judgment against the partnership;
10. Do any act which would make it impossible to carry on the ordinary business of the partnership;
11. Make, execute, or deliver in the name of the partnership any bond, trust deed, mortgage, indemnity bond, guarantee, surety bond, or accommodation paper or accommodation endorsement;
12. Borrow money in the name of the partnership or use as collateral any partnership property;
13. Assign, pledge, transfer, release, or compromise any debt owing to, or claim of, the partnership except for full payment;
14. Convey any real property of the partnership;
15. Pledge or transfer in any manner, except to another partner, his individual interest in the partnership; or
16. Undertake or complete any act for which unanimity is required under any other provision of this agreement.
17. Contracts. For purposes of the partnership business, but subject to any limitations and restrictions imposed by this section, each partner shall have equal power and authority in using the partnership name and in binding the partnership, in making contracts and purchasing goods, and in otherwise trading, buying, sell, or managing on behalf of the partnership.
18. Employment and Dismissal of Personnel. No partner shall hire any person for employment by the partnership or dismiss, except in case of gross misconduct, any person in the employment of the partnership without the consent of all the partners.
19. Indemnity By Partnership. The partnership will indemnify each partner in respect for payments made and personal liabilities reasonably incurred by each partner in the ordinary and proper conduct of the partnership business, or for the preservation of the business or property of the

partnership.

20. Meetings of Partners. Without call or notice, the partners shall hold regular quarterly meetings at times and places to be selected by the partners. In addition, special meetings may be called by any two partners at any time after the giving of one days' notice to all partners. Notice of special meetings shall be by actual notice in person or by telephone to each partner. Any partner may waive notice of any meeting, and attendance of a partner at a meeting constitutes a waiver of notice of such meeting. except in the event that a partner attends a meeting and protests the lack of notice to him.
21. Bank Deposits and Accounts. All partnership funds shall be deposited in the name of the partnership in the partnership's accounts in a designated banking institution. All checks, drafts, or other withdrawal slips drawn on such partnership accounts must be signed by any partner.
22. Profits and Losses.
    1. Sharing of Profits. The partners shall be entitled to an equal share of the net profits arising from the operation of the partnership business that remain after the payment of the expenses of conducting the business of the partnership.
    2. Losses. All losses that occur in the operation of the partnership business shall be paid out of the capital of the partnership and the profits of the business or, if such sources are deficient in funds to cover such losses, shall be shared equally by the partners.
23. Accounting Matters.
    1. Books of Account. Books of account shall be kept by the partners, and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions, and property of the partnership.
    2. Method of Accounting. All accounts of the partnership shall be kept on the accrual basis. All matters of accounting for which there is no provision in this agreement are to be governed by generally accepted methods of accounting.
    3. Place Where Books and Records To Be Kept. The partnership books of account, and all securities, papers, and writings of the partnership shall be kept at the principal place of business within the exterior boundaries of the Reservation. Each

       partner shall have free access at all times to examine and copy the books, papers, and other writings of the partnership.

    4. Auditing of Accounts. The books of account shall be audited annually at the expense of the partners by a certified public accountant selected by the partners.
    5. Capital Accounts. A capital account shall be maintained on the partnership books on behalf of each partner. Such account shall be credited with the partner's contributions to the capital of the partnership and shall be debited and credited in the manner prescribed in subpart (6) of this section.
    6. Income Accounts. An income account shall be maintained on the partnership books on behalf of each partner. Such account shall be closed to the capital account of the partner at the close of the fiscal year. As soon as practicable after the close of each fiscal year, and at such other times as the partners may decide, the income account of each partner shall be credited with that partner's distributive share of profits or debited with his share of the losses. Any losses to be debited to a partner's income account that exceed the credit balance of such account shall be debited to that partner's individual capital account. If, as a result of debiting a partner's individual capital account with the excess losses, his capital account is depleted, future profits of that partner shall be credited to his capital account until such depletion has been eliminated.
    7. Drawing Accounts. A drawing account, to which withdrawals shall be debited, shall be maintained on the partnership books on behalf of each partner. Withdrawals may be made subject to such limitations as the partners may from time to time adopt. Each partner's drawing account shall be closed to his income account at the close of each fiscal year.
    8. Tax Year. The taxable year of the partnership shall commence on January lst and end on

December 31st.

9. Partnership Account. All partnership funds shall be deposited in an account in the partnership name in a bank selected by a majority of the partners. Checks shall be drawn upon the partnership account only for partnership purposes and shall be signed by any one partner designated by the partners.

1. Accounting Between Partners. Each partner shall, on every reasonable request, give to the other partners a true accounting of all transactions relating to the business of the partnership, and full information of all letters, accounts, writings, and other things that come into his or her hands or to his or her knowledge concerning the business of the partnership.
2. Admission of Partners. Additional partners may be admitted to the partnership on such terms as may be agreed on in writing between the partners and such new partners. The terms so agreed on shall constitute an amendment to this partnership agreement.
3. Restrictions on Transfers. Except as otherwise provided in this section, no partner may sell, assign. transfer, encumber, or otherwise dispose of any interest in the partnership, partnership property, or assets of the partnership without the prior written consent of all other partners.
4. Withdrawal or Retirement of Partner.
    1. Notice of withdrawal or Retirement. In the event any partner shall desire to withdraw or retire from the partnership, or becomes disabled so that he is unable to fulfill his obligations to the partnership as specified in this agreement, such partner shall give 60 days notice thereof in writing by registered or certified mail to the other partners at the last known address of each other partner. If any partner is adjudged incompetent or insane, then his guardian shall give notice thereof to each of the other partners in the same manner as provided herein.
    2. Competitive Activities After Retirement or Withdrawal. Any partner who retires or withdraws from the partnership shall not, without the written consent of the remaining active partners, conduct or otherwise engage in Hardware retail sales within the Reservation for a period of two years after such retirement or withdrawal.
5. Expulsion of Partner.
    1. Grounds for Expulsion. Any partner may be expelled from membership in the partnership by a majority vote of the other partners on the following grounds:
        1. Failure of a partner to make, when due, any contribution required to be made under the terms of this agreement, when such failure has continued for a period of 60 days after written notice thereof.
        2. Failure to fulfill any other obligation to the partnership as specified in this agreement, when such failure has continued for a period of 60 days after written notice thereof.
        3. Adjudication of the partner as insane or incompetent.
        4. Disability of the partner to the extent that he or she is unable for a period of 365 days to fulfill his obligations to the partnership as specified in this agreement.
        5. The making of an assignment for the benefit of creditors, the filing of a petition under the National Bankruptcy Act or under similar law or statute of the United States, any state or tribe thereof, or the adjudication of the partner as a bankrupt or insolvent in proceedings filed against such partner under any such act or statute.
    2. Manner of Expulsion Notice. On the occurrence of any event listed in subpart (l)(1) of this section, the defaulting partner may be expelled from membership in the partnership by a majority vote of the other partners on giving the defaulting partner 60 days notice of expulsion. Such notice shall briefly state the grounds for the expulsion.
6. Dissolution, Winding Up and Liquidation.
    1. Causes of Dissolution. The partnership shall be dissolved on the happening of any of the following events:
        1. Termination of the business specified herein;

2. Withdrawal, retirement, or expulsion of any partner;
3. Death, disability, or bankruptcy of any partner; or
4. Unanimous agreement of the parties.

2. Right to Continue Business After Dissolution. On dissolution of the partnership, the remaining partners shall have the right to elect to continue the business of the partnership under the same name, by themselves, or with any additional persons they may choose. If the partners remaining desire to continue the business, but not together, the partnership shall be liquidated pursuant to subpart (5) of this section.
3. Payment if Partnership Continues After Dissolution. If, on dissolution, the remaining partners elect to continue the partnership business under (2) of this section, they shall pay to the retiring, withdrawing, or expelled partner, or to the estate of the deceased partner, the value of such partner's interest, as determined by (4) of this section, as of the date of dissolution. Such payment shall be made within 6 months of dissolution.
4. Value of Partners Interest. The value of a partner's interest in the partnership shall be computed by (1) adding the totals of (a) his of her capital account, (b) his or her income account, and (c) any other amounts owed to him or her by the partnership; and (2) subtracting from the sum of the above totals the sum of the totals of (a) his or her drawing account and (b) any amount owed by him or her to the partnership.
5. Winding Up and Liquidation. On dissolution of the partnership, if the partnership business is not continued pursuant to (2) of this section, it shall be wound up and liquidated as quickly as circumstances will allow. The assets of the partnership shall be applied to partnership liabilities in the following order:
    1. Amounts owing to creditors other than partners;
    2. Amounts owing to partners other than for capital and profits;
    3. Amounts owing to partners in respect to capital; and
    4. Amounts owing to partners in respect to profits.

7. Arbitration. In the event that disputes arising within the partnership, the parties shall submit to arbitration in accordance with the terms established between the Tribal Department of Commerce and the partners, or as directed by the Tribal Court.

1. Notice to Partners. Except as otherwise specified in this section. all notices to the partners shall be in writing and shall be deemed effective when given by personal delivery or by certified mail.

55.105. Jurisdiction of Tribal Court.

The Tribal Court has authority to adjudicate matters relating to business partnerships arising pursuant to this Title.

55.106. Severability.

In the event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

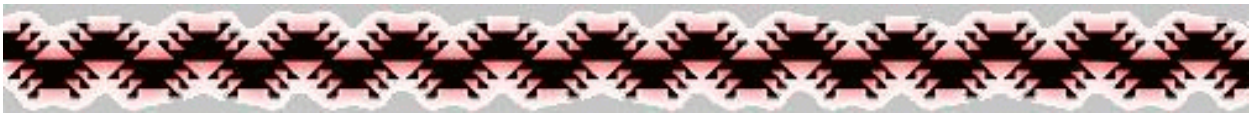
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 56 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL BUSINESS LICENSE AND STANDARDS

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 09-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL BUSINESS LICENSE AND STANDARDS CODE, TITLE 56 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals of the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Business License and Standards Code as Title 56 of the Hoopa Tribal Code.

TITLE 56 -- BUSINESS LICENSE AND STANDARDS CODE.

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TITLE 56 -- BUSINESS LICENSE AND STANDARDS CODE

CHAPTER I. BUSINESS LICENSING

PART 1: LEGISLATIVE FINDINGS AND PURPOSE

56.101. Sovereign Power to Regulate Business, Impose Taxes and License Fees.

The power to regulate business conducted within the Reservation by all persons, Indian and non-Indian, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Tribe except where it has been limited or withdrawn by applicable laws of

the United States. This Title is enacted pursuant to the inherent sovereign tribal powers expressly delegated to the Tribal Council in the Tribal Constitution. The primary responsibility to determine the meaning of the Tribal Constitution and Bylaws lies with the Tribal Council. The Council finds that the Tribal Constitution sufficiently empowers the Tribal Council to regulate the conduct of trade on the Reservation by both members and non-members alike.

56.102. Purpose.

The Tribal Council finds that the regulation of persons engaged in trade and business on the Reservation is necessary to safeguard and promote the peace, safely, morals, and general welfare of the Tribe. Accordingly, the Council declares that the Tribe has the sole and exclusive authority to grant, deny, or, withdraw the privilege of doing business within the Reservation, except where such authority is limited or withdrawn from the Tribe by the applicable laws of the United States.

56.103. Pre-Existing Businesses, Special Purpose Projects, Benefits.

(1) Any business that is pre-existing as of the date of enactment of this Code is not effected by this and other Titles of the Tribal Comprehensive Business Code unless such business

elected to utilize the provisions of the Code, except as prescribed in 56.103 (3) below.

(2) Any business that elects not to utilize the Tribal Comprehensive Business Codes shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis, except as prescribed in 56.103 (4) below.

1. The business license requirements contained in this Title shall not apply to special purpose fund raising projects, such as educational field trip or recreational projects.

(4) Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safely, morals, and general welfare of the Tribe and Reservation as prescribed by law.

56.104. Definitions.

The following terms, whenever used or referred to in this Title, shall have the following meanings, unless a different meaning clearly appears from the context:

(1) "Agent" means the individual or individuals designated by any "licensee" to receive and accept "service of process".

(2) "Applicant" means any "person' who submits an application to the Tribe for a business license and who has not yet received such license.

(3) "Business" means any regular or 'temporary business' activity engaged in by any "person" for the purpose of conducting a trade, profession or commercial activity involving the "sale" of any "property" or "services"; provided, however, that an isolated sale of property or services shall not be considered to be "business" under this Title. Business does not include special projects as defined in 56.103(3).

(4) "Title" means the Business Licensing Title as enacted and amended by the "Council".

(5) "Company" means any "person" or group of people engaged in "business."

(6) "Council" means the Hoopa Valley Tribal Council.

(7) "Director" means the Tribal Department of Commerce Director acting in his or her official capacity.

(8) "Governmental Entity" means the United States, the "Tribe, " a state or any political subdivision, agency, or any

subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.

(9) "Licensee" means any "person"who is granted a business license by the Tribe.

(10) "Notice" means actual notice by hand delivery or by certified mail. For time computations as provided for in this Title, which are to begin upon "notice," such notice shall be at delivery except that where delivery is not possible after three consecutive postal days due to the inaction of the "agent," notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Director, the forms shall be mailed by regular mail.

(11) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, partnership, joint venture, public utility, club, business trust, nonprofit corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and includes any instrumentality thereof. The term includes members and nonmembers of the "Tribe," but excludes any "governmental entity".

(12) "Property" means any existing and identified real or personal property, including, but not limited to "goods" as that term is defined by Section 105 of the Sales Title.

(13) "Sale" means the transfer, exchange or barter, conditional or otherwise, of the ownership of, title to, or possession of real or personal property for consideration. The term shall also include leases, conditional sales contracts, leases, with the option to purchase, and any other contract under which possession of the property is given to the purchaser but title is retained by the seller as security. It shall also include the furnishing of food, drink, or meals for compensation, whether or not consumed on the premises. It shall also include any conditional or unconditional provision of services for consideration.

(14) "Service of Process" includes the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the "Director" or "Tribal Council".

(15) "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

(16) "Tribal member" or "member of the Tribe" means an enrolled member of the Tribe. A corporation, partnership or other entity shall be considered a Tribal member, for purposes of this Title only, if 51% or more of the entity is owned by Tribal members.

56.105. Administration of Title.

The Tribal Department of Commerce is hereby delegated the responsibility to administer the provisions of this Title. The Department of Commerce is hereby delegated all powers of which are specifically provided for in this Title, or impliedly necessary to implement its provisions, subject to Council review of any action taken by virtue of such delegated powers.

56.106. Administrative Actions.

The Director shall promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title.

56.107. Agreements with Federal, State and Local Governments.

In the event it is deemed appropriate to effectuate the provisions of this Title, the Tribal Council may

negotiate Memoranda of Agreement or other instruments concerning this Title with federal, state and local governments.

PART II: BUSINESS LICENSES

56.201. Applicability.

This Title shall be applicable to all persons engaged in business within the exterior boundaries of the Reservation. No person shall engage in business upon the Reservation without a valid business license issued by the Tribe, except as provided in Section 204(l).

56.202. Application and Issuance.

An application for a business license shall be submitted in writing to the Tribal Department of Commerce, using forms which it shall provide. Any person engaged in business at the time this Title is enacted shall have 30 days in which to obtain and submit to the Tribe an application for a license. All applications shall include:

(1) A description of the type of business;

(2) The name and address of the owner or owners of the business;

(3) The trade name, if any, to be used by the company;

(4) The locations on the Reservation at which the business will be conducted;

(5) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;

(6) A statement that the applicant consents to Tribal Court jurisdiction and service of process in matters arising from the conduct of business;

(7) The name, address and signature of the agent who will accept service of process on behalf of the company.

The Director shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

56.203 Denial of License and Appeal.

If it is determined that:

(1) the applicant has materially misrepresented facts contained in the application,

(2) the applicant presently is in non-compliance with tribal law, or

(3) the business will threaten the peace, safety, morals, or general welfare of the Tribe,

the Director shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such

denial and shall state that the applicant has three days from receipt of the order of denial to file a notice of appeal with the Tribal Department of Commerce for an expedited administrative hearing under Section 305(l) of this Title, or 30 days from receipt of the order of denial to file a notice of appeal with the Tribal Court under Section 305(2) of this Title.

56.204. Exemptions.

(1) The following shall not be required to obtain a license under this Title:

(a) governmental entities;

(b) tribal members engaged in the creation of traditional Indian art or handicrafts in their home;

(c) tribal members engaged in the traditional practice of medicine; and

(d) employees of a person.

1. any church engaged in raising funds for religious or charitable purposes;
2. any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; and
3. any accredited school, no part of the income of which accrues to the personal benefit of any individual.

(3) A business that is pre-existing as of the date of enactment of this Code that elects not take advantage of any provisions of the Tribe Comprehensive Business Codes, provided, however, nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safely, morals, and general welfare of the Tribe and Reservation as prescribed by law.

56.205. Classes of Licenses.

(1) Temporary Business License: All persons engaged in business on the Reservation for a period of seven days or less shall have a temporary business license. The fee for a temporary business license is $10.00.

(2) Seasonal Business License: All persons engaged in business on the Reservation for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is $25.00.

(3) Permanent Business License: All persons engaged in business for a period exceeding three months shall have a permanent business license. The fee for a permanent business license is $50.00. A licensee holding a permanent business license need not apply for renewal each year, but the licensee must notify the Tribal Revenue Department of any change in the licensee's business activities, which render inaccurate the information previously provided to the Tribal Department of Commerce under Section 202 of this Title.

56.206. Conditions of License.

Each licensee shall comply with all applicable tribal laws, including but not limited to: Indian employment and contracting preference laws, health and sanitation laws and consumer protection

laws. The Tribe may, but need not, notify each licensee by regular mail of any additional tribal laws with which the licensee must comply as such laws are enacted by the Council.

Each licensee consents to the jurisdiction of Tribal Court as to any cause of action arising in connection with the transaction of any business within the Reservation, or any tortuous acts committed in connection with the transaction of any business within the Reservation. Each licensee consents to the service of process of the Tribal Court with respect to all actions over which the Tribal Court has subject matter jurisdiction, in accordance with the Rules of Procedure of the Tribal Court.

Each licensee shall respond in a timely manner to requests by the Tribal Department of Commence for information about the licensee's business for the purpose of establishing whether the licensee is in compliance with the terms of this Title.

PART III: SANCTIONS

56.301. Revocation of License; Failure to Obtain License; Show Cause Hearing.

(1) Whenever it is brought to the attention of the Tribal Department of Commerce that any person is in noncompliance with any condition of his license or has failed to obtain a license within the time requirements of this Title, the Director may serve upon such person or any agent of such person an order to show-cause why his or her license should not be revoked or why he should not be enjoined from doing business on the Reservation without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Court, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which he or she shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding 14 days and not less than 10 days from the date of the notice. The hearing shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(2) In the event it is determined that any person's non-compliance with this Title is a direct and immediate threat to the peace, safety, morals, or general welfare of the residents of the Reservation, the Director shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Court, within three days for an expedited appeal under Section 305(3) of this Title, or within 30 days for a regular appeal to Tribal Court under Section 305(2) of this Title.

56.302. Civil Penalties and Restitution.

(1) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Title, the Director may bring an action in Tribal Court for an order requiring the person to appear and show cause why a monetary penalty should not be imposed and restitution should not be ordered; provided, the amount-of the penalty shall not exceed $1,000.00 for each violation.

(2) The Director may submit a recommendation to the Tribal Court regarding any restitution which the person should pay to any person or persons injured by his or her failure to comply with the conditions of his or her license or his failure to secure a license within the time requirements of this Title.

(3) The Director may submit a recommendation to the Tribal Court regarding the amount

of any civil penalty which the person should pay for failure to comply with the conditions of his or her license or failure to secure a license within the time requirements of this Title.

If the Director submits a suggested penalty amount, the Director shall expressly address in writing each and all of the following criteria:

(a) the good or bad faith of the violator;

(b) the injury to the public resulting from the violation;

(c) the benefits derived by the violator from the violation;

(d) the violator's ability to pay;

(e) the administrative costs of prosecution; and

(f) the need to deter similar behavior by the violator and others and to vindicate the Tribe's authority and the integrity of the Director's orders.

The purpose of the civil penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Title, and secondarily, to deter continued violations of this Title by the violator or others; provided, however, that all funds collected by the Tribal Court under this section shall be subject to disposition by the Tribal Council.

56.303. Removal and Exclusion of Non-Indians.

If any non-Indian, except any person authorized by federal law to be present on tribal land or any person who owns real property on the Reservation, fails to comply with any order of the Director without appealing the order or fails to appear for any hearing, the Director may petition the Tribal Court for an order directing the Tribal police to remove the non-Indian physically from the Reservation in accordance with Tribal law. The Director may also petition the Tribal Court for an order permanently excluding the non-Indian, except any person authorized by federal law to be present on tribal land, or any person who owns real property on the Reservation, and an order authorizing the seizure and sale of any business property necessary to satisfy restitution and civil penalties imposed under this Title.

56.304. Other Remedies.

The Director may petition the Tribal Court for other remedies provided for in this Code which are necessary to enforce the provisions of this Title, including but not limited to temporary restraining orders and preliminary and permanent injunctions. The Director may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of Tribal Court off-Reservation. The order, judgment or decree must include findings showing:

(1) the basis for the Tribal Court's jurisdiction over the subject matter and the parties;

(2) the order, judgment or decree was not obtained fraudulently; and

(3) the defendant was afforded due process.

56.305. Appeals.

(1) Expedited Administrative Appeal.

(a) If an applicant for a business license seeks an administrative hearing, the Tribal Department of Commerce, upon receipt of the notice of appeal, shall notify the applicant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working, days thereafter.

(b) At the hearing the applicant shall be entitled to present testimony and cross examine opposing witnesses, and present any other evidence which the applicant shall deem appropriate. All oral testimony shall be recorded and retained until expiration of the time within which the applicant could appeal to Tribal Court. In the event of such an appeal, the Director shall immediately certify the record and deliver the recordings and all other evidence in the record to the Tribal Court. If no appeal is filed, all evidence, except recordings, submitted by the applicant shall be returned.

(c) The Director shall rule upon the appeal within three working days after the hearing, and shall set forth in writing the factual findings and the reasons for his or her decision. If the appeal is denied, the ruling shall state that the applicant has 30 days from receipt thereof to file a notice of appeal with the Tribal Court under this subsection. The notice shall state in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection.

(d) Upon receipt of a notice of appeal from an expedited administrative hearing, the Tribal Court shall notify the applicant in person or by telephone, telegraph or other electronic means, of the time set for the expedited hearing which shall be not less than three nor more than five working days thereafter.

(e) The appeal shall be decided by the Tribal Court sitting without a jury, and shall be heard solely on the record established at the hearing as certified by the Director. No new or additional evidence may be introduced during the appeal.

(f) The Tribal Court shall uphold all factual findings of the Director unless the Court determines that such findings are not supported by substantial evidence in the record established before the Director. In reviewing reasons for denial of the license by the Director, the Court shall give proper weight to the Director's interpretation of this Title and any regulations promulgated hereunder.

(2) Direct Appeal to the Tribal Court.

If any person entitled to an appeal pursuant to this Title seeks a direct appeal to the Tribal Court, the appellant shall be deemed to have waived any right he may otherwise have to an expedited administrative hearing or an expedited appeal to the Tribal Court, and the appeal shall be governed in all respects in accordance with the Rules of Procedure of the Tribal Court.

(3) Expedited Direct Appeal to the Tribal Court.

(a) Any person seeking an expedited appeal pursuant to Section 301(b) of this Title shall

file a notice of appeal which states in a conspicuous manner that the appeal sought is an expedited appeal pursuant to this subsection. Upon receipt of the notice of appeal the Tribal Court shall notify the appellant in person or by telephone, telegram or other electronic means, of the time set for the expedited hearing which shall be held no later than five working days after receipt by the Tribal court of the notice of appeal.

(b) The expedited appeal hearing by the Tribal Court shall be by trial de novo and shall be governed in all respects in accordance with the rules of procedures of the Tribal Court, except that the Tribal Court shall rule upon the expedited appeal within three working days after completion of the hearing.

Title II. BUSINESS STANDARDS.

56.401. In-Home Sales.

(1) Every door-to-door salesperson is obligated to inform each prospective consumer of the following information at the beginning of any sales visit:

(a) The salesperson's name;

(b) The name of the company that the salesperson represents;

(c) The salesperson's business address and the address of the company that the salesperson represents;

(d) The salesperson's business license number;

(e) An address or phone number where a consumer may inform the salesperson of a decision to reconsider a sale, address questions and concerns regarding sale products, and any other information that is of interest to the consumer and salesperson.

(2) Consumers of merchandise purchased at their residence from salespersons are entitled to reconsideration of any purchase within 3 workdays from the date of purchase. Reconsideration of sales will be fully credited or reimbursed to the consumer by the salesperson within 5 working days after the date such salesperson is informed of such reconsideration of the purchase.

(3) No door-to-door sales person may misrepresent any product to a prospective consumer in any manner that an ordinary person of reasonable aptitude, capability and instruction will not be able to perform the product in a like manner.

56.402. Food Sanitation.

(1) Every person involved with the sale of products to be consumed shall take reasonable care to ensure that such food products are prepared and sold in a sanitary environment.

(2) The business licensee is responsible for the preparation and sale of any food product that is sold under the authority of his or her license, regardless of whether the licensee prepared such food products.

56.403. Non-Consumer Property Damage Protections.

(1) Any business, whether or not licensed by the Tribe, that damages to private property of any individual is responsible for replace or repair of such property at the actual cost of repair and replacement of such property.

(2) Any business, whether or not licensed by the tribe, shall make prompt payment or repair of damaged property within 30 days from the date from the date the damage occurred unless another agreement is made between the business and the property owner.

(3) A property owner may file an appeal of in accordance with Section 52-305 of this Code for failure of the business to repair or replace damage property within 30 days, as prescribed in this Section.

56.404. Informal Complaint Procedures.

1. A person may file a written complaint with the Department of Commerce regarding alleged violations of Business License and/or Standards.
2. Upon receipt of a complaint, the Director of Commerce shall conduct an investigation of the alleged violation within 5 days. The Director of Commerce shall report any findings to the person filing the complaint no later than 10 days from the date the complaint was filed.
3. Based in information received as a result of the complaint, subsequent investigation, and from other sources, the Director of Commerce may take whatever action that he or she deems appropriate to address the situation.
4. The action or inaction by the Tribal Department of Commerce with respect to any formal complaints may be subject to review by the Tribal Court.

Title III. SAVINGS CLAUSE.

56.501. Savings Clause.

In event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

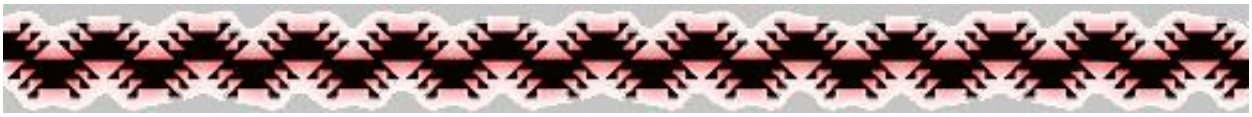
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 57 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL COMMERCIAL TRANSACTIONS CODE

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 11-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL COMMERCIAL TRANSACTIONS CODE, TITLE 57 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Part IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has established the promotion of business development and job creation as major goals for the Tribe and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Commercial Transactions Code as Title 57 of the Hoopa Tribal Code.

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TRIBAL COMMERCIAL TRANSACTIONS CODE

GENERAL PROVISIONS

PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT.

57.1.101. Short Title.

This Title shall be known and may be cited as the Tribal Commercial Transactions Code. Each Part of this Title (except this Part) may also be cited by its own short title.

57.1.102. Scope.

This Part, and all subsequent Parts and Sections of this Title, shall apply to the over-all processes

and procedures for engaging in commercial activities which are under the jurisdiction of Tribe.

57.1.103. Purposes; Rules of Construction.

(1) Underlying purposes and policies of this Title are:

(a) to simplify, and clarify the law governing commercial transactions within Indian Country; and

(b) to promote the continued expansion of commercial practices within Indian Country.

(2) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

57.1.104. Supplementary General Principles of Law.

Unless specifically modified or deleted by a particular provision of this Title or other recognized and applicable law, the principles of law and equity, including those relating to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating legal concept may supplement this title, where such provisions are not inconsistent with the Tribal

Comprehensive Business Codes. The adoption of this Code does not preempt any applicable consumer protection laws.

57.1.105. Construction Against Implicit Repeal.

No part of this Title shall be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

57.1.106. Territorial Application of the Title.

Except as provided elsewhere in this Title, this Title applies to all commercial transactions which are under the jurisdiction of the Tribe.

57.1.107. Remedies to Be Liberally Administered.

(1) The remedies provided by this Title shall be liberally administered so that the aggrieved party may be put in the same position as if the other party had fully performed. Consequential, special or punitive damages may not be had unless specifically provided for in this Title or in other applicable law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect.

57.1.108. Waiver or Renunciation of Claim or Right After Breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

57.1.109. Severability.

If the application of any provision or clause of this Title is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Title, if the

remaining provisions can still be given effect without the invalid provisions or application.

57.1.110. Special Limitation on Application of Code.

Notwithstanding any other provision of this Title to the contrary, this Title shall not apply to any exclusively barter transaction in which the market value of all the goods and services involved in

the transaction does not exceed $5,000.00. Such transactions shall be governed by the customs and traditions of the Tribe or other applicable process.

57.1.111. Administration of the Commercial Transactions; Regulations.

The Tribal Department of Commerce, or its designated successor, shall be charged with the administration of this Title. The Department of Commerce or its designated successor is authorized to

promulgate upon review and approval of the Tribal Council, regulations and revisions regarding those matters designated to be governed by this Title.

PART 2. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

57.1.201. General Definitions.

(1) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(2) "Accord and Satisfaction" means the discharge of a debt where the parties agree to exchange money or an item of value as a full and complete payment of the debt. The amount of money or value of the item exchanged does not need to equal the debt which is being discharged.

(3) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(4) "Aggrieved party" means a party entitled to resort to a remedy.

(5) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade or course of performance as provided in this Title. Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by recognized contract principle.

(6) "Attach" means the ability to enforce a claim against a debtor with respect to collateral.

(7) "Bank" means any person or institution that receives deposits, makes loans, or performs other money-related functions.

(8) "Barter" means to exchange goods or services without exchanging money.

(9) "Bearer form" means a security or similar commercial paper that is not registered on

the books of the issuer. Such a security or paper is payable to the person having possession of the paper.

(10) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

(11) "Branch" means any division or separate facility of an organization or business entity and includes a separately incorporated foreign branch of a bank.

(12) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its non-existence.

(13) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale is in violation of the ownership rights or security interest of a third party in the goods, buys in the regular business practice from a person in the business of selling goods of that kind. This definition does not extend to pawnbrokers. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash, secured or unsecured credit, contract for sale, exchange of other

property. Transfers in bulk or as security for or in total or partial satisfaction of a money debt do not constitute buying.

(14) "Cash Proceeds" means money, checks, deposit accounts and the like.

(15) "Certificated security" means a recognized interest in property, an enterprise or an obligation of the issuer which is:

> (a) represented by an instrument issued in bearer or registered form;
>
> (b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
>
> (c) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(16) "Chattel paper" means a written instrument which evidence both a monetary obligation and a security interest in, or a lease of specific goods. A charter or other contract involving the use or hire of a vessel is not chattel paper.

(17) "Check" means a draft, other than a document draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An item may be a check even though it is described on its face by another term, such as "money order."

(18) "Collateral" means property subject to a security interest, and includes accounts and chattel paper which have been sold.

(19) "Consequential Damages" means any indirect losses or injuries which are not the direct result from an action or failure to act. See also Special Damages and Punitive Damages.

(20) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (such as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger type or contrasting type or color. In a telegram any stated term is "conspicuous."

(21) "Consignee" is the person receiving goods to sale in accordance with the terms of an agreement with the consignor.

(22) "Consignment" is the act of placing goods with another for sale with the understanding that the consignee will pay the consignor for any goods sold and will return any unsold goods.

(23) "Consignor" is the person giving the goods to a consignee to sale.

(24) "Construction Mortgage" means a mortgage that secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(25) "Consumer" means any real person.

(26) "Consumer Goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(27) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other recognized and applicable rules of law.

(28) "Contract for Sale" means an agreement for both the present sale of goods and a contract to sell goods at a future time.

(29) "Course of performance" means the understanding which develops by conduct without objection between two parties during the performance of a contract.

(30) "Creditor" means a person or organization to whom a debt is owed and includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

1. "Days" means calendar days.

(32) "Debtor" means the person who owes payment or other performance of the obligation, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of this Title dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(33) "Defendant" means a person or organization against whom a legal action is brought and includes a person in the position of defendant in a cross-action or counterclaim.

(34) "Delivery" means the voluntary transfer of possession with respect to instruments, documents of title, chattel paper or certificated securities.

(35) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to person in possession of the goods and purport to cover goods in the person's possession.

(36) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(37) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary.

(38) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(39) "Equipment" means goods which are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.

(40) "Farm Products" means goods which are crops, livestock, supplies used or produced in farming operations, or are products or crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations. If goods are farm products they are neither equipment nor inventory.

(41) "Fault" means wrongful act, omission or breach.

(42) "Financing statement" means a document setting out a secured party's security interest the collateral. A financing statement includes the original financing statement and any amendments.

(43) "Fixture" means goods when they become so related to particular real estate that an interest in them arises under real estate law.

(44) "General Damages" means damages which are usual and customary in the type of transaction at issue. They may be pled in broad terms which provides sufficient information to the opposing party as to the nature of the damages.

(45) "General Intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money.

(46) "Genuine" means free of forgery or counterfeiting.

(47) "Good faith" means honesty in fact in the conduct or transaction concerned.

(48) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures and includes "Consumer goods", "Equipment", "Farm products", and "Inventory" but does not include money, documents, instruments,

accounts, chattel paper, general intangibles, or natural resources (minerals or the like including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(49) "Holder" with respect to a negotiable instrument payable to the bearer, means the person in possession of the instrument, in the case of an instrument payable to an identified person, if the identified person is in possession, with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(50) "Holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear apparent evidence of forgery, alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment or another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument; and

(vi) without notice that any party has a defense or claim in recoupment.

(51) "Honor" means to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(52) "Indian country" as defined by 18 U.S.C Sec. 1151 means:

(a) land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) all dependent Indian communities with the borders of the United States whether the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of way running through the same.

(53) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(54) "Insolvent" means a person or organization who either has ceased to pay their debts in the ordinary course of business or cannot pay their debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(55) "Instrument" means a negotiable instrument or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property.

(56) "Inventory" means goods which are held by a person who holds them for sale or lease or to be furnished under contracts or service or if the person has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as equipment.

(57) "Investment Property" means a security, whether certificated or uncertificated, a security entitlement, a securities account, a commodity contract, or a commodity account.

(58) "Lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(59) "Money" means a medium of exchange authorized or adopted by a sovereign entity and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(60) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(61) "Notifies" means a person or organization taking such steps as may be reasonably required to inform another in ordinary course, independent of whether or not such other actually comes to know of it.

(62) "Organization" includes a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(63) "Party", means a person who has engaged in a transaction or made an agreement within the scope of this Title.

(64) "Payment intangible" means a general intangible under which the account debtor's principal obligation is to pay money.

(65) "Punitive Damages" means damages which are not related to the actual injury or harm suffered but which are awarded as a deterrent to keep a particularly malicious or willful act from happening again.

(66) "Person" an individual.

(67) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(68) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(69) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(70) "Purchase money security interest" means a security interest that is:

> (a) taken or retained by the seller in the collateral to secure all or part of its price; or
>
> (b) taken by a person who (by making advances to incurring an obligation) gives value to enable the debtor to acquire rights in or the use of collateral, if such value is in fact so used.

(71) "Purchaser" means a person who takes by purchase.

(72) "Pursuant to commitment" means that the secured party is bound to make an advance, whether or not a subsequent event of default, or other event not within the secured party's control has relieved or may relieve the secured party from the obligation.

(73) "Reasonable time" means any time which is not manifestly unreasonable. Determination depends on the nature, purpose and circumstance of such action and may be fixed by agreement.

(74) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(75) "Representative" means any person empowered to act for another and includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(76) "Sale" means the passing of title or interest from the seller to the buyer for a price.

(77) "Security" means property that has been designated as financial backing for a loan or other obligation. It is either certificated or un-certificated security. If a security is certificated, the terms security and certificated security may mean either intangible interest, the instrument representing that interest, or both, as the context requires.

(78) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a "security interest".

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee: and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value ofthe goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

(a) Additional consideration is not nominal if:

(i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to

be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(79) "Send" means to properly address and deposit in the mail or deliver for transmission by any other recognized and acceptable means of communication, with postage or cost or transmission provided for.

(80) "Sign" means to identify a document or record by means of a signature, mark, or other symbol with intent to authenticate the writing.

(81) "Special Damages" means damages which are unique to the course of conduct between the parties and which must be specifically enumerated in order to provide the opposing party with the necessary information to inform them of the damages.

(82) "Standard trade practices" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(83) "Surety" includes guarantor.

(84) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(85) "Term" means that portion of an agreement which relates to a particular matter.

(86) "Trade fixture" means property placed on or within real estate for the purpose of conducting a trade or business. Trade fixtures are presumed not to become annexed to the real estate.

(87) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(88) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(89) "Usage of trade" means the prevailing and accepted customs within a particular trade or industry with preference being given to customs within the jurisdiction of the Tribe.

(90) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections a person gives "value" for rights if the person acquires them:

(a) generally, in return for any consideration sufficient to support a simple contract;

(b) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;

(c) as security for or in total or partial satisfaction of a pre-existing claim; or

(d) by accepting delivery pursuant to a pre-existing contract for purchase.

(91) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(92) "Written" or "writing" means any printed, typewritten or other form of communication reduced to tangible form.

57.1.202. Prima Facie Evidence by Third Party Documents.

A document purporting to be: a bill of lading; policy or certificate of insurance; official weigher's or inspector's certificate; consular invoice; or any other document authorized or required by contract, to be issued, shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document.

57.1.203. Obligation of Good Faith.

Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement.

57.1.204. Notice.

(1) The time and circumstances under which a notice or notification may cease to be effective are determined by the nature, purpose, and circumstances of the transaction.

(2) Notice, knowledge or notification received by an organization is effective for a particular transaction:

(a) from the time when it is brought to the attention of the individual conducting that transaction; or

(b) from the time when it would have been brought to that person's attention if the organization had exercised due diligence.

57.1.205. Course of Dealing and Usage of Trade.

(1) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged, or of which they are or should be aware may be considered for purposes of:

(a) determining the meaning of ambiguous terms in an agreement; or

(b) supplementing or qualifying the terms of an agreement.

(2) The express terms of an agreement and standard trade practices shall be construed, wherever reasonable as consistent with each other. When such construction is

unreasonable:

(a) Express terms control standard trade practices; and

(b) Past trade practices control usage of trade.

(3) The standard trade practices in the place where any part of performance is to occur may be used in interpreting the agreement relating to that part of the performance.

(4) Evidence offered by one party relating to standard trade practices is not admissible unless and until sufficient notice has been given to the other party.

57.1.206. Performance or Acceptance Under Reservation of Rights.

(1) A party who performs or promises performance in a manner demanded, or proposed by the other party, does not waive any rights, provided the party explicitly reserves those rights. Such words as "without prejudice", "under protest" or the like are sufficient to reserve those rights.

(2) Subsection (1) does not apply to an accord and satisfaction.

57.1.207. Option to Accelerate at Will.

(1) A term providing that one party or the parties successor in interest may accelerate payment, performance, require collateral or require additional collateral "at will", "when insecure" or words of similar import shall only be effective upon a good faith belief that the prospect of payment or performance is impaired.

(2) Any party or the party's successor in interest desiring to accelerate payment, performance, require collateral or require additional collateral must obtain leave of the court, unless the debtor agrees to the terms of the acceleration at the time the option is exercised.

(3) A judicial decree under Section 57.2.608 allowing a secured party to repossess collateral shall include an order of acceleration if the secured party has made such a request in the pleadings.

(4) The burden of establishing lack of good faith initially is on the party against whom the power has been exercised. Upon presentation of prima facia evidence of lack of good faith, the burden of proof shifts to the party exercising the power. The party exercising the power must present a commercially reasonable justification beyond a reasonable doubt for the exercise of the power.

57.1.208. Subordinated Obligations.

An obligation may be designated as subordinate to payment of another obligation of the debtor, or a creditor may subordinate the creditors right to payment of an obligation by agreement with either the debtor or another creditor of the debtor. Such a subordination does not create a security interest as against either the debtor or a subordinated creditor.

57.1.209. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

Except in the cases described in 57.1.110, a contract for the sale or personal property is not enforceable by way of action or defense beyond five thousand dollars ($5,000.00) in amount or value or remedy unless there is a writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party, or the parties authorized agent, the against whom enforcement is sought.

SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

PART 1. GENERAL PROVISIONS.

Sub-Part 1. Short Title.

57.2.101. Short Title.

This Part may be cited as Commercial Transactions--Secured Transactions.

Sub-Part 2. Concepts.

57.2.102. Control Over Investment Property.

(1) Control of a certificated security in bearer form is effective when the security is delivered to the purchaser.

(2) Control of a certificated security in registered form is effective when the security is delivered to the purchaser, and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) Control of an un-certificated security is effective if:

(a) the un-certificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with the instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has control of a security entitlement if:

(a) the purchaser becomes the entitlement holder; or

(b) the securities intermediary has agreed that it will comply with entitlement order originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the security intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner or the entitlement holder retains the right to:

(a) make substitutions of the uncertificated security or security entitlement;

(b) originate instructions or entitlement orders to the issuer or securities intermediary; or

(c) otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in 57.2.102(3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(8) (a) A secured party has control over a commodity contract if the commodity customer, the commodity intermediary, and the secured party agree that the commodity intermediary will apply any value distributed under the commodity contract as directed by the secured party without consent by the commodity customer.

(b) If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary has control as a secured party.

Sub-Part 3. Applicability of Part.

57.2.103. Sufficiency of Description.

(1) Except as otherwise provided in 57.2.103(2), a description of personal property or real estate is sufficient if it reasonably identifies what is described.

(2) A description of a deposit account is sufficient only if it describes the deposit account either by item; as all of the debtor's deposit accounts; or as an identified class of the debtor's deposit accounts.

(3) (a) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, un-certificated security, security entitlement, securities account, commodity contract, or commodity account:

(i) if it describes the collateral by those terms;

(ii) as investment property; or

(iii) by description of the underlying security, financial asset, or commodity contract.

(b) A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

57.2.104. Policy and Scope of Part.

(1) Except as otherwise provided in Section 57.2.105 on excluded transactions, this Part applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account or chattel paper; and

(d) a consignment.

(2) The application of this Part to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by transaction or interest to which this Part does not apply.

57.2.105. Transactions Excluded from Part.

(1) Except as provided in 57.2.105(2), this Part does not apply to:

(a) a security interest subject to any federal statute, regulation or applicable treaty, to the extent that such statute, regulation or treaty preempts tribal law and governs the rights of participating parties or third parties affected by the transaction;

(b) a landlord's lien;

(c) a lien given by statute or other rule of law for services or materials except as provided in Section 57.2.331;

(d) a transfer of a claim for wages, salary or other compensation of an employee;

(e) a transfer by a government or governmental subdivision or agency;

(f) a sale of accounts or chattel paper, or payment intangibles as part of a sale of the business out of which they arose;

(g) an assignment of accounts or chattel paper, or payment intangibles which is for the purpose of collection only;

(h) a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract;

(i) a transfer of a single account, or payment intangibles to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(j) a transfer of an interest or claim under any insurance policy, except:

(i) a transfer by a healthcare provider of a right to payment arising out of the furnishing of healthcare goods or services; and

(ii) as provided with respect to proceeds (Section 57.2.313) and priorities in proceeds (Section 57.2.319);

(k) a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(l) any right of set-off as provided in 57.2.338;

(m) a transfer in whole or in part of any claim arising out of tort; or

(2) The application of this Title is limited to the extent that provision is made within this Title for:

(a) fixtures in Section 57.2.332, or

(b) the creation or transfer of an interest, including a lease or rents, or lien on real estate.

57.2.106. Applicability of Other Statutes.

A transaction, although subject to this Title, may also be subject to the requirements found in the Tribal EDA Title IX Revolving Loan Funds Guidelines and Plan of Operations and Tribal Land Ordinance. In case of conflict between the provisions of this Title and any other statute, the more specific statute controls. Failure to comply with an applicable statute has only the effect the statute specifies.

PART 2. VALIDITY OF SECURITY AGREEMENT, ATTACHMENT OF SECURITY INTEREST, AND RIGHTS OF PARTIES TO SECURITY AGREEMENT

Sub-Part 1. Validity and Attachment.

57.2.201. General Validity of Security Agreement.

(1) Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against subsequent purchasers of the collateral and against creditors.

(2) Nothing in this Title validates any practice illegal under any statute or regulation

governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject to the statute or regulation.

57.2.202. Title to Collateral Immaterial.

Rights, obligations and remedies under this Title apply whether title to the collateral is in the Debtor or Secured Party except as otherwise provided with respect to consignments, sales or accounts, chattel paper or payment intangibles.

57.2.203. Attachment and Enforceability of Security Interest; Proceeds; Support Obligations; Formal Requisites.

(1) A security interest is not enforceable against the Debtor or third parties with respect to the collateral and does not attach unless:

(a) (i) the collateral is in the possession of the Secured Party pursuant to the debtor's agreement,

(ii) the collateral is investment property or a deposit account and the Secured Party has control pursuant to the Debtor's agreement; or

(iii) the debtor has signed a security agreement which contains a description of the collateral. When the security interest covers crops growing, crops to be grown or timber to be cut the description must also include a description of the land concerned;

(b) value has been given; and

(c) the Debtor has rights in the collateral.

(2) Attachment provisions in 57.2.202(1) are in addition to attachment provisions on:

(a) a security interest in investment property (57.2.206);

(b) the requirements on new debtors (57.2.203(3)).

(3) If a new Debtor becomes bound as Debtor by a security agreement entered into by a predecessor in interest, the agreement satisfies the requirement of Section 57.2.203(1)(a) as to existing or after acquired property of the new debtor to the extent the property is described in the agreement. No other agreement is necessary to make a security interest in the property enforceable.

(4) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Section 57.2.203(1) have taken place unless explicit agreement by the parties postpones the time of attaching.

(5) Unless otherwise agreed:

(a) a security agreement gives the secured party the rights to proceeds provided by Section 57.2.313; or

(b) attachment of a security interest in collateral is also attachment of a security interest in a support obligation with respect to the collateral;

57.2.204. After-Acquired Property; Future Advances.

(1) Except as provided in 57.2.204(2), a security agreement may create or provide for a security interest in after acquired collateral.

(2) No security interest attaches to Consumer Goods under an after-acquired property clause, except:

(a) to accessions (Section 57.2.333) when given as additional security; or

(b) the debtor acquires rights to the after acquired Consumer Goods within ten days after the secured party gives value.

(3) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given "pursuant to commitment."

57.2.205. Use or Disposition of Collateral Without Accounting Permissible.

(1) A security interest is not invalid or fraudulent against creditors by reason of:

(a) liberty in the debtor to:

(i) use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods);

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of goods or make authorized repossessions; or

(iv) use, commingle or dispose of proceeds; or

(b) the secured party failing to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession where perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party or by a bailee.

57.2.206. Security Interest Arising in Purchase or Delivery of Financial Asset.

(1) (a) A securities intermediary has a security interest in the buyer's security entitlement if:

(i) a person buys a financial asset through a securities intermediary;

(ii) in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the

purchase; and

(iii) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

Sub-Part 2. Validity and Attachment.

57.2.207. Rights and Duties When Collateral Is in Secured Party's Possession.

(1) If a security interest secures an obligation, or a buyer of accounts, chattel paper, or payment intangibles is entitled by agreement to charge back uncollected collateral or otherwise entitled to full or limited recourse against the debtor or against a secondary obligor, the secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of an instrument or chattel paper, reasonable care includes taking any necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed and not withstanding any contrary provision in Section 57.2.602, if a security interest secures an obligation and collateral is in the secured party's possession:

(a) reasonable expenses, including the cost of any insurance and payment of taxes or other related charges incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the secured party to the extent of a deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money received, unless remitted to the debtor, must be applied to reduce the secured obligation;

(d) the secured party must keep the collateral identifiable but collateral of which any unit is by nature or usage of trade the equivalent of any other like unit may be commingled; and

(e) the secured party may create additional security interests in the collateral upon terms which do not impair the rights of pre-existing security interests.

(3) A secured party is liable for any loss caused by the failure to meet any obligation imposed by Section 57.2.207(1) or (2) but the secured party does not loose its security interest.

(4) A secured party may use or operate the collateral:

(a) for the purpose of preserving the collateral;

(b) for the purpose of preserving the collateral's value;

(c) pursuant to tribal court order; or

(d) in the manner and to the extent provided in the security agreement. A security agreement may not restrict the use or operation of a consumer good.

57.2.208. Request for Accounting, List of Collateral or Statement of Account.

(1) A debtor may sign a statement indicating what the debtor believes to be the total amount of unpaid indebtedness as of a specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor.

(2) The secured party shall comply with a request pursuant to Section 57.2.208(1) within two weeks after receipt by sending a written correction or approval. If the secured party fails to comply without reasonable excuse, the secured party is liable for any loss caused to the debtor for noncompliance.

(a) If the debtor has properly included in a request pursuant to Section 57.2.208(1), a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against person's misled by the secured party's noncompliance.

(b) If the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(c) If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the

secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral.

(3) If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party shall disclose the name and address of any successor in interest known to the secured party and is liable for any loss caused to the debtor as a result of failure to disclose this information. A successor in interest is not subject to this section until a request is received by the successor.

(4) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $50.00 for each additional statement furnished.

PART 3. PERFECTION OF SECURITY INTERESTS.

Sub-Part 1. Law Governing Perfection and Priority.

57.2.301. Perfection and Priority of Certain Possessory and Nonpossessory Security Interests.

(1) The following rules apply to a possessory or nonpossessory security interest in collateral other than goods covered by a certificate of title described in Section 57.2.303, deposit accounts, investment property, and minerals and related accounts described in Section 57.2.306.

(2) Except as otherwise provided in this section, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the Tribe.

57.2.302. Perfection and Priority of Agricultural Liens.

(1) Perfection of an agricultural lien on collateral derived from land found within the exterior boundaries of the Reservation is governed by the law of the Tribe.

(2) While collateral is located in any jurisdiction, the effect of perfection or non-perfection and the priority of an agricultural lien on the collateral are governed by the law of the Tribe.

57.2.303. Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(1) This subsection applies to goods covered by a certificate of title issued under Tribal law or from any other jurisdiction under which indication of a security interest on the certificate is required as a condition of perfection.

(2) Goods become covered by a certificate of title when an appropriate application for the certificate and the applicable fee are delivered to the appropriate authority.

(3) Perfection, the effect of perfection or non-perfection, and the priority of the security interest are governed by the local law of the jurisdiction under whose certificate the goods are covered. This security interest is valid from the time the goods become covered by the certificate until the time the certificate becomes ineffective under the law of that jurisdiction or the time the goods become covered by a certificate of title from another jurisdiction.

57.2.304. Perfection and Priority of Security Interests in Deposit Accounts.

Perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account are governed by the law of the Tribe.

57.2.305. Perfection and Priority of Security Interests in Investment Property.

(1) Except as otherwise provided in section 57.2.305(2), the following rules apply to a security interest in investment property:

(a) While a security certificate is located within Tribe's jurisdiction, perfection, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the law of the

Tribe.

(b) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in an un-certificated security are governed by the local law of the issuer's jurisdiction.

(c) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the law of the Tribe.

(d) Perfection, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the law of the Tribe.

(2) The law of the Tribe governs perfection of a security interest created by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary.

57.2.306. Perfection and Priority of Security Interest in Minerals.

Perfection, the effect of perfection or non-perfection and the priority of a security interest that is created by a debtor having an interest in minerals or the like (including oil and gas) before

extraction and which attaches upon extraction, or which attaches to an account resulting from the sale of the collateral at the wellhead or minehead are governed by the law of the Reservation. This section does not apply to tribal resources held in trust.

57.2.307. Location of Debtor.

(1) A registered entity is located in the jurisdiction of its organization.

(2) Any other debtor is located at its place of business if it has only one, at its chief executive office if it has more than one place of business, and at the debtor's residence if the debtor has no place of business.

Sub-Part 2. Perfection.

57.2.308. When Security Interest or Agricultural Lien is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken as specified in Sections 57.2.309 through 57.2.313. If such steps are taken before the security interest attaches, it is perfected at the time it attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection specified in Section 57.2.309 and 57.2.313 have been met. If the steps are taken before the agricultural lien becomes effective, it is perfected when it becomes effective.

(3) A security interest or agricultural lien originally perfected in any manner permitted under this Title and subsequently perfected in another manner permitted under this Title shall be deemed to be continuously perfected for the purpose of this Title provided there was no intermediary period when the security interest or agricultural lien was unperfected.

(4) Perfection of a security interest in an account, chattel paper, a document, an instrument, a general intangible, or a security also perfects a security interest in a support obligation for the collateral.

(5) Perfection of a security interest in a securities account also perfects a security interest in all security entitlements carried in the securities account. Perfection of a security interest in a commodity account also perfects a security interest in all commodity contracts carried in the commodity account.

(6) Notwithstanding other law to the contrary, perfection of a security interest in a right to payment or performance, other than a right to payment evidenced by chattel paper, also perfects a security interest in a lien on property securing the right.

57.2.309. When Filing Is Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions of This Part Do Not Apply.

(1) A financing statement must be filed to perfect all security interests and agricultural liens, except the following:

(a) a security interest in collateral in the secured parties possession under Section 57.2.311;

(b) a security interest perfected under Section 57.2.314(1), (3) or (4);

(c) a security interest in instruments certificated securities, chattel paper, or documents perfected without filing or possession under Section 57.2.310(4) or (5);

(d) a security interest in or agricultural lien on proceeds under Section 57.2.313(5);

(e) a security interest in a support obligation under Section 57.2.308(4);

(f) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(g) a purchase money security interest in consumer goods; but 57.2.309(4) applies to consumer goods that are subject to a federal statute or applicable treaty described in 57.2.309(3);

(h) an assignment of accounts or payment intangibles which does not alone, or in conjunction with other assignments to the same assignee, transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(i) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee;

(j) a security interest arising in the purchase or delivery of a financial asset under Section 57.2.206;

(k) a security interest in investment property created by a broker or securities intermediary;

(l) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(m) a security interest in a letter of credit and proceeds of the letter of credit which is perfected without filing under Section 57.2.312;

(n) a security interest in property subject to a federal statute, regulation, or applicable treaty described in 57.2.309(3);

(o) a security interest in a deposit account which is perfected without filing under Section 57.2.312; and

(p) a sale of a payment intangible.

(2) If a secured party assigns a perfected security interest, no filing under this Title is required in order to continue the perfected status of the security interest against creditors and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Title is not necessary or effective to perfect a security interest in property subject to:

(a) federal statutes, regulations or applicable treaties of the United States which provides for:

(i) national or international registration;

(ii) national or international certificate of title; or

(iii) which specifies a place of filing different from that specified in this Title for filing of the security interest; or

(b) the following tribal regulations, loan guidelines, contracts, or the like. During any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Title (Part 4) apply to a security interest in that collateral created by the person as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition or result of perfection (Section 57.2.303).

(4) Compliance with the requirements prescribed by a statute, regulation, or treaty described in Section 57.2.309(3) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Part. Except as otherwise provided in Sections 57.2.311 and 57.2.314(3) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in Section 57.2.309(3) can be perfected only by compliance with those requirements, and a security

interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral. Except as otherwise provided in Section 57.2.314(3), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by the statute, regulation, or treaty are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this Part.

57.2.310. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in instruments, chattel paper, investment property or negotiable documents may be perfected by filing. Except as otherwise provided in Section 57.2.313(5) for cash proceeds:

(a) a security interest in money can be perfected only by the secured party's taking possession (Section 57.2.311);

(b) a security interest in a deposit account can be perfected only by control (Section 57.2.312); and

(c) except as otherwise provided in Section 57.2.308(4) for support obligations, a security interest in a letter of credit and proceeds of the letter of credit can be perfected only by control (Section 57.2.312).

(2) A security interest in goods in the possession of a bailee that has issued a negotiable document covering the goods is perfected by perfecting a security interest in the document. Any security interest in the goods otherwise perfected during the period is subordinate to the security interest perfected in the document.

(3) A security interest in goods in the possession of a bailee that has issued a non-negotiable document covering the goods is perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

(4) A security interest in instruments is perfected without filing or the taking of possession for a period of 21 days from the time it attaches. In order for the security interest to attach the secured party must have given new value under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing if a secured party having a perfected security interest in an instrument, certified security, negotiable document or goods in possession of a bailee other than a bailee who has issued a negotiable document for those goods:

(a) makes available to the debtor the goods or documents representing the goods:

(i) for the purpose of ultimate sale or exchange; or

(ii) for the purpose of loading, unloading, storing, shipping,

manufacturing, processing or otherwise dealing with the goods in a manner preliminary to their sale or exchange, but priority among conflicting security interests in the goods is subject to Section 57.2.322; or

(b) delivers the instrument or certified security to the debtor for the purpose of:

(i) ultimate sale or exchange; or

(ii) presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in 57.2.310(4) and (5) expires, perfection depends upon compliance with this Part.

57.2.311. When Possession by Secured Party Perfects Security Interest Without Filing.

(1) Except as otherwise provided in 57.2.311(2), a security interest in goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in certificated securities may be perfected by the secured party's taking possession of the security certificates.

(2) A security interest in goods covered by a certificate of title issued by the Reservation may be perfected by the secured party's taking possession of the collateral only in the circumstances described in Section 57.2.314(3).

(3) This subsection applies to collateral other than goods covered by a document.

(a) A security interest is perfected by possession when the secured party takes possession, without a relation back, and continues only while the secured party retains possession, unless otherwise specified in this Part.

(b) If the collateral is in the possession of a person other than the debtor, a secured party or a lessee in the ordinary course of the debtor's business takes possession when the person in possession acknowledges in writing that it holds possession for the secured party's or lessee's benefit.

(c) If a person, other than the debtor, the secured party, or a lessee in the ordinary course of the debtor's business takes possession of the collateral after having acknowledged in writing that it will hold possession of collateral for the secured party's or lessee's benefit, the secured party or lessee takes possession when the person takes possession.

(4) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(5) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under subsection (c) even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or other law otherwise provides, the

person owes no duties to the secured party and is not required to confirm the acknowledgment to another person.

(6) A security interest may be perfected as otherwise provided in this Part before or after a period of possession by a secured party.

57.2.312. Perfection by Control.

(1) A security interest in investment property, a deposit account, or a letter of credit and proceeds of the letter of credit may be perfected by control of the collateral under Section 57.2.102 or 57.2.110.

(2) A security interest is perfected by control from the time the secured party obtains control without a relation back and continues only while control is retained.

(3) A security interest may be otherwise perfected as provided in this Part before or after the period of control by the secured party.

57.2.313. Proceeds; Secured Party's Rights on Disposition of Collateral; Secured Party's Rights in Proceeds.

(1) Money, checks, deposit accounts, and the like are cash proceeds. All other proceeds are noncash proceeds.

(2) Except as otherwise provided in this Part, a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof, and also attaches to any identifiable proceeds, unless the secured party authorized the disposition free of the security interest in the security agreement or through subsequent agreement. Other law determines whether an agricultural lien continues on collateral notwithstanding disposition or becomes effective as to proceeds.

(3) Proceeds that are commingled with other property are identifiable proceeds:

(a) if the proceeds are goods, to the extent provided by Section 57.2.334; and

(b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under other law with respect to commingled property of the type involved.

(4) A security interest in or agricultural lien on proceeds is a perfected security interest or agricultural lien if the interest in or lien on the original collateral was perfected. The security interest in or agricultural lien on proceeds ceases to be a perfected interest or lien and becomes un-perfected on the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds unless:

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed and, if the proceeds are acquired with cash proceeds or funds from a deposit account, the description of collateral in the financing statement indicates the type of property constituting the proceeds;

(b) the proceeds are identifiable cash proceeds; or

(c) the security interest in or agricultural lien on the proceeds is perfected before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.

(5) Except as otherwise provided in 57.2.313(4), a security interest in or agricultural lien on proceeds can be perfected only by the methods or under the circumstances permitted in this Part for original collateral of the same type.

(6) If a filed financing statement covers the original collateral, a security interest in or an agricultural lien on proceeds which remains perfected under 57.2.313(4)(a) becomes unperfected when the effectiveness of the filed financing statement lapses under Section 9-516 or is terminated under Section 9-511, but in no event before the 21st day after the security interest attaches to the proceeds or the agricultural lien becomes effective as to the proceeds.

57.2.314. Perfection of Security Interest or Agricultural Lien Following Change in Applicable Law.

(1) This subsection applies to an agricultural lien and to a nonpossessory security interest in collateral other than goods covered by a certificate of title (Section 57.2.303), deposit accounts, investment property, and minerals and related accounts described in Section 57.2.306. A security interest or agricultural lien perfected under the law of the jurisdiction in which the debtor is located remains perfected until the expiration of four months after a change of the debtor's location to within the jurisdiction of the Reservation, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the Reservation before the end of that period, the security interest or agricultural lien continues perfected thereafter. If it does not become perfected under the law of the Reservation before the end of that period, the security interest or agricultural lien becomes unperfected and is deemed never to have been perfected.

(2) This subsection applies to a possessory security interest in collateral, other than goods covered by a certificate of title (Section 57.2.303) and minerals described in Section 57.2.306. A security interest remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into the jurisdiction of the Reservation; and

(c) upon entry into the jurisdiction of the Reservation the security interest is perfected under the law of the Reservation.

(3) This subsection applies to goods covered by a certificate of title (Section 57.2.303). If a security interest in goods is perfected by any method under the law of another jurisdiction and the goods become covered by a certificate of title requirement from this jurisdiction the security interest remains perfected until the earlier of the time the security interest would have become unperfected under the law of the other jurisdiction or the expiration of four months after the goods have become located within this jurisdiction. If the security is perfected under Section 57.2.309(4) or 57.2.311 before the prior perfection ceases to be

effective, the security interest continues perfected thereafter. If it does not become perfected under Section 57.2.309(4) or Section 57.2.311 before the earlier of that time or the expiration of that period, the security interest becomes unperfected and is deemed never to have been perfected.

(4) This subsection applies to deposit accounts and investment property. A security interest perfected under the law of the depositary institution's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, which ever is applicable, remains perfected until the expiration of four months after a change of the depositary institution's jurisdiction, or until perfection would have ceased under the law of the first jurisdiction, whichever occurs first. If it becomes perfected under the law of the Reservation before the end of that period, the security interest continues perfected thereafter. If it does not become perfected under the law of the Reservation before the end of that period, the security interest becomes unperfected and is deemed never to have been perfected.

Sub-Part 3. Priority.

57.2.315. Interests That Take Priority Over and Take Free of Unperfected Security Interests or Agricultural Lien.

(1) An unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 57.2.319; and

(b) a person who becomes a lien creditor before the security interest is perfected.

(2) Except as otherwise provided in 57.2.315(5), a buyer of goods, instruments, documents, a security certificate, or chattel paper that is not a secured party takes free of a security interest if the buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(3) Except as otherwise provided in 57.2.315(5), a lessee of goods takes free of a security interest if the lessee receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(4) A buyer of accounts, general intangibles, or investment property other than a security certificate which is not a secured party takes free of a security interest if the buyer gives value without knowledge of the security interest and before it is perfected.

(5) If the secured party files, with respect to a purchase money security interest, before or within 20 days after the debtor receives possession of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arises between the time the security interest attaches and the time of filing.

57.2.316. Rights and Title of Consignee and Seller of Account or Chattel Paper With Respect to Creditors and Purchasers.

(1) Goods purchased for personal, family or household use and goods having a value of less than $1000.00 which are delivered or consigned do not become the property of the deliveree or consignee unless the deliveree or consignee purchases and fully pays for the goods. A deliveree or consignee may still act as the deliver's agent for purposes of

transfering title to a buyer of these goods. Payment received by the deliveree or consignee upon selling of the goods, may be reduced by any commissions, fees or expenses expressly agreed to by the deliverer with the remaining payment amount being the property of the deliverer and not subject to any claims by the delivere's or consignee's creditors.

(2) For purposes of determining the rights of creditors of, and purchasers of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

57.2.317. Protection of Buyers of Goods.

(1) This section does not affect a security interest in goods in the possession of the secured party under Section 57.2.311.

(2) A buyer in the ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the seller, even if the security interest is perfected and the buyer knows of its existence.

(3) A buyer of consumer goods takes free of a security interest, even though perfected, if the buyer purchases the goods:

(a) without knowledge of the security interest;

(b) for value; and

(c) for the buyers own personal, family or household purposes unless prior to the buyer's purchase the secured party has filed a financing statement covering the goods.

57.2.318. Lessees of Goods in Ordinary Course of Business.

A lessee of goods in ordinary course of business of the lessor takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

57.2.319. Priorities Among Conflicting Security Interests and Agricultural Liens in the Same Collateral.

(1) Except as otherwise provided in this part, with respect to a security interest of a collecting bank, and with respect to a security interest of an issuer or nominated person, priority among conflicting security interests and agricultural liens in the sale collateral is determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, if there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(2) For the purposes of 57.2.319(1), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

57.2.320. Future Advances.

(1) This subsection applies only to a security interest that secures an obligation. For purposes of determining the priority of a security interest under Section 57.2.319(2), perfection of the security interest dates from the time an advance is made if the security interest secures an advance made, other than pursuant to commitment, while the security interest is temporarily perfected under Section 57.2.310(4) or (5) and by no other method.

(2) This subsection applies only to a security interest that secures an obligation. A security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) A buyer of goods, other than a buyer in ordinary course of business, takes free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the buyer's purchase, or more than 45 days after the purchase, whichever occurs first, unless the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period. This subsection does not affect a security interest in goods in the possession of the secured party under Section 57.2.311.

(4) A lessee of goods other than a lessee of goods in ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

57.2.321. Priority of Production Money Security Interests and Agricultural Liens.

(1) Except as otherwise provided in 57.2.321(5), if the requirements of 57.2.321(2) are met, a perfected production money security interest in production money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 57.2.326, also has priority in their identifiable proceeds. A production money security interest has priority under this subsection only to the extent that the conflicting security interest secures obligations incurred more than six months before the production money secured party first gives new value to enable the debtor to produce the crops.

(2) A production money security interest has priority under 57.2.321(1) if:

(a) the production money security interest is perfected by filing when the production money secured party first gives new value to enable the debtor to produce the crops;

(b) the production money secured party gives written notification to the holder of the conflicting security interest before the production money secured party first gives new value to enable the debtor to produce the crops if the holder

had filed a financing statement covering the crops before the date of the filing made by the production money secured party; and

(c) the notification states that the production money secured party has or expects to acquire a production money security interest in the debtor's crops and contains a description of the crops.

(3) Except as otherwise provided in 57.2.321(4), if more than one security interest qualifies for priority in the same collateral under 57.2.321(1), the security interests rank according to priority in time of filing under Section 57.2.319(2).

(4) If a statute provides that an agricultural lien in collateral has priority over a conflicting security interest or agricultural lien in the same collateral, the statute governs priority if the agricultural lien is perfected.

(5) To the extent that a person holds both an agricultural lien and a production money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

57.2.322. Priority of Purchase Money Security Interests.

(1) Except as otherwise provided in 57.2.322(5), a perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable cash proceeds to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected when the debtor receives possession of the inventory;

(b) the holder of the purchase money security interest gives written notice to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory;

(i) before the date of a filing made by the purchase money secured party or;

(ii) before the beginning of the 20 day period where the purchase money security interest is temporarily perfected without filing or possession under Section 57.2.310(5);

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory ; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.

(2) If a purchase money security interest in inventory has priority over a conflicting security interest under 57.2.322(1), a security interest held by the purchase money secured party in chattel paper constituting proceeds of the inventory has priority over a conflicting security interest in the chattel paper if:

(a) the purchase money secured party takes possession of the chattel paper in good faith;

(b) in the ordinary course of the secured party's business; and

(c) without knowledge that the security interest violates the rights of the holder of the conflicting security interest.

(3) Except as otherwise provided in 57.2.322(5), a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable proceeds and identifiable products in their unmanufactured states if:

(a) the purchase money security interest is perfected when the debtor receives possession of the livestock;

(b) the purchase money secured party gives written notification to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of livestock before the date of a the filing made by the purchase money secured party, or before the beginning of the 20 day period if the purchase money security interest is temporarily perfected without filing or possession under Section 57.2.310(5);

(c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock ; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in livestock of the debtor, describing the livestock by item or type.

(4) Except as otherwise provided in 57.2.322(5), a purchase money security interest in collateral other than inventory or livestock has priority over a conflicting security interest in the same collateral and, except as otherwise provided in Section 57.2.326, also has priority in its identifiable proceeds if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(5) If more than one security interest qualifies for priority in the same collateral under 57.2.322(1), (3), or (4):

(a) a security interest securing an obligation incurred as the price of the collateral has priority over a security interest securing an obligation incurred by an obligor for value given to enable the debtor to acquire rights in collateral; and

(b) in all other cases, Section 57.2.319(2) applies to the qualifying security interests.

57.2.323. Priority of Security Interests in Transferred Collateral.

(1) If a debtor acquires property subject to a perfected security interest created by another person, any security interest created by the debtor is subordinate to the security interest created by the other person, if there is no period when the prior security interest is

unperfected, notwithstanding anything to the contrary in this part.

(2) If a debtor acquires property subject to an unperfected security interest created by the other person or which becomes unperfected at any time thereafter, the other sections of this subpart govern, as applicable.

57.2.324. Priority of Security Interests Created by New Debtor.

(1) A perfected security interest in collateral that is effective solely by a filed financing statement under Section 57.2.510, which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected in another manner.

(2) If more than one security interest in the same collateral is subordinate under this subsection, the other rules stated in this subpart determine the priority of the subordinated security interests.

57.2.325. Priority of Security Interests in Investment Property.

Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) A possessory security interest in a security certificate in registered form has priority over a conflicting security interest perfected by a method other than control.

(c) Except as otherwise provided in section 57.2.325(d) and (e), conflicting security interests of secured parties each of whom has control rank equally.

(d) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(f) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(g) In all other cases, priority between conflicting security interests in investment property is governed by Section 57.2.319(2) and (3) and 57.2.320(1).

57.2.326. Priority of Security Interests in Deposit Accounts.

Priority among conflicting security interests in the same deposit account is governed by the following

rules:

(a) A security interest held by a secured party that has control over the deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 57.2.326(c) and (d), security interests perfected by control rank equally.

(c) Except as otherwise provided in 57.2.326(d), a security interest held by the depositary institution with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(d) A security interest perfected by control has priority over a security interest held by the depositary institution with which the deposit account is maintained.

57.2.327. Priority of Security Interests in Letters of Credit.

Priority among conflicting security interests in the same letter of credit and proceeds of the letter of credit is governed by the following rules:

(a) A security interest held by a secured party that has control over the letter of credit and proceeds of the letter of credit has priority over a conflicting security interest held by a secured party that does not have control.

(b) Except as otherwise provided in 57.2.327(c), security interests perfected by control rank equally.

(c) A security interest held by a transferee beneficiary has priority over a conflicting security interest held by another secured party.

57.2.328. Purchase of Chattel Paper and Instruments.

(1) A purchaser of chattel paper or an instrument has priority over a security interest in the chattel paper or instrument and, except as otherwise provided in Section 57.2.326, in its proceeds if the purchaser gives new value and takes possession of the chattel paper or instrument:

(a) in good faith;

(b) in the ordinary course of the purchaser's business; and

(c) without knowledge that the purchase violates the rights of the secured party.

(2) For purposes of 57.2.328(1), if chattel paper or an instrument indicates that it has been assigned to an identified assignee, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the assignee.

(3) A possessory security interest in an instrument has priority over a conflicting security interest perfected by another method.

57.2.329. Rights of Purchasers of Instruments, Documents and Securities

Under Other Law.

(1) Nothing in this Part limits the rights of:

(a) a holder in due course of a negotiable instrument,

(b) a holder to whom a negotiable document of title has been duly negotiated, or

(c) a protected purchaser of a security.

(2) These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided under applicable law. Filing under this Part does not constitute notice of the security interest to those holders or purchasers.

57.2.330. Transfer of Money; Transfer of Funds From Deposit Account.

(1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

57.2.331. Priority of Certain Liens Arising by Operation of Law.

(1) When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

(2) A perfected security interest or an unperfected security interest is subordinate to any Tribal Lien in existence when the security interest is created.

57.2.332. Priority of Security Interests in Fixtures.

(1) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Title may be created in goods which are fixtures or may continue in goods that become fixtures, but no security interest exists in ordinary building materials incorporated into an improvement on land.

(3) This Title does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) (i) the security interest is a purchase money security interest;

(ii) the interest of the encumbrancer or owner arises before the goods become fixtures;

(iii) the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter; and

(iv) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) (i) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record;

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner; and

(iii) the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) (i) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods; and

(ii) before the goods become fixtures the security interest is perfected by any method permitted by this Title; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Title.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the fixture(s) as against the encumbrancer or owner.

(6) If the debtor's right terminates, the priority of the security interest continues for a period of ninety days, beginning on the date the debtor's rights terminate.

(7) Notwithstanding Section 57.2.332(4)(a) but otherwise subject to sections 57.2.332(4), (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that a mortgage is given to refinance a construction mortgage, the mortgage has the same priority date as the construction mortgage.

(6) In all other instances, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(7) When the secured party has priority over all owners and encumbrances of the real estate, on default the secured party may remove the collateral from the real estate.

However, the secured party must reimburse any encumbrancer or owner of the real estate who is not the debtor for any physical injury to the real estate, but not for any diminution in value caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

57.2.333. Accessions.

(1) A security interest in goods which attaches before the goods are installed or affixed to other goods takes priority over the claims of all other persons to which the initial goods were installed or affixed. The attached security interest in goods prior to installation or affixation is limited to those goods installed or affixed but does not include the goods to which the initial goods were installed or affixed except as stated in section 57.2.333(3).

(2) A security interest which attaches to goods after they become part of a whole:

(a) is valid against all persons subsequently acquiring interests in the whole except as stated in section 57.2.333(3); and

(b) is invalid against any person with an interest in the whole at the time the security interest attaches to the goods, who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) A security interest described in sections 57.2.333(1) and (2) made or contracted for without knowledge of the security interest and before the security interest is perfected do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole;

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances.

(4) A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at the holder's own foreclosure sale, is a subsequent purchaser within this section.

(5) When the secured party has an interest in accessions which has priority over the claims of all persons who have interest in the whole, on default the secured party may remove the collateral from the whole. However, the secured party must reimburse any encumbrancer or owner of the whole who is not the debtor for the cost of repair of any physical injury to the whole, but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may require the secured party give adequate security through a performance bond or otherwise prior to removal of the collateral.

57.2.334. Priority When Goods Are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods, or a part thereof, have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are manufactured, processed, assembled or commingled in a manner that causes their identity to be lost; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

(2) When section 57.2.334(1)(b) applies, no separate security interest in the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 57.2.334.

(3) When more than one security interest attaches to the product or mass under Section 57.2.334(1), the security interests have equal priority and are apportioned by the ratio that the cost of the original security interests bear to the total value of the product or mass.

57.2.335. Priority of Security Interest in Goods Covered by a Certificate of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, the Reservation issues a certificate of title (Section 57.2.303) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(a) A buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(b) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 57.2.309(4), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

57.2.336. Priority of Security Interest Perfected by Effective Financing Statement Containing Incorrect Information.

A security interest, or agricultural lien, perfected by a filed financing statement complying with Section 57.2.502(1) but containing information described in Section 57.2.515(2)(e) that is

incorrect is subordinate to the rights of a purchaser of the collateral which gives value in reasonable reliance upon the incorrect information.

57.2.337. Priority Subject to Subordination.

Nothing in this Part prevents subordination by agreement by any person entitled to priority.

57.2.338. Effectiveness of Right of Recoupment or Set-off Against Deposit Account.

(1) Except as otherwise provided in 57.2.338(3) and (4), a depositary institution where a deposit account is maintained may exercise any right of recoupment and any right of set-off against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in 57.2.338(3), the application of this Part to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(3) A depositary institutions exercising a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control.

(4) A depositary institution shall obtain leave of court prior to the exercise of any right of set-off.

57.2.339. Depositary Institution's Right to Dispose of Funds in Deposit Account.

Except as otherwise provided in Section 57.2.338(3), and unless the depositary institution otherwise agrees in writing, a depositary institution's rights and duties with respect to a deposit account maintained with the depositary institution are not terminated, suspended, or modified by:

(a) the creation or perfection of a security interest in the deposit account; or

(b) the depositary institution's knowledge of the security interest.

PART 4. RIGHTS OF THIRD PARTIES.

57.2.401. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred by way of sale, creation of a security interest, attachment, levy or other recognized judicial process notwithstanding a provision in the security agreement prohibiting any transfer or indicating any transfer constitutes a default.

57.2.402. Secured Party Not Obligated on Contract of Debtor.

The existence of a security interest, agricultural lien or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

57.2.403. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) This part is subordinate to any other law that establishes a different rule for consumer account debtors.

(2) Except as provided in Section 57.2.403(3), an agreement between and account debtor and an assignor not to assert against an assignee any claim or defense the account debtor may have against the assignor is enforceable by the assignee that takes an assignment:

(a) for value;

(b) in good faith;

(c) without notice of a claim or defense to the property assigned; and

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 57.2.305(1).

(3) An agreement of the kind described in Section 57.2.403(2) is not enforceable against a holder in due course of a negotiable instrument under Section 57.2.305(2).

57.2.404. Rights Acquired by Assignee; Defenses Against Assignee; Modification of Contract; Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Term Prohibiting Assignment Ineffective.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to 57.2.404(2), the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any recognized defense or claim arising from the contract; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) The claim of an account debtor may be asserted against an assignee under Section 57.2.404(1) only to reduce the amount owing when the action is brought.

(3) To the extent that the right to full or partial payment under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(4) Subject to 57.2.404(5), (6) and (7), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until but not after the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of notification, the account debtor may discharge its obligation by paying the assignee.

(5) An assignee may not send a notification under Section 57.2.404(4) that directs an account debtor to make less than the full amount of any installment payment to the assignee, regardless of whether only a portion of the account, chattel paper, or general intangible has been assigned to that assignee, a portion has been assigned to another assignee, or the account debtor knows that the assignment to that assignee is limited.

(6) A notification is ineffective under Section 57.2.404(4):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under other law.

(7) If requested by the account debtor, the assignee must within 10 days furnish reasonable proof that the assignment has been made. Unless the assignee does so, the account debtor may discharge its obligation by paying the assignor even if the account debtor has received notification under Section 57.2.404(4).

(8) This subsection does not apply to the sale of a payment intangible. Except as otherwise provided under other applicable law, a term in any contract between an account debtor and an assignor is ineffective if it prohibits, restricts, or requires the account debtor's consent to assignment of an account, chattel paper, or a payment intangible.

57.2.405. Restrictions on Assignment of Certain General Intangibles Ineffective.

(1) Section 57.2.405(2) applies to a security interest in a payment intangible only if the security interest arises out of a sale of the payment intangible.

(2) A term in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor that prohibits, restricts, or requires the account debtor's consent to the assignment or transfer of or creation, attachment, or perfection of a security interest in the general intangible, is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest;

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the general intangible.

(3) A term in a statute or governmental rule or regulation that prohibits, restricts, or requires the consent of a government or governmental body or official to the assignment or creation of a security interest in a general intangible, including a contract, permit, license, or franchise, between an account debtor and a debtor is ineffective to the extent that:

(a) the term would impair the creation, attachment, or perfection of a security interest; or

(b) the creation, attachment, or perfection of the security interest would cause a default, breach, claim, defense, termination, right of termination, or remedy under the general intangible.

(4) To the extent that a term in a general intangible, statute, rule, or regulation is ineffective under Section 57.2.405 (3) or (4) but is effective under other law, the creation, attachment, or perfection of a security interest in the general intangible:

(a) is not enforceable against the account debtor;

(b) imposes no duties or obligations on the account debtor; and

(c) does not require the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(5) This section controls over any inconsistent provisions of the following statutes, rules, and regulations:

Note: List any statutes, rules, and regulations containing provisions inconsistent with this section.

PART 5. FILING.

Sub-Part 1. Place of Filing, Contents and Effectiveness of Financing Statement.

57.2.501. Place of Filing.

(1) Except as otherwise provided in Section 57.2.501(2), if tribal law governs perfection of a security interest (Sections 57.2.301 through 57.2.307), the place to file a financing statement to perfect the security interest is:

(a) the Tribal Department of Commerce - Filing Office (Filing Office) is designated as responsible for coordinating with other appropriate agencies the filing or recording of a mortgage on the real estate, if the collateral is:

(i) timber to be cut;

(ii) minerals or the like, including oil and gas;

(iii) accounts subject to Section 57.2.306; or

(iv) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; and

(b) the Filing Office in all other cases, including if the goods are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) Subject to Section 57.2.9-309(3), the place to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Filing Office. This financing statement constitutes a fixture filing as to the described collateral that is or is to become fixtures.

57.2.502. Contents of Financing Statement; Mortgage as Financing Statement; Time of Filing Financing Statement.

(1) A financing statement is sufficient only if it gives the names and mailing addresses of the debtor and the secured party or a representative of the secured party and contains a statement indicating the collateral covered by the financing statement.

(2) If the financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, or if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures, the financing statement also must show that it covers this type of collateral, recite that it is to be filed in the real estate records, contain a description of the real estate and, if the debtor does not have an interest of record in the real estate, show the name of a record owner.

(3) A real estate mortgage is effective as a financing statement filed as a fixture filing from the date of its recording only if:

(a) the mortgage indicates the goods that it covers;

(b) the goods are or will become fixtures related to the real estate described in the mortgage;

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded.

1. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

57.2.503. Name of Debtor and Secured Party.

(1) A financing statement sufficiently gives the name of the debtor:

(a) if the debtor is a registered entity, only if the financing statement gives the name of the debtor as shown on the public records of the debtor's jurisdiction of organization;

1. (b) if the debtor is a decedent's estate, only if the financing statement gives the name of the decedent and indicates that the debtor is an estate;

(c) if the debtor is a trust, only if the financing statement gives the name, if any, specified for the trust in its organic documents or, if no name is specified, gives the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors and indicates, in the debtor's name or otherwise, that the debtor is a trust; and

(d) in other cases, only if it gives the individual or organization name of the debtor.

(2) A financing statement that sufficiently gives the name of the debtor is not rendered ineffective by the absence of a trade or other name or names of partners, members, or associates.

(3) A financing statement may give the name of more than one debtor, may give, as an additional debtor, a trade or other name for the debtor, and may give the name of more than one secured party.

(4) The failure to indicate the representative capacity of a secured party or a representative of a secured party does not affect the sufficiency of a financing statement.

57.2.504. Indication of Collateral.

A description of the collateral, an indication of the type of collateral, or a statement to the effect that

the financing statement covers all assets or all personal property is sufficient to indicate the collateral that is covered by a financing statement.

57.2.505. Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Bailments, and Other Transactions.

(1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible may file a financing statement, or may comply with a statute or treaty described in Section 9-303, using the terms consignor, consignee, lessor, lessee, bailor, bailee, owner, registered owner, buyer, seller, or the like, instead of the terms debtor and secured party.

(2) This part applies to a financing statement and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 57.2.309, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. However, if it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

57.2.506. Effect of Minor Errors.

(1) A financing statement substantially complying with the requirements of this part is effective, even if it contains minor errors that are not seriously misleading.

(2) A financing statement that fails to give the correct name of the debtor in accordance with Section 57.2.503(1) is seriously misleading unless a search of the records of the Filing Office conducted in accordance with a rule adopted pursuant to Section 9-526 under the debtor's correct name would disclose the financing statement, in which case the incorrect name does not render the financing statement seriously misleading.

57.2.507. Effect of Certain Changes on Effectiveness of Financing Statement.

(1) If a debtor so changes its name that a filed financing statement becomes seriously misleading:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after the change.

(2) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues under Section 57.2.313(2), even if the secured party knows of or consents to the disposition.

(3) Except as otherwise provided in Section 57.2.506(1) and Section 57.2.510, a financing statement is not rendered ineffective if, after the financing statement is filed, the information contained in the financing statement becomes inaccurate and seriously misleading.

57.2.508. Authorization of Financing Statement; Liability for Unauthorized

Filing.

(1) A person may not file an initial financing statement or an amendment that adds collateral covered by a financing statement unless:

(a) the debtor authorizes the filing in a signed writing or in a signed record in another medium authorized in writing by the debtor; or

(b) the person holds an agricultural lien at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By signing a written security agreement, a debtor authorizes the secured party to file an initial financing statement and an amendment covering the collateral described in the security agreement.

(3) A person that files an initial financing statement or an amendment that adds collateral and that claims an agricultural lien in the collateral covered by the financing statement shall send a copy of the financing statement or the amendment to the debtor not later than the 10th day after the filing. The person shall send the copy to the most recent mailing address of the debtor known to the person.

(4) A person that files an initial financing statement or an amendment in violation of Section 57.2.508(1) and that fails to send a copy of a financing statement or amendment to the debtor in accordance with Section 57.2.508(3) is liable to the debtor for any documented actual and reasonable costs incurred by the debtor to cure the failure and any loss thereby sustained by the debtor.

57.2.509. Amendment of Financing Statement.

Subject to Section 57.2.513, a secured party of record may add or release collateral covered by a financing statement or otherwise amend the information contained in a financing statement by filing an amendment that identifies the initial financing statement by the date of filing and the file number assigned pursuant to Section 57.2.520(a) or by another method prescribed by rule. An

amendment does not extend the period of effectiveness of a financing statement. If an amendment adds collateral, it is effective as to the added collateral only from the date of filing of the amendment.

57.2.510. Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement.

(1) Except as otherwise provided in 57.2.510(2) and (3), a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective if the original debtor acquired rights in the collateral.

(2) If a filed financing statement that is effective under 57.2.510(1) is seriously misleading with respect to the name of the new debtor:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 57.2.203(3); and

(b) the financing statement is not effective to perfect a security interest in

collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 57.2.203(3) unless an amendment that renders the financing statement not seriously misleading is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 57.2.507(2).

57.2.511. Termination Statement.

(1) A secured party of record for a financing statement may file a termination statement for the financing statement.

(2) (a) If a financing statement covers consumer goods, within 10 days after written demand by the debtor after there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, the secured party of record shall file with the Filing Office a termination statement for the financing statement.

(b) In other cases, if there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value, or if a financing statement covers accounts, chattel paper, or payment intangibles that have been sold but as to which the account debtor other person obligated has discharged its obligation, the secured party of record for a financing statement, within 10 days after written demand by the debtor, shall send the debtor a termination statement for the financing statement or file the termination statement with the Filing Office.

(3) A secured party of record that fails to file or send a termination statement as required by this subsection is liable to the debtor for any documented actual and reasonable costs incurred by the debtor to cure the failure and any loss thereby sustained by the debtor.

(4) Subject to Section 57.2.513, upon the filing of a termination statement with the Filing Office under 57.2.511(2), the financing statement to which the termination statement relates becomes ineffective.

57.2.512. Assignment of Rights Under Financing Statement.

(1) Except as otherwise provided in Section 57.2.512(3), an initial financing statement may reflect an assignment of all of the secured party's rights under the financing statement with respect to some or all of the collateral by giving in the financing statement the name and mailing address of the assignee. Upon filing, the assignee named in an assignment filed under this subsection is a secured party of record for the financing statement. An assignment in an initial financing statement may state that the rights under the financing statement are being assigned only with respect to the portion of the collateral covered by the financing statement that is indicated in the assignment; otherwise, the rights under the financing statement are assigned with respect to all of the collateral covered by the financing statement.

(2) A secured party may assign all or part of the secured party's rights under a financing statement by filing in the Filing Office a written statement of assignment signed by the secured party, or a copy thereof, and setting forth:

(i) the name of the recorded secured party and the debtor;

(ii) the file number and the date of filing of the financing statement;

(iii) the name and address of the assignee; and

(iv) a description of the collateral assigned.

(3) An assignment of record of a security interest in a fixture covered by a real estate mortgage that is effective as a fixture filing under Section 57.2.502(2) may be made only by an assignment of record of the mortgage in the manner provided by other law of the Reservation, including EDA Loan Program and Land Ordinance provisions.

57.2.513. Multiple Secured Parties of Record.

(1) If there is more than one secured party of record for a financing statement, each secured party of record may file an amendment, continuation statement, or termination statement concerning its rights under the financing statement.

(2) A filing by one secured party of record does not affect the rights under the financing statement of another secured party of record.

57.2.514. Successor of Secured Party.

A person that succeeds to substantially all of the rights of a secured party by operation of law and becomes a secured party may act under this part without disclosing its status as a successor or may act in its own name as the disclosed successor of a secured party.

57.2.515. What Constitutes Filing a Record; Effectiveness of Filing.

(1) Except as otherwise provided in Section 57.2.515(2), presentation of a record to a Filing Office and tender of the filing fee or acceptance of the record by the Filing Office constitutes filing.

(2) Filing does not occur with respect to a record that a Filing Office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the Filing Office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the Filing Office is unable to index the record because:

(i) in the case of an initial financing statement, the record gives no name for a debtor or the Filing Office is unable to read or decipher the names given; or

(ii) in other cases, the record does not identify the initial financing statement as required by this part or the Filing Office is unable to read or decipher the identification;

(d) the Filing Office is unable to determine the secured party of record because the record does not give a name for the secured party of record or the Filing Office is unable to read or decipher the name given;

(e) in the case of an initial financing statement, the statement does not:

(i) indicate whether the debtor is an individual or an organization; or

(ii) if the financing statement indicates that the debtor is an organization, indicate the type of organization, give a jurisdiction of organization for the debtor, or give an organizational identification number for the debtor or indicate that the debtor has none; or

(f) in the case of an assignment in an initial financing statement under Section 57.2.512(1) or an amendment filed under Section 57.2.512(2), the record does not give a name for the assignee.

(3) Except as otherwise provided in Section 57.2.336, a filed financing statement complying with Section 57.2.502(1) is effective, even if some or all of the information described in Section 57.2.515(2)(e) is not given or is incorrect.

(4) A record that is presented to the Filing Office with tender of the filing fee but which the Filing Office refuses to accept pursuant to Section 57.2.521 for a reason other than one set forth in Section 57.2.515(2) is effective as a filed record except as against a purchaser of the collateral which gives value in reliance upon the absence of the record in the files.

57.2.516. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement.

(1) Except as otherwise provided in Sections 57.2.516(3) and (4), a filed financing statement is effective for a period of five years after the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless before the lapse a continuation statement is filed pursuant to Section 57.2.516(2). Upon lapse, a financing statement becomes ineffective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest or agricultural lien is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(2) A continuation statement of a filed financing statement may be filed by a secured party of record within six month period before the expiration of the five-year period specified in 57.2.516(1).

(3) Subject to Section 57.2.513, upon timely filing of a continuation statement, the effectiveness of the initial financing statement is continued for five years after the last date on which the financing statement was effective, whereupon the financing statement lapses in the same manner as provided in Section 57.2.516(1) unless before the lapse another continuation statement is filed pursuant to this subsection. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(4) If a debtor is a transmitting utility and a filed financing statement so states, the

financing statement is effective until a termination statement is filed.

(5) A real estate mortgage that is effective as a fixture filing under Section 57.2.502(2) remains effective as a fixture

filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

57.2.517. Contents of Continuation Statement.

A continuation statement must identify the initial financing statement by file number and the date of filing or by another method prescribed by rule and state that it is a continuation statement or that it is filed to continue the effectiveness of the financing statement.

57.2.518. Effect of Indexing Errors.

(1) Except as otherwise provided in Section 57.2.518 (2), the failure of the Filing Office to index a record correctly does not affect the effectiveness of the record.

(2) A filed but improperly indexed record is ineffective against a purchaser of the collateral that gives value in reliance upon the apparent absence of the record in the files.

57.2.519. Claim Concerning Inaccurate or Wrongfully Filed Record; Failure to Send or File Termination Statement.

(1) If a person believes in good faith that a record indexed under the person's name with the Filing Office is inaccurate or was wrongfully filed, the person may file with the Filing Office a correction statement with respect to the record or financing statement.

(2) If a person believes in good faith that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement under Section 9-511, the person may file with the Filing Office a termination request with respect to the financing statement.

(3) A correction statement or termination request must identify the record or the initial financing statement to which it relates by the date of filing and the file number assigned under Section 57.2.520(a) or by another method prescribed by rule. A correction statement must give the basis for the person's belief that a record is inaccurate or was wrongfully filed and the manner in which the record should be amended in order to cure any inaccuracy. A termination request must give the basis for the person's belief that the secured party of record for a financing statement indexed under the person's name has failed to comply with its duty to file or send to the person a termination statement for the financing statement.

(4) Upon filing, a correction statement or a termination request becomes a part of the record or financing statement to which it relates, but neither the correction statement nor the termination request otherwise affects the record or financing statement.

Sub-Part 2. Duties and Operation of Filing Office.

57.2.520. Numbering, Maintaining, and Indexing Records.

(1) Except as otherwise provided in Sections 57.2.520(2) and (4), for each record filed with the Filing Office, the Filing Office shall:

(a) assign a file number to the record;

(b) create a record that bears the file number and the date and time of filing;

(c) maintain the filed record for public inspection;

(d) index the filed record according to the name of the debtor in such a manner that each initial financing statement is interrelated to all filed records relating to it; and

(e) note in the index the file number and the date and time of filing.

(2) If a financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, or is filed as a fixture filing, the Filing Office shall index it under the names of the debtor, and any owner of record shown on the financing statement, as if they were the mortgagors under a mortgage of the real estate described. The Filing Office shall index a financing statement as if it were a mortgage to the extent that the law of the Reservation provides for indexing of mortgages:

(a) under the name of the mortgagee,

(b) under the name of the secured party as if the secured party were the mortgagee, or,

(c) by description.

(3) In the case of a fixture filing, or a financing statement covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to Section 57.2.306, the Filing Office shall index an assignment filed under Section 57.2.512(1) or an amendment filed under Section 57.2.512(2), under the name of the assignor as grantor and, to the extent that the law of the Reservation provides for indexing the assignment of a real estate mortgage under the name of the assignee, the Filing Office shall index the assignment or the amendment under the name of the assignee.

(4) The Filing Office shall perform the acts required by Sections 57.2.520(1), (2), and (3) at the time and in the manner prescribed by rule.

1. The Filing Office is responsible for coordinating with other appropriate agencies to record security interests as provided in this Title.

57.2.521. Acceptance and Refusal to Accept Record.

(1) A Filing Office may refuse to accept a record for filing only for a reason set forth in Section 57.2.515(2).

(2) If a Filing Office refuses to accept a record for filing, it shall communicate the fact of and reason for its refusal to the person that presented the record. The communication must be made in writing within two weeks after the Filing Office receives the record.

(3) The Filing Office may not refuse to accept a written Financing Statement or Addendum

Form utilizing an applicable tribal form except for a reason set forth in Section 57.2.515(2):

(4) The Filing Office may not refuse to accept a written Change From that utilizing an applicable tribal form except for a reason set forth in Section 57.2.515(2):

57.2.522. Lapsed Financing Statements.

(1) The Filing Office may cause the files to reflect the fact that a financing statement has lapsed under Section 57.2.516(1) or has become ineffective under Section 57.2.511.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, immediately upon lapse the Filing Office may destroy any written record evidencing the financing statement. If the Filing Office destroys a written record evidencing a financing statement, it shall maintain another record of the financing statement which is recoverable by using the file number of the destroyed record.

57.2.523. Information From Filing Office.

(1) If a person filing a written record furnishes a copy to the Filing Office, the Filing Office upon request shall note upon the copy the file number and date and time of the filing of the original and deliver or send the copy to the person.

(2) The Filing Office shall communicate the following information to any person who requests it:

(a) whether there is on file on the date and time specified by the requesting party any financing statement that designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request, and has neither lapsed under Section 57.2.516(1) nor become ineffective under Section 57.2.511;

(b) the date and time of filing of each financing statement; and

(c) the information contained in each financing statement.

(3) In complying with its duty under Section 57.2.523(2), the Filing Office may communicate the information in any medium. However, if requested, the Filing Office shall communicate the information by issuing a written certificate.

57.2.524. Assignment of Functions to Third Party.

The Tribal Department of Commerce, with approval by the Tribal Council, may contract with a third party to perform some or all of the functions of a Filing Office under this part, other than the adoption of rules under Section 57.2.526.

57.2.525. Fees.

(1) The fee for filing and indexing a record under this part is $20,00 if the record is communicated in writing on a standard form as set forth in Section 57.2.521. The fee for filing a written record in a form other than as set forth in Section 57.2.521, or if the record is communicated by another medium authorized by this Title is $30.00. The fee for each additional name more than one required to be indexed is $10.00 if provided on a standard form or $15.00 if communicated on a substitute form or alternate authorized medium.

(2) The fee for responding to a request for information from the Filing Office, including marking a written copy to show the time and place of filing under provided under Section 57.2.523 or issuing a certificate showing whether there is on file any

financing statement naming a particular debtor, is $10.00 if the request is communicated in writing and $15.00 if the request is communicated by another medium authorized by this Title.

57.2.526. Administrative Rules.

The Tribal Department of Commerce shall develop for consideration and approval by the Tribal Council rules to carry out the provisions of this Part. The rules must be adopted in accordance with the Tribal Legislative Procedures Act.

PART 6. DEFAULT.

Sub-Part 1. Default and Enforcement of Security Interest.

57.2.601. Default and Enforcement of Security Interest.

(1) When a debtor is in default under a security agreement:

(a) a secured party has the rights and remedies:

(i) provided in this Title;

(ii) provided in the security agreement so long as they comply with applicable laws; and

(iii) consistent with Part 5 of this Title.

(b) The secured party may reduce the claim to judgment, foreclose or otherwise enforce the security interest by legally available procedure.

(c) If the collateral is documents, the secured party may proceed either as to the documents or as to the goods covered thereby.

(d) A secured party in possession has the rights, remedies and duties provided in Section 57.2.207.

(e) The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies:

(a) as provided in this Title;

(b) as provided in the security agreement so long as they comply with recognized law; and

(c) as provided in Section 57.2.207.

(3) When a secured party has reduced the claim to judgment the lien of any levy which

may be made upon the collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this part, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Title.

57.2.602. Waiver and Variance of Rights and Duties.

(1) To the extent that they give rights to a debtor or an obligor and impose duties on a secured party, the rules stated in the sections referred to below may not be waived or varied by a debtor or by a consumer obligor, except as specifically provided in Section 57.2.622:

(a) Section 57.1.106, which deals with the territorial application of this title;

(b) Sections 57.2.609, 57.2.610, and 57.2.612, which deal with disposition of collateral;

(c) Sections 57.2.606 and 57.2.613 insofar as they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(d) Sections 57.2.606, 57.2.607, and 57.2.613 insofar as they require accounting for or payment of surplus proceeds of collateral;

(e) Sections 57.2.617, 57.2.618, or 57.2.619, which deal with acceptance of collateral in satisfaction of obligation;

(f) Section 57.2.620, which deals with redemption of collateral;

(g) Section 57.2.621, which deals with reinstatement of obligations;

(i) Sections 57.2.623, 57.2.624, and 57.2.627, which deal with the secured party's liability for failure to comply with this Part;

(j) Section 57.2.404(6)(c), which deals with an account debtor's right to ignore certain notifications; and

(k) Section 57.2.209, which deals with requests for an accounting, list of collateral, and statement of account.

(l) An obligor other than a consumer obligor may waive or vary the rules referred to in Section 57.2.602(1) to the extent and in the manner provided by other law.

57.2.603. Agreement on Standards Concerning Rights and Duties.

The parties may determine by agreement the standards by which the fulfillment of the debtor's rights, obligor's rights and secured party's duties are to be measured provided the standards are not unreasonable.

57.2.604. Procedure if Security Agreement Covers Real Property of Fixtures.

(1) If a security agreement covers both real and personal property, a secured party may

proceed:

(a) under this part as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the real and the personal property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) If a security agreement covers goods that are or become fixtures, a secured party, subject to Section 57.2.604(3), may proceed under this part or in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) If a secured party with a security interest in fixtures has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the other provisions of this part, remove the collateral from the real estate. The secured party shall reimburse any encumbrancer or owner of the real estate that is not the debtor and that has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of the obligation to reimburse.

57.2.605. Time of Default for Agricultural Lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the earlier of the time provided by agreement of the parties and the time at which the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

57.2.606. Collection Rights of Secured Party.

(1) If so agreed in the security agreement and in any event upon default the secured party may by leave of the court:

(a) notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral; and

(b) take control of any proceeds to which the secured party is entitled under 57.2.313.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral, or is entitled to full or limited recourse against the debtor, and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner and must obtain leave of the tribal court when required.

(b) The secured party may deduct reasonable expenses of realization from the collections including reasonable attorney's fees and legal costs incurred by the secured party.

(c) If the security agreement secures an indebtedness, the secured party must

account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides or a recognized court order so allows.

57.2.607. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(1) If a security interest or agricultural lien secures payment or performance of an obligation the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds (Section 57.2.313) of collection or enforcement under this section in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 57.2.607(1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds (Section 57.2.313) of collection and enforcement under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus notwithstanding any agreement to the contrary, and, unless otherwise agreed, the obligor is liable for any deficiency. Recovery of a deficiency under this subsection is subject to Section 57.2.624.

(2) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if its agreement so provides. Recovery of a deficiency under this subsection is subject to Section 57.2.624.

57.2.608. Secured Party's Right to Take Possession After Default.

(1) Unless otherwise agreed, a secured party has on default the right to take possession of the collateral. In taking possession a secured party must either obtain the consent of the debtor when the default occurs or obtain a judicial order of repossession. The secured party may ask that the debtor be required to assemble the collateral at a reasonably convenient location for both parties and make it available to the secured party.

(2) If the debtor consents at the time of default or the secured party obtains a judicial order of foreclosure, the secured party may take possession of the collateral and without removal may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 57.2.609.

57.2.609. Disposition of Collateral After Default.

(1) After default a secured party may sell, lease or otherwise dispose of any or all of the collateral in the then existing condition at the time of default or following any commercially reasonable preparation or processing of the collateral for disposal. Any sale of goods is subject to applicable law. The proceeds of disposition shall be applied in the following order:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must furnish reasonable proof of the subordinate interest, and unless so provided, the secured party need not comply with the subordinate interest's demand.

(2) (a) Disposition of the collateral may be by public or private proceedings and by way of one or more contracts.

(b) Sale or other disposition:

(i) may be as a unit or in parcels;

(ii) at any time and place;

(iii) on any terms; and

(iv) must be commercially reasonable.

(c) The secured party may buy the collateral at any public sale. If the collateral

is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy the collateral at private sale for a commercially reasonable price.

57.2.610. Persons Entitled to Notification Before Disposition of Collateral.

(1) The notification date is the earlier of the date on which a secured party sends to the debtor and any secondary obligor written notification of a disposition and the date on which the debtor and any secondary obligor waive the right to notification.

(2) A secured party shall send to a debtor and any secondary obligor reasonable written notification of disposition under Section 57.2.612, unless collateral is perishable or threatens to rapidly decline in value or is of a type customarily sold on a recognized market. In the case of consumer goods, another notification need not be sent. In other cases a secured party shall send written notification of disposition to:

(a) any other person from whom the secured party has received, before the notification date, written notification of a claim of an interest in the collateral;

(b) any other secured party that, 30 days before the notification date, held a security interest or agricultural lien in the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date (Sections 57.2.301 through 57.2.307 and 57.2.501); and

(c) any other secured party that, 30 days before the notification date, held a security interest in the collateral perfected by compliance with a statute or treaty described in Section 57.2.309.

(3) A secured party complies with the notification requirement specified in Section 57.2.610(2)(b) if:

(a) not later than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Section 57.2.610(2)(b); and

(b) before the notification date, either the secured party did not receive a response to the request for information or the secured party received a response to the request for information and the secured party sent written notification to each secured party named in that response and whose financing statement covered the collateral.

57.2.611. Timeliness of Notification Before Disposition of Collateral.

(1) Notification of a disposition after default is sent within a reasonable time before disposition if sent:

(a) in a consumer secured transaction, 21 days or more before the earliest time of disposition set forth in the notification; or

(b) in other transactions, 10 days or more before the earliest time of disposition

set forth in the notification.

(2) Notification that does not meet the applicable time requirements of Section 57.2.611(1) is presumed unreasonable. Rebuttal of this presumption is a question of fact.

57.2.612. Contents and Form of Notification Prior to Disposition of Collateral.

(1) Except in a consumer secured transaction, the following rules apply:

(a) Unless otherwise agreed, the contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness (Section 57.2.209) and states the charge, if any for an accounting; and

(v) states the time and place of a public sale or the time after which any other disposition is to be made, whether or not the notification contains additional information.

(b) Whether a notification that lacks any of the information set forth in Section 57.2.612(1)(a) is nevertheless sufficient is a question of fact in each case.

(c) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(d Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

(2) In a consumer secured transaction, the following rules apply:

(a) A notification of disposition must contain the following information:

(i) the information specified in Section 57.2.613(1)(a);

(ii) a description of any liability for a deficiency of the person to which the notification is sent;

(iii) the amount that must be paid to the secured party to redeem the obligation secured under Section 57.2.620;

(iv) the amount that must be paid to the secured party to reinstate the obligation secured under Section 57.2.621; and

(v) a telephone number or mailing address from which additional

information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required. A notification substantially complying with the requirements of this subsection is sufficient, even if it contains minor errors that are not seriously misleading.

(c) Notifications utilizing applicable tribal forms are presumed to provide sufficient notice.

57.2.613. Application of Proceeds of Disposition; Liability for Deficiency and Rights to Surplus.

(1) A secured party shall apply or pay over for application the cash proceeds (Section 57.2.313) of disposition in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if the secured party receives a written notification of demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Section 57.2.613(1)(a).

(3) A secured party need not apply or pay over for application noncash proceeds (Section 57.2.313) of disposition under this section. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, the secured party shall account to and pay a debtor for any surplus, and, unless otherwise agreed, the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, or payment intangibles, the debtor is entitled to any surplus, and the obligor is liable for any deficiency, only if its agreement so provides. Recovery of any deficiency under this subsection is subject to Section 57.2.624.

57.2.614. Rights of Transferee of Collateral.

(1) When collateral is disposed of by a secured party after default to a purchaser for value, the disposition:

(a) transfers all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c discharges any security interest or lien subordinate to which the disposition is made.

(2) The purchaser at disposal takes free of all rights and interests of the debtor, secured party or subordinate interests even though the secured party fails to comply with the requirements of this Section or of any judicial proceedings;

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

57.2.615. Rights and Duties of Certain Persons Liable to Secured Party.

(1) A person that is liable to a secured party under a guaranty, indorsement, repurchase agreement, or the like acquires the

rights and assumes the duties of the secured party if the person:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party.

(2) An assignment, transfer, or subrogation described Section 57.2.615(1) is not a disposition of collateral under this Part and does not relieve the secured party of its duties under this Part.

57.2.616. Transfer of Record or Legal Title.

(1) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office must accept the transfer statement, promptly amend its records to reflect the transfer, and, if applicable, issue a new appropriate certificate of title in the name of transferee.

(2) A transfer of the record or legal title to collateral to a secured party is not of itself a disposition of collateral under this Part and does not of itself relieve the secured party of its duties under this Part.

57.2.617. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.

(1) A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under 57.2.617(3);

(b) the secured party does not receive, within the time set forth in Section 57.2.617(4), a written notification of objection to the proposal from a person to whom the secured party was required to send a proposal under Section 57.2.618, or from any other person holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(c) in a consumer secured transaction in which collateral is of a type in which a security interest can be perfected by possession under Section 57.2.311, the collateral is in the possession of the secured party when the debtor consents to the acceptance.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless the secured party consents to the acceptance in a signed writing or sends written notification of a proposal to the debtor and the conditions of Section 57.2.617(1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor so agrees in a writing signed after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a written notification of objection from the debtor within 20 days after the proposal is sent.

(4) To be effective under Section 57.2.617(1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to whom the proposal has been sent pursuant to Section 57.2.618, within 20 days after notification is sent to that person; and

(b) in other cases, within 20 days after the last notification is sent pursuant to 57.2.618 or, if a notification is not sent, before the debtor consents to the acceptance under Section 57.2.617(3).

(5) A secured party that has lawfully taken possession of collateral shall dispose of the collateral pursuant to Section 57.2.609 within 90 days after taking possession or within any extended period to which the secured party, the debtor and all secondary obligors have agreed in writing after default if:

(a) 60 percent of the cash price has been paid in the case of a purchase money security interest in consumer goods; or

(b) 60 percent of the principal amount of has been paid in the case of another security interest in consumer goods.

(6) In a consumer secured transaction, a secured party may accept collateral only in full satisfaction, and not in partial satisfaction, of the obligation is secures.

57.2.618. Notification of Proposal to Accept Collateral.

(1) Except in a consumer secured transaction, a secured party that wishes to accept collateral in full or partial satisfaction of the obligation it secures shall send written notification of its proposal also to:

(a) any secondary obligor;

(b) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral;

(c) any other secured party or lienholder that, 30 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date (Sections 57.2.301 through 57.2.307 and 57.2.501); and

(d) any other secured party or lienholder that, 30 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected or evidenced by compliance with a statute or treaty described in Section 57.2.309(3).

(2) In a consumer secured transaction, a secured party that wishes to accept collateral in satisfaction of the obligation it secures shall send written notification of its proposal to:

(a) any person from whom the secured party has received, before the debtor consented to the acceptance, written notification of a claim of an interest in the collateral; and

(b) any secondary obligor to the security agreement.

57.2.619. Effect of Acceptance of Collateral.

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) discharges the security interest or agricultural lien that is the subject of the

debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under 57.2.619(1) whether or not the secured party is required to send or does send notification to the holder thereof. However, any person to whom the secured party was required to send, but did not send, notification has the remedy provided by Section 57.2.623(2).

57.2.620. Rights to Redeem Collateral.

At any time before a secured party has collected collateral under Section 57.2.606, disposed of collateral or entered into a contract for its disposition under Section 57.2.609, or accepted collateral in full or partial satisfaction of the obligation it secures under Section 57.2.617, the debtor, any secondary obligor, or any other secured party or lienholder may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the reasonable expenses and attorney's fees of the type described in Section 57.2.613(1)(a).

57.2.621. Reinstatement of Obligation Secured Without Acceleration.

(1) If 60 percent of the cash price has been paid in the case of a purchase money security interest in consumer goods or 60 percent of the principal amount of the obligation secured has been paid in the case of another consumer secured transaction, a debtor or a secondary obligor that is a consumer obligor may cure a default consisting only of the failure to make a required payment and may reinstate the secured obligation without acceleration by tendering the unpaid amount of the secured obligation due at the time of tender, without acceleration, including charges for delinquency, default, or

deferral, and reasonable expenses and attorney's fees of the type described in Section 57.2.613(1)(a).

(2) A tender of payment under Section 57.2.621(1) is ineffective to cure a default or reinstate a secured obligation unless made before the later of:

(a) 21 days after the secured party sends a notification of disposition under Section 57.2.610(2) to the debtor and any consumer obligor who is a secondary obligor; and

(b) the time the secured party disposes of collateral or enters into a contract for its disposition under Section 9-609 or accepts collateral in full satisfaction of the obligation it secures under Section 57.2.617.

(3) A tender of payment under Section 57.2.621(1) restores to the debtor and a consumer obligor who is a secondary obligor their respective rights as if the default had not occurred and all payments had been made when scheduled, including the debtor's right, if any, to possess the collateral. Promptly upon the tender, the secured party shall take all steps necessary to cause any judicial process affecting the collateral to be vacated and any pending action based on the default to be dismissed.

(4) A secured obligation may be reinstated under Section 57.2.621(1) only once, unless the parties have agreed otherwise.

(5) The debtor's rights under this subsection may not be waived by agreement.

57.2.622. Waiver of Agreement by Debtor or Consumer Obligor.

(1) Subject to Section 57.2.622(3), a debtor or a consumer obligor may waive the right to notification of disposition of collateral under Section 57.2.610 or the right to redeem the collateral under Section 57.2.620 only by signing a statement to that effect after default.

(2) Subject to 57.2.622(3), a consumer obligor may waive the obligor's rights and the secured party's duties under Section 57.2.618 or 57.2.619 only by signing a statement to that effect after default.

(3) In a consumer secured transaction, a statement signed by the debtor or a consumer obligor is ineffective under Section 57.2.622(1) or (2) unless the secured party establishes by clear and affirmative evidence that the debtor or consumer obligor expressly agreed to its terms.

Sub-Part 2. Noncompliance With This Part.

57.2.623. Remedies for Secured Party's Failure to Comply With This Part.

(1) If it is established that a secured party is not proceeding in accordance with this Part, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) A secured party is liable for damages in the amount of any loss caused by a failure to comply with this Part. Except as otherwise provided in Section 57.2.626, a person that, at the time of the failure, was a debtor, a secondary obligor, or held a security interest in or other lien on the collateral has a right to recover damages for its loss under this subsection.

(3) Except as otherwise provided in Section 57.2.626, in a consumer secured transaction, a person that was a debtor at the time a secured party failed to comply with this part has a right to recover from the noncomplying secured party an amount equal to the interest or finance charges plus 10 percent of the principal amount of the obligation, less the sum of any amount by which any consumer

obligor's personal liability for a deficiency is eliminated or reduced under Section 57.2.624 and any amount for which the secured party is liable under Section 57.2.623(2).

(4) If the secured party fails to dispose of the collateral within 90 days after legally taking possession, the debtor may recover in conversion or under Section 57.2.624 on the secured party's liability.

57.2.624. Action in Which Deficiency or Surplus is at Issue.

In an action in which the amount of a deficiency or surplus is in issue the following rules apply:

(a) A secured party need not establish compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue, in which case the secured party has the burden of establishing that the

collection, enforcement, disposition, or acceptance was conducted in accordance with the applicable provisions of this part.

(b) Except as otherwise provided in Section 57.2.626, if a secured party fails to meet the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance the following rules apply:

(i) in a consumer secured transaction for which no other collateral remains to secure the obligation, neither the debtor nor a secondary obligor is liable for a deficiency;

(ii) in other cases, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of the actual proceeds of the collection, enforcement, disposition, or acceptance or the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance. However, the amount that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party meets the burden of establishing that the amount is less than that sum.

(iii) in a consumer secured transaction, any liability under Section 57.2.624(b)(ii) is not a personal liability of a consumer obligor but may be satisfied only by enforcing a security interest or other consensual lien against property securing the obligation.

57.2.625. Determination of Whether Conduct Was Commercially Unreasonable.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) It is a rebuttable presumption that disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market therefor;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A disposition which has been approved in any judicial proceeding and performed in accordance with such an order shall conclusively be deemed commercially reasonable.

57.2.626. Nonliability of Secured Party in Certain Circumstances; Liability of Secondary Obligor.

(1) Unless a secured party knows that a person is a debtor or a secondary obligor, knows the identity of the person, knows how to communicate with the person and has made a good faith effort to determine if there are or locate additional debtors or secondary obligors:

(a) the secured party is not liable to the person or to a secured party or lienholder that has filed a financing statement against the debtor for failure to comply with this Part; and

(b) the secured party's failure to comply with this Part does not affect the liability of the debtor or secondary obligor for a deficiency.

(2) A secured party is not liable to any person and a person's liability for a deficiency is not affected because of any act or omission, other than the failure to send a notification required by Section 57.2.610(2)(b), that occurs before the secured party knows that the person is a debtor or a secondary obligor or knows that the person has a security interest or other lien in the collateral.

(3) A secured party is not liable to any person and a person's liability for a deficiency is not affected because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer secured transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held, or an obligor's representation concerning the purpose for which a secured obligation was incurred.

57.2.627. Attorney's Fees in Consumer Secured Transactions.

If the secured party's compliance with this Part is placed in issue in an action with respect to a consumer secured transaction, the following rules apply:

(a) If the secured party would have been entitled to attorney's fees as the prevailing party, the court shall award to a consumer debtor or consumer obligor prevailing on the issue the costs of the action and reasonable attorney's fees.

(b) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(c) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

PART 7. JUDICIAL PROCEDURE.

57.2.701. One Action to Foreclose Security Interest.

(1) There can be one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a security interest on non-trust property situated or located on the

Reservation which action must be in accordance with the procedures outlined herein.

(2) Notwithstanding the provisions above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance, installment(s) due or other charges which are to be paid by the mortgagor may be foreclosed, at the election of the encumbrance holder. The Court may by its judgment direct the sales of the encumbered property or of the equity of the defendants therein or so much thereof as may be necessary to satisfy the amount due. Such encumbrance shall otherwise remain valid and the holder thereof shall have the right to foreclose on the balance or any part thereof.

57.2.702. Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property when the debtor is in default of a security agreement shall be commenced in Tribal Court.

(2) The creditor must file a complaint for repossession and in said complaint, the creditor must include a concise statement for the creditor's claim against the debtor. The debtor may file an answer to the creditor's complaint at any time prior to the hearing. At the hearing both creditor and debtor may present documentary evidence and witness to support their positions in the debt dispute. At the hearing, if the Judge determines that repossession is in fact justified, the Tribal Judge shall issue an order authorizing the creditor to repossess the personal property involved. Any such order shall direct that a creditor may repossess the property only when accompanied by a Tribal police officer.

(3) The Tribal Court shall direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses of such sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct entry of a judgment for such balance against the defendant or defendants.

(4) Sale of property under the Court's judgment shall be conducted in:

(a) a commercially reasonable manner if:

(i) the court does not issue instructions for the sale of the property; or

(ii) there is no tribal statute or regulation governing the sale of property:

(b) in accordance with any judicial decree if there is no governing tribal statute or regulation governing the sale of the property.

(c) in all other situations, in accordance with applicable tribal statute or governing regulation.

57.2.703. Right of Attachment.

(1) At the time of the issuance of a summons and complaint in a civil action, or at any time prior to final judgment, a creditor may file with the Clerk of the Tribal Court a request for a pre-judgment Order of Attachment. All requests for pre-judgment Order of Attachment

shall be accompanied by an affidavit of the creditor which shall contain the following facts:

(a) that a debt is owed to the creditor by a debtor and the nature and specific amount of the debt;

(b) that the personal property being attached, which must be specifically identified as non-trust personal property belonging to the debtor; and

(c) that the creditor has reasonable cause to believe that the specific personal property sought to be attached may be lost, damaged, vandalized or removed off the Reservation prior to payment of a final judgment and such loss, damage, vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

(2) If the Tribal Judge is satisfied after reviewing the complaint and affidavit, the judge may issue an Order of Attachment of the designated personal property. The Tribal police shall be given the Order of Attachment and the police shall seize any property identified by the order. Said property shall be kept in storage under the control of the tribal police. Said personal property shall be held by the police pending any further order of the Tribal Court.

(3) An Order of Attachment shall not be issued until the creditor has filed with the Clerk a surety bond or cash bond in the sum of at least $1,000.00. Said bond shall be necessary in the event that the order of attachment was wrongfully issued and the debtor was damaged, or in the event the debtor prevails when final judgment is rendered.

(4) The debtor shall be served with the Order of Attachment at the time the Tribal Police seize the personal property of the debtor. If the debtor is not available or present at the time the personal property is seized, said Order of Attachment shall be posted in a conspicuous place on the door of the debtor's house, mobile home or residence and a copy mailed to the debtor's last known address. The service shall be documented for court records.

(5) At any time following the issuance of an Order of Attachment, the debtor shall be entitled to challenge the validity of the issuance of that writ. The debtor may contest the Writ of Attachment by filing a Response to Writ of Attachment. At the time that the Response is filed with the Clerk of the Tribal Court, the Court shall set a hearing date and notice of said hearing shall be served on the creditor at least five days before that hearing. At the hearing the debtor must establish by a preponderance of the evidence that:

(a) (i) the specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed off the Reservation prior to final judgment; or

(ii) that said loss, damage, vandalism or removal of property would not result in hindering the ability of the creditor to collect on a judgment if one should subsequently be obtained;

(b) that no debt is owed to the creditor; or

(c) that the property sought to be attached is exempt under this Part or is trust property.

(6) If the court determines that the pre-judgment writ of attachment was wrongfully issued,

the court may impose a fine up to $500.00 and order payment of the other party's attorney fees and costs.

57.2.704. Conduct of Sale.

(1) All sales of property under decrees of repossession and orders for sale conducted by the Tribal Police must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of Court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several lots or parcels, they may be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third persons claims an interest in part of the property to be sold, that party may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid for property sold to the bidder at sale, the officer conducting the sale may again sell the property to the highest bidder and if any less be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in the officer's discression, thereafter reject any subsequent bid of such person.

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57.2.705. Return on Sale.

(1) The Tribal police officer conducting the sale shall make a return thereon to the Tribal Court reciting the details of the sale including the following:

(a) The name and address of the highest bidder;

(b) the successful bid price;

(c) the date and time of sale;

(d) the name of the officer conducting the sale;

(e) any other relevant information.

(2) A certified copy of such return together with a certified copy of the Court's order directing the sale shall be filed by the purchaser in the tribal filing records under the name of the original debtor.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

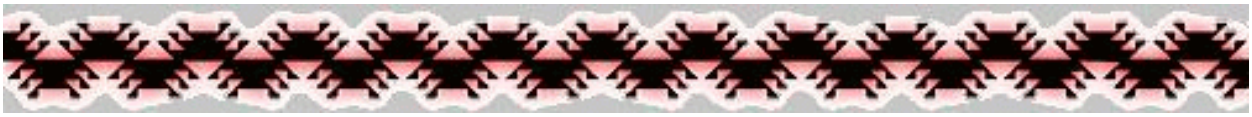
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 59 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL SMALL BUSINESS INCENTIVE PROGRAM

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 12-98

DATE APPROVED: June 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL SMALL BUSINESS INCENTIVE PROGRAM CODE, TITLE 59 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals of the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Small Business Incentive Program Code as Title 53 of the Hoopa Tribal Code.

TITLE 59 -- TRIBAL SMALL BUSINESS INCENTIVE PROGRAM CODE

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TITLE 59 — TRIBAL SMALL BUSINESS INCENTIVE PROGRAM CODEGENERAL PROVISIONS

59.101. Short Title.

This Title may be cited as the Tribal Small Business Incentive Program Code.

59.102. Purpose.

Small business provides an essential component to the self-sustaining economy of the Hoopa Valley Indian Reservation. Therefore, it is the policy of the Tribal Council to facilitate, promote and assist the development and maintenance of small businesses. The purpose of the Tribal Small Business Incentive Program is to assist Tribal members and local residents to start-up, maintain and expand small businesses within the exterior boundaries of the Reservation.

59.103. Establishment of the Tribal Small Business Incentive Program, Limitations of Obligation.

1. There is hereby established the Tribal Small Business Incentive Fund Program (Program) or the purpose of providing capital and startup funds for establishing, maintaining and expanding small business for the Reservation. It is the policy of the Tribe to appropriate an amount of funds equivalent to fifty percent (50%) of the amount of the amount of funds that are provided to Tribal economic development projects. Funds may be appropriated each year by the Tribal Council during its annual budget process for the purposes and consistent with the provisions of this Title.

2. The functions authorized under this Title do not obligate the Tribe to provide any functions or obligations beyond those established each year upon approval of the Tribal Annual budget.

59.104. Amount of Tribal Contribution from Program.

1. Subject to the availability of funds for this Program, the Tribe may provide up to 50%, not to exceed $50,000, match the amount of personal contributions in their business venture. Personal contributions may be derived from the amount of actual funds contributed, in-kind investments, and documented personal equity that has been invested in a legitimate business venture. In no case is the Tribe authorized to contribute more than $50,000 to any participant or business.

1. Annual Program funds will be distributed on a first-come first-serve basis, taking into consideration the amount of applicants and funds available. In the event that insufficient funding levels are adequate to serve all qualified applicants, the Tribal Department of Commerce may develop distribution criteria which takes into consideration such things as the amount of available funds, the level of need for each prospective participant, the amount of alternative resources available, and other factors that may impact a prospective participant's level of need.
2. Notwithstanding a 50% match by a prospective participant, the Tribe or Department of Commerce is under no obligation to provide the total amount of funds requested, and such amount may be reduced to accommodate funding limitations and other factors that may impact the Program.

59.105. Administration of the Tribal Small Business Incentive Fund.

The Program shall be administered by the Tribal Department of Commerce. The Department of Commerce shall develop regulations for implementation of the Program that are consistent with the provisions of this Title, subject to approval by the Tribal Council.

59.106. Participation in the Tribal Small Business Incentive Fund Program.

1. The loan application for the Tribal EDA Title IX Revolving Loan Fund guidelines are hereby designated as the application form for the Program. Each prospective participant must submit a completed loan application package to be eligible to participate in the Program, provided that no loan application submitted more than 6 months before the Program approval date shall not be eligible for consideration.
2. Any business operating pursuant to the Tribal Comprehensive Business Codes, and that meets the requirements of the Program, and which is operating within the boundaries of the Hoopa Valley Indian Reservation is eligible to receive financial assistance from the Program.
3. The participant and/or business must not have received funds from the Program for a period of 5 years prior.

59.107. Tribal Small Business Incentive Fund Eligibility Requirements.

To become eligible to receive funds from the Program, a prospective participant must meet each of the following requirements:

1. The participant must file with the Department of Commerce a completed application form which contains, among other things, a detailed business plan;
2. The prospective participant must document that the 50% sharing match has been met;
3. The participant must enter into a contract with the Hoopa Valley Tribe which commits the business to accomplish the goals set forth in the business plan;

4. That obligates the participant to repay Program funds in accordance with the terms of this Title upon sale of the business; and
5. That certifies that the participant and/or business has not received funds from the Program for the same or similar purpose or received a total amount of $50,000 from the Program for the past five (5) years.

59.108. Tribal Small Business Incentive Fund Repayment Contract.

Every recipient of funds from the Program is required to sign a contract, as provided in this Title, prior to receiving funds from the program.

1. Business Failure Repayment Schedule.
    1. If the business fails within the first year, the participant shall repay the Program an amount equivalent to eighty percent (80%) of the total amount received.
    2. If the business fails the second year, the participant shall repay the Program an amount equivalent to sixty percent (60%) of the total amount received.
    3. If the business fails the third year, the participant shall repay the Program an amount equivalent of forty percent (40%) of the total amount received.
    4. If the business fails fourth year, the participant shall repay the Program an amount equivalent of twenty percent (20%) of the total amount received.
    5. If the business continues to operate into and beyond the fifth year, the participant is not required to repay any funds received from the program, except as provided in (b).
2. Repayment Upon Sale of Business.

    In the event of a sale of a business that received funds from the Program, the participant shall pay to the program the amount of funds received.

59.109. Enforcement.

The Tribal Court shall enforce the provisions of this Code, consistent with its terms and other applicable tribal laws.

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59.110. Savings Clause.

In event that any provision of this chapter shall be found or declared to be invalid, the remaining provisions of this Chapter shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

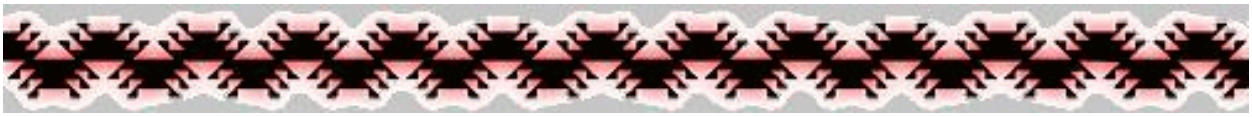
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 60 OF THE HOOPA TRIBAL CODE

PURPOSE: TRIBAL BUSINESS MISCELLANEOUS PROVISIONS

ADMINISTRATIVE RECORD: Adopted June 8, 1998



ORDINANCE OF THE HOOPA VALLEY TRIBE

HOOPA INDIAN RESERVATION

HOOPA, CALIFORNIA

ORDINANCE NO: 13-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL BUSINESS MISCELLANEOUS PROVISIONS CODE, TITLE 60 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals of the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Business Miscellaneous Provisions Code as Title 60 of the Hoopa Tribal Code.

TITLE 60. BUSINESS -- MISCELLANEOUS PROVISIONS

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TITLE 60. BUSINESS -- MISCELLANEOUS PROVISIONS.GENERAL PROVISIONS

60.101. SHORT TITLE.

This Title may be cited as the Business -- Miscellaneous

Provisions Code.

60.102. PURPOSE.

The purpose of this Title is to prescribe specific rules,

direction and interpretations for various identified provisions

of Tribal law that are related to implementation of the Tribal

Comprehensive Business Code.

60.103. COMMERCIAL LAND LEASES.

(a) Policy and Purpose.

(i) This section prescribes the provisions for implementing Section 10.10 of the Tribal Land Assignment Ordinance, Title 10 of the Hoopa Valley Tribal Code. It is the policy of the Tribe to allow the use of tribal lands for the propose of implementing the provisions of the Tribal Comprehensive Business Code, to the extent that such lands are utilized to the benefit of the Tribe, the lessee and the residents of the Reservation.

(ii) Tribal commercial assignment are intended to provide for use of such lands by the lessee in accordance with the terms of the lease that, while such lands may be used to establish a security interest in such lands by the lessee, nothing in this Code shall be construed to subject such lands to alienation of tribal ownership in any manner.

(iii) To the extent that a security interest is necessary for utilizing the lands for business development purposes, and to the extent that such purposes and use of the land is consistent with the lease and this Code, lands subject to a commercial lease of the Tribe may be utilized for purposes of implementing this Code.

(b) Terms of Commercial Leases.

Consistent with the Tribal policy of employment in lieu of taxes, lands controlled by a commercial assignment issued by the Tribe under the terms and conditions of the Tribal Comprehensive Business Code and the Tribal Land Assignment Ordinance shall be issued for a term of $1.00 for each twenty-five year term, with an option to renew, provided, however, that such lands continue to be utilized for fulfilling the purposes of the Tribal Comprehensive Business Code.

(c) Penalty for Unused Leased Lands.

If for any reason that the lessee does not utilize the leased tribal property provided under this Code for a period of 1 year from the anniversary date of the lease, the lessee shall pay a lease fee to the Tribe an amount of $500.00 per month for each month that leased land is not utilized for the prescribed purpose. The Director of Commerce, however, may waive such lease fee upon the lessee submitting sufficient documentation that

demonstrates beyond a reasonable doubt that the land has been or will be used for its intended purpose within a reasonable time frame.

(d) Lessee's Option for Reducing Monthly Fee.

At his or her option, the lessee may hire at his or her cost a qualified appraiser to conduct an appraisal of lands subject

to the commercial lease such documentation that demonstrates beyond a reasonable doubt that an amount of less than $500 is more appropriate for the monthly charge for such lands.

(e) Nothing in this section is intended nor shall be construed as permitting any lessee to hold lands under a commercial lease without utilizing such lands for its intended purpose as provided in the lease. Further, nothing in this section is intended nor shall be construed as permitting any lessee to maintain control over any lands controlled under a commercial lease which are not being utilized or are planned to be utilized for business development purposes provided for in this Code.

(f) The Tribal Department of Commerce, in conjunction with the Tribal Land Department, is authorized to enforce the terms of commercial leases entered into pursuant to this Code and the Tribal Land Ordinance.

60.104. COMMERCIAL AGRICULTURAL LEASES.

The Section 9 of the Tribal Land Ordinance is amended to provide that no residential lease may preempt a commercial agricultural lease when the agricultural lease is being used to promote employment and business opportunities.

60.105. MULTI-YEAR AND LONG-TERM RESOURCE USE PERMITS.

(a) In order to facilitate the creation and maintenance of business and employment opportunities for business, the tribe, tribal members and Reservation residents, the Tribal Council may, when appropriate, enter into multiple-year and long term leases and permits for use of tribal resource, property and other agreements with businesses as provided by tribal laws and regulations.

(b) Leases and permits issued under this Code shall include provisions for:

(i) The date by which the resource will become available;

(ii) For permits and leases for resources that require annual allocations of resources, the date by which the resource will become available each year;

(iii) The total volume of resources covered by the lease or permit by total or annual amount;

(iv) If applicable, the price of the resource covered by the lease and permit (taking into consideration the employment in lieu of taxing policy); and

(v) Environmental considerations (if any) that will be made part of the lease or permit.

60.106. PER CAPITA ORDINANCE EXEMPTION FOR TRIBAL EMPLOYMENT RIGHTS TAX EXEMPTION FOR EMPLOYMENT AND RELATED TRAINING FUNDS.

For purposes of the Tribal Per Capita Ordinance, Ordinance No. 5-96, of the Tribal Code, the Tribal Employment Rights Tax funds that are designated for employment and employment related training or that are specifically designated for training activities to implement the Tribal Comprehensive Business Code and any of its Titles are exempt from the provisions of the Ordinance.

60.107. PER CAPITA ORDINANCE EXEMPTION FOR TRIBAL EDA REVOLVING LOAN FUND.

Consistent with the spirit and intent of the EDA Revolving Loan Fund to stimulate and promote business and employment opportunities, the EDA Loan Funds are hereby exempted from the provisions of the Tribal Per Capita Ordinance, Ordinance No. 5-96, of the Tribal Code.

60.108 TRIBAL CONSTRUCTION TAX ORDINANCE EXEMPTION.

The Tribal Construction Tax Ordinance, Ordinance No. 4-95, does not apply to businesses operating with the exterior boundaries of the Reservation pursuant to the Tribal Comprehensive Business Codes.

60.109. BUSINESS DEVELOPMENT RESERVED LANDS.

(a) Cal Pac Mill Site.

The area on the Reservation previously known as the Cal Pac Mill site is reserved for commercial purposes. Such lands may be leased by for-profit corporations and tribal entities for promoting the policies and purposes of the Tribal Commercial Business Code.

(b) Masonite Mill Site.

The area on the Reservation previously known as the Masonite Mill sites are reserved for commercial purposes. Such lands may be leased by for-profit corporations and tribal entities for promoting the policies and purposes of the Tribal Commercial Business Code.

60.108. PAN-HANDLING AND LOITERING PROHIBITED.

No person may pan-handle and loitering within 25 feet from any entrance of any business, or 25 feet from any fixed device used in

the operation of such business, licensed under this Code. Any person found pan-handling shall be subject to:

(a) A warning for the first offense;

(b) A warning and removal from the premise for the second offense; and

(c) A fine, removal, exclusion or other appropriate penalties for the third or additional offenses.

60.109. EDUCATIONAL ORGANIZATIONS.

Every educational organization or institution of learning operating pursuant to this Code, whether for-profit or non-profit, shall comply with the educational standards of the Tribe as a condition of its business license.

60.110. EDUCATIONAL AND RECREATIONAL ORGANIZATIONS - DRUG AND ALCOHOL FREE REQUIREMENTS.

Every educational organization, institution of learning, and recreational organization operating pursuant to this Code, whether for-profit or non-profit, when such organization's activities involved minors, shall maintain a drug and alcohol free environment at all times as a condition of its business license.

60.111. SAVINGS CLAUSE.

In the event that any provision of this Chapter is found or declared to be invalid, the remaining provisions of this Chapter shall be unaffected thereby, and shall remain in full force and effect.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.

_____

MERV GEORGE, JR., CHAIRMAN

HOOPA VALLEY TRIBAL COUNCIL

ATTEST:_____

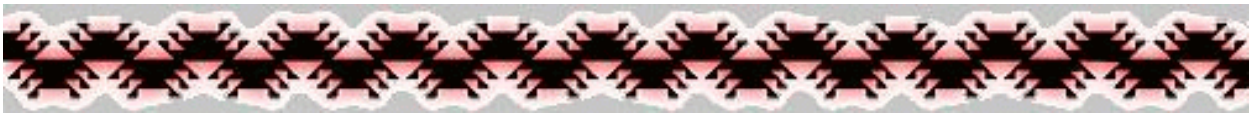
DARCY BALDY, EXECUTIVE SECRETARY

HOOPA VALLEY TRIBAL COUNCIL

TITLE 61 OF THE HOOPA TRIBAL CODE

PURPOSE: Tribal Labor Relations Ordinance for Compacted Gaming

ADMINISTRATIVE RECORD: Adopted July 20, 2000



TRIBAL LABOR RELATIONS ORDINANCE

Of The Hoopa Valley Tribe
Hoopa, California

Title 61

ORDINANCE NO: 01-00

DATE APPROVED: July 20, 2000

SUBJECT Tribal Labor Relations Ordinance for compacted gaming with the State of California

Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

The provisions of this ordinance apply to any person (hereinafter "Eligible Employee"), who is employed within a tribal casino in which class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: **Non-interference with regulatory or security activities**

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible casino employees free to engage in or refrain from concerted activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 5: Unfair Labor Practices for the tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict a the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

(3) to discharge or otherwise discriminate against an eligible employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair Labor Practices for the union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles,

materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 7: Tribe and union right to free speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designated to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

Section 9: Indian preference explicitly permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the tribe's customs and traditions shall govern.

Section 10: Secret ballot elections required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor

Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective bargaining impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 13 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703(4).

Section 12: Decertification of bargaining agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. A decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a collective bargaining

agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding dispute resolution mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be resolved by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations in an interest dispute, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three member panel of the Tribal Labor Panel, who render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor

Panel names shall be submitted to the parties and each party may strike no more that two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which seven (7) were present constituting a quorum at a Regular meeting thereof; duly and regularly called, noticed, and convened, and held this 20th day of July, 2000; and that this Resolution was duly adopted by a vote of none (0) in favor and none (0) opposed, and that said Resolution has not been rescinded, amended or modified in any way.

Dated this 20th day of July, 2000.

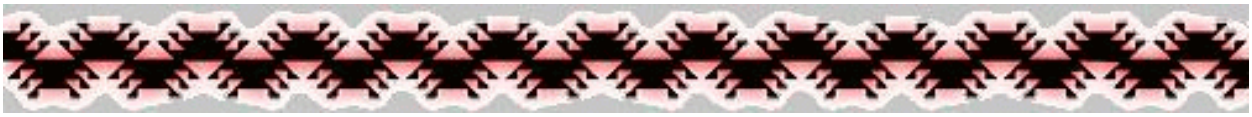
_____
DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

ATTEST:_____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 62 OF THE HOOPA TRIBAL CODE

PURPOSE: Casino Patron Protection Act

ADMINISTRATIVE RECORD: Adopted July 20, 2000



Casino Patron Protection Act
TORT CLAIMS ORDINANCE
Of The Hoopa Valley Tribe

Title 62

ORDINANCE NO: 02-00

DATE APPROVED: July 20, 2000

SUBJECT: Tort Claims Procedures for Negligent Acts or Omissions by The Lucky Bear Casino also known as Casino Patron Protection Act.

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October, 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Indian Tribe;

WHEREAS: The Tribe has limited financial resources available to it to pay claims made against it for money or damages;

WHEREAS: To ensure a timely and effective means of resolving claims against the Tribe without the necessity of litigation, an administrative claims procedure needs to be established by the Tribe;

WHEREAS: An administrative claims procedure that requires the presentation of a claim to the Tribal Council, prior to filing suit against the Tribe, will reduce litigation against the Tribe, protect Tribal assets, and expedite the payment of legitimate claims and money damages due members of the public arising from breaches of contract or the negligent acts of Tribal employees.

WHEREAS: The Hoopa Valley Tribe and the State of California entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The tribal-state gaming compact at Section 10.2(d) requires the Tribe to maintain five million dollars in public liability insurance for patron claims and that the

Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid;

WHEREAS: The tribal-state gaming compact requires the Tribe to adopt and make available to patrons a tort liability ordinance describing the procedures for processing any claims for money damages;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety, and welfare and is in the public interest.

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Tort Claims Ordinance in order to comply with the requirements of the tribal-state gaming compact.

§ 62.1 SHORT TITLE

This Ordinance shall be known as the Casino Patron Protection Act or Tort Claims Ordinance or Title 62.

§ 62.2 SCOPE

The scope of application of this Ordinance shall be limited to claims arising out of negligent acts or omissions of the Lucky Bear Casino except for claims preempted by Tribal law, including, but not limited to claims made pursuant to the Tribal Employment Rights Ordinance.

§ 62.3 PURPOSE

The purpose of this Ordinance is to establish a timely and effective administrative procedure by which any person who believes the Tribe owes them money as a result of an injury to person or property caused by a negligent act of a Tribal employee is required to submit an administrative claim to the Tribal Council on a form approved by the Tribal Council for that purpose and to allow the Tribal Council to consider the merits of the claim and either approve or reject the claim as a precondition to the claimant filing a lawsuit against the Tribe.

§ 62.4 DEFINITIONS

62.4.1 "Council" or "Tribal Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

62.4.2 An "Award" is t~~@ is t~~he financial remedy offered a Claimant by the Tribal Council or Tribal Gaming Agency to resolve a Certified Claim timely filed under this Ordinance.

62.4.3 "Certified Claim" is a Claim that the Tribal Council has certified as complying with all procedural requirements and stating a prima facie case that a Claimant has sustained a Compensable Injury.

62.4.4 "~~A~~Claim" is the written document, together with such supporting information as a Claimant may wish to provide, alleging a Compensable Injury to person or property that is prepared by the Claimant and delivered to the Tribal Council as provided herein.

62.4.5 "Claimant" is the individual who submits a Claim to the Tribal Council.

62.4.6 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

§ 62.5 PRESENTATION OF CLAIMS AS PRE-REQUISITE FOR FILING SUIT

All claims against the Lucky Bear Casino for injury to person or property shall be presented to the Tribal Council and acted upon as a prerequisite to filing a lawsuit thereon as further provided herein. All such claims shall be presented as required by this Ordinance and in the time periods specified herein.

§ 62.6 CLAIMS SUBJECT TO FILING REQUIREMENTS

The claims subject to the filing requirements under this Ordinance shall include, but not be limited to, any and all claims for injury to person or property as a result of the negligent act or omission of the Lucky Bear Casino; and any and all claims by any federal, state, or local public entity. The provisions of this Ordinance shall apply to any and all claims that relate to events, transactions, or occurrences that take place after the effective date of this Ordinance.

§ 62.7 CONTENT OF CLAIM

A claim shall be presented by the claimant or by a person acting on the claimant's behalf and shall include the following:

(A) the name and address of the claimant;

(B) the address to which the person presenting the claim desires notices to be sent;

(C) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(D) a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim;

(E) the name or names of the Tribal employee or employees causing the injury, damage, or loss, if known; and

(F) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of

computation of the amount claimed.

§ 62.8 SIGNATURE OF CLAIMANT

The claimant, or some person with personal knowledge of the claim on the claimant's behalf, shall sign the claim.

§ 62.9 FORMS

The Tribal Council may provide forms specifying the information to be contained in claims against the Tribe or any of its business enterprises. If the Tribal Council provides forms pursuant to this Section, the person presenting the claim need not use such form if he/she presents his/her claim in conformity with Sections 62.7 and 62.8. A claim presented on a form provided pursuant to this Section shall be deemed to be in conformity with Sections 62.7 and 62.8, if the claim complies substantially with the requirements of the form or with the requirements of said Sections.

§ 62.10 AMENDMENT OF CLAIM; EFFECT OF FAILURE OR REFUSAL TO AMEND

A claim may be amended at any time before the expiration of the period designated in Section 62.13 or before final action thereon is taken by the Tribal Council of the Tribe, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

§ 62.11 NOTICE OF INSUFFICIENCY OF CLAIM

If, in the sole discretion of the Tribal Council for the Tribe or the person designated by it, a claim as presented fails to comply substantially with the requirements of this Ordinance or the requirements of a form provided under this Ordinance, the Tribal Council for the Tribe or such person may, at any time within twenty (20) days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by this Ordinance. The Tribal Council for the Tribe may not take action on the claim for a period of fifteen (15) days after such notice is given.

§ 62.12 FAILURE TO GIVE NOTICE OF INSUFFICIENCY; WAIVER OF DEFENSE BASED ON DEFECT OR OMISSION

Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of the insufficiency with respect to such defect or omission as provided in Section 62.11, except that no notice need be given and no waiver shall result when the claim, as presented, fails to state either an address to which the person presenting the claim desires notice to be sent or an address of the claimant.

§ 62.13 TIME FOR PRESENTATION OF CLAIMS

A claim relating to a cause of action for death or for injury to a person or to personal property shall be presented as provided for in this Ordinance, not later than the thirtieth (30th) day after the accrual of the cause of action.

§ 62.14 GRANT OR DENIAL OF CLAIM BY TRIBAL COUNCIL

(A) The Tribal Council shall grant or deny the claim within sixty (60) days after it is presented to the Tribal Council. The claimant and the Tribal Council may extend the period within which the Council is required to act on the claim by written agreement made before the expiration of such period.

(B) If the Tribal Council fails or refuses to act on the claim within the time prescribed by this Section, the claim shall be deemed to have been denied on the sixtieth day or, if the period within which the Tribal Council is required is extended by agreement, pursuant to this Section, the last day of the period specified in such agreement.

§ 62.15 NOTICE OF REJECTION OF CLAIM

(A) Written notice of the rejection of the claim or the Tribal Council's inaction on the claim, which is deemed a rejection of the claim under this Ordinance, shall be given in a manner provided in Section 62.16. Such notice may be in substantially the following form:

> "Notice is hereby given that the claim which you presented to the Tribal Council of the Hoopa Valley Indian Tribe on ____ *[indicate date]* was *[indicate whether rejected, allowed, allowed in the amount of $_____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable]* on *[indicate date of action or rejection by operation of law]*."

(B) If the claim is rejected in whole or in part, the notice required by Subdivision (A) above shall include a warning in substantially the following form:

"***WARNING"***

> If your claim was based upon death or injury to a person or personal property, you have only thirty (30) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim before the Hoopa Valley Tribal Court,. You may seek the advice of an attorney of your choice at your own expense in connection with this matter. If you desire to consult an attorney, you should do so immediately."

§ 62.16 MAILING OR SERVICE OF NOTICE

The notice required by Section 62.15 shall be deemed given when it is either: (1) personally

delivered to the claimant or the claimant's representative as specified in the claim or (2) when deposited in the United States mail addressed to the claimant or the claimant's representative as specified in the claim, first class postage prepaid.

§ 62.17 RE-EXAMINATION OF REJECTED CLAIM

The Tribal Council may, in its discretion, within the time described by Section 62.15 for commencing an action on the claim, re-examine a previously presented claim in order to consider a settlement of the claim.

§ 62.18 TRIBAL COURT AUTHORITY

The Hoopa Valley Tribal Court shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance. Any action commenced pursuant to this Ordinance shall be initiated in accordance with the applicable rules of the Hoopa Valley Tribal Court, including payment of appropriate filing fees. The Hoopa Valley Tribal Court shall have authority to determine the following issues: 1) the Tribal Council's rejection of a claim for failure to timely comply with the procedures established in this Ordinance or allege a Compensable Injury; 2) the Tribal Council's or Tribal Gaming Agency's denial of a Certified Claim for a Claimant's failure to establish by a preponderance of evidence that the Tribe is liable to the Claimant on a Certified Claim; 3) the adequacy of an Award granted on a Certified Claim; or 4) the failure of the Tribe or its insurer to timely pay an Award.

§ 62.19 EXHAUSTION OF ADMINISTRATIVE REMEDIES

To be entitled to seek judicial review of Tribal Council action to deny, reject, or modify a claim, or otherwise fail to pay a claim pursuant to this Ordinance, the Claimant must first exhaust their administrative remedies as provided by this Ordinance. Failure to comply with the administrative requirements of this Ordinance is a jurisdictional defect and the Hoopa Valley Tribal Court shall deny any relief requested for lack of jurisdiction.

§ 62.20 LIMITATION OF ACTIONS

This Ordinance does not provide for and does not include coverage for any injury allegedly sustained by a Tribal official, agent or employee in connection with his/her employment or performance of official duties, any injury allegedly sustained by a Tribal member or any person eligible for enrollment in the Tribe, any claim for punitive or exemplary damages, any injury proximately caused by a negligent act that was committed outside the course and scope of the employment and/or authority of a Tribal official(s), employee(s) or agent(s) whose act(s) or omission(s), or any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe or who is not otherwise directly subject to the Tribe's direction, supervision or control. For the purposes of this Ordinance, a Claim may not be certified if the person or entity alleged to have been the proximate cause of a Compensable Injury was not, at the time the injury was sustained, either an elected or appointed official of the Tribe, an employee or agent of the Tribe, or party to a contract with the Tribe in connection with

the operation or maintenance of a Tribal Gaming Facility. The Tribe specifically disclaims, and shall not be liable or responsible for, any acts or omissions committed by any patron of a Tribal Gaming Facility.

§ 62.21 STATUTE OF LIMITATION

Claimant shall file any lawsuit pursuant to this Ordinance within thirty (30) days of the date the notice of rejection of claim, modification of claim or other failure to pay the Claimant was personally delivered or deposited in the mail for delivery to Claimant or upon the date that such determination occurred by operation of law.

§ 62.22 ATTORNEYS' FEES AND PUNITIVE DAMAGES

Nothing herein shall be construed as authorizing the award of attorneys' fees or punitive damages as against the Tribe or any of its enterprises, officers, agents or employees.

§ 62.23 LIMITATION ON ATTORNEYS' FEES

No attorney representing a Claimant pursuant to this Ordinance shall charge, demand, receive, or collect from the Claimant for services rendered on the Claim, fees in excess of twenty-five percent (25%) of any judgment, settlement, or award rendered or paid by the Tribe or its insurer to the Claimant. Each attorney who appears on behalf of a Claimant must be admitted to the Hoopa Valley Tribal Bar.

§ 62.24 AWARD LIMITED TO POLICY LIMITS

The Tribe shall not be obligated to pay any award that is not covered by, or exceeds the policy limits of, the Tribe's liability insurance. The Tribe's insurer shall pay any cognizable award in the same manner and at the same time as judgments rendered in the courts of the United States.

§ 62.25 APPEALS

The Claimant may appeal a final decision as to liability or the amount of damages awarded, based upon the evidentiary record presented to the Hoopa Valley Tribal Court in accordance with the rules regarding the filing of appeals in the Hoopa Valley Tribal Court system.

§ 62.26 SEVERABILITY

If any part of this Ordinance is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

§ 62.27 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees, except to the extent of

insurance coverage in effect at the time of the accrual of the claim provided that nothing herein shall authorize the award of attorney's fees or punitive damages as against the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees.

§ 62.28 EFFECTIVE DATE, AMENDMENT

This Ordinance shall take effect upon its adoption by the Council and shall have retroactive effect to May 16, 2000. This Ordinance may be amended as provided by and in accordance with the Legislative Procedures Act.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a special meeting thereof, duly and specially called, noticed, convened and held this 20th day of July, 2000; and that this Ordinance was adopted by a vote of six (0) for; none (0) opposed; and none (0) abstaining, and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated this 20th day of July, 2000

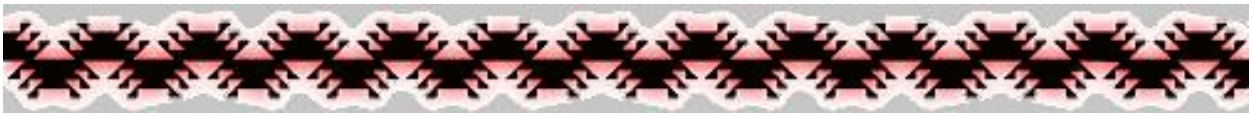
_____
DUANE J. SHERMAN, SR., CHAIRMAN
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 63 OF THE HOOPA TRIBAL CODE

PURPOSE: Criminal History Information Use Ordinance

ADMINISTRATIVE RECORD: Adopted July 20, 2000



CRIMINAL HISTORY INFORMATION USE ORDINANCE

Hoopa Valley Tribe
Hoopa, California

Title 63

ORDINANCE NO: 05-00

DATE APPROVED: July 20, 2000

SUBJECT: Adoption Of Criminal History Information Use Ordinance, Title 63 Of The Hoopa Valley Tribal Code.

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority expressed in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. sec. 1300i *et seq.*); and

WHEREAS: By tribal law, the sovereign authority of the Hoopa Valley Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law; and

WHEREAS: The Hoopa Valley Tribe is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety morals and general welfare of the membership pursuant to Article IX of the Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council established the Hoopa Valley Tribal Gaming Commission to protect the integrity of Indian gaming; and

WHEREAS: The Tribal Gaming Commission is responsible for conducting background investigations for prospective licensees; and

WHEREAS: The Tribal Gaming Commission reviews criminal history information as part of the process to issue gaming licenses; and

WHEREAS: Access to criminal history information through the California Law Enforcement Telecommunications System (CLETS) will improve the time necessary to process license applications and will reduce costs of outside background investigations; and

WHEREAS: The Tribal-State Class III Gaming Compact entered into by and between the Hoopa Valley Tribe and the State of California on or about September 10, 1999 provides that the Hoopa Valley Tribe may access CLETS information upon adoption of an appropriate tribal ordinance; and

NOW, THEREFORE, BE IT RESOLVED: The Hoopa Valley Tribal Council hereby adopts and enacts the Criminal History Information Use Ordinance as Title 63 of the Hoopa Valley Tribal Code.

63.1 SHORT TITLE

This Ordinance shall be known and may be cited as the "Criminal History Information Use Code" or Title 63.

63.2 PURPOSE

The purpose of this Ordinance is to provide a means to ensure the confidential use of information obtained by the Tribal Gaming Commission or any other authorized Tribal department or entity from the California Law Enforcement Telecommunications System (CLETS) and to provide sufficient remedies should an individual improperly disclosed confidential information.

63.3 SCOPE

This Ordinance shall only apply to the Hoopa Valley Tribe.

63.4 DEFINITIONS

As used in this Ordinance:

(A) "Tribal Court" means the Hoopa Valley Tribal Court;

(B) "Penal Code" means the California Penal Code or specific sections thereof;

(C) "Reservation" means the Hoopa Valley Indian Reservation, as presently and hereafter constituted;

(D) "Tribal Council" means the Hoopa Valley Tribal Council, the governing body of the Tribe;

(E) "Gaming Commission" means the Hoopa Valley Tribal Gaming Commission;

(F) "CLETS" means the California Law Enforcement Telecommunications System;

(G) "Tribe" means the Hoopa Valley Tribe;

(H) "Ordinance" means the "Criminal History Information Use Code" or Title 63;

(I) "State" means the State of California;

(J) "Record" means the State summary criminal history information as defined by subdivision (a) of Penal Code Section 11105, or a copy thereof, maintained under a person's name by the State Department of Justice;

63.5 APPLICATION OF CALIFORNIA PENAL CODE 11140

(A) The Tribal Council hereby adopts Penal Code Sections 11140 through 11144. Penal Code Sections 11140 - 11144 shall apply to members, investigators and staff of the Gaming Commission, subject to Sections 5 and 6 of this Ordinance.

(B) The Gaming Commission is hereby authorized and shall be entitled to receive State summary criminal history information through CLETS pursuant to Penal Code § 11105.

(C) Any other department or entity of the Hoopa Valley Tribe, including but not limited to the Hoopa Tribal Police Department, K'ima:w Medical Center or Education Department, may seek permission from the State of California to access to State summary criminal history information through CLETS pursuant to Penal Code § 11105.

(D) Any other department or entity authorized by law to access State summary criminal history information through CLETS shall be subject to the requirements of this Ordinance.

63.6 VIOLATION OF ORDINANCE

(A) It shall be a violation of this Ordinance for any person authorized by law to receive a record or information obtained from a Record to furnish the Record or information to a person who is not authorized by law to receive the record or information.

(B) It shall be a violation of this Ordinance for any person, who knowing he is not authorized by law to receive a Record or information obtained from a Record, to possess, buy, or receive the Record or information.

(C) It is not a violation of this Ordinance to:

(1) disseminate statistical or research information obtained from a Record, provided that the identity of the subject of the Record is not disclosed;

(2) disseminate information obtained from a Record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime;

(3) include information obtained from a Record in (a) a transcript or record of a judicial or administrative proceeding or (b) any other public record when the inclusion of the information in the public record is authorized by a court, statute, ordinance or decisional law.

63.7 TRIBAL COURT AUTHORITY

(A) The Tribal Court shall have exclusive authority to adjudicate civil actions brought against the Tribe, Tribal Council, or individuals for alleged violation of this Ordinance.

(B) Civil Penalties. Any person who violates this Ordinance shall be fined a civil penalty not to exceed $500.00.

(C) Individual Civil Action. Any person aggrieved by violation of this Ordinance may bring an action in the Tribal Court to recover from the person violating the Ordinance (hereinafter "violator") actual damages or two hundred dollars ($200.00), whichever is greater, plus costs and reasonable attorney's fees. An intentional violation of this Ordinance shall entitle the person to recover from the violator treble actual damages or five hundred dollars ($500.00), whichever is greater, plus costs and reasonable attorney's fees.

63.8 CRIMINAL PROSECUTION

Nothing herein shall prevent the Tribe from seeking criminal prosecution by the appropriate authority of any person who violates this Ordinance for violation of any applicable criminal law(s).

63.9 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Hoopa Valley Tribal Council. This Ordinance may be amended as provided in accordance with the Legislative Procedures Act.

63.10 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

63.11 SOVEREIGN IMMUNITY

Nothing herein is intended to be or shall be construed to be a waiver of the sovereign immunity of the Hoopa Valley Tribe from unconsented suit in Tribal, federal or state court except to the extent stated herein.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribe, do certify that the Hoopa Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a special meeting thereof; duly and specially called, noticed and convened and held this 20th day of July, 2000; and that this Ordinance was adopted by a vote of six (6) for, none (0) opposed, and none (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended or modified in any form.

Dated this 20th day of July, 2000

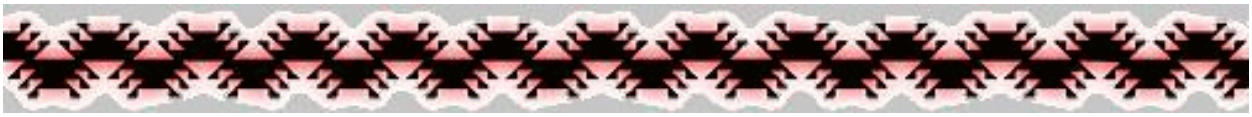
_____
DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 64 OF THE HOOPA TRIBAL CODE

PURPOSE: OFF-RESERVATION ENVIRONMENTAL IMPACTS ORDINANCE

ADMINISTRATIVE RECORD: Adopted July 20, 2000



OFF-RESERVATION ENVIRONMENTAL IMPACTS ORDINANCE

Of The Hoopa Valley Tribe

Title 64

ORDINANCE NO. 03-00

DATE APPROVED: July 20, 2000

SUBJECT: Ordinance providing for the preparation, circulation and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts.

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe pursuant to authority expressed in Article V Section 1 of the Constitution;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribe and the State of California entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. ' 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The tribal-state gaming compact at Section 10.8 requires the Tribe to Aadopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date@ of the Compact;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety and welfare and is in the public interest;

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Off-Reservation Environmental Impacts Ordinance in order to comply with the requirements of the tribal-state gaming compact.

64.1 SHORT TITLE

This Ordinance shall be known and may be cited as the Off-Reservation Environmental Impacts Ordinance or Title 64.

64.2 SCOPE

This Ordinance shall only apply to the Hoopa Valley Tribe and shall be limited to Projects as defined herein.

64.3 PURPOSE

The purpose of this Ordinance is to comply with the requirements of the tribal-state gaming compact between the State of California and the Hoopa Valley Tribe. It is also the purpose of this Ordinance to provide a means to ensure that significant off-reservation environmental impacts caused by a Project commenced in relation to the Tribe's gaming operation as defined herein are identified and mitigated to the fullest extent possible.

64.4 DEFINITIONS

64.4.1 "Board of Supervisors" means the Humboldt County Board of Supervisors.

64.4.2 "Casino" means the Lucky Bear Casino, or its successor.

64.4.3 "Class III gaming" means the forms of Class III gaming defined as such by IGRA and any regulations promulgated thereunder.

64.4.4 "Compact" means the tribal-state class gaming compact between the Tribe and the State of California and any amendments thereto.

64.4.5 "Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

64.4.6 "Environmental Impact Report" or "EIR" means any environmental assessment, environmental impact report or environmental impact statement, as the case may be.

64.4.7 "Gaming Activities" means Class III gaming activities authorized under the Compact.

64.4.8 "Gaming Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other

funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to the storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.

64.4.9 "Gaming Operation" means the business enterprise that offers and operates Class III gaming activities, whether exclusively or otherwise.

64.4.10 "IGRA" means the Indian Gaming Regulatory Act, any amendments thereto and all regulations promulgated thereunder.

64.4.11 "Off-Reservation" means outside the exterior boundaries of the Hoopa Valley Indian Reservation and as hereafter constituted and within six (6) miles of the exterior boundaries of the Reservation.

64.4.12 "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility.

64.4.13 "Reservation" means the Hoopa Valley Indian Reservation and as hereafter constituted.

64.4.14 "Significant effect on the environment" means a substantial or potentially substantial adverse change in any of the physical conditions within the area affected by the Project including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.

64.4.15 "State" means the State of California.

64.4.16 "Tribe" means the Hoopa Valley Tribe, its departments and entities, including the Lucky Bear Casino.

64.5 NOTICE TO PUBLIC

64.5.1 Prior to the commencement of a Project, the Tribe will:

(A) Inform the public of the proposed Project by, at a minimum, posting a notice briefly describing the proposed Project in the Neighborhood Facilities Building, at the local market (Ray's) and the United States Post Office; and by publication of said notice in the Tribal newspaper, if any.

(B) Take appropriate action to initially determine whether the proposed Project will have a significant adverse impact on the off-Reservation

environment and either issue a Negative Declaration stating that there will not be a significant adverse impact on the off-Reservation environment; or determine that an Environmental Impact Report ("EIR") will be conducted if the initial study reveals substantial evidence of the potential for significant adverse impact on the off-Reservation environment;

(C) In order to make the determination required in Section 64.5.1(B), above, the Tribal Environmental Protection Agency or other designated agent shall complete an Environmental Checklist similar to that attached hereto as Appendix A;

(1) The Environmental Checklist shall consider all phases of project planning, implementation and operation.

(2) After preparation of the Environmental Checklist, the Tribal Environmental Protection Agency or designated agent may consult with the Project applicant to determine if the proposed Project may be revised to avoid or reduce any identified environmental impacts.

(a) The Tribal Environmental Protection Agency may issue a Negative Declaration if there is substantial evidence that any significant effects identified in the Environmental Checklist would be avoided or mitigated by revisions agreed to by the Project applicant.

(b) A Negative Declaration may be issued in reliance upon an existing Environmental Impact Report prepared for an earlier Project.

(D) Upon completion of the Environmental Checklist or Environmental Impact Report, the Tribe shall submit any Negative Declaration and supporting documentation or Environmental Impact Report(s), as appropriate, concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the Board of Supervisors.

64.6 DETERMINING SIGNIFICANT ENVIRONMENTAL IMPACT

The Environmental Checklist or, if necessary, EIR shall be used to describe, analyze and review the potential significant off-reservation environmental effects of a proposed Project. The EIR shall also be used as a means to identify alternatives to the Project.

64.7 PREPARATION OF ENVIRONMENTAL IMPACT REPORT

Upon a determination that a Project may have a significant adverse impact upon the off-reservation environment, the Tribe, through the Tribal Environmental Protection Agency (TEPA) or other designated agent, shall prepare an Environmental Impact Report.

64.7.1 Each Environmental Impact Report shall go through both a draft and final stage. A draft EIR shall serve as the basis for public review and consultation between the Board of Supervisors and the Tribe. The final EIR is the actual decision-making document to be used by the Tribal Council.

64.7.2 Content of Environmental Impact Report.

The Environmental Impact Report shall address or otherwise include the following:

A) Table of Contents;

B) Summary;

C) Description of project;

D) Describe the off-reservation environment in the vicinity of the Project as it exists before commencement of the Project, from both a local and regional perspective;

E) Identify and focus on the significant off-reservation environmental effects of the proposed Project, including indirect and direct significant adverse effects by comparing the actual existing physical conditions to the contemplated post-project conditions;

F) Describe any significant off-reservation impacts, including those which can be mitigated but not reduced to a level of insignificance;

G) Describe measures that could mitigate significant adverse off-reservation impacts;

H) Describe a range of reasonable alternatives to the Project which could feasibly achieve the basic objectives of the Project, including the alternative of "no Project". The alternatives must be considered even if they would frustrate Project objectives or would be more costly. "Reasonable alternatives" includes a range of alternatives necessary to permit a reasoned choice, not every conceivable project alternative.

I) Discuss the cumulative impacts which may compound or increase other off-reservation environmental impacts.

J) In the final EIR, comments received in the review process and TEPA's or other designated agent's, responses to those comments.

64.8 CONSULTATION WITH BOARD OF SUPERVISORS

The Council or its designated agent shall, if requested by the Board of Supervisors, meet with the Board of Supervisors to discuss mitigation of significant adverse off-Reservation environmental impacts.

64.9 PUBLIC HEARING

The Council or its designated agent shall conduct at least one public hearing prior to commencement of the Project to provide an opportunity to members of the public residing off-Reservation to make comments regarding the proposed negative declaration or environmental impact report, if any.

64.9.1 Time for Public Hearing

The Public Hearing required by this Section shall be held at least 30 days prior to the commencement of the proposed Project.

64.10 PROGRESS UPDATE

During the duration of the Project, the Tribe shall orally or in writing, including but not limited to publication in the Tribal newspaper or the *Kourier*, and approximately every three (3) months until completion of the Project, generally inform the Board of Supervisors and public of the Project's progress. Failure to inform the Board of Supervisors and public of the progress of a Project shall not be ground for issuance of a peremptory writ of mandate or otherwise create jurisdiction in the Tribal Court.

64.11 MITIGATION OF SIGNIFICANT ADVERSE OFF-RESERVATION IMPACTS

The Tribal Council shall not approve a Project for which an EIR has identified one or more significant environmental impacts unless the Tribal Council makes one or more of the following written findings, supported by substantial evidence in the record:

64.11.1 Changes have been required in the Project which avoid or substantially lessen the off-reservation environmental impacts identified in the EIR;

64.11.2 Such changes are within the responsibility and jurisdiction of the State of California or other local government agency which can and should require them and are not within the jurisdiction of the Tribe;

64.11.3 Specific economic, social or other considerations make infeasible the mitigation measures or Project alternatives identified in the final EIR; or

64.11.4 The benefits of the Project outweigh the unavoidable adverse environmental effects.

64.12 REVIEW OF ORDINANCE WITH STATE

The Tribe and the State may from time to time, meet to review this Ordinance, the Tribe's compliance herewith and Section 10.8 of the Compact to ensure off-Reservation significant adverse environmental impacts resulting from Projects undertaken by the Tribe may be avoided or mitigated.

64.13 TRIBAL COURT JURISDICTION

64.13.1 Exhaustion of Administrative Remedies

To be entitled to seek judicial review of Tribal Council action for alleged violations of this Ordinance, aggrieved parties must first exhaust their administrative remedies by presenting their specific objections to the Tribal Council at the time of the public hearing. If this is not done, then the Court must deny any relief requested for lack of jurisdiction.

64.13.2 Statute of Limitation

(A) Where the Tribe files a notice of determination that a negative declaration has been prepared, or where an EIR was prepared or certified, 30 days after the filing and posting of the notice;

(B) Where none of the other statute of limitation periods applies, 45 days after either (1) the Tribal Council's determination to carry out or approve the Project; or (2) commencement of the Project, if the Project is undertaken without a formal decision by the Tribal Council.

64.13.3 Pre-Notice Filing

The plaintiff in an action under this Ordinance shall serve a notice of intent to commence action upon the Tribal Council at least 20 days prior to filing the action. Said notice shall be considered an administrative remedy pursuant to 64.13.1, above.

64.13.4 Exclusive Jurisdiction

The Tribal Court system shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance.

64.13.5 Remedies

If after a trial, hearing or remand from an appellate court, a trial court finds that the Tribal Council has violated this Ordinance, the court will issue a peremptory writ of mandate requiring one or more of the following:

(A) That the Tribal Council's decision be voided;

(B) That the Tribal Council or the real party in interest suspend all activity pursuant to the decision that could alter the off-reservation environment until the Tribal Council takes steps to comply with this Ordinance; and/or

(C) That the Tribal Council take specific action to cause the decision to comply with this Ordinance.

64.13.5.1 The trial court shall retain jurisdiction over the matter until it has determined that the Tribal Council has adequately complied with this Ordinance, provided that the Tribal Court cannot direct the Tribal Council to exercise its jurisdiction in any particular way.

64.13.5.2 The Tribal Court is not authorized to, and shall not, award attorney's fees or monetary damages as against the Tribe for violations of this Ordinance.

64.13 EFFECTIVE DATE, AMENDMENT

This Ordinance shall take effect upon its adoption by the Tribal Council. This Ordinance may be amended as provided in accordance with the Legislative Procedures Act, and as hereafter amended.

64.14 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall remain in full force and effect to the maximum extent possible.

64.15 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Tribe or any of its enterprises, officers, agents, or employees, except to the extent provided for herein. Nothing herein shall authorize the award of monetary damages, attorney's fees or punitive damages as against the Hoopa Valley Tribe or any of its enterprises, officers, agents or employees.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do certify that the Hoopa Valley Tribal Council is comprised of eight (8) members of which seven (7) were present constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, convened and held this July 20, 2000; and that this Ordinance was adopted by a vote of six (6) for; none (0) opposed; and none (0) abstaining, and that since approval, this Ordinance has not been rescinded, amended or modified in any form.

Dated this 20th day of July, 2000.

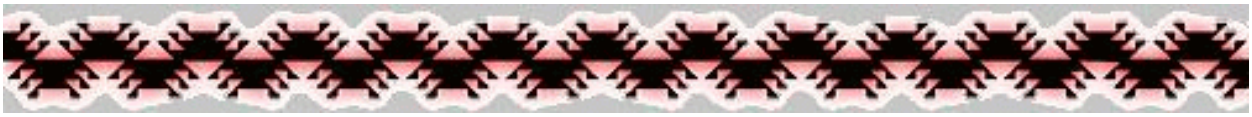
_____
DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council

TITLE 65 OF THE HOOPA TRIBAL CODE

PURPOSE: GAMING FACILITY STANDARDS ORDINANCE

ADMINISTRATIVE RECORD: July 20, 2000



GAMING FACILITY STANDARDS ORDINANCE

Of The Hoopa Valley Tribe

Title 65

ORDINANCE NO: 04-00

DATE APPROVED: July 20, 2000

SUBJECT: Gaming Facility Standards Ordinance

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October, 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Indian Tribe;

WHEREAS: The Hoopa Valley Tribe and the State of California entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The tribal-state gaming compact at Section 10.2 requires the Tribe to adopt and comply with various standards; including, food and beverage handling standards; federal water quality and safe drinking water standards; federal workplace and occupational health and safety standards; to comply with tribal codes and other applicable federal law regarding public health and safety; general anti-discrimination in employment laws; state laws prohibiting a gaming enterprise from cashing certain types of checks; state laws regarding gratuitous or reduced price alcoholic beverages or food or lodging; state laws regarding extensions of credit; and possession of firearms;

WHEREAS: The tribal-state gaming compact states that if a tribe fails to adopt tribal or applicable federal standards described above, the state statute or regulation will become the applicable standard by default;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety, and welfare and is in the public interest.

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Ordinance in order to comply with the requirements of the tribal-state gaming compact.

§ 65.1 SHORT TITLE

This Ordinance shall be known as the Gaming Facility Standards Act or Title 65.

§ 65.2 SCOPE

The scope of application of this Ordinance shall be limited to the Lucky Bear Casino or any other Class III gaming facility operated under any Class III gaming compact between the Tribe and the State of California.

§ 65.3 PURPOSE

The purpose of this Ordinance is to address the various standards, laws, and regulations required by the tribal-state compact ("Compact") in Section 10.2 of the Compact.

§ 65.4 DEFINITIONS

65.4.1 "Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

65.4.2 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

§ 65.5 FOOD AND BEVERAGE HANDLING

The Tribe hereby adopts, incorporates by this reference and makes applicable to all gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California standards no less stringent than the public health standards of the State of California for food and beverage handling. The Tribe hereby delegates to the Hoopa Valley Tribal Gaming Commission all necessary authority to adopt appropriate regulations and enforce said standards, subject to prior approval by the Tribal Council.

§ 65.6 WATER QUALITY STANDARDS

The Tribe hereby adopts, incorporates by this reference and makes applicable to all gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California federal water quality and safe drinking water standards applicable in California. The Tribe hereby delegates to the Tribal Environmental Protection Agency working in conjunction with the Public Utilities District all necessary authority to adopt appropriate regulations and enforce said standards, subject to prior approval by the Tribal Council.

Nothing herein shall serve override any authority now contained in or granted by any Self-Governance Compact between the Tribe and the Department of the Interior, Indian Health Services, or any designation of Treatment as a State by the Environmental Protection Agency.

§ 65.7 BUILDING & SAFETY CODE STANDARDS

The Tribe previously adopted the Uniform Building Code as Title 26 of the Hoopa Valley Tribal Code.

§ 65.8 WORKPLACE AND OCCUPATIONAL HEALTH & SAFETY STANDARDS

The Tribe hereby adopts, incorporates by this reference and makes applicable to all gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California workplace and occupational health and safety standards no less stringent than those established under federal law. The Tribe hereby delegates to the Hoopa Valley Tribal Gaming Commission and the Tribal Employment Rights Commission working cooperatively and as appropriate, all necessary authority to adopt appropriate regulations and enforce those standards.

Nothing in this section shall serve to override the Tribal Employment Rights Ordinance and enforcement of any regulations promulgated pursuant to this section shall be accomplished before the Tribal Employment Rights Commission in accordance with its rules.

§ 65.9 HEALTH & SAFETY STANDARDS

The Tribe hereby adopts as Tribal standards all relevant federal health and safety standards for which there is not express Tribal standard and for which there is a comparable State standards that would apply to the Tribe's gaming facilities by default in the absence of a Tribal standard.

§ 65.10 INDIAN PREFERENCE

All gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California shall not discriminate in the employment of persons to work for the Gaming Operation or Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability, provided, that nothing herein shall override or repeal the provisions of the Tribal Employment Rights Ordinance regarding Indian Preference. It is the policy of the Tribe to grant Indian Preference in hiring, promotion and retention, all subject to meeting or being capable of meeting minimum job qualifications. Any alleged violations of this section shall be subject to the jurisdiction of the Tribal Employment Rights Commission and any claims shall be brought in accordance with the Tribal Employment Rights Ordinance and the rules or regulations of the Tribal Employment Rights Commission.

§ 65.11 CHECK CASHING

All gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California shall not cash any check drawn against a federal, state, county, or city

fund, including but not limited to, Social Security, unemployment insurance, disability payments or public assistance payments.

§ 65.12 ALCOHOLIC BEVERAGES

All gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California shall comply with applicable standards for service of alcoholic beverages, including any applicable licensing requirements and prohibitions against serving of complimentary alcoholic beverages to patrons.

§ 65.13 EXTENSION OF CREDIT

All gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California shall not extend credit to patrons except in accordance with regulations promulgated by the Hoopa Valley Tribal Gaming Commission and approved by the Tribal Council which shall be no less stringent than the laws of the State of California, if any, prohibiting the extension of credit.

§ 65.14 BANK SECRECY ACT

All gaming facilities operated under any Class III gaming Compact between the Tribe and the State of California shall comply with the applicable provisions of the Bank Secrecy Act , all applicable reporting requirements of the Internal Revenue Service regarding casinos, and any applicable Minimum Internal Control Standards promulgated by the National Indian Gaming Commission.

§ 65.15 POSSESSION OF FIREARMS

The Tribe officially declares its policy of permitting law enforcement officers of the Hoopa Valley Tribal Police Department and qualified security personnel to carry firearms on the premises of Tribal gaming facilities, provided that all other persons are prohibited from possessing firearms on the premises of Tribal gaming facilities.

§ 65.16 SEVERABILITY

If any part of this Ordinance is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

§ 65.17 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Tribe or any of its enterprises, officers, agents, or employees, except to the extent of insurance coverage in effect at the time of the accrual of the claim provided that nothing herein shall authorize the award of attorney's fees or punitive damages as against the Hoopa Valley Tribe or any of its enterprises, officers, agents, or employees.

§ 65.18 EFFECTIVE DATE, AMENDMENT

This Ordinance shall take effect upon its adoption by the Council and in no event later than 30 days after the effective date of the Compact. This Ordinance may be amended as provided in accordance in the Legislative Procedures Act and as such Act is hereafter amended.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, convened and held this July 20, 2000; and that this Ordinance was adopted by a vote of six (6) for; none (0) opposed; and none (0) abstaining, and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated this 20th day of July, 2000

_____
DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council