

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STATE OF ALABAMA,)	
)	
Plaintiff,)	Civil Action No.
)	2:13-cv-00178-WKW-WC
v.)	
)	
PCI GAMING AUTHORITY, <i>et al.</i> ,)	
)	
Defendants,)	
)	
)	
)	

**UNITED STATES' AMICUS CURIAE BRIEF IN SUPPORT OF
TRIBAL DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

Plaintiff State of Alabama's First Amended Complaint seeks "declaratory and injunctive relief to abate a public nuisance of unlawful gambling," and brings two counts alleging that the use of certain devices at three casinos operated by the Defendants PCI Gaming Authority, *et al.*¹ constitutes a public nuisance under state and federal law. First Am. Compl. ("FAC") at ¶¶ 1, 6-8, ECF No. 10. The United States files this amicus brief in support of Defendants' Motion to Dismiss (ECF No. 13).

The Poarch Band of Creek Indians ("Poarch Band") is a federally-recognized Indian tribe, and operates its three casinos on land held in trust by the United States for the Band. The United States has a significant stake in protecting the trust status of these lands, which the State challenges here. As trust lands, they are subject to federal and tribal criminal and civil jurisdiction and the State generally lacks jurisdiction except to the extent expressly authorized by federal statute. The United States also has an interest in ensuring that gaming activities conducted on these trust lands are both permissible under federal law and free from conflicting state regulation or enforcement actions.

BACKGROUND

I. STATUTORY AND REGULATORY BACKGROUND

Pursuant to the Constitution, Congress has plenary authority over Indian affairs. U.S. Const. art. I, § 8, cl. 3; *United States v. Hellard*, 322 U.S. 363, 367 (1944). From the first days of this Nation, Congress has exercised this authority to prohibit transfers of tribal land without the express approval of Congress. *See* Indian Trade and Intercourse Act of 1834, codified as

¹ PCI Gaming Authority is a commercial enterprise owned and operated by the Poarch Band of Creek Indians, and the remaining defendants are individual members of the PCI Gaming Authority, the Poarch Band of Creek Indians Tribal Council, and/or officials of the Poarch Band of Creek Indians, sued in their official capacities.

amended at 25 U.S.C. § 177. Congress has codified the scope of what is termed federal “Indian country” in 18 U.S.C. § 1151.² The term “Indian country” also describes the scope of tribal governmental authority. *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 527 n.1 (1998). “Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, not with the States.” *Id.*; *see also Oklahoma Tax Comm’n*, 498 U.S. at 509, 511.

Pursuant to the Indian Reorganization Act of 1934 (“IRA”), Congress authorized the Secretary of the Interior to acquire land for “Indians”³ and take such land into trust for the “Indian tribe or individual Indian for which the land is acquired.” 25 U.S.C. § 465. Title to land that is acquired in trust is held by the federal government for the benefit of the Indian tribe or individual Indians, and such land is exempt from state and local taxation. *Id.* The Secretary has

² The term “Indian country” is defined as “(a) all land within the limits of any Indian reservation . . . (b) all dependent Indian communities within the borders of the United States . . . (c) and all Indian allotments, the Indian titles to which have not been extinguished . . .” 18 U.S.C. § 1151. Land held in trust for a tribe outside reservation boundaries constitutes Indian country either as an informal reservation or a dependent Indian community. *See Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) (No “precedent of this Court has ever drawn the distinction between tribal trust land and reservations [T]he test for determining whether land is Indian country does not turn upon whether that land is denominated ‘trust land’ or ‘reservation.’” (internal quotations and citations omitted)).

³ The first definition of “Indian” in Section 479 of the IRA includes “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction.” 25 U.S.C. § 479. The Supreme Court has interpreted this definition to be limited to tribes that were “under Federal jurisdiction” in 1934. *Carcieri v. Salazar*, 555 U.S. 379 (2009). The majority in *Carcieri* did not opine on the meaning of the phrase “under Federal jurisdiction,” nor did it address the phrase “any recognized Indian tribe” that precedes the phrase “under Federal jurisdiction.” In his concurrence, Justice Breyer addressed the relationship between these phrases, noting that the word “now” in the IRA modifies “under Federal jurisdiction” not “recognition,” and concluded that the IRA “imposes no time limit upon recognition.” *Id.* at 397-398. Justice Breyer further noted that “a tribe may have been ‘under Federal jurisdiction’ in 1934 even though the Federal Government did not believe so at the time.” *Id.* at 397. Thus, although a tribe must be “recognized” in order to have its land taken into trust, there is no requirement that the tribe had to have been “recognized” in 1934.

issued regulations governing the implementation of her authority under the IRA to take land into trust. 25 C.F.R. Part 151.

In 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721 (1988), “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1). IGRA permits gaming on “Indian lands,”⁴ and divides gaming into three classes, each of which is regulated differently. 25 U.S.C. § 2703(6)-(8).

Two classes of gaming are pertinent to this case. Class II gaming consists of bingo, other games similar to bingo (when played in the same location), and non-banking card games. 25 U.S.C. § 2703(7). Indian tribes maintain regulatory jurisdiction over class II gaming, *see* 25 U.S.C. § 2710(a)(2), subject to the supervision of the National Indian Gaming Commission (“NIGC”). 25 U.S.C. § 2704. An Indian tribe may engage in class II gaming if: (1) the state in which the gaming is located “permits such gaming for any purpose by any person,” (2) such gaming is not prohibited on Indian lands by federal law, and (3) the gaming is conducted pursuant to a tribal ordinance that satisfies specified statutory requirements and is approved by the Chairman of the NIGC. 25 U.S.C. § 2710(b).

⁴ IGRA defines “Indian lands” as

(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). The definition of “Indian country” is broader than IGRA’s definition of “Indian lands.” However, all lands that are “Indian lands” meet the definition of “Indian country.” Thus, not only does the federal government have primary jurisdiction over “Indian lands” because they are “Indian country,” but federal gaming law applies exclusively on such lands, except as expressly exempted in IGRA.

Class III gaming is gaming that does not fall within class I and class II, and includes banking card games, casino games, slot machines, horse racing, dog racing, jai alai, and lotteries. 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4. IGRA authorizes class III gaming activities on Indian lands if three conditions are met, including that the activities are “conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State [].” 25 U.S.C. § 2710(d)(1)(C). IGRA authorizes judicial review of certain disputes between Indian tribes and states regarding the negotiation and enforcement of tribal-state compacts. *Id.* § 2710(d)(7)(A).

If an Indian tribe engages in class III gaming on Indian lands without the proper approvals, the Chair of the NIGC has the authority to issue a notice of violation, 25 C.F.R. § 573.3, and assess civil penalties, 25 U.S.C. § 2713. When it enacted IGRA, Congress also added several sections to the federal criminal code. Among them, Title 18, Section 1166 specifically addresses gambling in Indian country. This provision makes state gaming laws applicable as federal law and gives the United States exclusive jurisdiction over criminal prosecutions for violations of state gambling laws, except where a tribe has expressly consented to the transfer to the state of criminal jurisdiction by entering into a tribal-state compact with the state that provides for such transfer.

II. FACTUAL BACKGROUND

On January 9, 1984, the Secretary of the Interior, through the Bureau of Indian Affairs (“BIA”), issued a proposed finding that the Poarch Band exists as an Indian tribe. 49 Fed. Reg. 1,141 (Jan. 9, 1984). On June 11, 1984, the BIA issued a final determination of federal acknowledgment of the Poarch Band as an Indian tribe within the meaning of federal law. 49 Fed. Reg. 24,083 (June 11, 1984); *see also* 77 Fed. Reg. 47,868, 47,871 (Aug. 10, 2012) (list of

federally-recognized tribes). The final determination summarizes the evidence of the Poarch Band's history as a tribe. 49 Fed. Reg. 24,083.

After the Secretary recognized the Poarch Band, he exercised his discretion to acquire land into trust for the tribe pursuant to Section 465 of the IRA. The Secretary took the land on which the gaming activities at issue take place into trust for the benefit of the Poarch Band in 1984 (Wetumpka), 1992 (Atmore), and 1995 (Montgomery). *See* Exhibit A to Defs.' Notice of Removal of Civil Action, ECF No. 1-1. The gaming activities that take place on these parcels are conducted pursuant to a tribal ordinance that has been approved by the Chairman of the NIGC. *See* NIGC Approval Letter to Poarch Band (July 30, 2010), <http://www.nigc.gov/LinkClick.aspx?fileticket=0qtvvBjtWRc%3d&tabid=909> .

ARGUMENT

Plaintiff's First Amended Complaint asserts two counts for public nuisance, the first under state law and the second under federal law. Defendants argue that they enjoy sovereign immunity from suit and thus the First Amended Complaint should be dismissed for lack of subject matter jurisdiction. Br. in Support of Tribal Defs.' Mot. To Dismiss First Am. Compl. (ECF No. 14) at 3. Defendants argue in the alternative that the First Amended Complaint fails to state a claim upon which relief can be granted because IGRA preempts state law with respect to gaming activity conducted on Indian lands and grants exclusive enforcement authority to the federal government to enforce or otherwise regulate the Poarch Band's gaming activity on Indian lands. *Id.* For the reasons provided herein, the United States agrees that the Tribe's sovereign immunity bars both counts and that Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.

//

I. COUNT I FAILS TO STATE A CLAIM BECAUSE PLAINTIFF CANNOT COLLATERALLY ATTACK THE FEDERAL TRUST STATUS OF DEFENDANTS' LANDS AND THE STATE'S CLAIM IS PREEMPTED BY IGRA.

In its first count, Plaintiff claims that Defendants are allowing the use of devices in their three casinos that are prohibited by State law and that the continued operation of these devices is a public nuisance under State law.⁵ FAC ¶¶ 20-30. The allegations in Count I fail to state a claim for two reasons. First, the State's claim that State nuisance law applies turns in part on its assertion that the lands in question are not properly held by the United States in trust for the Poarch Band.⁶ But the State cannot adjudicate the title to these tribal trust lands in a suit to which the United States is not a party. The State cannot amend its complaint to add the United States as a party because the statute of limitations has run on a challenge to the decisions to acquire the lands in trust. Nor can the State adjudicate the title issue in the absence of the United States because it is a required party under Federal Rule of Civil Procedure 19. Second, even if State law did apply, the State's claim is preempted by IGRA.

A. Plaintiff Cannot Collaterally Attack the Federal Trust Status of the Poarch Band's Lands.

In support of its claim that State law applies, Plaintiff alleges that "Defendants' casinos are not located on properly recognized 'Indian Lands'" because the Poarch Band "was not under

⁵ Although Plaintiff cites to federal and state law in both counts of the First Amended Complaint, the United States, like Defendants, ECF No. 14 at 6 n.5, reads the first count to allege a claim under state law and the second count to allege a claim under federal law, and responds accordingly.

⁶ The United States notes that the plaintiffs in another case pending in this court have alleged a claim that the Secretary of the Interior's decision to acquire one of the parcels the United States holds in trust for the Poarch Band violates the Indian Reorganization Act and the Administrative Procedure Act. *Muscogee Creek Nation, et al. v. Poarch Band of Creek Indians, et al.*, No. 2:12-cv-01079-MHT-CSC (M.D. Ala.) (filed Dec. 12, 2012). The United States filed a motion to dismiss, which is pending with the court.

federal jurisdiction and recognized prior to 1934” and so, under the Supreme Court’s *Carcieri* decision, the Secretary of the Interior was not authorized to take land into trust for the Poarch Band. FAC ¶ 25. Plaintiff’s allegation must be viewed as a collateral attack on the Secretary’s 1984, 1992, and 1995 decisions to acquire land in trust for the Poarch Band. Such a collateral attack is impermissible. In order to challenge these federal decisions, the State would need to bring suit against the United States or the Secretary of the Interior under a statute, such as the Administrative Procedure Act (“APA”), that waives federal sovereign immunity. However, Plaintiff has not brought any claim against the Secretary or otherwise named the United States in this suit, and any attempt to raise the title issue at this time would be futile because the statute of limitations on challenges to the Secretary’s decisions to take the Poarch Band’s lands into trust has long since expired. The *Carcieri* decision does not alter this result. Moreover, the United States is also a required party because it holds title to the Poarch Band’s lands in trust for the Tribe, but cannot be joined because it is immune from suit.

1. Any Challenge to the Secretary’s Decisions to Take Land into Trust Must be Brought Against the Secretary Under the Administrative Procedure Act.

Because the United States acquired title to the Poarch Band’s land through its three decisions to take those lands into trust, the State would need to challenge the Secretary’s land-into-trust decisions in order to affect the United States’ title and the federal trust status of those lands. The Secretary’s decisions to take land into trust are reviewable, if at all, under the APA, 5 U.S.C. § 701, *et seq.* *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S.Ct. 2199, 2208 (2012) (challenge to the Secretary’s decision to take land into trust is a “garden-variety APA claim”); *Carcieri*, 555 U.S. at 385-386.

Here, claim one alleges a violation of State nuisance law against the tribal defendants, not a claim under the APA against the Secretary. Absent a proper APA claim against the Secretary, Plaintiff cannot challenge the trust status of the Poarch Band's lands. Plaintiff's collateral attack is impermissible because no such claim is properly before the Court.

2. Amendment of the Complaint to Assert a Claim Against the United States Would be Futile Because Challenges to the Land-Into-Trust Decisions Are Time-Barred.

Although an APA claim against the Secretary is required to challenge the decisions to take the Poarch Band's land into trust, any future attempt by Plaintiff to amend the complaint to add an APA claim against the Secretary would be futile because the United States' consent to be sued has expired. *Presnell v. Paulding County, Ga.*, 454 Fed. Appx. 763, 768 (11th Cir. 2011) ("the district court did not abuse its discretion in denying Plaintiff's motion to amend to add the new parties, as the claims against the new parties would have been barred by the statute of limitations, and thus the amendment was futile."). The United States is immune from suit unless it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). This principle applies to suits involving Indian lands that the United States holds in trust. *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 141-142 (1972).

In the APA, the United States has waived its immunity to suits challenging "final agency action" where another statute does not provide a right to judicial review. 5 U.S.C. § 702, 704. A plaintiff has six years to bring an APA claim. 28 U.S.C. § 2401(a); *U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1280 (11th Cir. 2007). The limitations period begins to run from the time of "final agency action." *U.S. Steel*, 495 F.3d at 1280. Once the limitations period closes, the United States' waiver of sovereign immunity expires, depriving the courts of jurisdiction.

Center for Biological Diversity v. Hamilton, 453 F.3d 1331, 1334 (11th Cir. 2006) (“§ 2401(a) is a jurisdictional condition attached to the government’s waiver of sovereign immunity.”).

Here, the Secretary’s decisions to acquire in trust the land on which Defendants’ casinos are located occurred in 1984, 1992, and 1995. Exhibit A to Defs.’ Notice of Removal of Civil Action, ECF No. 1. Each of those decisions represents a final agency action. *See McAlpine v. United States*, 112 F.3d 1429, 1432-35 (10th Cir. 1997). Therefore, based upon the applicable six-year statute of limitations, Plaintiff had until 1990, 1998, and 2001, respectively, to challenge the Secretary’s decisions to acquire the Poarch Band’s lands in trust. Plaintiff’s failure to sue the Secretary within the limitations period means the Court lacks jurisdiction to review the trust status allegations in claim one even if Plaintiff tried to add the Secretary or the United States as a defendant to this case. *Loeffler v. Frank*, 486 U.S. 549, 554 (1988) (absent a waiver of sovereign immunity, the United States and its federal agencies are immune from suit and cannot be named as parties).

Plaintiff may argue that it could not have challenged the Secretary’s decisions under the holding of *Carciari* because that decision was issued after the statute of limitations periods expired. However, the issuance of a court decision construing the meaning of a federal statute does not toll the statute of limitations contained in Section 2401(a), and no equitable exception to the statute of limitations applies. *Center for Biological Diversity*, 453 F.3d at 1335 (“The terms ‘upon which the Government consents to be sued must be strictly observed and exceptions are not to be implied’”) (quoting *Soriano v. United States*, 352 U.S. 270, 276 (1957)); *see also Baxter v. United States*, 451 Fed. Appx. 868, 870 (11th Cir. 2012) (“§ 2401(a) is jurisdictional and cannot be waived.”). Statutes of limitations must be strictly construed because they condition the waiver of sovereign immunity that is necessary for a court to have jurisdiction.

United States v. Mottaz, 476 U.S. 834, 841 (1986) (quoting *Block v. North Dakota*, 461 U.S. 273, 287 (1983)) (“When waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity.”). Plaintiff could have timely challenged the Secretary’s decisions to acquire the Poarch Band’s land in trust, alleging (as it does here) that the Poarch Band was not “under Federal jurisdiction” in 1934, just as the petitioner did in *Carcieri*.⁷ The *Carcieri* decision is based on the meaning of the IRA, a statute promulgated in 1934. Thus, Plaintiff’s decision not to challenge the Secretary’s decisions within six years bars review of the decisions to take the parcels into trust.

3. The United States Also is a Required Party, But Cannot Be Joined.

Plaintiff’s attempt to collaterally attack the federal trust status of the Poarch Band’s land suffers from an additional problem. Plaintiff’s allegation that the Poarch Band’s lands are not trust lands, and therefore not “Indian lands” under IGRA, is effectively a challenge to the United States’ title to those lands. *See* Exhibit A to Defendants’ Notice of Removal of Civil Action, ECF No. 1. The United States has an interest in defending its title to lands it holds in trust, but it cannot protect that interest if it is not a party. Consequently, the United States is a required party

⁷ Plaintiff’s allegation that the Poarch Band “was not under federal jurisdiction and recognized prior to 1934,” FAC ¶ 25, is a reference to, but misinterpretation of, section 479’s first definition of “Indian” in the IRA. The first definition of “Indians” in Section 479 includes “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction.” 25 U.S.C. § 479 (emphasis added). There are two relevant parts to the definition – “recognized Indian tribe” and “under Federal jurisdiction.” The word “now” modifies “under Federal jurisdiction,” not “any recognized Indian tribe.” Thus, while an Indian tribe must be “recognized” before the United States can acquire land in trust for the tribe’s benefit, the IRA “imposes no time limit upon recognition.” *Carcieri*, 555 U.S. at 397-398 (concurring opinion). Plaintiff’s allegation that the Poarch Band’s lands are not trust lands because the tribe was not “recognized prior to 1934” therefore is based on a mistaken interpretation of the IRA and *Carcieri*. Here, the Poarch Band was “recognized” prior to the land into trust decisions, satisfying the first part of the definition. Even if it was not, as previously explained, the State had the opportunity to challenge the Secretary’s decision to acquire land into trust for the Poarch Band (including any claim that the Poarch Band does not meet the IRA’s definition of “Indian”) but failed to do so. Thus, this Court lacks jurisdiction to consider whether the Poarch Band is a “recognized Indian tribe” or was “under Federal jurisdiction” in 1934.

to any case where its title to land is being challenged. Fed. R. Civ. P. 19(a); *City of Marietta v. CSX Transp.*, 196 F.3d 1300, 1305 (11th Cir. 1999) (Rule 19(a) requires a court to ask “whether the nonparty’s absence will impede either the nonparty’s protection of an interest at stake or subject parties to a risk of inconsistent obligations.”); *State of Minnesota v. United States*, 305 U.S. 382, 386 (1939) (“A proceeding against property in which the United States has an interest is a suit against the United States.”) (citations omitted). However, because the United States cannot be joined due to its sovereign immunity, “in equity and good conscience” the Court should not consider this aspect of the Plaintiff’s claim in the United States’ absence. Fed. R. Civ. P. 19(b).

B. Because the Imposition of State Nuisance Law to Regulate the Tribe’s Gaming Activity Would Interfere with its Governance of Gaming, the State’s Claim is Preempted by IGRA.

Count I seeks to apply state nuisance law to the Poarch Band’s operation of its gaming activity on Indian lands. States generally lack authority to regulate the activities of Indian tribes in Indian country, absent federal legislation to the contrary. *See Native Village of Venetie Tribal Gov’t*, 522 U.S. at 527 n.1; *Okl. Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993) (There is “a deeply rooted policy in our Nation’s history of ‘leaving Indians free from state jurisdiction and control.’”) (internal quotation omitted). In this context, however, IGRA provides an independent basis for precluding application of State nuisance law to the Band in Indian country. Courts have routinely held that the preemptive effect of IGRA extends to state law claims that would affect or interfere with the “governance” of gaming. Through Count I, the State clearly seeks to regulate the Band’s gaming, which is precluded by general principles of Indian law and preempted by IGRA.

The Eleventh Circuit has explained that Congress intended IGRA “to expressly preempt the field in the governance of gaming activities on Indian lands.” *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida*, 63 F.3d 1030, 1033 (11th Cir. 1995) (quoting *Report to the Senate Indian Affairs Committee*, S. Rep. No. 100-446, at 5-6 (1988) (reprinted in 1988 U.S.C.C.A.N. 3071)). Other circuits have likewise recognized that state law claims that interfere with a tribe’s ability to conduct its own gaming processes on Indian lands are preempted. *See, e.g., Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 548-49 (8th Cir. 1996) (claims that concerned a tribe’s gaming licensing processes are preempted); *Casino Res. Corp. v. Harrah’s Entm’t, Inc.*, 243 F.3d 435, 440-41 (8th Cir. 2001) (only state law claims that do not interfere with governance of gaming are potentially valid); *Confederated Tribes of Siletz Indians of Or. v. State of Oregon*, 143 F.3d 481, 487 (9th Cir. 1998) (state law claims that “seek to usurp tribal control over gaming” or “threaten to undercut federal authority over Indian gaming” are preempted).⁸

To be sure, courts have acknowledged that some types of claims may be “merely peripherally associated with tribal gaming,” *Casino Res. Corp.*, 243 F.3 at 439, and therefore might fall outside of the preemptive effect of IGRA.⁹ Here, however, Plaintiff seeks to directly regulate, through state nuisance law, the Band’s gaming activities on Indian lands.¹⁰ Resolution

⁸ Similarly, the Supreme Court has emphasized, with particular reference to IGRA, that “where Congress has prescribed a detailed remedial scheme for the enforcement...of a statutorily created right, a court should hesitate before casting aside those limitations and permitting an action” not expressly authorized by statute. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 74 (1996).

⁹ Such claims might be precluded, however, by the general principle that states lack authority over tribes in Indian country.

¹⁰ In addition, because these are “Indian lands,” the Tribe has sovereign immunity for a state law nuisance claim brought by a state for all activities it conducts on those lands. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*, 523 U.S. 751, 754-55 (1998). The question whether

of the claim would clearly interfere with the Band's governance of gaming. Consequently, Plaintiff's allegation that State law applies to gaming activity at Defendants' casinos fails to state a claim and Count I of the First Amended Complaint should be dismissed.

II. COUNT II FAILS TO STATE A CLAIM BECAUSE THE UNITED STATES HAS EXCLUSIVE JURISDICTION TO ENFORCE 18 U.S.C. § 1166.

In its second count, Plaintiff contends that gaming activities at Defendants' casinos are a public nuisance under federal law, 18 U.S.C. § 1166, and that it has the authority to enjoin such activities. FAC ¶¶ 32-37. Count II fails for two reasons. First, absent a tribal-state compact with the Poarch Band in which the Tribe expressly agrees to state enforcement of state law, the Tribe's sovereign immunity bars the State from enforcing its law against the Tribe. Second, the United States has exclusive authority to enforce 18 U.S.C. § 1166.

A. Even if the Poarch Band Were Operating Class III Gaming Devices, the State Cannot Enforce its Laws Through § 1166 Because There is No Tribal-State Compact and the Tribe Has Sovereign Immunity.

Even if the Court were to assume, for the sake of argument, that Defendants are operating class III gaming devices in their casinos in violation of State law, the State has no authority to enforce its State law against Defendants because it does not have a tribal-state compact with the Poarch Band that gives it the right to enforce State law and thus it would be barred by the Poarch Band's defense of sovereign immunity.

An Indian tribe is subject to suit only where Congress has authorized the suit and thus abrogated the tribe's sovereign immunity or the tribe has waived immunity. *Kiowa Tribe of Oklahoma*, 523 U.S. at 754. In passing IGRA, "Congress abrogated tribal immunity only in the narrow circumstances in which a tribe conducts class III gaming in violation of an existing Tribal-State compact." *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1242 (11th Cir.

the Tribe would have sovereign immunity from a state law claim involving tribal activities outside of Indian lands, although addressed in *Kiowa*, is not presented in this case.

1999); 1988 U.S.C.A.N. at 3075-76 (the mechanism whereby a tribe affirmatively elects to have state jurisdiction extend to its lands is the tribal-state compact). Here, there is no tribal-state compact between the Poarch Band and the State of Alabama and, in the absence of such, nothing in IGRA or 18 U.S.C. § 1166 expressly abrogates the Poarch Band's sovereign immunity to suit by a state or third party. In the only case where this issue has been squarely raised, the Sixth Circuit did not reach the merits of the state's claim because it held that Section 1166 did not abrogate the tribe's sovereign immunity to suit. *Michigan v. Bay Mills Indian Community*, 695 F.3d 406, 415 (6th Cir. 2012). Therefore, IGRA and 18 U.S.C. § 1166 do not provide a waiver of sovereign immunity for Count II. Likewise, the Poarch Band has not otherwise voluntarily waived its sovereign immunity.¹¹

B. 18 U.S.C. § 1166 Does Not Grant the State a Right to Seek an Injunction by Invoking State Law That Is Assimilated into Federal Law.

The State also alleges that 18 U.S.C. § 1166(a) makes State nuisance law applicable to Defendants' gaming activities and provides the State a right to bring a civil injunctive action to enforce its law. FAC ¶¶ 32-33, 36-37. Although Section 1166 makes state gaming laws applicable to gaming in Indian country conducted in violation of IGRA, it does so only as a matter of federal law and the federal government has exclusive enforcement jurisdiction. Section

¹¹ As discussed in footnote one, PCI Gaming Authority is a commercial enterprise owned and operated by the Poarch Band of Creek Indians, and the remaining defendants are individual members of the PCI Gaming Authority, the Poarch Band of Creek Indians Tribal Council, and/or officials of the Poarch Band of Creek Indians, sued in their official capacities. As such, PCI Gaming Authority is indistinguishable from the Poarch Band for purposes of sovereign immunity. See *Freemanville Water System, Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1207 n.1 (11th Cir. 2009); *Sanderford v. Creek Casino Montgomery*, No. 12-455, 2013 WL 131432, at *2 (M.D. Ala. Jan. 10, 2013). To the extent the State is attempting to bring an *Ex parte Young*-like action against the individually named Defendants, for the reasons discussed in Defendants' Motion to Dismiss, the State failed to identify any discrete action or omission by these Defendants and so they are also protected by the Poarch Band's sovereign immunity. ECF No. 14 at 5-6; cf. *Seminole Tribe*, 517 U.S. at 46 ("the doctrine of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), may not be used to enforce [IGRA] against a state official.").

1166 is included in the federal criminal code, and makes gaming in Indian country a federal crime if it violates the law of a state. Exclusive authority over the prosecution of violations under Section 1166, however, is vested with the United States. Therefore, the State has no authority to utilize Section 1166 to bring either a criminal or a civil action that incorporates a state law claim.¹²

When Congress enacted IGRA, it added 18 U.S.C. § 1166 to the federal criminal code that specifically addresses gambling on Indian lands. 18 U.S.C. § 1166(a) provides that all civil and criminal laws of a state relating to “gambling” shall apply to Indian lands within that state:

Subject to subsection (c),¹³ for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

18 U.S.C. § 1166(a). Subsection (d) provides the United States with

¹² In its Opposition to Defendants’ Motion to Dismiss, Plaintiff incorrectly contends that “the United States Solicitor General and the National Indian Gaming Commission have also recognized the possibility that a State like Alabama may be able to pursue a public- nuisance cause of action against tribal officials under Section 1166.” State of Alabama’s Br. in Opp. to Mot. to Dismiss (ECF No. 17) at 31. Plaintiff refers to an amicus brief the United States filed with the Supreme Court in *State of Michigan v. Bay Mills Indian Community*, No. 12-515 (U.S. May 2013). In the *Bay Mills* case, Count VI alleged a violation of State public nuisance law, but did not allege that the State of Michigan had authority to bring the claim under 18 U.S.C. § 1166. Furthermore, nowhere in the brief did the United States say that states could bring a claim under 18 U.S.C. § 1166. To the contrary, the United States said that “the United States can enforce federal criminal laws and related civil enforcement provisions governing gaming,” including 18 U.S.C. § 1166, and that the “States may also apply their laws to gaming outside of Indian country.” Brief of the United States as Amicus Curiae in *Michigan v. Bay Mills*, available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/05/12-515-Michigan-v-Bay-Mills.pdf>. Here, the State is alleging it can enforce state law through 18 U.S.C. § 1166 within Indian country on Indian lands. The United States has never endorsed such a claim in *Bay Mills* or anywhere else.

¹³ Subsection (c) states that “the term ‘gambling’ does not include – (1) class I gaming or class II gaming regulated by the [IGRA], or (2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under section 11(d)(8) of the [IGRA] that is in effect.” *Id.* § 1166(c).

exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country, unless an Indian tribe pursuant to a Tribal-State compact . . . has consented to the transfer to the State of criminal jurisdiction with respect to gambling on the lands of the Indian tribe.

Id. § 1166(d).

Thus, the statute incorporates state law “for purposes of federal law” if gaming is conducted out of compliance with IGRA. By using the phrase “for purposes of federal law,” Congress effectively substituted the United States for the states with respect to enforcement of state laws relating to gambling on Indian lands. This makes sense since Indian tribes cannot assert sovereign immunity against suits brought by the United States, but they can for those brought by states. *Florida Paralegic, Ass’n, Inc. v. Miccosukee Tribe of Indians of Florida*, 166 F.3d 1126, 1135 (11th Cir. 1999) (“tribal sovereign immunity does not bar suits by the United States”) (citations and quotations omitted).

This reading is further buttressed by IGRA’s legislative history. Indeed, it is clear from the legislative history that in enacting IGRA Congress did not intend the states to have any criminal or civil enforcement abilities on Indian lands outside of an agreed upon compact:

the Committee has developed a framework for the regulation of gaming activities on Indian lands which provides that in the exercise of its sovereign rights, unless a tribe affirmatively elects to have State laws and State jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow State jurisdiction in Indian lands for the regulation of Indian gaming activities.

Report to the Senate Indian Affairs Committee, S. Rep. No. 100-446, at 5-6. In the absence of a compact, all state laws regarding gambling are assimilated into federal law. 18 U.S.C. § 1166(a). “In no instance, does [IGRA] contemplate the extension of State jurisdiction or the application of State laws for any other purpose.” *Report to the Senate Indian Affairs Committee*, S. Rep. No. 100-446 at 6.

Although the Eleventh Circuit has not ruled on this issue, it has noted that “[a]n examination of cases that have addressed [18 U.S.C. § 1166(a)] engenders some doubt about whether it would permit a state to bring an action in federal court seeking state-law injunctive relief against a tribe for violating state gambling laws.”¹⁴ *Florida*, 181 F.3d at 1246 n.13. The cases the Eleventh Circuit cited all considered whether 18 U.S.C. § 1166(a) provides the United States a right to obtain an injunction against a tribe. None of the cases looked at whether Section 1166(a) provides a state or third party such a right or found that it did.¹⁵

In *United Keetoowah Band of Cherokee Indians v. State of Oklahoma ex rel Moss*, 927 F.2d 1170 (10th Cir. 1991), the Tenth Circuit found that Section 1166 does not provide for state civil or criminal enforcement in the absence of a compact, because “[n]owhere does the statute indicate that the State may, on its own or on behalf of the federal government, seek to impose criminal or other sanctions against an allegedly unlawful tribal bingo game.” *United Keetoowah Band*, 927 F.2d at 1177. The court emphasized that “the very structure of the IGRA permits assertion of state civil or criminal jurisdiction over Indian gaming only when a tribal-state compact has been reached to regulate class III gaming.” *Id.* In fact, the United States is unaware of any court that has determined that Section 1166(a) provides a state with the right to bring a civil injunctive action to enforce state law against an Indian tribe because, as discussed above, 18 U.S.C. § 1166 does not clearly abrogate a tribe’s sovereign immunity.

¹⁴ The Court ultimately declined to reach the question of whether this provision gives states a right to sue tribes for injunctive relief because Florida had failed to make the argument in its briefings even though it had included such a claim in its complaint. *Id.*

¹⁵ The Eleventh Circuit has also held that there is no private right of action under IGRA for declaratory or injunctive relief against a tribe or tribal officials that are unlawfully conducting class III gaming because the existence of “various express remedies is a clear signal that we should not read into IGRA the implied right of action asserted by the State [Florida].” *Florida*, 181 F.3d at 1246-49 (discussing the factors set forth in *Cort v. Ash*, 422 U.S. 66 (1975), that are relevant in determining whether a private right of action is implicit and concluding that none exists).

In sum, the State lacks authority to enforce its State gambling law on the Poarch Band's tribal trust lands through 18 U.S.C. § 1166. The United States is the only entity that has jurisdiction to utilize Section 1166 to enforce Alabama's civil anti-gambling laws (to the extent they are assimilated into federal law) on such Indian lands. Accordingly, Count II of Plaintiff's First Amended Complaint fails to state a claim and should be dismissed.

CONCLUSION

For all the foregoing reasons, the Court should dismiss Plaintiff's First Amended complaint because the Tribe has sovereign immunity and Plaintiff has failed to state a claim.

Dated: June 5, 2013

Respectfully Submitted,

IGNACIA S. MORENO, Assistant Attorney General

/s/ Meredith L. Flax

Meredith L. Flax (DCB 468016)

Sr. Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Law & Policy Section

Ben Franklin Station

P.O. Box 7415

Washington, D.C. 20044-7415

Phone: (202) 305-0404

Email: meredith.flax@usdoj.gov

Attorneys for Federal Defendants

Of Counsel:

Jennifer Turner

Rebecca Ross

Department of the Interior

Office of the Solicitor

Washington, D.C.

CERTIFICATE OF SERVICE

I, Meredith L. Flax, do hereby certify that a true and correct copy of the foregoing has been furnished by filing through the Court's CM/ECF System on this 5th day of June 2013, to:

Andrew L. Brasher
Office of the Attorney General
501 Washington Ave
Montgomery, AL 36130
334-353-2609
Fax: 334-242-4891
Email: abrasher@ago.state.al.us

Kelly Fitzgerald Pate
Balch & Bingham, LLP
P.O. Box 78
Montgomery, AL 36101
334-269-3130
Fax: 866-501-9985
Email: kpate@balch.com

Henry Theodore Reagan, II
Office of the Attorney General
P.O. Box 300152
Montgomery, AL 36130
334-353-2186
Fax: 334-242-4890
Email: sreagan@ago.state.al.us

Mark H. Reeves
Kilpatrick Townsend & Stockton LLP
699 Broad St., Ste 1400
Augusta, GA 30901-1453
706-823-4206
Fax: 706-828-4488
Email: mreeves@kilpatricktownsend.com

Keith M Harper
Kilpatrick Townsend & Stockton LLP
607 14th St NW - Ste 900
Washington, DC 20005
202-508-5800
Email: kharper@kilpatricktownsend.com

Robin Garrett Laurie
Balch & Bingham, LLP
105 Tallapoosa Street, Suite 200
P.O. Box 78
Montgomery, AL 36101-0078
334-834-6500
Fax: 334-269-3115
Email: rlaurie@balch.com

Date: June 5, 2013

/s/ Meredith L. Flax
Meredith L. Flax



JUL 3 0 2010

Buford L. Rolin, Tribal Chairman
Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, Alabama 36052

Dear Chairman Rolin:

This letter is in response to your request for the National Indian Gaming Commission (NIGC) to review and approve the Poarch Band of Creek Indians' amended gaming ordinance, TCO 2010-002, enacted by the Tribal Council on May 10, 2010.

The Ordinance is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and the NIGC's implementing regulations and is therefore approved. Any Class III gaming, however, must be conducted pursuant to a gaming compact entered into with Alabama, or pursuant to Class III gaming procedures approved by the Secretary of the Interior. It is also important to note that approval is granted for gaming only on Indian lands, as defined in IGRA, over which the Tribe has jurisdiction.

Thank you for submitting the Amended Gaming Ordinance for review and approval. The NIGC staff and I look forward to working with you and the Tribe on future gaming issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracie L. Stevens".

Tracie L. Stevens
Chairwoman



*Poarch Creek Indians
Tribal Council Ordinance*

TCC 2010-002

**ORDINANCE AMENDING
SECTION 20--GAMING**

JUN -7 2010

WHEREAS, the Poarch Band of Creek Indians is a federally recognized Tribe organized pursuant to 25 C.F.R. 83;

WHEREAS, the Constitution of the Poarch Band of Creek Indians authorizes its Tribal Council to enact, amend or repeal an ordinance;

WHEREAS, the Tribal Council enacted the current version of Section 20 of the Tribal Code, which is known as the Gaming Ordinance, on July 26, 1993 by Tribal Council Ordinance 93:001;

WHEREAS, the passage of time and the Tribe's participation in Secretarial Procedures requires that the Gaming Ordinance be substantially revised; and

WHEREAS, the Tribal Council desires to update the Gaming Ordinance.

NOW THEREFORE BE IT ORDAINED that the Tribal Council amends and replaces the Section 20 of the Tribal Code as follows:

**§ 20
GAMING**

**CHAPTER 1
GENERAL PROVISIONS**

§ 20-1-1 Title

This Section of the Poarch Band of Creek Indians Tribal Code shall be known as the "Gaming Ordinance."

§ 20-1-2 Purpose

The purpose of this Gaming Ordinance is to govern and regulate the operation, conduct, and playing of all forms of gaming on the Tribe's Indian lands.

§ 20-1-3 Definitions

Unless a different meaning is clearly indicated in this Gaming Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 et seq., and regulations of the National Indian Gaming Commission ("NIGC"), 25 C.F.R. § 500 et seq.:

- (a) *Class II Gaming* means class II gaming as defined by IGRA and regulations of the NIGC.
- (b) *Class III Gaming* means class III gaming as defined by IGRA and regulations of the NIGC.

- (c) *Commission* means the Poarch Band of Creek Indians Tribal Gaming Commission, the entity established by the Tribal Council by this Gaming Ordinance in order to regulate the operation, conduct and playing of all forms of gaming on the Tribe's Indian Lands.
- (d) *Commission Personal Property* means all the personal property, including without limitation cash on hand, revenues, income, inventory, equipment, supplies, accounts, contract rights, leases, allotment rights, and severed buildings, fixtures, or improvements owned by or transferred to the possession, use and management of the Commission.
- (e) *Commission Real Property* means any interest or rights in real property which management control, but not ownership, has been transferred by the Tribe to the Commission.
- (f) *Commissioner* means an individual member of the Poarch Band of Creek Indians Tribal Gaming Commission.
- (g) *Compact* means any agreement between a tribe and a State of Alabama about Class III gaming under 25 USC 2710(d).
- (h) *Gaming Activities* means any form of Class II or Class III gaming, whether authorized or unauthorized.
- (i) *Gaming Board* means the PCI Gaming Authority Board of Directors and/or any other board that may be established to oversee the management and non-regulatory aspects of a Gaming Establishment or Operation.
- (j) *Gaming Device* means any mechanical, electromechanical, electronic, or video machine or device, or component thereof, that, for consideration, assists or allows a player to play a game of chance. The term shall be broadly construed to promote the purposes of this Gaming Ordinance and shall include any such machine or device whether the game played is a Class II or a Class III game.
- (k) *Gaming Establishment* means any building, room or structure in which any Gaming Activity is conducted, including any fills and credits and any area where any currency or coin related to or generated from any Gaming Activity is stored or counted.
- (l) *Gaming Operation* means a business entity owned by the Tribe for the conduct of any Gaming Activity in any Gaming Establishment on Indian Lands.
- (m) *Gaming-Related Services* means any goods, services or concessions provided or used in connection with Gaming Activities, whether exclusively or otherwise, including but not limited to, equipment, gaming devices and components thereof, equipment ancillary to gaming devices, implements of gaming activities such as playing cards and dice, furniture designed primarily for use with gaming activities, surveillance or security equipment, and consulting services. "Gaming-related services" does not include professional legal or accounting services.
- (n) *Gaming Vendor* means any Person providing Gaming-Related Services to the Gaming Operation, management contractor, or a Gaming Establishment, as determined by the Commission.
- (o) *IGRA* means the Indian Gaming Regulatory Act of October 17, 1988, Public Law 100-497, 102 Stat. 2467, codified in 25 U.S.C. § 2701 et seq.
- (p) *Immediate Family Member* means spouse (including common law relationship), parent, child, sibling, grandparent, and/or grandchild. These relationships are determined by consanguinity, affinity, adoption, foster care, or legal ward ship.

- (q) *Indian Lands* means Indian lands as defined by IGRA and regulations of the NIGC.
- (r) *Key Employee* means:
 - (1) A person who performs one or more of the following functions: bingo caller, counting room supervisor, chief of security, custodian of gaming supplies or cash, floor manager, pit boss, dealer, croupier, approver of credit, or custodian of gambling devices including persons with access to cash and accounting records within such devices;
 - (2) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year;
 - (3) If not otherwise included, the four most highly compensated persons in the Gaming Operation; or
 - (4) Any other person designated by the Commission or Gaming Board as a key employee.
- (s) *Management Contract* means any contract, subcontract, or collateral agreement between the Tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a Gaming Operation.
- (t) *Management Contractor* means the Person designated by the Management Contract as having management responsibility for the Gaming Operation, or a portion thereof.
- (u) *Minor Traffic Violation* means any violation of law governing the operation of a motor vehicle, if the violation does not result in a fine of more than \$1,000.00, property damage in excess of \$1,000, or personal injury to any natural person involved.
- (v) *NIGC* means the National Indian Gaming Commission.
- (w) *Net Revenue* means gross gaming revenues of the Gaming Operation less:
 - (1) Amounts paid out as, or paid for, prizes; and
 - (2) Total gaming-related operating expenses, including all those expenses of the Gaming Operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.
- (x) *Non-gaming Vendor* means any Person providing any goods and/or services (other than Gaming-Related Services) to the Gaming Operation, Management Contractor or any Gaming Establishment, but excluding any professional legal or accounting services.
- (y) *Person* means any natural person or entity, including but not limited to any partnership, corporation, trust or other legal entity.
- (z) *Principal* means an officer, director, partner, or owner of 10% interest or more in a Gaming Vendor or Non-gaming Vendor.
- (aa) *Primary Management Official* means:
 - (1) The Person having management responsibility for a Management Contract;
 - (2) Any Person who has authority:

- (i) To hire or fire Key Employees; or
 - (ii) To set up working policy for the Gaming Operation;
 - (3) The chief financial officer or other Person who has financial management responsibility;
 - (4) The Gaming Board established to oversee the management and non-regulatory aspects of a Gaming Establishment or Operation; and
 - (5) Any other Person designated by the Commission as a Primary Management Official.
- (bb) *Secretarial Procedures* means Class III Gaming procedures issued by the Secretary of the Interior.
- (cc) *Subject Commission Property* means the Commission Real Property, the Commission Personal Property, and such additional assets as are transferred to or acquired by the Commission.
- (dd) *Tribe* means the Poarch Band of Creek Indians.
- (ee) *Tribal Council* means the nine-member body of the Poarch Band of Creek Indians elected by the General Council.

§ 20-1-4 Gaming Authorized

- (a) Class II and Class III Gaming are hereby authorized to be conducted on the Tribe's Indian Lands; provided, however, that such gaming must be conducted in accordance with the provisions of this Gaming Ordinance and any other applicable laws or regulations.
- (b) No Person shall engage in, conduct or condone any Gaming Activities that are not conducted in accordance with this Gaming Ordinance and any other applicable laws or regulations. Any Person who engages in, conducts or aids with any act of unauthorized gaming on the Tribe's Indian Lands shall be guilty of a class B misdemeanor and shall be prosecuted in any court of competent jurisdiction.

§ 20-1-5 Location of Gaming

- (a) The Commission shall ensure that all Gaming Activities are conducted on Indian Lands.
- (b) The Commission shall ensure that all Gaming Activities conducted on Indian Lands are authorized under tribal and federal law.

§ 20-1-6 Ownership of Gaming

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any Gaming Operation and Gaming Activities authorized by this Gaming Ordinance.

§ 20-1-7 Use of Gaming Revenue

- (a) Net Revenues from any Tribal Gaming Activities shall be used only for the following purposes:

- (1) To fund tribal government operations and programs;
 - (2) To provide for the general welfare of the Tribe and its members;
 - (3) To promote tribal economic development;
 - (4) To donate to charitable organizations; or
 - (5) To help fund operations of local government agencies.
- (b) If the Tribe elects to make per capita payments from the Net Revenues, the Tribe shall authorize such payments only in accordance with the Tribe's Revenue Allocation Ordinance as approved by the Secretary of the Interior.

§ 20-1-8 Environment Public Health and Safety

The construction, maintenance and operation of any Gaming Establishment shall be in a manner that adequately protects the environment, public health and safety, and shall comply with all applicable laws relating to environmental protection and public health and safety including, but not limited to, 25 C.F.R. § 580.

§ 20-1-9 Consent to Jurisdiction

Any Person who applies for a license under this Gaming Ordinance, applies for employment in any Gaming Establishment or Gaming Operation, enters into any contract or agreement related to gaming, or participates in any Gaming Activities on Indian Lands shall be deemed to consent to the civil jurisdiction of the Tribe and the Commission. Nothing in this section shall limit the jurisdiction of the Tribe or the Commission under any circumstances.

§ 20-1-10 Applicable Law

All controversies arising under this Gaming Ordinance or otherwise relating to gaming on Indian Lands shall be resolved in accordance with the laws of the Tribe.

§ 20-1-11 Service of Process

The Attorney General of the Tribe shall be the designated agent for service of process for the Poarch Band of Creek Indians and the Gaming Commission. The NIGC shall be informed of any change in these designations within ten (10) days of such change.

§ 20-1-12 Amendment

Any amendment to this Gaming Ordinance shall be submitted to the NIGC for approval within fifteen (15) days after adoption.

§ 20-1-13 Effective Date

This Gaming Ordinance and all subsequent amendments shall become effective on the date such amendments are approved by the NIGC.

§ 20-1-14 Repeal

Once this Gaming Ordinance is effective, the previous §20 of the Tribal Code, which was originally passed on July 26, 1993 by Tribal Ordinance 93:0021 is repealed in its entirety.

Furthermore, any other prior gaming laws, rules, ordinances or regulations of the Tribe are hereby repealed to the extent that they are inconsistent with this Gaming Ordinance.

§ 20-1-15 Savings Provision

If any provision of this Gaming Ordinance or the application thereof to any Person or circumstance is held invalid, the invalidity shall not effect other provisions or application of the Gaming Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Gaming Ordinance are severable.

CHAPTER 2
POARCH BAND OF CREEK INDIANS
TRIBAL GAMING COMMISSION'S
ORGANIZATION AND PERSONNEL

§ 20-2-1 Commission Established

The Tribal Council hereby establishes the Poarch Band of Creek Indians Tribal Gaming Commission ("Commission") in order to regulate the operation, conduct, and playing of Gaming Activities on the Tribe's Indian Lands. Furthermore, the Tribal Council hereby delegates the authority to manage and oversee the Subject Commission Property to the Commission on behalf of the Tribe and within the limitations set forth in the Tribal Constitution and this Gaming Ordinance. The Commission shall assume control and custody over the Subject Commission Property as it exists on the date that this Gaming Ordinance becomes effective.

§20-2-2 Independence

The Commission shall be and act independently and autonomously from the Tribal Council in all matters within its purview.

§ 20-2-3 Board of Commissioners

(a) Eligibility of Commissioners

- (1) A Commissioner shall be a natural person of at least eighteen (18) years of age.
- (2) A majority of the Commissioners shall be enrolled members of the Poarch Band of Creek Indians.
- (3) A Commissioner must be eligible to be licensed as a Key Employee and Primary Management Official in accordance with §20-7-1.
- (4) Commissioners must complete a background investigation which shall confirm that the Commissioners are persons of good character, honesty, and integrity, and persons whose prior and current activities, criminal record, reputation, habits, and associations (both business and personal) do not pose a threat to the public interest of the Tribe or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or carrying on of the business and financial arrangements incidental to the conduct of gaming.
- (5) A Commissioner must annually obtain a gaming license in accordance with the procedure in §20-2-4.
- (6) No person shall serve on the Commission if such:

- (i) Person is an employee of the Commission, member of the Gaming Board, a tribal judge or justice, or an employee of any Gaming Establishment or the Gaming Operation;
 - (ii) Person is an Immediate Family Member of or living with any Tribal Council member or Gaming Board member;
 - (iii) Person has a direct or indirect financial interest in a Management Contract, other than his or her share of any per capita payment that the Tribe may make;
 - (iv) Person is a Gaming Vendor or Non-gaming Vendor or has a direct or indirect financial interest in a Gaming Vendor's or Non-gaming Vendor's contract with any Gaming Establishment or the Gaming Operation;
 - (v) Person has a direct or indirect financial interest in any Gaming Establishment or the Gaming Operation, other than his or her share of any per capita payment or any stipend or compensation paid for service to the Board of Commissioners; or
 - (vi) Person has been convicted of a felony, embezzlement, theft, robbery, receiving stolen property, fraud, fraudulent use of a credit card, forgery, possession of a forged instrument, bribery, counterfeiting, or falsification or destruction of records.
- (b) Number, Tenure and Nomination of the Commissioners. The number of Commissioners which shall constitute the whole Board of Commissioners shall be five (5). The Tribal Council shall designate annually one Tribal Council member as its representative Commissioner on the Board of Commissioners; the designated Tribal Council representative commissioner shall serve a term of one (1) year. All other Commissioners shall be elected by the Tribal Council and shall initially have staggered four (4) year terms. Commissioners may serve more than one term and may serve consecutive terms. Each Commissioner shall hold office until such Commissioner's successor is selected and qualified.
- (c) Vacancies. Any vacancy occurring in the Board of Commissioners due to the removal or resignation of a Commissioner shall be filled by the Tribal Council following the advertisement of the position for at least thirty (30) days, and the Commissioner shall hold office for the same term as the Commissioner that he or she is replacing (unless removed earlier in accordance with this Gaming Ordinance). If the vacancy is left by a Commissioner who was the designated Tribal Council member, then such vacancy must be filled with a new Tribal Council member.
- (d) Function of the Commission. The business and affairs of the Commission shall be managed by its Board of Commissioners, subject to any limitations set forth in the Tribal Constitution, this Gaming Ordinance, or the Commission bylaws. The Board of Commissioners will determine the manner in which it will exercise authority and responsibility for the management of the Commission and the extent to which such powers will be delegated to committees of the Board of Commissioners. The Board of Commissioners generally shall be responsible for establishing overall policies and objectives for the oversight of the affairs and assets of the Commission, for planning and delegating responsibility, and for periodically reviewing and evaluating results.
- (e) Compensation. The Tribal Council shall set the amount and manner of compensation for performance of the Commissioner's duties in accordance with the established policies and procedures of the Tribe.

§ 20-2-4 Licensing of Commissioners

- (a) Application. Once appointed by the Tribal Council to the Commission, an individual must submit an application containing the same information as set forth in §20-7-2 to the Police Chief.
- (b) Background Investigation. Using the procedures for a background investigation performed on Key Employees, as provided for in §20-7-6, the Public Safety Department shall complete a background investigation on all individuals appointed to the Commission.
- (c) Recommendation to the Tribal Council. Upon completion of the background investigation, the Police Chief, or his designee, shall review the background investigation, determine whether the appointed individual meets the eligibility requirements for Commissioners set forth in §20-2-3(a), and recommend that the Tribal Council approve or deny the license. This recommendation shall be made no later than 30 days from the date the application was submitted.
- (d) Tribal Council Approval. If an appointed individual meets the eligibility requirements for Commissioners set forth in §20-2-3(a), the Tribal Council shall issue the individual a Commissioner's license, and individual shall take his/her position on the Commission.

§ 20-2-5 Removal of Commissioners

- (a) Commissioners may be removed from office by the Tribal Council prior to the expiration of their respective terms only for:
 - (1) Neglect of duty, misconduct, malfeasance, or other acts that would render a Commissioner unqualified for his or her position;
 - (2) Failure at any time to meet the license requirements under this Gaming Ordinance; or
 - (3) Violation of this Gaming Ordinance and any other applicable laws or regulations.
- (b) The Commissioner shall be afforded the opportunity to present written and oral testimony and other evidence to the Tribal Council before it renders a decision on the Commissioner's removal.
- (c) A Commissioner shall not be removed unless the Tribal Council determines that there is clear and convincing evidence of the misconduct or violation.
- (d) The Tribal Council shall make a final decision on removal within ten (10) calendar days from the date of the hearing. The Tribal Council's decision shall be in writing and shall set forth specific findings on each alleged act of misconduct or each alleged violation. The written decision shall be sent to the Commissioner and to the National Indian Gaming Commission.
- (e) A vote of the Tribal Council on the validity of the removal shall be final and not subject to further appeal.

§ 20-2-6 Tribal Gaming Commission Administrator

- (a) The day-to-day activities of the Commission shall be under the direction of the Tribal Gaming Commission Administrator.
- (b) The Board of Commissioners shall select and set the compensation for the Commission's Administrator. However, after the effective date of this Gaming

Ordinance, no employment contract and no modifications or amendments to any employment contract for the Administrator shall be binding upon the Commission or Tribe unless and until it is approved by the Tribal Council.

- (c) The Administrator must be licensed annually. The procedure used for licensing of the Administrator shall be the same procedure used for the Commissioners and outlined in §20-2-4, except that the Administrator's eligibility for a gaming license shall be determined using the eligibility standards for Key Employee and Primary Management Official as set forth in §20-7-1.

§ 20-2-7 Gaming Commission Staff Qualifications

- (a) No member of the Commission staff may be directly or indirectly employed by any Gaming Establishment or the Gaming Operation.
- (b) Commission staff must be licensed annually. The procedure used for licensing Commission staff shall be the same procedure used for the Commissioners and outlined in §20-2-4, except that the Commission staff's eligibility for a gaming license shall be determined using the eligibility standards for Key Employee and Primary Management Official as set forth in §20-7-1.

§ 20-2-8 Commissioners Prohibited from Participating in Tribal Gaming

Neither a Commissioner nor a member of the Commission staff shall be permitted to participate in any Gaming Activities within any of the Tribe's Gaming Establishments except for any such participation engaged in solely for educational, instructional, or investigative purposes.

§ 20-2-9 Penalty for Divulging Certain Information

Any Commissioner or member of the Commission staff who divulges any fact or information coming to his or her knowledge not generally known by the public respecting any aspect of his or her duties as a Commissioner or member of the Commission staff, except insofar as he or she may be authorized by the Commission or a court of competent jurisdiction or a judge thereof, is guilty of a class C misdemeanor. Furthermore, the breach of confidentiality may result in a penalty ranging from censure, suspension, recommendation to the Tribal Council for removal from the Board of Commissioners for a Commissioner, and termination of employment for a member of the Commission's staff.

CHAPTER 3
GAMING COMMISSION'S
POWERS, DUTIES, AND LIMITATIONS

§ 20-3-1 Exclusive Power and Jurisdiction

The rights, powers, authority, jurisdiction, and duties conferred by this Gaming Ordinance upon the Commission shall be exclusive and shall be exercised so far as they may be exercised consistently with the Constitution of the Poarch Band of Creek Indians and all other titles of the Tribal Code.

§ 20-3-2 Powers and Duties of the Commission

The Commission shall have the authority and responsibility to:

- (a) Enforce and administer all provisions of this Gaming Ordinance;
- (b) Ensure that any Person involved with the conduct of Gaming Activities on Indian land is a Person of good character, honesty, and integrity and whose prior

activities, criminal record, if any, and reputation, habits and associations (both business and personal) do not 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, methods, and activities in the conduct of Gaming Activities or the business and financial arrangements incidental to the conduct of any Gaming Establishment or the Gaming Operation;

- (c) Deny, issue, renew, revoke, restrict, suspend, or condition licenses and establish the term for all licenses for all Key Employees, Primary Management Officials, Gaming Establishments, Gaming Vendors, Non-gaming Vendors, and all employees of any Gaming Establishment and Gaming Operation;
- (d) Adopt or promulgate by rule a schedule of fees and charges for services licensing;
- (e) Fingerprint any applicants for licenses as required by this Gaming Ordinance, except for the fingerprinting of the Commissioners;
- (f) Conduct or cause to be conducted any background investigation required by this Gaming Ordinance;
- (g) Require the bonding of Management Contractors, Primary Management Officials, Key Employees, or other employees as deemed necessary;
- (h) Investigate any suspicion of corruption, theft, or fund misappropriation or any violation of this Gaming Ordinance or any other applicable laws or regulations;
- (i) Report any criminal activity discovered to the appropriate law enforcement agency and coordinate investigations and prosecutions with that agency;
- (j) Assess, collect, and maintain a correct and full accounting of any fees, penalties, expenses, or interest as provided for in this Gaming Ordinance and deposit the same into an account to the credit of the Commission;
- (k) Review or cause to be reviewed all financial data, records, and accounts of any Gaming Establishment and the Gaming Operation and inspect any Gaming Establishment as the Commission deems necessary;
- (l) Audit or cause to be audited the expenditures, receipts and reports of any Gaming Establishment and the Gaming Operation as the Commission deems necessary and any gaming employee when reasonable suspicion of theft or corruption exists;
- (m) Require at its discretion any Gaming Establishment or Gaming Operation to allow a Person of the Commission's choosing in any room of any Gaming Establishment or Gaming Operation who shall have a full opportunity to monitor operations at all times the Gaming Establishment or Gaming Operation is in operation;
- (n) Certify that all Gaming Devices purchased, leased or otherwise acquired by any Gaming Establishment or Gaming Operation meet the technical equipment standards set forth by the Commission or NIGC;
- (o) Provide or cause to be provided such information as may be required by this Gaming Ordinance to the NIGC;
- (p) Enforce all provisions of and audit compliance with any document or agreement entered into by the Tribe, any Gaming Establishment, or a Gaming Operation relating to any Gaming Activities;
- (q) Administer and hear all claims made according the §29 of the Tribal Code (Tort Claims Act);

- (r) Investigate and resolve all patron disputes not governed by §29 of the Tribal Code (Tort Claims Act) in accordance with the procedures adopted by the Commission;
- (s) Institute such legal proceedings in the name of the Tribe or the Commission in Tribal Court or any other court as it deems necessary for the enforcement of this Gaming Ordinance;
- (t) Conduct hearings as provided for within this Gaming Ordinance or tribal law;
- (u) Administer oaths and issue subpoenas to compel attendance of witnesses or to produce any documents relevant to the matter before the Ethics Board;
- (v) Prescribe, promulgate, and enforce written rules and regulations not inconsistent with this Gaming Ordinance;
- (w) Maintain the following records and information at the principal office for the Commission:
 - (1) Applications, financial statements, fingerprints, contracts, licenses, suspension and cancellation notices, and all correspondence related to all applicants for licenses issued by the Commission;
 - (2) Meeting minutes from all Commission meetings;
 - (3) Compact or Secretarial Procedures;
 - (4) Reports and documentation relating to tort claims and other patron disputes or other issues that affect the integrity of the Gaming Establishments and Operations;
 - (5) Tribal Council communications and correspondences;
 - (6) A list of certified Gaming Devices located at any Gaming Establishment whether or not such Gaming Devices are in operation; and
 - (7) Any other records or documents the Commission deems necessary or appropriate;
- (x) To waive sovereign immunity against suit, to sue and be sued, to complain and defend in its name, to waive exhaustion of tribal remedies, to accept service of process, to consent to jurisdiction of courts, to forego tribal court jurisdiction, and to consent to arbitration or mediation, but in each case only on behalf of itself and consistent with the limitations set forth in §20-3-3;
- (y) Adopt and amend bylaws, policies, and procedures as are reasonable and necessary, but not inconsistent with this Gaming Ordinance and any other applicable laws or regulations, to effectuate the purposes of this Gaming Ordinance;
- (z) Cause the following to be achieved for the Commission:
 - (1) A written accounting system, approved by an independent certified public accounting firm, shall be established;
 - (2) An inventory of property shall be taken as of the last day of business of each fiscal year of the Commission;
 - (3) An annual financial statement of the operations of the Commission shall be prepared and provided to the Tribal Council;
 - (4) Monthly financial statements shall be prepared and provided to the Tribal Council;

- (5) A proposed budget, which shall constitute a plan of operation, shall be prepared prior to the beginning of each fiscal year and shall be submitted to the Tribal Council for approval; and
- (6) General policies, which shall include, among other appropriate matters, a statement of purpose, a statement of policy, a statement of administrative policies, and a statement of personnel policies, shall be adopted;
- (aa) Enter into agreements, contracts, or similar documents with any governmental agency or with any Person within the limitations established by this Gaming Ordinance;
- (bb) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with Commission Personal Property, or any legal or equitable interest in this property, wherever located;
- (cc) Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of the Subject Commission Property; provided, however, that, with respect to Commission Real Property, the Commission shall obtain the prior written approval of the Tribal Council;
- (dd) Incur liabilities, borrow money and issue temporary or long-term evidence of indebtedness, secured by the Commission Personal Property; provided, however, that with respect to indebtedness in an aggregate principal amount in excess of \$500,000.00, the Commission shall obtain the prior written approval of the Tribal Council;
- (ee) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (ff) Hire employees and agents, and define their compensation;
- (gg) Establish committees as deemed necessary;
- (hh) Transact any lawful business that will aid the Commission and perform any other act not inconsistent with the law that furthers the business and affairs of the Commission; and
- (ii) Take such other actions and issue such orders as the Commission may deem necessary and proper to fully perform its duties and responsibilities under this Gaming Ordinance.

§ 20-3-3 Sovereign Immunity

Except as expressly provided herein, nothing in this Gaming Ordinance shall constitute or be interpreted as a waiver by the Tribe of sovereign immunity from unconsented lawsuits, nor as consent by the Tribe to the bringing of any action against the Tribe, its officers, agents, employees, departments, or business entities. By enacting this Gaming Ordinance, however, the Tribe hereby authorizes the Commission to grant, by specific written agreement with any party, a limited waiver of the Commission's sovereign immunity, but only with respect to itself and only with respect to a contract, claim, or obligation entered into or assumed by the Commission and only up to the contract amount.

§ 20-3-4 Rules and Regulations

- (a) Any rules or regulations the Commission deems necessary to administer this Gaming Ordinance shall be promulgated only upon thirty (30) days notice of the proposed rulemaking action, which shall be provided to the Tribal Council and posted at the tribal offices.

- (b) The notice shall specify the purpose of the proposed regulation, the draft language of the proposed regulation, and the factors the Commission has considered in its determination to enact the proposed regulation, and the address at which the Commission shall receive comments.
- (c) During the notice period the Commission shall receive comments regarding the proposed regulation at the designated mailing address.
- (d) The comments received by the Commission shall be considered by the Commission at a meeting open to all interested persons, and the Commission shall make a final determination regarding the need for the proposed regulation on the basis of all the information available to the Commission. Any final determination of the Commission shall be recorded in writing.

§ 20-3-5 Comity and Concurrent Jurisdiction

The Commission is empowered to seek comity and enforcement of the orders of the Commission by the courts of any other jurisdiction whose assistance may be required to give effect to the orders of the Commission. The Commission is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts of foreign jurisdiction.

§ 20-3-6 Distribution of Revenues

The revenues of the Commission shall be allocated in the manner set forth in Tribal Council Ordinance 07:009, as it may be amended from time to time; provided however, that at such time as the Commission incur indebtedness, the distribution of free cash flow shall be allocated as set forth in financing documents relating to such indebtedness; provided further however, in the event such indebtedness is issued and the documents relating to such indebtedness do not explicitly alter or amend the distribution of cash flow set forth in Tribal Council Ordinance 07:009, then the distribution formula set forth therein shall continue to be effective.

§ 20-3-7 Reports

- (a) The Commission shall submit written quarterly reports to the Council within thirty (30) days after the end of each quarter. Such reports shall contain the following information:
 - (1) A summary of the number and types of licenses issued, denied, suspended, or revoked during the previous quarter;
 - (2) A summary of any events of noncompliance, breach or violations of this Gaming Ordinance or any other applicable laws or regulations; provided, however, that these reports are not the subject of or relating to a pending investigation being conducted by the Commission or a hearing before the Commission;
 - (3) A summary of the number and types patron disputes investigated by the Commission; and
 - (4) All other information which the Commission deems relevant in order to keep the Council informed and current on all gaming regulatory matters.
- (b) Nothing in this section shall authorize or permit the Commission to provide the Tribal Council with any information pertaining to a pending investigation being conducted by the Commission or hearing before the Commission. The Tribe shall

comply with any obligation in a Compact, Secretarial Procedures, or IGRA to provide such reports to the NIGC.

CHAPTER 4
RULES AND REQUIREMENTS

§ 20-4-1 Records and Reports for Gaming Establishments and Operations

- (a) Cash Management and Internal Control System. All Gaming Establishments and Gaming Operations shall have a written cash management and internal control system adequate to safeguard all funds of the Gaming Establishment or Gaming Operation. Such cash management and internal control system shall include procedures relating to the handling of internal bankroll and cash receipts, deposits to the bank accounts of the establishment, disbursements from such bank accounts, and all other necessary accounting and auditing procedures relating thereto. If the cash management and internal control system is established and implemented by an Management Contractor, the Commission shall have the right to approve such system and shall, at any time once implemented, have the right to monitor this system whether directly or through an agent. This includes the right to inspect and examine all accounting records and books of accounting pertaining to the Gaming Establishment or Gaming Operation as well as all source documentation for these records.
- (b) Record Storage. All financial data, records, and accounts are the property of the Tribe and shall be kept on the premises of the Gaming Establishment or Gaming Operation. If off-premises storage is necessary, the Commission shall approve the location. The Commission shall have access, either directly or through an agent to the daily operations of the Gaming Establishment, and shall have the right to verify the daily gross revenues and income earned from all Gaming Activities. The Commission shall also have access to any other gaming-related information the Commission deems appropriate.
- (c) Copies. Upon request, the Commission shall be provided with copies of all documents, reports, or other related paperwork produced in the operation of any Gaming Establishment or Gaming Operation. Such items shall be furnished to the Commission no later than one (1) week after the request is made or no later than one (1) week after the items are produced. These items will include, but not be limited to, verifiable financial reports showing the revenues and expenses of the establishment, balance sheets, operation budgets and projections, tour/bus attendance and compensation, tax reports, and all items completed for the NIGC or any other governmental agency.
- (d) Operational Procedures. All financial and accounting aspects of each Gaming Establishment and Gaming Operation shall be in compliance with the operational procedures of the particular establishment.
- (e) Record Falsification. No Person shall falsify or cause to be falsified any books or records relating to any transaction connected with the conduct of Gaming Activities, any Gaming Establishment, or the Gaming Operation.

§ 20-4-2 Audit of Gaming Establishments and Gaming Operations

- (a) An independent audit, conducted by an outside independent accounting firm approved by the Commission, shall be performed at least annually on each Gaming Establishment and Gaming Operation.
- (b) All gaming related contracts that result in the purchase of supplies, services, or concessions for more than \$25,000 annually, except contracts for professional

legal or accounting services, shall be specifically included within the scope of the audit described in subsection (a).

- (c) The results of the audit described in subsection (a) shall be submitted to the NIGC.

§ 20-4-3 Reporting Criminal Activity

All matters and occurrences which indicate that a criminal act may have occurred in or around any Gaming Establishment shall be reported to the appropriate law enforcement agency and the Commission.

§ 20-4-4 Gaming Machine Fee

A gaming machine fee in an amount established by the Tribal Council shall be paid to the Tribe. This fee shall be guaranteed and shall have priority over all expenses and other cash disbursements including the retirement of development and construction costs.

§ 20-4-5 Prohibited Actions Enumerated

- (a) In addition to those actions or omissions prohibited elsewhere within this Gaming Ordinance, the following actions or omissions are hereby prohibited:
 - (1) No Person shall provide, operate, or conduct any gaming activity in a Gaming Establishment within the exterior boundaries of Indian Land without a gaming license issued by the Tribal Gaming Commission as prescribed by this Gaming Ordinance.
 - (2) No Person shall provide false information in connection with any document or proceeding under this Gaming Ordinance.
 - (3) No Person shall fail to account fully for all monies received, collected, or paid in connection with Gaming Activities.
 - (4) No person under the age of eighteen (18) years shall be permitted to participate in Gaming Activities.
 - (5) No person under the age of eighteen (18) years shall be permitted to work in any Gaming Establishment.
 - (6) No Person shall engage in cheating in any Gaming Activity or in any Gaming Establishment.
 - (7) No Person, other than a law enforcement officer or security personnel, may enter or remain in a Gaming Establishment licensed under this Gaming Ordinance while in the possession of a firearm.
 - (8) No Person shall violate any provision of this Gaming Ordinance or any order of the Tribal Gaming Commission.
 - (9) Any Person who is in privity with a violator shall be deemed to be in violation of this Gaming Ordinance to the same extent as the violator, and shall be treated accordingly.
 - (10) Any Primary Management Official is responsible to ensure that all Key Employees assisting in the operation of any Gaming Activity comply with this Gaming Ordinance.
 - (11) No Person shall:

- (i) Use bogus, counterfeit or substitute cards, or use any game cards that have been tampered with;
 - (ii) Employ or have on one's person any device to facilitate cheating in any Gaming Activity;
 - (iii) Use any fraudulent scheme or technique, including when an operator or player directly or indirectly solicits, provides, or receives inside information of the status of a game for the benefit of either person;
 - (iv) Cause, aid, abet, or conspire to violate any provision of this Gaming Ordinance or any rule adopted under this Gaming Ordinance;
 - (v) Participate, either directly or indirectly, in any activity that would be considered cheating;
- (12) Alcoholic beverages shall not be possessed, sold, or offered for sale on the premises of any Gaming Establishment unless otherwise authorized by the Tribal Council; or
- (13) Except as permitted by the Commission, no Person shall possess, with the intent to use in connection with gaming, either individually, or in privity 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.
- (b) The Commission shall have the authority to subject any Person committing an act or omission as prohibited here or elsewhere within this Gaming Ordinance to a penalty deemed appropriate by the Commission.

CHAPTER 5
MANAGEMENT CONTRACTS

§ 20-5-1 Management Contracts Subject to NIGC Approval

- (a) Application. This section shall only apply to Management Contracts that are subject to NIGC approval under IGRA.
- (b) Approval. No Management Contract, and no modifications, revision, or amendment thereto, shall be binding upon the Tribe unless and until it is approved by the Tribal Council and the NIGC.
- (c) Required Provisions. Any Management Contract, including any modification, revision, or amendment thereto, shall satisfy the requirements of IGRA and any applicable NIGC regulations and shall also include the following:
 - (1) Compliance with Applicable Law Required. Any management contract shall provide that all Gaming Activities covered thereunder shall be conducted in accordance with this Gaming Ordinance and all other applicable laws, regulations, amendments, provisions, and conditions.
 - (2) Identification of Duties and Responsibilities. Any management contract shall identify the duties and responsibilities of each party for each-function as set forth in IGRA and any NIGC regulations.
 - (3) Accounting. Any Management Contract shall provide for the establishment and maintenance of appropriate accounting systems and

procedures that shall, at a minimum, permit the preparation of financial statements in accordance with generally accepted accounting principles, are susceptible to audit, and that permit proper calculation of fees and expenses.

- (4) Reports. Any Management Contractor shall, at its own expense, be required to provide a monthly verifiable financial report to the Tribal Council, the Commission, and if required by IGRA, the Secretary of the Interior and/or NIGC.
- (5) Access. Any Management Contractor shall be required to allow immediate access to the Gaming Operation and Gaming Establishments, including books and records, to individuals designated by Tribal Council resolution, the Commission, the Secretary of the Interior, and/or NIGC, for purposes of verifying the daily gross revenues and income from any Gaming Activity and of verifying compliance with all applicable tribal, federal and state law.
- (6) Guaranteed Minimum Payment. Any Management Contract shall provide for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of any development and construction costs.
- (7) Disputes. Any Management Contract shall include a mechanism to resolve disputes between the Tribe and the Management Contractor.
- (8) Assignments and Subcontracts. Any Management Contract shall indicate that assignment of rights under a Management Contract and subcontracting are not permitted unless approved by the Tribal Council, the Commission, and the NIGC.
- (9) Ownership Interest. Any change in the ownership interest in the Management Contractor shall require advance approval of the Commission and the Tribal Council.
- (10) Prohibited Provisions. A Management Contract shall not transfer or in any other manner convey any interest in the Tribe's lands unless authorized by federal law and unless clearly specified in writing in said Management Contract.

CHAPTER 6
LICENSE REQUIREMENTS AND RESTRICTIONS

§ 20-6-1 Requirement of a License

- (a) Mandatory. The following Persons shall have a license issued by the Commission:
 - (1) All Primary Management Officials, Key Employees, and employees of any Gaming Establishment or Gaming Operation shall obtain a gaming license;
 - (2) Each Gaming Establishment shall obtain a facility license for each class of gaming played within the Gaming Establishment;
 - (3) All Gaming Vendors shall obtain a vendor license;
 - (4) All Non-gaming Vendors shall obtain a vendor license unless otherwise exempt by the Commission; and

- (5) Any other Person that the Commission designates to have a license in order to effectively regulate Gaming Activities on the Tribe's Indian Lands shall obtain a license.
- (b) Permissive. A Principal or employee of a Gaming Vendor or Non-gaming Vendor may be required by the Commission to obtain a license.

§ 20-6-2 Privilege; Conditions

- (a) No applicant has an absolute right to a license. A license is a revocable privilege and no holder thereof acquires any vested right (property or other) therein or thereunder.
- (b) 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.
- (c) Acceptance of a license by the licensee constitutes an agreement on the part of the licensee to be bound by the provisions of this Gaming Ordinance, applicable laws, and applicable rules and regulations as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Commission.
- (d) It is the responsibility of the licensee to remain informed of the contents of this Ordinance and all other applicable laws, rules, regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.

§ 20-6-3 Licenses not Assignable or Transferable

- (a) A gaming license may not be assigned or transferred to another Person, except that the Commission may approve a transfer of a gaming license so that a licensee may transfer his or her employment to another Gaming Establishment or a Gaming Operation or to another type of Gaming Activity (Class II, Class III, or both) without reapplying for a gaming license.
- (b) Facility licenses and Gaming and Non-gaming Vendor licenses may not be assigned or transferred to another facility or vendor.

§ 20-6-4 License Fees

- (a) Annual license fees shall be imposed in accordance with a fee schedule to be established by the Commission.
- (b) In addition to the license fees imposed pursuant to subsection (a), the Commission may impose such fees on 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 Gaming Ordinance. Such costs may be estimated by the Commission and imposed prior to a final Commission action regarding a particular licensee or applicant.
- (c) The amount of these fees may, at any time, be increased by the Commission, provided, however, that any such increase shall not be retroactive.

§ 20-6-5 Credits or Refunds

Any licensee paying a penalty for late filing or failing to file a report for which there is an acceptable explanation may petition the Commission for credit or refund. The petition shall be filed within thirty (30) days after the petitioner knew or should have known that the payment was excusable, but not more than six (6) months after payment in any case.

§ 20-6-6 Suspension and Revocation of Licenses

- (a) If, after issuance of any license, the Commission receives reliable information indicating that a Person does not meet the qualifications for a license, the Commission shall temporarily suspend such license and shall notify the licensee in writing of the suspension and the proposed revocation.
- (b) Before a license can be permanently revoked, a hearing must be held.
- (c) Notification of any revocation of a gaming license of a Primary Management Official or Key Employee shall be provided to the National Indian Gaming Commission.
- (d) The same procedure for revocation shall be followed if such information regarding ineligibility is received initially by the National Indian Gaming Commission.

§ 20-6-7 Retention of Licensing Records

- (a) Any reports obtained from fingerprint processing shall be incorporated into the applicant's license file.
- (b) All license applications, applications for employment, background investigations, if applicable, and any related matters shall be retained by the Commission for the following periods of time:
 - (1) For records relative to Primary Management Officials, Key Employees, and employees of the Gaming Establishments and Gaming Operation, no less than three (3) years after the employment relationship with the Gaming Establishment or Gaming Operation is terminated;
 - (2) For records relative to Gaming Establishments, no less than three (3) years after the Gaming Establishment is no longer in operation; and
 - (3) For records relative to Gaming Vendors and Non-Gaming Vendors, no less than three (3) years after the contractual relationship is terminated.
- (c) All records for employees of Primary Management Officials and Key Employees shall be available for inspection by the NIGC pursuant to lawful requests submitted to the Commission.

CHAPTER 7
GAMING LICENSES

§ 20-7-1 Standard for Issuing a Gaming License

- (a) General Requirements. The Commission may not issue a gaming license to any Person who, based on reliable information, the Commission determines in its sole discretion:

- (1) Has provided materially false or misleading statements to the Commission and/or the NIGC, or has omitted material information from his or her application, or has refused to respond to all requests of the Commission and/or the NIGC for information concerning the applicant's background and activities;
 - (2) Has been convicted (either by plea or by verdict) or has entered a plea of nolo contendere to any felony, any gaming offense, or any misdemeanor involving theft or conversion of property, where such conviction or plea, in the sole discretion of the Commission, jeopardizes the integrity of the Tribe's Gaming Activities;
 - (3) Is a Person whose prior activities, criminal record, if any, and reputation, habits and associations (both business and personal) 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, methods, and activities in the conduct of Gaming Activities or the business and financial arrangements incidental to the conduct of Gaming Operations and Establishments; or
 - (4) Has attempted to interfere or to influence, and/or has interfered and/or influenced, unduly for gain or advantage, any decision or process of the Commission or the Tribe relating to gaming. Undue influence means the use of bribery, blackmail, intimidation, threats of violence, or other improper means to influence governmental actions of the Tribe. Nothing in this section shall be interpreted as preventing a Person from expressing his or her opinions and consulting with members of the Tribe's government, or from responding to inquiries or requests from the Commission or the Tribal Council.
- (b) Primary Management Officials and Key Employees. The Commission may not issue a gaming license to any Primary Management Official or Key Employee who, based on reliable information, the Commission determines in its sole discretion:
- (1) Is not eligible to hold a license in accordance with subsection (a) above;
 - (2) Has a direct or indirect financial interest in any Gaming Establishment or the Gaming Operation, other than his or her share of any per capita payment or any employment compensation; or
 - (3) Has been convicted of a felony, embezzlement, theft, or any other money-related or honesty-related crime (such as fraud).

§ 20-7-2 Application for Gaming License

All Primary Management Officials, Key Employees, and other employees of any Gaming Establishment or Gaming Operation shall submit a completed application, which shall indicate the type of Gaming Activity (Class II, Class III, or both) for which the license is sought, and the application shall include, but not be limited to, the following:

- (a) Full name, other names used (oral or written), date and place of birth, gender, citizenship, social security number(s), all languages either spoken or written, and current business and residence telephone numbers;
- (b) Currently and for the previous five (5) years, business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

- (c) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under subsection (b) above;
- (d) A description of any previous or existing business relationship with any Indian tribe, including ownership interests in those businesses;
- (e) A description of any previous or existing business relationship with the gaming industry in general, including ownership interests in those businesses;
- (f) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (g) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (h) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (i) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding Minor Traffic Violations) within ten (10) years of the date of application, the charge, the name and address of the court involved, and the date and disposition if any;
- (j) For each criminal charge (excluding Minor Traffic Violations), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to subsections (h) or (i), the criminal charge, the name and address of the court involved, and the date and disposition if any;
- (k) A photograph taken within the last year;
- (l) The name of the Gaming Establishment or Gaming Operation that where the applicant will be employed;
- (m) Any other information the Commission deems relevant;
- (n) Fingerprints taken by the Commission that are consistent with 25 C.F.R. §522.2(h);
- (o) The Privacy Act notice required by 25 C.F.R. §556.2(a) and the notices concerning false statements required by 25 C.F.R. §556.3(a); and
- (p) An agreement by the applicant to abide by all conditions of the license; all applicable requirements of IGRA, this Gaming Ordinance, and any Compact or Secretarial Procedures; and any other applicable laws or regulations.

§ 20-7-3 Previous Applications Submitted Without Notices

If the notices required in §20-7-2(o) do not appear on the most current application, the Commission shall notify the Primary Management Official, Key Employee, or other employee in writing that he or she shall either:

- (a) Complete a new application form that contains a Privacy Act notice and the notice regarding false statements; or

- (b) Sign a statement that contains the Privacy Act notice and the notice regarding false statements and consent to the routine uses described in that notice.

§ 20-7-4 Withdrawal of Gaming License Application

An application may not be withdrawn without the permission of the Commission or by a duly authorized person or agent of the Commission. An applicant may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request.

§ 20-7-5 Financial Disclosures

Each applicant who is a Primary Management Official or Key Employee shall be required to provide a financial statement in the form adopted by the Commission, which shall include the applicant's income for the previous five (5) years and sources of that income, as well as all assets and debts of the applicant at the time of the application. The financial statement, if required, shall include copies of all federal income tax returns filed by the applicant during the previous five (5) years.

§ 20-7-6 Licensing Procedure

Once the application described in §20-7-2 is submitted, the Commission shall proceed as follows:

- (a) Fingerprints.
 - (1) Pursuant to 25 C.F.R. § 522.2(h), the Commission shall forward an applicant's fingerprints to the NIGC to be processed by the Federal Bureau of Investigation's National Criminal Information Center for a criminal history check.
 - (2) The Commission may submit an applicant's fingerprints to any additional Tribal, local or state criminal history check system or center as the Commission deems necessary or appropriate.
- (b) Background Investigations. The Commission's staff shall conduct a background investigation on each applicant sufficient to allow the Commission to make an eligibility determination under § 20-7-1 of this Gaming Ordinance. The performance of background investigations and the issuance of gaming licenses shall be in accordance with requirements at least as stringent as 25 C.F.R. Parts 556 and 558. As part of the Commission background investigation, designees of the Commission shall, among other things:
 - (1) Verify the applicant's identity through items such as a social security card, driver's license, birth certificate, or passport;
 - (2) Contact each personal and business reference provided in the application, when possible;
 - (3) Conduct a civil history check;
 - (4) Conduct a criminal history check via the submission of the applicant's fingerprints to the NIGC, and further obtain information from the appropriate court regarding past felony, misdemeanor convictions, and/or criminal charges within the last ten years;
 - (5) Inquire into any previous or existing business relationships with the gaming industry and Indian tribes by contacting the entities or tribes;

- (6) Verify the applicant's history and status with any licensing agency by contacting the agency; and
 - (7) Take other appropriate steps to verify the accuracy of the information, focusing on problem areas noted.
 - (8) In conducting a background investigation, the Commission shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- (c) Investigative Report. The Commission's staff shall create an investigative report on each applicant containing the steps taken in conducting the background investigation, the results obtained, the conclusions reached and the bases for those conclusions. The investigative report shall also contain a recommendation to the Commission's Administrator as to whether the applicant meets the requirements of §20-7-1 of this Gaming Ordinance. Based upon the investigative report, the Commission's Administrator may either grant a license to the applicant or deny the license application.
- (d) Approvals.
- (1) *Key Employees and Primary Management Officials.* If the applicant is a Key Employee or a Primary Management Official and is approved for a gaming license, a temporary gaming license may be issued.
 - (i) The Commission shall forward the investigative report described in §20-7-6(c) to the NIGC within 60 days after a Key Employee or a Primary Management Official begins work.
 - (ii) The NIGC shall have thirty (30) days in which to evaluate the application, request additional information, and notify the Commission of any objections. If additional information is requested, the thirty (30) day period shall be suspended until the NIGC receives such additional information. At the conclusion of the thirty (30) day period, the Commission:
 - (A) May grant a permanent license where no objection is raised by the NIGC; or
 - (B) May reconsider the application taking into consideration any objection of the NIGC.
 - (iii) No Gaming Establishment or Gaming Operation shall employ a Key Employee or a Primary Management Official who does not have a license after 90 days.
 - (2) *Other Employees.* If the applicant is not a Key Employee or a Primary Management Official and is approved for a gaming license, a gaming license shall be issued.
- (e) Denials. If the applicant is denied a gaming license, both the applicant and the NIGC shall be notified by the Commission that the application has been denied. Notification to both parties shall take the form of a written letter summarizing the basic steps taken and where appropriate, a statement as to the reasons(s) why the application was denied. Any temporary license or provisional employment shall be terminated.
- (f) License a Requirement of Employment. Unless written authorization is made by the Commission, no Gaming Establishment or Gaming Operation shall employ a person who does not have a permanent license after ninety (90) days of hire.

- (g) NIGC Inquiry. If after the issuance of a gaming license the Commission receives notice from the NIGC that it has reliable information indicating that a Key Employee or a Primary Management Official is not eligible for employment, the Commission shall suspend the relevant license. The Commission shall notify the licensee in writing of the suspension and proposed revocation. This notice shall also include the time and place for a hearing on the proposed license revocation. After a revocation hearing, the Commission shall decide whether to revoke or reinstate the license and shall notify the NIGC of its decision.

§ 20-7-7 Displaying Gaming License

All Primary Management Officials, Key Employees, and other employees of the Gaming Establishment or Gaming Operation must wear his or her gaming license at all times while in a Gaming Establishment or Gaming Operation so that it can be easily viewed by others.

CHAPTER 8
FACILITY LICENSES

§ 20-8-1 Standard for Issuing a Facility License

- (a) The Commission shall issue a separate license for each type of Gaming Activity (Class II or Class III) to each place, facility, or location on Indian lands where the Tribe elects to allow Gaming Activities, and shall do so according to requirements at least as stringent as those contained in 25 C.F.R. §559. The Commission shall issue a facility license only if the place, facility, or location:
- (1) Is a sound physical structure with adequate and safe plumbing, electrical, heating and cooling and ventilation systems in place and operational;
 - (2) Has been inspected and approved for safety by a building and fire inspector designated by the Commission;
 - (3) Is adequate in all respects to accommodate the Gaming and non-Gaming Activities intended to be carried on within the structure;
 - (4) Is equipped with security and surveillance equipment meeting or exceeding provisions set forth in regulations established by the Commission;
 - (5) Meets all requirements of applicable tribal and federal laws; and
 - (6) Has paid all applicable license fees and costs.
- (b) Violations of any provision of this Gaming Ordinance, applicable rules and regulations, or relevant license provisions by a licensee deemed contrary to the public health, safety, morals, good order and general welfare of the Tribe and its members shall be deemed grounds for denying a facility license or suspension or revocation of a license.

§ 20-8-2 Application for a Facility License

- (a) All Gaming Establishments shall submit a completed application, which shall indicate the type of Gaming Activity (Class II, Class III, or both) for which the license is sought, and the application shall include, but not be limited to, the following:
- (1) The name, physical address, and telephone number of the Gaming Establishment;

- (2) A complete description of the premises at which gaming will be conducted;
 - (3) An agreement by the Gaming Establishment to abide by all conditions of the license, this Gaming Ordinance and any other applicable laws or regulations; and
 - (4) Such other information and details as the Commission may require in order to properly discharge its duties.
- (b) All applications shall be signed by an authorized Gaming Board member if the applicant is a Tribal Gaming Establishment.

§ 20-8-3 Notification of a New Facility

No later than 150 days before the opening of any new Gaming Establishment, notice shall be submitted to the Commission. The notice shall contain:

- (a) The name and address of the property where the Gaming Establishment will be located;
- (b) A legal description of the property where the Gaming Establishment will be located; and
- (c) A copy of the deed to the property where the Gaming Establishment will be located.

§ 20-8-4 Displaying Facility License

Any facility license issued must be displayed by the licensee in a conspicuous public place within the Gaming Establishment so that it may be viewed by patrons.

CHAPTER 9
VENDOR LICENSES

§ 20-9-1 Standard for Vendor Licensing

No gaming license shall be issued to any applicant under this section who is determined by the Commission to be a Person whose prior activities, criminal record, if any, and reputation, habits and associations (both business and personal) 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, methods, and activities in the conduct of Gaming Activities or the business and financial arrangements incidental to the conduct of Gaming Operations and Establishments.

§ 20-9-2 Vendor Applications

- (a) All Gaming Vendors and Non-Gaming Vendors shall submit a completed application, which shall include, but not be limited to, the following:
 - (1) The name of the entity, the type of business organization (partnership, corporation, limited liability company), the physical address and phone number;
 - (2) The names of all Principals;
 - (3) A description of any previous or existing gaming or business relationship with any Indian tribe, including ownership interests in those businesses;

- (4) A description of any previous or existing business relationship with the gaming industry in general, including ownership interests in those businesses;
 - (5) The name and address of any licensing or regulatory agency with which the Gaming Vendor or Non-Gaming Vendor has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - (6) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 - (7) Agreement by the applicant to abide by all conditions of the license, this Gaming Ordinance and any other applicable laws or regulations; and
 - (8) Such other information and details as the Commission may require in order to properly discharge its duties.
- (b) All applications shall be signed by:
- (1) The applicant if the applicant is a natural person;
 - (2) By a member or partner of the applicant if the applicant is an unincorporated association or partnership; or
 - (3) By an executive officer if the applicant is a corporation or by some other individual specifically authorized by the corporation to sign the application, in which case written evidence of authority to bind the applicant shall be attached.

If any change is made in that authority, before or after a license is issued, the Commission shall be immediately informed in writing. Until that information is filed with the Commission, any action of or commitment made by the representative shall be binding upon the applicant.

§ 20-9-3 Withdrawal of Application by Vendor

An application may not be withdrawn without the permission of the Commission or by a duly authorized person or agent of the Commission. A vendor may request to withdraw an application by submitting to the Commission a written request for withdrawal. The Commission retains the right, in its sole discretion, to grant or deny a request.

§ 20-9-4 Background Investigations

- (a) Background investigations may be conducted by the Commission staff on Gaming Vendors, Non-gaming Vendors, and Principals and employees of Gaming Vendors and Non-gaming Vendors.
- (b) Background investigations shall be conducted in a manner which takes all reasonable steps to ensure the confidentiality of the information generated by the investigation, including the identity of each person interviewed in the course of the investigation, as well as the information submitted by the applicant.

§ 20-9-5 Displaying License

All Licenses issued to Principals and employees of Gaming and Non-gaming Vendors must be worn by the licensee at all times while present in the Gaming Establishment or Gaming Operation so that it is easily viewed.

CHAPTER 10
COMPACT OR SECRETARIAL PROCEDURES

§ 20-10-1 Compact with the State of Alabama or Secretarial Procedures

Notwithstanding any provision in this Gaming Ordinance or the rules and regulations promulgated by the Commission, the Commission is hereby directed to comply with the provisions of a Compact or Secretarial Procedures, including, but not limited to, any licensing, approval, or monitoring requirements contained in a Compact or Secretarial Procedures.

§ 20-10-2 Assessments

Notwithstanding any provision in this Gaming Ordinance or the rules and regulations promulgated by the Commission, the Commission is hereby fully empowered to comply with all assessments authorized by the NIGC. Such assessments shall be payable solely from funds of Gaming Operation revenue as an operating expense.

§ 20-10-3 Regulation of the Commission

Notwithstanding any provision in this Gaming Ordinance or the rules and regulations promulgated by the Commission, the Commission is hereby fully empowered and required to comply with all regulations promulgated by the NIGC, including, but not limited to, reporting requirements relating to ordinances, contracts, license applications, background checks, and other information.

CHAPTER 11
HEARINGS, APPEALS, AND ENFORCEMENT

§ 20-11-1 Civil Violations

All matters and occurrences contrary to this Gaming Ordinance or rules and regulations promulgated by the Commission which are not covered under a criminal code shall be deemed to be a civil violation.

§ 20-11-2 Civil Sanctions and Penalties

Based on the severity of the civil violation, the Commission shall determine what sanctions and/or penalties it believes are warranted, including, but not limited to, the following:

- (a) Suspend, restrict, or revoke any licenses issued by the Commission;
- (b) Impose a civil penalty. If such violation is a continuing one, each day of such violation may be deemed a separate offense;
- (c) Require that the Gaming Establishment ban the Person;
- (d) Request that the Person be permanent expelled from Indian Lands in accordance with the provisions in tribal law; and/or

- (e) Any other sanction and/or penalty the Commission deems necessary to carry out the purposes of this Gaming Ordinance; however, the sanction and/or penalty may not violate any applicable laws.

§ 20-11-3 Hearings and Appeals

- (a) Any action or decision taken without a hearing by the Commission may be appealed by any Person aggrieved by a decision made or action taken by filing a petition no later than thirty (30) days after the petitioner knew or should have known of the decision or action. The Commission shall grant a prompt hearing upon receiving such a petition and shall reconsider its decision or action in light of evidence and argument presented at a hearing.
- (b) All license hearings and enforcement hearings shall be conducted by rules and regulations established by the Commission. Furthermore, the Commission shall comply with any hearing procedures and/or requirements set forth in a Class III Compact or Secretarial Procedures.
- (c) In all cases, the licensee or respondent shall, at a minimum, be provided with notice of the proceeding, an opportunity to be present, and an opportunity to present evidence to the Commission and confront and cross-examine witnesses.
- (d) Any dispute resulting from a decision of the Commission may be appealed to the Tribal Court within fourteen (14) days after notification of the Commission's decision is received. The decision of the Commission shall be upheld unless it is arbitrary and capricious, an abuse of discretion, not supported by substantial evidence or unauthorized by law; provided that there shall be de novo review on all questions of law.

§ 20-11-4 Enforcement Actions in Tribal Court

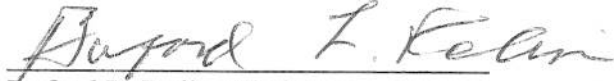
- (a) The Commission may bring an action in the Tribal Court to enforce a civil sanction and/or penalty issued by requesting an order:
 - (1) To seize any Gaming Devices, proceeds or other property of a licensee connected with the Gaming Activities engaged in by the licensee;
 - (2) To garnish any wages or payments from the Tribe to collect any unpaid fees, interest, or penalties;
 - (3) To execute on any nonexempt property of a Person located within the boundaries of Indian Lands; and/or
 - (4) For any other action deemed necessary or appropriate.
- (b) The Tribal Court shall have jurisdiction over any action brought by the Commission to the fullest extent permitted by law and shall have the authority to enforce any and all penalties and/or sanctions provided for within this Gaming Ordinance and elsewhere.

§ 20-11-5 Ex Parte Communications

- (a) Neither the licensee nor any witnesses shall have any oral or written communication regarding any matter before the Commission with the Commissioners. Any such communication shall be reported in writing to the Commission staff who, in turn, will report the communication to the other members of the Commission, so that necessary and appropriate measures may be taken, including, but not limited to, disqualification from participation in the proceedings.

APPROVAL

I, the Chairman of the Poarch Band of Creek Indians, hereby affix my signature to the ordinance authorizing it to become official this 20th day of May, 2010.



Buford L. Rolin, Chairman
Poarch Band of Creek Indians

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Tribal Council meeting of the Poarch Band of Creek Indians, comprised of nine members with 9 in attendance on the 20th day of May, 2010, and that the above is in conformity with the provisions therein adopted by a vote of 9 in favor, and 0 against, 0 abstentions.



David W. Gehman, Secretary
Poarch Band of Creek Indians