



BUENA VISTA RANCHERIA GAMING FACILITY TORT CLAIMS ORDINANCE

The Buena Vista Rancheria of Me-Wuk Indians of California Tribal Council does ordain as follows:

Section 1. Short Title.

This Ordinance shall be known and may be cited as the Buena Vista Rancheria Gaming Facility Tort Claims Ordinance.

Section 2. Purposes.

The purposes of this Ordinance are to establish the extent of liability with respect to Covered Claims, to set forth the Tribe's required Tribal Dispute Process, and to provide for the arbitration of Covered Claims as provided in the Compact.

Section 3. Authority.

The authority for this Ordinance is VI, § 1(b) and (e) of the Constitution of the Buena Vista Rancheria of Me-Wuk Indians of California.

Section 4. Scope.

This Ordinance governs all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility (collectively, a "Covered Claim"). Covered Claim shall not include a claim or controversy arising out of, connected with, or relating to an alleged breach or violation of any covenant, obligation, or agreement in connection with a financing or borrowing related to the Gaming Facility in which the Tribe or any agency, authority, or instrumentality of the Tribe is the borrower or issuer, including any issuance by the Tribe or any agency, authority, or instrumentality of the Tribe of any debt security, the documentation of which financing, borrowing or issuance refers such claims to other courts, other laws, and/or other jurisdictions. Nothing in the foregoing shall be read, however, to limit any claims that maybe brought as Covered Claims if so desired by a non-tribal party and permitted by the relevant documentation.

Section 5. Definitions.

“Compact” means the tribal-state gaming compact entered into between the Tribe and the State of California as of September 10, 1999, as amended August 23, 2004.

“Covered Claim” means all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe’s land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, which claims are brought in accordance with this Ordinance.

“Gaming Activities” has the meaning given to it in Section 2.4 of the Compact.

“Gaming Facility” has the meaning given to it in Section 2.8 of the Compact.

“JAMS” refers to “Jams, The Resolution Experts,” formerly known as “Judicial Arbitration and Mediation Services, Inc ”

“Ordinance” means the Buena Vista Rancheria Gaming Facility Tort Claims Ordinance.

“Policy” means the insurance policy referred to in Section 8 below.

“Tribal Council” or “Council” means the governing body of the Tribe pursuant to the Constitution of the Buena Vista Rancheria of Me-Wuk Indians of California.

“Tribal Court” means the courts of the Tribe or other dispute resolution forum of the Tribe, including the Tribal Council.

“Tribal Dispute Process” means the process set out in Section 9 of this Ordinance.

“Tribe” means the Buena Vista Rancheria of Me-Wuk Indians of California.

Section 6. Claims; Exclusive Remedy.

This Ordinance provides the exclusive process with respect to Covered Claims, which remedies include only the exhaustion of the Tribal Dispute Process and/or the arbitration of claims as provided in this Ordinance.

Section 7. Claims Governed by California Law.

California tort law shall govern all Covered Claims, except that California law governing punitive damages shall not apply to Covered Claims.

Section 8. Maximum Extent of Liability.

The Tribe shall obtain and maintain a commercial general liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher ("Policy") which provides coverage of no less than Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, pursuant to Section 10 below, the Tribe waives its right to assert sovereign immunity up to the limits of the Policy in limited respect to any Covered Claim. The Policy shall acknowledge that the Tribe has waived its right to assert sovereign immunity for the limited purpose of arbitration of Covered Claims up to the limits of the Policy and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to said limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the policy limits.

Section 9. Tribal Dispute Process.

- (a) **Dispute Process Required.** In order to be entitled to consideration of a remedy pursuant to this Ordinance, a person who is injured, damaged or otherwise suffers loss and asserts a claim must pursue the claim in the form and manner prescribed in this Ordinance.
- (b) **Notice of Tribal Dispute Process.** Upon notice that a claimant claims to have suffered an injury or damage covered by this Ordinance, the Tribal Court shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within one hundred eighty (180) days to first exhaust the Tribal Dispute Process set out in this Section 9, and if dissatisfied with the resulting resolution, such claimant is entitled to arbitrate his or her claim in accordance with this Ordinance, which notification shall be prominently displayed on the front page of said notice.
- (c) **Time for Presentation of Claims.** The claimant must bring his or her claim, in the form and manner provided in subsection (e) below, to the Tribal Court within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process; if a claim is made within 180 days, the arbitration under Section 10 of this Ordinance shall be stayed until the completion of the Tribal Dispute Process.
- (d) **Contents of Claim.** A claim shall be presented to the Tribal Court by the claimant or by a person acting on his or her behalf and shall include all of the following: (a) the name and post office address of the claimant; (b) the post office address to which the person presenting the claim desires notices to be sent; (c) the date, place and other circumstances of the occurrence or transaction giving rise to the claim asserted; (d) a general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; (e) the name or names of the Tribal employee or employees, if any,

causing the injury, damage, or loss, if known; (f) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed; and (g) a notarized signature of claimant or by some person on claimant's behalf.

- (e) Grant or Denial of Claim. The Tribal Court shall grant or deny the claim within sixty (60) days after it is presented to the Tribal Court. The claimant and the Tribal Court may extend the period within which the Tribal Court is required to act on the claim by written agreement made before the expiration of such period. If the Tribal Court fails or refuses to act on this claim within the time prescribed by this Section, the claim shall be deemed to have been denied on the sixtieth (60th) day or, if the period within which the Tribal Court is required is extended by agreement, pursuant to this Section, the last day of the period specified in such agreement.
- (f) Service of Notice. The Tribal Court's written notice of the rejection of the claim, delivered by personal service or certified mail, return receipt requested, to the claimant, is deemed a rejection of the claim under this Ordinance.
- (g) No Waiver. Nothing in this Section 9 shall be construed as a general waiver of sovereign immunity of the Tribe or any of its enterprises, officers, agents, or employees, except as expressly provided below in Section 10. The acceptance or consideration by the Tribal Court of a claim pursuant to this Section 9, or any resulting award, judgment, or order resulting therefrom, shall not be construed as or considered a waiver of the Tribe's sovereign immunity from suit.

Section 10. Limited Waiver of Sovereign Immunity; Arbitration.

- (a) Limited Waiver. Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Tribe or any of its enterprises, officers, agents, or employees, except with respect to the arbitration of such claims, but only up to the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the Policy limits.
- (b) Binding Arbitration. The Tribe consents to binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy; provided that (i) discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure, that (ii) the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that (iii) any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or

if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. This limited waiver of sovereign immunity for arbitration applies in connection with the arbitrator's jurisdiction and in any action to: (a) enforce the parties' obligation to arbitrate, (b) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (c) enforce or execute a judgment based upon said award.

- (c) No Attorney Fees or Punitive Damages. Nothing herein shall be construed as authorizing the award of attorney fees or punitive damages as against the Tribe or any of its enterprises, officers, agents or employees.
- (d) Award Limited to Policy Limits. The Tribe shall not be obligated to pay any award that is not covered by, or that exceeds the policy limits of, the Tribe's liability insurance. The Tribe's insurer shall pay any cognizable award in the same manner and at the same time as judgments rendered in the courts of the State of California.

Section 8. Miscellaneous.

- (a) To the extent reasonable, this Ordinance shall be read and interpreted in a manner that is consistent with the Constitution of the Tribe, but in the event of an inconsistency, the Constitution shall control.
- (b) Subject to subsection (a) of this Section, all provisions of any law, statute, ordinance, resolution, or action of the Tribe, except the Constitution, that are inconsistent with or that would frustrate the intent of this Ordinance are hereby repealed.
- (c) This Ordinance shall become effective as the law of the Tribe for all purposes on the date of its enactment, and may be amended only by duly enacted resolution of the Tribal Council.