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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Shingle Springs Band of Miwok Indians Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

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SUMMARY: This notice publishes the Liquor Ordinance of the Shingle Springs Band of Miwok Indians. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Shingle Springs Indian Rancheria tribal land. The tribal land is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their tribal land, and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: Effective Date: This Ordinance is effective December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Doka Jr., Tribal Operations Officer, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, Telephone (916) 978-6067; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240; Telephone (202) 513-7627; Fax (202) 501-0679.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the Federal

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Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Tribal Council for the Shingle Springs Band of Miwok Indians adopted this Liquor Ordinance on May 17, 2008. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Shingle Springs Band of Miwok Indians tribal land. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs. I certify that this Liquor Control Ordinance of the Shingle Springs Band of Miwok Indians was duly adopted by the Tribal Council on May 17, 2008.

Dated: November 24, 2008.  
George T. Skibine,  
Acting Deputy Assistant Secretary for Policy and Economic Development.  
The Liquor Ordinance for the Shingle Springs Band of Miwok Indians  
reads as follows:

#### Shingle Springs Liquor Ordinance

#### Article 1. Declaration of Findings and Purpose

Sec. 1. Title. This ordinance shall be known as the Shingle Springs Liquor Ordinance.

Sec. 2. Findings and Purpose.

(a) The introduction, possession, and sale of liquor on the Tribal Lands of the Shingle Springs Band of Miwok Indians ('`Tribe'') are matters of special concern to the Tribe.

(b) The Tribe is the beneficial owner of the Shingle Springs Rancheria, upon which it plans to construct and operate a casino and related entertainment and lodging facilities, which will be an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

(c) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C. 1161).

(d) Pursuant to Article III of the Tribe's Articles of Association, the Shingle Springs Tribal Council (Tribal Council) is the governing body of the Tribe. Pursuant to Article VI of the Articles of Association, the Tribal Council is empowered to manage, lease, and operate all unassigned Tribal Lands, to charter tribal enterprises, corporations, and associations, to administer tribal assets and manage all economic affairs and enterprises of the Tribe, and to exercise the Tribe's inherent sovereign authority for the protection of public health and safety, including regulation of the conduct of all persons who enter the jurisdiction of the Tribe.

(e) Pursuant to Article I of the Tribe's Articles of Association, the territorial jurisdiction of the Tribe extends to all lands which now and hereafter comprise the Shingle Springs Rancheria.

(f) The Tribal Council has, by its Ordinance Establishing and Governing the Shingle Springs Tribal Gaming Authority (Gaming Authority Ordinance), created an independent governmental agency of the Tribe, the Shingle Springs Tribal Gaming Authority (Gaming Authority), and conferred upon it the full authority of the Tribe to own and operate the Foothill Oaks Casino and related entertainment and lodging facilities (collectively Casino), except for the regulatory powers retained by the Tribal Council and Tribal Gaming Commission as set forth in the Shingle Springs Gaming Ordinance approved by the National Indian Gaming Commission, and any regulations promulgated thereunder.

(g) The Tribal Council finds that a complete ban on liquor within the Shingle Springs Rancheria is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within Tribal Lands because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the

tribe, to protect the health and welfare of tribal members and members of the public on Tribal Lands, and to address specific tribal concerns relating to alcohol use on Tribal Lands.

(h) The enactment of a tribal ordinance governing the possession and sale of liquor on Tribal Land will enhance the ability of the tribal government to control liquor distribution and possession on the Shingle Springs Rancheria, and, at the same time, will provide an important source of revenue for the continued operation of the tribal government and the delivery of essential tribal governmental and social services.

(i) Tribal regulation of the sale, possession, and consumption of liquor on Tribal Lands is necessary to protect the health, security, and general welfare of the Shingle Springs Band and members of the public on Tribal Lands. In order to further these goals and to provide for a needed additional source of governmental revenue, the Tribal Council adopts this Ordinance. This Ordinance shall be liberally construed to fulfill the purposes for which it has been adopted.

## Article II. Definitions

Sec. 1. As used in this Ordinance, the following words shall have the following meanings unless the context clearly indicates otherwise.

(a) Alcohol. Means ethyl alcohol, ethanol, hydrated oxide of ethyl, or spirits of wine, in any form, and regardless of source or the process used for its production.

(b) Alcoholic Beverage. Means any liquid or solid that contains alcohol in an amount not less than one-half of one percent by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) Beer. Means any alcoholic beverage obtained by the fermentation of an infusion or decoction, or both, of barley, malt, hops or any other similar product(s), including any cereal(s) or carbohydrates or products prepared therefrom, or any combination thereof, in potable water, with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption, and includes products such as ale, stout, brown, porter and lager, but not sake (also known as rice wine).

(d) Bottle. Means any container, irrespective of the material from which the container is made, that contains liquor.

(e) Liquor. Means any alcoholic beverage, as defined in this Article.

(f) Minor. For purposes of this Ordinance only, means an individual who is less than twenty-one (21) years old.

(g) Package. Means any container or receptacle used for holding liquor.

(h) Sale and Sell. Means the transfer for consideration of any kind, including by means of exchange or barter.

(i) Spirits. Means any alcoholic beverage which has an alcohol content that exceeds twenty-four percent of the total volume of that alcoholic beverage.

(j) Tribal Land(s). Means any land, and any building, structure or other object thereon, within the exterior boundaries of the Shingle Springs Rancheria held in trust by the United States for the use and occupancy of the Shingle Springs Band.

(k) Wine. Means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other suitable agricultural products containing not more than twenty-four

percent of alcohol by volume, and includes all imitation, other than standard, or artificial product sold as wine, including vermouth, port, sherry, muscatel, angelica and sake or other products referred to as rice wine, regardless of whether such products have been fortified with wine spirits, so long as such product does not contain more than twenty-four percent of alcohol by volume.

#### Article III. Tribal Liquor Authority

Sec. 1. There is hereby established the Tribal Liquor Authority (Authority) which shall have the following powers and responsibilities:

(a) To administer this Ordinance by exercising general control, management, and supervision of all liquor sales, places of sale, and sales outlets as well as exercising all powers necessary to accomplish the purposes of this Ordinance.

(b) To publish and enforce rules and regulations adopted by the Tribal Council in furtherance of the purposes of this Ordinance and the performance of the Authority's administrative functions, and to recommend appropriate rules and regulations to the Tribal Council.

(c) To bring suit in the appropriate court to enforce the provisions of this Ordinance with the consent of the Tribal Council. In so doing, the Authority shall not, without the specific consent of the Tribal Council, waive the Tribe's immunity from suit.

(d) To assume the full authority and responsibility of the Tribe with respect to the lawful sale and consumption of liquor on Tribal Land, including the authority to issue permits (including permits issued to the Gaming Authority or other Tribal entities) for the sale of liquor on Tribal Land, subject to compliance with applicable State of California licensing requirements.

(e) To make such reports as may be required by the Tribal Council.

(f) To collect taxes and fees levied or set by the Tribal Council, and to keep accurate records, books, and accounts thereof.

(g) To exercise such other powers as may be delegated to the Authority by the Tribal Council.

Sec. 2. Designation of Tribal Liquor Authority. In furtherance of this Ordinance, and until otherwise designated by the Tribal Council, the members of the Gaming Authority shall also serve as the members of the Authority.

Sec. 3. Limitation on Powers, Gratuities.

(a) The members of the Authority shall not accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor.

(b) In the exercise of its powers and duties, the Authority and its individual members shall not waive the immunity of the Tribe from suit without the express consent of the Tribal Council, except as authorized by the Gaming Authority Ordinance.

Sec. 4. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Authority at all reasonable times for the purposes of ascertaining compliance with this Ordinance, any other ordinance governing liquor on Tribal Land, or any rule or regulation adopted by the Tribal Council in furtherance of the purposes of this Ordinance or such other ordinance governing liquor.

#### Article IV. Sales of Liquor

Sec. 1. Limitations on Sales. No sale of any alcoholic beverage shall be made on Tribal Land except pursuant to a permit issued by the Authority.

Sec. 2. All Sales Cash. All liquor sales on Tribal Land shall be on a cash only basis and no credit shall be extended to any person, organization, or entity; provided, however, that this provision shall not prevent payment by means of a check or by the use of a debit card or a credit card of a type generally accepted by merchants as a means of making payment for a purchase of liquor.

Sec. 3. All Sales for Personal Use. All sales shall be for personal use and consumption, and not for resale. Resale of any alcoholic beverage purchased on Tribal Land is prohibited.

#### Article V. Taxes

Sec. 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on Tribal Land in the amount of 7.25% of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on Tribal Land.

Sec. 2. Payment and Distribution of Taxes. All taxes from the sale of alcoholic beverages on Tribal Land shall be paid over to the General Treasury of the Tribe and be subject to use or distribution by the Tribal Council.

#### Article VI. Illegal Activities and Enforcement

##### Sec. 1. Violations.

(a) Illegal Sale of Liquor by Drink or Bottle. It shall be a violation of this Ordinance for any person to sell any liquor on Tribal Land, whether by the drink or by the bottle, except as otherwise provided in this Ordinance.

(b) Illegal Sale, Transportation or Production. It shall be a violation of this Ordinance for any person to sell or offer for sale, transport in any manner, or produce any liquor on Tribal Land except in accordance with this Ordinance.

(c) Illegal Purchase of Liquor. It shall be a violation of this Ordinance for any person to buy liquor on Tribal Land from any person other than pursuant to a permit issued by the Authority.

(d) Illegal Possession of Liquor--Intent to Sell. It shall be a violation of this Ordinance for any person to keep or possess liquor upon his or her person or in any place or on premises conducted or maintained by him or her as a principal or agent with the intent to sell that liquor contrary to the provisions of this Ordinance. In any proceeding under this Ordinance, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this Ordinance.

(e) Sales to Persons Apparently Intoxicated. It shall be a violation of this Ordinance for any person to sell liquor to a person who appears intoxicated.

(f) Possession and Use of Liquor by Minors. Except in the case of liquor administered or validly prescribed by a physician or dentist for medicinal purposes, it shall be a violation of this Ordinance for any person under the age of twenty-one (21) to consume, acquire, or have in his or her possession any alcoholic beverage.

(g) Furnishing Liquor to Minors. It shall be a violation of this Ordinance for any person to furnish to a person under the age of

twenty-one (21) or to permit any person under the age of twenty-one (21) to consume liquor on his or her premises or on any premises under his or her control, except in those special situations set forth in Section 1(f) of this Article.

(h) Sale of Liquor to Minors. It shall be a violation of this Ordinance for any person to sell any liquor to any person under the age of twenty-one (21) years.

(i) Unlawful Transfer of Identification. It shall be a violation of this Ordinance for any person to transfer in any manner to a minor identification of any type, including identification of the types listed in Section 3 of this Article, for the purpose of enabling such minor to obtain liquor.

(j) Possession or Use of False or Altered Identification. It shall be a violation of this Ordinance for any person under the age of twenty-one (21) years to attempt to purchase an alcoholic beverage through the use of false or altered identification which purports to show that the individual is twenty-one (21) years of age or older, or to possess such false or altered

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identification for the purpose of purchasing an alcoholic beverage.

Sec. 2. General Penalties. Any person found to have violated this Ordinance shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) for the first such violation. The Authority may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members and to patrons of the Tribe's business establishment(s). Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar (\$500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may be imposed by federal, state or Tribal law.

Sec. 3. Identification--Proof of Minimum Age. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present anyone of the following officially issued cards of identification which shows correct age and bears his/her signature and photograph:

(a) A valid driver's license or identification card issued by any State.

(b) United States Active Duty Military identification.

(c) Passport.

Sec. 4. Contraband. Any alcoholic beverage possessed contrary to the terms of this Ordinance is declared to be contraband. Any tribal officer, employee, or other agent of any kind who is authorized by the Tribal Council to enforce this Ordinance shall seize all such contraband, and shall preserve that contraband or cause it to be preserved in accordance with the provisions established for the preservation of impounded property under applicable Tribal law, or, in the absence of such Tribal law, under California law. Upon being found in violation of this Ordinance by the Tribal Court, or in the absence of a Tribal Court by a majority of the Tribal Council, the party from whom the contraband was seized shall forfeit all right, title and interest in the item(s) seized, which shall become the property of the Tribe.

## Article VII. Abatement

Sec. 1. Declaration of Nuisance. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance or of any other tribal law or regulation relating to the manufacture, importation, transportation, possession, distribution, or sale of liquor, and all property kept in and used in maintaining such place, are hereby declared to be a common nuisance.

Sec. 2. Institution of Action.

The Chair of the Authority or, if the Chair of the Authority fails or refuses to do so, the Chair of the Tribal Council, shall institute and maintain an action in the proper court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this Ordinance. Restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum (but in any event not less than \$10,000) payable to the Tribe and conditioned that liquor thereafter will not be manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this Ordinance or any other applicable Tribal law, and that such person will pay all fines, costs and damages assessed for any violation of this Ordinance or any other Tribal law or regulation pertaining to alcohol. If any condition of the bond be violated, the whole amount may be recovered for the use of the Tribe.

Sec. 3. Prima Facie Evidence of Nuisance. In all cases where any person has been found responsible for a violation of this Ordinance relating to the manufacture, importation, transportation, possession, distribution, or sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Ordinance and violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

## Article VIII. Severability and Effective Date

Sec. 1. If any provision or application of this Ordinance is determined by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Sec. 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the Federal Register.

Sec. 3. Any and all prior enactments of the Tribal Council which are inconsistent with the provisions of this Ordinance are hereby rescinded.

Sec. 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1161.

## Article IX. Amendment

This Ordinance may be amended only by a majority vote of the Tribal Council.

[FR Doc. E8-28800 Filed 12-4-08; 8:45 am]

BILLING CODE 4310-4J-P