

- (i) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.
- (ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.
- (iii) The off-reservation environmental effects of a Project will cause substantial adverse effects on human beings, either directly or indirectly.

For purposes of this definition, reservation refers to Indian lands within the meaning of IGRA or lands otherwise held for the Tribe in trust by the United States.

(c) "Interested Persons" means (i) all local, State, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the project or would exercise authority over the natural resources that may be affected by the project, or (ii) persons, groups, or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe or the County.

#### **Section 10.8.8. Intergovernmental Agreements.**

(a) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the County, the Tribe shall offer to commence negotiations with the County, and upon the County's acceptance of the Tribe's offer, shall negotiate with the County and shall enter into an enforceable written agreement with the County with respect to the matters set forth below:

- (i) Timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.
- (ii) Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
- (iii) Reasonable compensation for programs designed to address gambling addiction.
- (iv) Mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.

(b) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the State Gaming Agency, the Tribe shall negotiate with the State Department of Transportation or other agency designated by the Governor (the "State Designated Agency") and shall enter into an enforceable written agreement with the State Department of Transportation or the State Designated Agency to timely mitigate the off-reservation traffic impacts of the Project on the State highway system and facilities, where such impacts are attributable, in whole or in part, to the Project. The State Department of Transportation shall have authority to enter into such agreement with the Tribe in order to implement this subdivision.

**Section 10.8.9. Arbitration.** In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably

prevented from commencing a Project and benefiting therefrom, if either an intergovernmental agreement with the County or an intergovernmental agreement with the State Department of Transportation (or State Designated Agency) is not entered within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe and the County, or Tribe and the State Department of Transportation (or State Designated Agency) (for purposes of this Section "the parties") may mutually agree in writing, any party that has not reached agreement may demand binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation of its respective agreement:

(a) The arbitration shall be conducted as follows: Each party shall exchange with the other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to Section 10.8.8. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment unless the parties agree to extend the time. As between the Tribe and the County, or the Tribe and the State Department of Transportation (or State Designated Agency), the arbitrator shall be limited to awarding only one or the other of the two offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Off-Reservation Environment and on public safety (or in the case of the negotiations under Section 10.8.8, subdivision (b), which best provides feasible mitigation of the off-reservation traffic impacts of the Project on the State highway system and facilities) and most reasonably compensates for public services pursuant to Section 10.8.8, without unduly interfering with the principal objectives of the Project or imposing mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County and/or the State Department of Transportation (or State Designated Agency) to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If a respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor.

(b) Review of the resulting arbitration award is waived.

(c) In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

### ***VIII. LICENSURE OF FINANCIAL SOURCES***

**Section 6.4.6 is repealed and replaced by the following:**

#### **Section 6.4.6. Financial Sources.**

(a) Subject to subdivision (e) of this Section 6.4.6, any person or entity extending financing, directly or indirectly, to a Tribe for a Gaming Facility or a Gaming Operation (a "Financial Source") shall be licensed by the Tribal Gaming Agency prior to extending that financing.

(b) A license issued under this Section shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal.

(c) Any agreement between the Tribe and a Financial Source shall include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal.

(d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming