CRIMINAL BACKGROUND CHECK REGULATIONS

1.0 Purpose

The purpose of these regulations is to provide detail and procedure to implement Sitka Tribe of Alaska's Criminal Background Check Ordinance, (codified at Sitka Tribal Code; Title 01; Chapter 04; Criminal Background Check Ordinance) (referred to hereinafter as CBC ordinance).

2.0 Authority

The authority for the creation of these regulations is contained in STC 01.04.06 (CBC Ordinance, Section 6).

3.0 Definitions

(a) Adjudication committee consists of three individuals appointed by the General Manager for one year terms. If the adjudicating official determines that a member of the adjudication committee has a conflict of interest to review any specific appeal, the adjudicating official will bring this fact to the General Manager, who will appoint a new member of the adjudication committee.

(b) Adjudicating official is the person designated by the General Manager to review background investigations to determine whether an individual is suitable for employment. The adjudicating official must be well-qualified and trained, thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability, and must also be found suitable for employment.

4.0 List of Affected Positions

(a) **Employment**

(1) The General Manager will develop and maintain a list of employment positions which are covered under Section 4 of the CBC Ordinance (01.04.04) according to the definition of position listed in Section 3 of the CBC Ordinance. The list will delineate the following categories:

(A) Positions which are screened for a sex offense
(B) Positions with regular contact, or control over Indian children
(C) Positions authorized to carry a firearm
(D) Positions that handle cash
(E) Positions within STA's Charitable gaming operation

(2) Each time a new employment position is created, or a job description is re-written, a review of the job description will be conducted by the General Manager to determine if the position fits into one of these categories. The minimum

requirements for criminal background screening will then be indicated on the job description.

(b) **Contracts**

Each time a new contract is contemplated, the attorney will review the contract subject matter and determine if the contracted position is within the definition of "position" contained in Section 3 of the CBC Ordinance, because the contractor (1) will work with children, (2) will interact with the public or (3) act as spokesperson for STA. If so, the tribal attorney will determine what level of screening the contracted position will be subject to, and draft appropriate contract language detailing the pre-contracting background screening requirement

(c) **Volunteers**

The General Manager will determine which volunteer positions fit the definition of "position" as defined in Section 3 of the CBC Ordinance, and will maintain a list of types of volunteers which will require background screening. The list will cover volunteer positions which (1) work with children, (2) interact with the public, or (3) act as spokesperson for STA.

5.0 Application for Employment or Volunteering

(a) **Employment Application**

(1) Prior to being employed at Sitka Tribe of Alaska, each individual shall fill out a STA employment application.

(2) The employment application shall ask (a) whether the applicant has ever been arrested or convicted of a sex offense, (b) the disposition of the arrest or charge (c) require that the applicant sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application, and (d) inform the applicant that a criminal history record check is a condition of employment and require the applicant consent, in writing, to a record check.

(b) **Volunteer and Contractor Application**

(1) Prior to volunteering or contracting for a position which (1) work with children, (2) interact with the public, or (3) act as spokesperson for STA, each individual shall fill out a STA volunteer and contractor application.

(2) No volunteer or contractor will be allowed to have regular contact or control over Indian Children, unless the individual has also filled out an application for suitability, submits fingerprints to STA and has been deemed suitable for such position.

(c) Supplemental Employment Application

In addition to an employment or volunteer application, any applicant applying for a position which requires more than a screening for a sex offense, and volunteers and contractors that have regular contact, or control over Indian children, shall also fill out the applicable portions of the supplemental employment application. The supplemental employment application will ask

(A) whether the applicant has been arrested or convicted of any crime, and the disposition of the arrest or charge;

(B) in the case of a position under the "Indian Child Protection and Family Violence Prevention Act" or a position which is authorized to carry a firearm, other questions applicable to the individual's suitability;

(C) require that the applicant or volunteer sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and

(D) inform the applicant or volunteer that a criminal history record check is a condition of employment and require that the applicant or volunteer consent in writing to a record check.

6.0 Background Investigation

(a) Information Collection

(1) Prior to offering an employment position that will only be screened for a sexual offense, the Administrative Services Director shall forward the name of the selected individual, the position the individual has applied for, and the individual's employment application to the adjudicating official for review.

(2) Prior to offering an employment position that is listed as a position with regular contact or control over Indian children, the Administrative Services Director will obtain (a) a supplemental employment application, and (c) fingerprint cards. The Administrative Services Director shall forward the supplemental employment application, a copy of the employment application, and the position the individual has applied for to the adjudicating official for review.

(3) Prior to offering an employment position that is listed as a position which is authorized to carry firearms, handle cash or within STA's charitable gaming operation, the Administrative Services Director will obtain a supplemental employment application. The Administrative Services Director shall forward the supplemental employment application, a copy of the employment application, and the position the individual has applied for to the adjudicating official for review.

(4) For contractors or volunteers listed under Section 4 of these regulations, the individual must submit a STA volunteer and contractor application to the adjudicating official for review. If a contractor or volunteer will have regular contact, or control over Indian children, the volunteer or contractor must also submit a supplemental employment application and fingerprint cards to the adjudicating official for review.

(b) Background Research

(1) Upon receipt of information, the adjudicating official will review the information provided for completeness and accuracy, and conduct a National Search for Sex Offenses listed in the individual's name.

(2) The adjudicating official's research will include

(A) screen for crimes, charges or other activities, as detailed in Section 4 of the CBC ordinance;

(B) Review of the supplemental employment application and the employment application to compare information provided;

(C)Review of written records obtained via criminal record checks; and

(D) Review of the FBI Fingerprint Check for the individual, if applicable.

(3) The Tribal attorney will complete a Criminal background investigation screening form, and develop a supplemental memo if necessary.

7.0 Adjudication

(a) General policy. Adjudication requires uniform evaluation to ensure fair and consistent judgment. Each case is judge on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past. The adjudicating official must consider prior conduct in light of: (a) the nature and seriousness of the conduct in question, (b) the recency and circumstances surrounding the conduct in question, (c) the age of the individual at the time of the incident, (d) societal conditions that may have contributed to the nature of the conduct, and (e) the probability that the individual will continue the type of behavior in question.

(b) Procedure.

(1) If the criminal background investigation reveals no crimes or activities indicating the individual may be unsuitable for employment, the adjudicating official will draft letter indicating that

(A) the individual is suitable for employment,
(B) the individual is responsible to report any charges or convictions while employed at Sitka Tribe of Alaska to his or her immediate supervisor, as required by Section 5 of the CBC ordinance; and
(C) for positions that involve regular contact, or control over Indian children, that the determination is conditional upon the receipt of the FBI Fingerprint Check.

(2) If a criminal background investigation reveals that the individual is not suitable for employment under applicable standards, the adjudicating official will draft a letter

(A) summarizing how the outcome of the background check prohibits employment, volunteering or contracting with Sitka Tribe for the position applied for,
(B) summarizing the reasoning of the decision (the crime committed or charged, and the standard),
(C) defining the limited scope of the decision.
(D) that includes an opportunity to refute, deny or explain the factual basis of this determination as provided in Section 7 of this policy.
(E) will not release the actual background investigative report to the applicant.

(3) All letters sent to prospective employees under this section will be signed by the adjudicating official, and mailed directly to the prospective employee. If the individual is a prospective or current employee, a copy will be forwarded to the Administrative Services Director for the individual's personnel file. Letters which serve as notice that an individual is not suitable for employment will be mailed certified mail, return receipt requested.

(4) The results of the investigation cannot be used for any other purpose other than to determine suitability for employment, volunteering or contracting.

8.0 Appeal Process

(a) An applicant will be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation. The applicant, volunteer or employee must file an appeal of the adjudicating official's decision within seven days of the receipt of the letter indicating that the individual is not suitable for employment. The appeal must be directed to the adjudicating official.

(b) Upon receipt of the appeal, the adjudicating official will forward the appeal to the adjudication committee. The adjudication committee will hold a hearing where the individual can provide additional information refuting the convictions within five working days of the provision of the information relied upon. If the adjudication committee determines that the information relied upon by the adjudicating official, was false, inaccurate or incomplete, and that in fact the conviction, charge, or activity barring the individual from employment did not occur, then the adjudication committee will so issue a decision. If the adjudication committee determines that the adjudicating official's decision was correct, the adjudication committee will issue such a decision The adjudication committee must issue a decision within five working days of the hearing. The adjudication committee's decision will be final with no further right of appeal.

(c) The individual who is the subject of a background investigation may obtain a copy of the reports from the originating agency and challenge the accuracy and completeness of any information maintained by that agency.

9.0 Confidentiality and Records

(a) All information gathered by the adjudicating official for purposes of criminal background checks will be held in confidence, and will not be discussed or released by anyone who rightfully has access to the information, without the express written consent of the individual.

(b) The criminal background investigation screening form and all records related to the criminal background check review process will be retained by the adjudicating official in a locked filing cabinet. Access to the files contained therein shall be limited to the adjudicating official, or in his or her absence, the General Manager.

9.0 Date of Enactment and Amendment

These regulations were approved by the Legislative Affairs Committee on February 11, 2008 by a vote of 4 for 0against, 0 abstentions and 1 absent.

Revisions to these regulations were approved by the Legislative Affairs Committee on June 2, 2008 by a vote of 3 for, 0 against, 1 absent and 0 abstentions.