



**SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS**

**TITLE 10
LIQUOR CONTROL**

REVISED and ADOPTED January 29, 2016

Tribal Council Resolution #01-29-16-02

Previous Liquor Ordinances Repealed

**Shoalwater Bay Indian Tribe
Code of Laws**



**TITLE 10
LIQUOR CONTROL**

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**Shoalwater Bay Indian Tribe
Code of Laws**



**TITLE 10
LIQUOR CONTROL**

Chapter 10.1 General Provisions

Section 10.1.01 Title

This Title shall be cited as the tribal “Liquor Control” code of the Shoalwater Bay Indian Tribe.

Section 10.1.02 Authority

This title is enacted pursuant to the Tribe’s inherent sovereignty and pursuant to the provisions of the Shoalwater Bay Tribal Constitution, Article VI, Powers of the Tribal Council, Section 1. Enumerated Powers, subsections (e),(f) and (x) and in conformity with the applicable laws of the State of Washington to the extent required under 18 U.S. C. § 1161.

Section 10.1.03 Relation to Other Tribal Laws

Prior liquor control ordinances enacted in 1979 and 1987 are hereby repealed. Chapter 2.06 of the Shoalwater Bay Code of Laws shall remain in effect but, if there is a conflict, this Title shall control.

Section 10.1.04 Definitions

The definitions related to this Title are as follows:

- A. Alcoholic Beverage: Shall mean any intoxicating liquor, spirits, beer, or any wine, as defined under the provisions of this Title or other applicable law or regulation;
- B. Council: Shall mean the Tribal Council of the Shoalwater Bay Indian Tribe;
- C. Legal Age: Shall mean the age requirements as defined in this Title;
- D. Liquor Store: Shall mean any store established by the Tribe for the sale of alcoholic beverages or any entity licensed by the Tribe to sell alcoholic beverages;
- E. On-Site Licensee: Shall mean the Shoalwater Bay Indian Tribe or its duly authorized

licensee when it sells, or keeps for sale, any alcoholic beverage authorized under this Title for consumption on the premises where sold;

F. On-Site Sale: Shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold;

G. Sale: Shall include the exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor, spirits, alcoholic beverage, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also includes a sale or selling within an area of tribal jurisdiction to a foreign consignee or his or her agent.

H. Reservation: means the Shoalwater Bay Indian Reservation.

I. Shoalwater Bay Indian country shall mean all lands to fullest extent of applicable law under the control of the Tribe as well as all trust land owned by the Tribe both on and off of its Reservation.

J. Transaction: Shall mean any transfer of any bagged, bottled, boxed, canned or kegged alcoholic beverage, or the transfer of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage from any liquor store, on-site dealer or vendor to any person; and

K. Tribe: means the Shoalwater Bay Indian Tribe.

L. Tribal Court: means the Shoalwater Bay Tribal Court.

M. Tribal Council or Council: means the Shoalwater Bay Tribal Council

N. Trust land: means all land held in trust or restricted fee status by the United States on behalf of the Shoalwater Bay Indian Tribe;

O. Vendor: Shall mean any person employed or under the supervision by and of a liquor store or on-site dealer who conducts sales or transactions involving alcoholic beverages.

Chapter 10.2 Tribal Control of Alcoholic Beverages

Section 10.2.01 General Prohibition

It shall be a violation of Tribal law to manufacture for sale, sell, offer, or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Title.

Section 10.2.02 Tribal Control of Alcoholic Beverages

The Tribal Council shall have the sole and exclusive right to authorize the importation of alcoholic beverages for sale or other exchange or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverage into the Shoalwater Bay Indian Country and into trust land, which includes the Reservation and trust lands of the Tribe, wherever situated, unless authorized by the Tribal Council.

Section 10.2.03 Regulatory Authority of Tribal Council

In furtherance of this Title, the Tribal Council shall have the following powers and duties:

- (a.) To promulgate rules and regulations governing the sale, manufacture, distribution, licensing and possession of alcoholic beverages on the Reservation;
- (b.) To issue such licenses and permits as it deems appropriate permitting the sale or manufacture or distribution of liquor, for retail or wholesale, and to revoke such licenses;
- (c.) To employ such managers, accountants, security personnel, inspectors, and such other personnel as it shall determine necessary to allow the Tribal Council to perform its functions;
- (d.) To charter or create such tribal enterprises, divisions, corporations or other entities as it shall determine necessary to sell, possess, manufacture, or exchange alcoholic beverages as provided in Chapter 10.3 hereunder and elsewhere in Tribal law;
- (e.) To do all other things necessary and proper to fulfill this Title and duties, rights and responsibilities it has hereunder.

Chapter 10.3 Tribal Liquor Store Enterprise

Section 10.3.01 Tribal Liquor Enterprise

In addition to any other licensed outlets under Chapter 10.4 of this Code, the Council may establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a Tribal liquor store or stores for the retail sale or wholesale of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by any Tribal liquor store and may set such other regulations as it deems appropriate to regulate the Store.

Chapter 10.4 Liquor Licenses and Permits

Section 10.4.01 Retail License

The Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a retail establishment or establishments for storage and on-site consumption of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these on-site dealers.

Section 10.4.02 Grocery License

The Tribal Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a grocery or groceries for storage and sale of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these groceries.

Section 10.4.03 Special Occasion License

The Council may issue a license or licenses for the consumption of alcoholic beverages at special events at specific times and places and under such conditions as it may deem appropriate by regulation. Such special events may include but not be limited to banquets, fund raisers, and private parties.

Section 10.4.04 Wholesale License

The Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, an establishment for the sale or distribution of alcoholic beverages at wholesale in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these distributors.

Section 10.4.05 Other Licenses and Permits

The Council may issue such other licenses and permits for alcohol or alcoholic beverages as it deems appropriate. Such additional licenses and permits may be issued pursuant to Tribally issued regulations determining the terms and conditions as the Council may determine.

Section 10.4.06 Regulation and Control

Section 10.4.06.1

Applications for licenses or permits shall be subject to such conditions, fees, and restrictions on these licenses or permits as the Council shall deem appropriate. Applications shall be submitted on the prescribed form to the Council or its authorized employees. The Council may, at its sole discretion and subject to the conditions of this Code and other tribal laws and regulations, issue or refuse to issue any license permit upon payment of the prescribed fee.

Section 10.4.06.2

For the purpose of considering any application for a license or permit, the Council may cause an inspection of the premises to be made and may inquire into all matters with the construction and operation of the premises.

Section 10.4.06.3

No license shall be issued to:

- (a.) A person who is not a member of the Shoalwater Bay Indian Tribe;
- (b.) A partnership entity unless each partner is qualified to obtain a license, as provided in this section;
- (c.) A corporation or other entity unless all shareholders or owners are members of the Tribe;
- (d.) A person whose place or business is conducted by a manager or agent, unless such manager or agent is also an enrolled member of the Tribe;
- (e.) A person who has been convicted of a felony within five years prior to filing his or her application;
- (f.) A person who has been convicted of a violation of any federal, state or tribal law concerning the manufacture, possession or sale of alcoholic beverages within the last five years or has forfeited his or her bond to appear in court within the preceding five years to answer charges for such violation; or
- (g.) A person who is less than twenty-one years of age.

In conformity with State and federal law, the requirements of subparagraphs (a) through (f) may be waived by the Tribal Council for special occasion licenses.

Section 10.4.06.4

Every license shall be issued in the name of the applicant and no license shall be transferable, nor shall the holder thereof allow any other person to use the license.

Section 10.4.06.5

Before the Council shall issue any license notice of the application shall be posted in public places and comments shall be received on the application for period of twenty (20) days at the Shoalwater Bay Tribal office.

Section 10.4.06.6

Before the Council shall issue any license it shall give due consideration to the location of the business.

Section 10.4.06.7

All licenses issued by the Tribe shall be posted in a conspicuous place on the licensed premises.

Section 10.4.06.8 Inspection Following License

(a.) All licensed premises used in the storage or sale of alcoholic beverages, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, shall at all times be open to inspection by any tribal inspector or tribal police officer authorized by the Council to do such inspection.

(b.) Every person, being on any such premises and having charge thereof, who refuses to admit a tribal inspector or tribal police officer demanding to enter therein pursuant to authority herein, or who obstructs or attempts to obstruct the entry of such inspector or tribal police officer, or who refuses to allow the inspector to examine the books of the licensee, or who refuses to or neglects to make any return required by this Code or the regulations passed pursuant thereto, shall be deemed to be in violation of this Code.

Section 10.4.06.9 Suspension and Cancellation

(a.) The Council may, for violation of this Code, suspend or cancel any license or permit; and all rights to keep or sell alcoholic beverages thereunder shall be suspended or terminated as the case may be.

(b.) Prior to cancellation or suspension the Council shall send notice of its intent to cancel or suspend to the licensee or permit holder. A license or a permit is a privilege and no person shall have a vested right to one. The Council shall give

at least ten (10) days notice of such cancellation or suspension. The licensee shall have the right, prior to cancellation or suspension date, to apply to the Tribal Court for a hearing to determine whether the license was rightfully suspended or cancelled. The sovereign immunity of the Shoalwater Bay Tribe is waived for this hearing to seek declaratory and injunctive relief; provide that this waiver shall not waive sovereign immunity to allow the award of money damages, attorneys fees or cost against the Tribe nor to grant any other relief other than a declaratory and injunctive relief nor shall it be construed to waiver sovereign immunity for suit in any court other than Tribal Court. This waiver shall not apply to a denial of an application for a license nor to a refusal to renew an expired license.

Section 10.4.06.10 Expiration of License

No license or permit shall be for a period longer than a year and may be for a shorter period at the discretion of the Tribe. Unless sooner cancelled, every license or permit issued by the Council shall expire at midnight on the thirtieth day of the fiscal year for which it was issued. Licenses issued less than six months before that date shall only cost one-half of the annual fee.

Chapter 10.5 State of Washington Licenses and Agreements

Section 10.5.01 State of Washington Licenses and Agreements

The Council or operator may negotiate at their discretion an agreement with the State of Washington or obtain a State of Washington liquor license or licenses for any purpose including any tribally operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages to allow the Tribe or its licensees to sell liquor in Indian Country or within trust land under the Tribe's control.

Chapter 10.6 Disputes; Violations; Penalties

Section 10.6.01 Disputes with Licensees; Violations; Penalties; Exclusive Tribal Court Jurisdiction

Any disputes or violations that arise under this Title shall be resolved by mediation or by a suit in Tribal Court, which shall have exclusive civil and criminal jurisdiction for actions arising under or to enforce this Title.

Chapter 10.7 Applicability of State Law

Section 10.07.01 Applicability of State Law

The Council and its agents shall act in conformity with Washington State laws regarding the liquor transactions to the extent required by applicable federal law, including 18 U.S.C. §1161.

Chapter 10.8 Illegal Activities

Section 10.8.01 Persons Under 21 Years of Age: Restrictions

- (a.) No person under the age of 21 years shall purchase or possess alcoholic beverages in any establishment operating pursuant to the provisions of this Title.
- (b.) No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under their control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this Title for each and every drink so consumed;
- (c.) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Title for each such sale or drink provided;
- (d.) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Title;
- (e.) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Title.

Section 10.8.02 Restrictions on Intoxicated Persons

No Tribally operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

Section 10.8.03 Hours and Days of Sale

No Tribally operated or licensed establishment shall sell or furnish alcoholic beverages for on-site purposes during hours or on days not in compliance with applicable law.

Section 10.8.04 Illegal Sales or Purchase

- (a.) Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this Title, or who shall operate or shall have liquor for sale in their possession without a license, shall be guilty of a violation of this Title subjecting them to civil fines assessed by the Tribal Council;

(b.) Any person within the boundaries of the reservation or trust land of the Tribe who buys liquor from any person other than a properly licensed facility or the Tribal Enterprise shall be guilty of a violation of this Title;

(c.) Any person who keeps or possesses liquor upon their person or in any place or on premises conducted or maintained by their principal or agent with the intent to sell or distribute it contrary to the provisions of this Title, shall be guilty of a violation of this Title;

(d.) Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense under this Title. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Title.

Section 10.8.06 Identification

When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature, and photograph. Official documentation includes one of the following:

(a.) Valid driver's license, identification, or enrollment card issued by any Tribe or State department of motor vehicles;

(b.) United States Active Duty Military Identification;

(c.) Liquor control authority card of identification of any state; or

(d.) Passport.

Section 10.8.07 Contraband

(a.) Liquor which is possessed, including for sale, contrary to the terms of this Title is declared to be contraband. Any Tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property; and

(b.) Upon being found in violation of the Title, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Section 10.8.08 Tribal Liquor Stamp

(a.) No liquor, other than beer and wine, sold pursuant to a tribal license shall be sold on the Shoalwater Bay Indian Reservation, in Indian Country or on trust land unless there shall be affixed a stamp of the Shoalwater Bay Tribal Council.

Any sales made in violation of this provision shall be remedied as set out in this Title. All liquor other than beer and wine sold pursuant to a tribal license not so stamped which is sold or held for sale, is hereby declared contraband and, in addition to any penalties imposed by the Court in violation of this section, it may be confiscated and forfeited in accordance with procedures herein.

(b.) No person other than an employee of the Tribe shall keep or have in his or her possession any legal seal prescribed under this Code unless the same is attached to a package which has been purchased from a tribal liquor outlet, nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this Code or calculated to deceive by its resemblance to any official seal or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked. Any person violating this provision shall be in violation of this Title.

Section 10.8.09 Defense to Action for Sale to Minors

It shall be a defense to a suit for serving alcoholic beverages to a person under twenty-one years of age if such a person has presented a card of identification.

(a.) In addition to the presentation by the holder and verification of such card of identification, the seller shall require the person whose age may be in question to sign a card and place a date and number of this card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee at or before the close of business on the day on which the statement is executed, in the file box contained containing a suitable alphabetical index and the card shall be subject to examination by any tribal peace officer or employee of the Tribe at all times.

(b.) Such card in the possession of a licensee may be offered as defense in any hearing by the Tribal Court for serving liquor to the person who signed the card and may be considered by the Court as evidence that the licensee acted in good faith.

Section 10.8.10 Civil Fines

Any person guilty of a violation of this Title or any regulation shall be liable to pay the Tribe the amount of \$500 per violation plus costs as civil damages to defray the Tribe's cost of enforcement of this Title when there is no other penalty specifically provided.

Section 10.8.11 Enforcement

(a.) In any proceeding under this Title, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Title.

(b.) The Shoalwater Bay Tribal Court shall have jurisdiction over any case brought by the Tribe for violations of this Code. The Tribal Court may, in addition to the above penalty, grant to the Tribe such other relief as may be necessary and proper for the enforcement of this Code, including but not limited to injunctive relief against acts in violation of this Code.

Section 10.8.12 Abatement

(a.) 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 Title or of any other Tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance;

(b.) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council may institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this Title. The Tribe shall not be required to give bond to maintain this action. In addition to all other remedies at Tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than \$25,000 payable to the Tribe and on the condition that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this Title or of any other applicable Tribal law and that they will pay all fines, costs and damages assessed against them for any violation of this Title. If any conditions of the bond be violated, the bond may be recovered for the use of the Tribe; and

(c.) In all cases where any person has been found in violation of this Title relating to the manufacture, importation, transportation, possession, distribution, and 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 Title and violation of this Title shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Chapter 10.9 Tribal Taxation

Section 10.9.01 Taxation

(a.) The power to levy taxes under the provisions of this Title is vested exclusively with the Tribal Council.

(b.) All revenues received, funds collected, and property acquired by the Shoalwater Bay Tribal Council or by the Shoalwater Bay Tribal Enterprise

pursuant to this Code shall be the property of the Shoalwater Bay Indian Tribe. The net proceeds shall be paid through the tribal treasurer in the general tribal fund of the Shoalwater Bay Indian Tribe for the general governmental services of the Tribe.

Section 10.9.02 Liquor Sales Excise Tax

(a.) There is hereby levied and shall be collected a tax upon each sale of liquor, except beer and wine, whatever package or container, in the amount of three (3) cents per fluid ounce or fraction thereof contained in such package or container.

(b.) There is hereby levied and shall be collected a tax upon each sale of beer or wine in the amount of five percent (5%) of the selling price.

(c.) These excise taxes shall be added to the sale price of the liquor sold and shall be paid by the buyer to the Shoalwater Bay Liquor Enterprise or the licensed or permitted tribal seller who shall collect the same and hold those taxes in trust until collected by the Shoalwater Bay Tribal treasurer. The taxes provided for herein shall be the only taxes applicable to the activities of the Shoalwater Bay Liquor Enterprise.

(d.) All tax revenues shall be transferred to the Tribal treasurer for deposit in the tribal tax fund for the benefit of the Shoalwater Bay Indian Tribe. In appropriating from those tax revenues, the Council shall give priority to :

(1.) Strengthening tribal government which shall include but not be limited to strengthening tribal court and law enforcement systems and the system for administering and enforcing this Code.

(2.) Fire protection, roads, and water and sewage services.

(3.) Health, education, and other social services, and land acquisition and development needs. The Council shall have the sole discretion to determine which of the above priorities shall receive an appropriation and the amount of the appropriation for a given priority.

(e.) The Enterprise and retail licensees shall keep such records required by the Tribal treasurer to determine the amount of taxes owing and shall complete the tax returns in accordance with instructions from the Tribal treasurer.

(f.) Amendments to the amounts and types of taxes levied on the sale of liquor may be made from time to time by regulation by the Shoalwater Bay Tribal Council.

Chapter 10.10 Construction

Section 10.10.01 Severability

If any part of this Title or the application thereof to any party, person, or entity or to any circumstances shall be held invalid for any reason whatsoever, the remainder of the Title shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Section 10.10.02 Amendment or Repeal of Title

This Title may be amended or repealed by a majority vote of the Tribal Council.

Section 10.10.03 Sovereign Immunity

Nothing in this Title is intended to nor shall be construed as a waiver of the sovereign immunity of the Shoalwater Bay Indian Tribe except as provided in section 10.04.06.9 above.

Section 10.10.04 Effective Date

This Title shall be effective upon the date that the Secretary of the Interior certifies this Title and publishes it in the Federal Register.

Section 10.10.05 Jurisdiction

Notwithstanding anything in this Title to the contrary, nothing herein is intended to nor shall be construed as a grant of jurisdiction from the Shoalwater Bay Indian Tribe to the State of Washington beyond that provided expressly by applicable law. The Tribe shall operate in conformity with State law and Tribal law to the extent required pursuant to 18 U.S.C. § 1161.



SHOALWATER BAY INDIAN TRIBE

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SHOALWATER BAY INDIAN TRIBE RESOLUTION 01-29-16-02

Summary: Title 10 Liquor Control Ordinance adopted & repealing 1979/1987 Ordinances.

WHEREAS, The Shoalwater Bay Indian Tribe (the "Tribe") is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in Tokeland, State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Tribe in accordance with the Shoalwater Bay Indian Tribe Constitution and By-laws with the powers set forth in Article VI, Section 1 of the Constitution; and

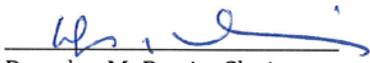
WHEREAS, The Shoalwater Bay Tribal Council enacted liquor ordinances in 1979 and 1987 which the Council intends to repeal, and enact this new liquor ordinance Title 10 – Liquor Control in the Shoalwater Bay Tribal Code;

NOW THEREFORE BE IT RESOLVED, the liquor ordinance, attached as Exhibit A, is hereby adopted and incorporated as Title 10 of the Shoalwater Bay Tribal Code of Laws.

BE IT FURTHER RESOLVED, that the liquor ordinances enacted by the Shoalwater Bay Tribal Council in 1979 (Resolution No: 02-22-79-07) and 1987 (Resolution No: 10-29-87-35) are hereby repealed.

CERTIFICATION

This Resolution was passed at a Regular Meeting of the Shoalwater Bay Tribal Council on January 29, 2016, at which a quorum was present by a vote of 5 FOR
0 AGAINST 0 ABSTENTION.


Douglas M. Davis, Chairman
Shoalwater Bay Tribal Council

Attest:


Lynn Clark, Secretary
Shoalwater Bay Tribal Council