

**AMENDED MEMORANDUM OF AGREEMENT
BETWEEN
THE SHOALWATER BAY INDIAN TRIBE
AND
THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD
CONCERNING AUTHORIZATION OF LIQUOR SALES.**

I. Parties

The Parties to this Memorandum of Agreement ("MOA") are the Shoalwater Bay Indian Tribe ("Tribe"), and the Washington State Liquor and Cannabis Board (the "Board") (each a "Party," collectively "the Parties").

The Shoalwater Bay Indian Tribe is a federally recognized Indian tribe possessed of the full sovereign powers of a government. The Tribe and its wholly-owned enterprises operate on the Tribe's reservation and trust lands (hereafter "Indian Country").

The Washington State Liquor and Cannabis Board is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to liquor regulation under Title 66 RCW.

II. Purpose

The introduction, possession and sale of liquor in Indian Country have, for more than 150 years, been clearly recognized as matters of special concern to Indian tribes and to the United States federal government. Federal law currently prohibits the introduction of liquor into Indian Country, leaving tribes the decision regarding when and to what extent liquor transactions will be permitted. After serious deliberation, the Tribe has determined that present day circumstances make a complete ban of liquor within Indian Country ineffective and unrealistic. At the same time, the need still exists for strict regulation and control over liquor distribution. The Parties share a strong interest in ensuring that liquor sales in Indian Country are well-regulated to protect public safety and community interests. The Parties have entered into this MOA in order to strengthen their ability to meet these mutual interests.

The Parties acknowledge that pursuant to federal law, 18 U.S.C. § 1161, the federal prohibition on sale of liquor in Indian Country does not apply to any act or transaction within any area of Indian Country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the Federal Register. The Tribe has such an ordinance in place, published in the Federal Register June 1, 2018.

The Parties further acknowledge that within the framework of federal Indian law, tribal law and state law, there are uncertainties and unsettled issues regarding jurisdiction, licensing, taxation, enforcement and other matters essential to the proper regulation of liquor sales in Indian Country.

The Parties therefore agree that it is in the best interests of the Tribe, and the Board, on behalf of the State of Washington, to enter into an agreement to provide certainty and cooperation in this area of mutual concern.

This MOA is intended to provide a general framework for government-to-government cooperation and coordination regarding the sale of liquor by the Tribe and its wholly-owned enterprises in Indian Country.

III. Definitions

- A. "Board" means the Liquor and Cannabis Board and its staff.
- B. "Indian Country" means the lands of the Shoalwater Bay Indian Tribe as defined by 18 U.S.C. § 1151, including the Tribe's Indian Reservation and all lands held in trust or restricted fee status by the United States for the Tribe or its Tribal Members.
- C. "STC" means the Shoalwater Bay Tribal Code.
- D. "MOA" means this Memorandum of Agreement.
- E. "Parties" means the Board and Tribe.
- F. "Tribal Enterprises" means a wholly-owned business enterprise of the Tribe, including, but not limited to Willapa Bay Enterprises.
- G. "Tribal Member" means an enrolled member of the Shoalwater Bay Indian Tribe.
- H. "Tribally-Licensed Business" means a business licensed, but not wholly-owned, by the Tribe pursuant to the STC.
- I. "Tribe" means the Shoalwater Bay Indian Tribe.

IV. Terms of Agreement

- A. References to Laws, Rules and Policies. References herein to Tribal ordinances, Tribal and State laws, and to Tribal, State, and Board rules and policies, include the ordinances, laws, rules, and policies in existence as of the effective date of this MOA, together with any amendments that may be adopted during the term of the MOA. References herein to specific titles, chapters, or sections of the Tribal Code, the Revised Code of Washington, or the Washington Administrative Code, include the cited titles, chapters, and sections as they exist on the effective date of this MOA, together with any amendments or renumbering that may be adopted during the term of this MOA.
- B. Liquor Licensing.
 - 1. Tribe and Tribal Enterprises. The Parties agree that the State's licensing process does not sufficiently address unique jurisdictional and other matters that arise in Indian Country under federal and tribal law and that the Parties have a longstanding disagreement with respect to the application of state law to Tribal liquor sales. Therefore, the Parties agree that in lieu of obtaining and/or maintaining one or more state licenses for the sale of liquor in Indian Country, the Tribe and its Tribal Enterprises will hereafter make liquor sales in Indian Country pursuant to the terms of this MOA.

2. Tribal Members and Tribally-Licensed Businesses. Tribal Members and Tribally-Licensed Businesses located in Indian Country will comply with all applicable State licensure requirements and State law, and prior to issuance of any State license, will obtain approval from the Tribe to sell liquor in Indian Country pursuant to STC. No enterprise owned and operated by a Tribal Member or Tribally-Licensed Business will be considered a "location" for purposes of this MOA.

C. Location of Sales.

1. Current Locations. The Tribe and its Tribal Enterprises currently make liquor sales in Indian Country at the locations and in the manner specified below. For purposes of the Board's implementation of this MOA, the Board has assigned license number 081516 to this MOA, which functions as the equivalent of an umbrella license for the locations specified below.

a) Shoalwater Bay Casino

License Type: Spirits/Beer/Wine Restaurant/Lounge with Catering
Endorsement
Address: 4112 State Route 105, Tokeland, WA 98590

b) Georgetown Station Convenience Store

License Type: Grocery Store- Beer/Wine
4115 State Route 105 Tokeland, WA 98590

c) Smoke N' Spirits

License Type: Spirits Retail
4112 State Route 105 Suite B Tokeland, WA 98590

The Parties agree that liquor sales currently allowed under this MOA as specified above, as well as additional liquor sales not currently authorized under this MOA that the Tribe and its Tribal Enterprises may wish to add or modify at this or other locations in Indian Country in the future, will hereafter be governed by the terms of this MOA in lieu of otherwise applicable state law.

2. New Locations or Expansion of Current Locations. The Tribe and its Tribal Enterprises may amend or expand the locations where liquor is sold and/or served as listed in subsection (IV)(B)(1) in accordance with the terms set forth in this MOA. The Tribe and its Tribal Enterprise will notify the Board in writing of the addition of a new location for sale or service of alcohol and/or the addition of privileges at an existing location. For new locations within the footprint of an existing facility or for the addition of privileges at an existing location, said notification will be provided at least 30 days prior to the effective date of said change. For new locations outside the footprint of an existing facility, said notification will be provided at least 60 days prior to the effective date of said change. The information to be provided will include:

- a) The identity of the entity which is operating the facility;
- b) Location of the premises;
- c) Certification that the premises is located in Indian Country;
- d) Certification to the Board by the Tribe that it has adequately addressed the issues necessary to prevent the misuse of alcohol and prevent minor access to alcohol at the locations pursuant to subsection (D)(2) and (3) below; and
- e) An update to the Operating Plan referenced in subsection (D)(2) and (3) below.
- f) If the new location is outside the original footprint, identify how the location will be policed, i.e., tribal police or other law enforcement agency for service calls or regular patrols.
- g) If the new location has off-premises sales and there is a drive through window, the Tribe will provide written verification that no liquor sales will take place through said drive through window.

The Board will then do the following:

- a) Determine if the additional location necessitates fee re-negotiation.
- b) Notify the appropriate parties in Enforcement to determine impact.

3. Notice to Local Jurisdictions. Without resolving jurisdictional questions that may arise, the Board and the Tribe agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the opening of a new location where liquor sales will be made.

- a) When the Tribe or its Tribal Enterprises proposes to open an additional location at a new and unique address in Indian Country, the Board will provide written notice to the county in which the sales will occur. The Tribe agrees to make contact with the county about the new location. The Board and the Tribe agree that the primary purpose of the contact/notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding

that such notice related to Indian Country is primarily a matter of intergovernmental courtesy.

- b) When any other business operating in Indian Country applies for a liquor license, the Board agrees that such license will not be granted without the business first obtaining express written consent of and licensure by the Tribe, as required by the STC.

D. Tribal Authority and Jurisdiction.

1. Conditions. Without determining the scope of the legal authority of either Party to regulate the sale of liquor by the Tribe in Indian Country, the Parties agree that it is in the mutual interest of the Tribe and the Board that the Tribe and its Tribal Enterprises be authorized to sell liquor under the terms of this MOA. Therefore, when the following conditions are met, the Board agrees that for the purposes of Title 66 RCW, and related provisions of state law, the Tribe and its Tribal Enterprises will be treated as holding the necessary authority to make liquor sales in Indian Country. To the extent necessary, the Board agrees to work with the Tribe and with any third party distributors to assure such distributors that the Tribe is legally authorized to purchase liquor pursuant to the terms of this MOA.
2. Liquor Sales Authority. The Board agrees the Tribe and its Tribal Enterprises are authorized to sell and serve liquor in Indian Country provided they have submitted an approved Operating Plan containing the following elements:
 - a) The location, nature, and times of liquor sales (see Exhibit A);
 - b) The training of staff involved in liquor sales. It is required that persons responsible for serving alcohol for on-premises consumption possess a Mandatory Alcohol Server Training (MAST) permit (see Exhibit B);
 - c) A regulatory enforcement and compliance plan (see Exhibit C); and
 - d) Consideration of proximity of alcohol sales to a school, church, or non-tribal public institution;
 - e) Confirmation that the land on which alcohol sales are to occur is either reservation or trust land held by the Tribe (see Exhibit D);
 - f) Any lease, purchase, partnership or franchise agreement with a non-tribal entity which directly relates to the location where alcohol is sold or served;
 - g) A copy of the Tribe's ordinance permitting the sale of liquor in Indian Country (see Exhibit E);
 - h) Other information as deemed necessary by agreement between the Board and the Tribe.

3. On-Premise Consumption. In addition, for locations providing liquor service by the drink for on-premises consumption, the Tribe will include in its Operating Plan the following factors, as applicable to each particular location:
 - a) The location, nature, and times of liquor sales (see Exhibit A);
 - b) A description of how the Tribe will prevent the sale of alcohol to persons under 21 years of age and those who appear to be intoxicated (see Exhibit B);
 - c) A security plan. Those serving alcohol must at minimum possess a valid Mandatory Alcohol Server Training permit (see Exhibit B);
 - d) The nature of any special events or entertainment events hosted on the premises including security and alcohol service plans for these events (see Exhibit B); and
 - e) Any other special conditions considered necessary to protect public safety based on the type of events to be held at the Tribe's facilities.

4. Consultation and Agreement on the Operating Plan. In consultation with the Tribe, the Board will then determine if the Tribe has met the public safety requirements consistent with Title 66 RCW and Title 314 WAC, together with the provisions of this MOA. The Board acknowledges that no one license type under Title 66 RCW is applicable to the Tribe's operations and that one purpose of this MOA is to allow flexibility with respect to the Tribe's operations. The Tribe and the Board agree that consultation with respect to the Operating Plan will occur in good faith and the Board's approval will not be unreasonably withheld. The Board will make every effort to accommodate the Tribe's interests as reflected in the Tribe's proposed Operating Plan and any disapproval will include a clear explanation of the decision, its necessity in order to prevent misuse of alcohol and service to minors, and proposed alternatives. If the Tribe objects to the disapproval or to approval of any conditions imposed by the Board, it may invoke the dispute resolution provisions of subsection (F). The Board hereby approves the initial Operating Plan as attached as Exhibit A and the Safety and Training Provisions as attached as Exhibit B.

5. Annual Payment to the Board. The Tribe agrees to pay the Board \$2,000.00 annually in lieu of any license fees. This annual fee will be due on or before June 1st of each year this MOA is in effect. Either Party may invoke a renegotiation of this fee based on substantial changes to the Operating Plan (Exhibit A) or the Enforcement/Compliance Plan (Exhibit C) where said changes substantially modify the regulatory effort required by the Board. Notice by the Party requesting renegotiation of this annual fee will include a written reason for the request.

6. Spirits Retailer Fees. The Board agrees that in lieu of the spirits retailer license fees imposed by RCW 66.24.630, the Board will accept payment as under subsection IV(D)(5) of the MOA and will not impose nor pursue collection of such licensing fees/taxes on sales by the Tribe and the Tribal Enterprises. In the event that new licensing fees or taxes on Spirits Retailers are added, or the existing licensing fees/taxes are modified, repealed, or replaced, as the result of legislation, initiative, referendum, court decision or otherwise, the Parties agree that the fee for services as outlined herein and in the MOA shall remain in effect pending agreement of the Parties to a revised fee for regulatory services as the Parties agree is appropriate under the circumstances and that the Board shall not impose nor pursue collection of the new fees and taxes on sales by the Tribe and the Tribal Enterprises. The Parties agree to meet and pursue discussions of the applicability of any new fees or taxes on an expedited basis.

7. DOR Suspension Requests. The Parties acknowledge that Chapter 39 of the 2012 Washington Session Laws (HB 2758) provides that the Department of Revenue ("Department") may request that the Board suspend a taxpayer's spirits license if the Department determines that a taxpayer is more than thirty days delinquent in reporting or remitting spirits taxes. The Board asserts that a failure by the Tribe to pay a spirits tax alleged to be due and owing by the Department would constitute a breach of this MOA. However, the Tribe disagrees that such a result would necessarily ensue and preserves its right to dispute any tax assessment by the Department without penalty under this MOA and to prove in dispute resolution proceedings under this MOA that the Board's licensing authority under 18 U.S.C. § 1161 does not allow the Board to prohibit Tribal liquor sales or purchases by reason of asserted state tax noncompliance. In the event that the Board believes that the Tribe has failed to remit a spirits tax that the Department asserts to be validly and legally due and owing, the Board will notify the Tribe in accordance with Part V of this MOA. Within 90 days following the date of the notice, the Parties agree to meet and confer in an effort to resolve the issue consistent with any related settlement between the Tribe and the Department or determination by a court of competent jurisdiction regarding the underlying tax assessment. If the Parties are unable to resolve the issue within six months after the date of the notice, either Party may invoke the dispute resolution provisions of Section IV(G) of this MOA. This Section D.6 does not apply to sales where the Tribe or a Tribal Enterprise is the retail customer.

9. Reporting Requirements. In the event the Board's audit of a distributor or other supplier to the Tribe reveals a discrepancy that can best be reconciled through comparison to the Tribe's spirits retail sales records, the Tribe agrees, on the Board's reasonable request, to provide a detailed summary of its purchases as a spirits retail licensee from that supplier for the relevant time period, including date, amount, brand, and price. This summary will serve in lieu of submission of any reporting form(s) required of other spirits retail license holders.

E. Enforcement. The Parties will handle enforcement issues in accordance with Exhibit C.

F. Conditions and Limitations. The Board and the Tribe agree to the following conditions and limitations:

The Tribe agrees that sales of liquor by the Tribe and its wholly-owned enterprises will conform to Title 66 RCW and Title 314 WAC to the extent required by 18 U.S.C. § 1161. To the extent any terms in this MOA conflict with Title 66 RCW or Title 314 WAC, the terms of this MOA will control. The Parties agree that RCW 66.24.010(2), which provides for criminal background checks of applicants, is inapplicable to the Tribe and its Tribal Enterprises. Any other express exemptions from statute must be negotiated individually between the Tribe and the Board.

G. Dispute Resolution.

1. Neither the Tribe, nor the Board, nor officers acting on either government agency's behalf, may petition any court to enforce this MOA unless: (i) the dispute resolution process described in subsections (a) through (c) below has been followed in good faith to completion without successful resolution; or (ii) the other Party fails to enter into the dispute resolution process. Should a dispute arise between the Tribe and the Board upon an issue of compliance with the MOA by either government agency, or by their officers, employees or agents, the Tribe and the Board will attempt to resolve the dispute through the following dispute resolution process:

- a) Notice. Either Party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice must set out the issues in dispute and the notifying Party's position on each issue.
- b) Meet and Confer. The first stage of the process will include a face-to-face meeting between representatives of the two government agencies to attempt to resolve the dispute by negotiation. The meeting must be convened within 30 days after the receiving Party's receipt of the written notice described in subsection (a). The representatives of each government agency will come to the meeting with the authority to settle the dispute. If the dispute is resolved, the resolution will be memorialized in a writing signed by the Parties.
- c) Mediation. The second stage of the process will be that if the Parties are unable to resolve the dispute within sixty (60) days after the receiving Party's receipt of the written notice sent under subsection (a) above, the Parties will engage the services of a mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator will be borne equally by the Parties. The Parties will pursue the mediation process in good faith until the dispute is resolved or until the mediator determines that the Parties are not able to resolve the dispute. If the Parties cannot agree on a format for the mediation process, the format will be that directed by the mediator. If the dispute is resolved, the resolution will be memorialized by the mediator in a writing signed by the Parties, which will bind the Parties.

2. If the parties are unable to resolve a dispute under the dispute resolution process detailed in Section IV.G.1 above, then either party may terminate this agreement with 120 days' written notice, consistent with the notice requirements in Section V, Communication and Notice.
 3. If, at any time after the effective date of this MOA, the Board enters into an agreement, compact, or consent decree with any other federally recognized Indian tribe or governmental agency thereof, of or relating to the regulation of liquor in Indian Country which includes a "most favored nation" provision, then, upon the Tribe's written request, this MOA will be amended to include such provision. A "most favored nation" provision is defined as language by which the Board agrees to accord a tribe or tribal government agency the same favorable terms that are offered in later agreements with any other tribe or tribal government agency. This will not be construed to require that the Board offer the Tribe the option to receive the same terms offered to every tribe or tribal government agency, in the absence of a most favored nation provision in the MOA.
 4. In any action filed by a third party challenging either the Tribe or the Board's authority to enter into or enforce this MOA, The Tribe and the Board each agree to support the MOA and defend each of their authority to enter into and implement this MOA; provided, however, that this provision does not waive, and must not be construed as a waiver of, the sovereign immunity of the Tribe, or its Tribal Enterprises.
- H. Sovereign Immunity. The Board agrees that the signing of this MOA by the Tribe does not imply a waiver of sovereign immunity by the Tribe or its Tribal Enterprises and is not intended by the Tribe as a waiver of sovereign immunity, and that any action by the Board in regard to liquor sales by the Tribe in Indian Country will be in accord with this MOA.
- I. No Limitation. The Parties agree that the signing of this MOA and the resultant benefits and obligations will not be construed as limiting any otherwise lawful activity of the Tribe or its Tribal Enterprises, and will not subject the Tribe or its Tribal Enterprises to any state jurisdiction not agreed to in this MOA.
- J. Updated Information. The Tribe and its Tribal Enterprises will review any Operating Plan on an annual basis and notify the Board of any substantial changes in the plan or procedures. This review is in addition to the notification of changes in the service of alcohol referenced in subsection (C)(2).
- K. Future Activities. The Parties agree that this MOA provides a successful, government-to-government basis by which to address jurisdictional and other issues arising out of the sale and consumption of liquor in Indian Country. In the future, the Tribe may wish to expand its business activities into other areas, such as becoming a liquor distiller. The Parties acknowledge that the legal backdrop for liquor distilleries is different, but agree that the policy concerns of avoiding jurisdictional gaps, protecting the public safety, and preventing youth access are very similar. For that reason and others, the Parties agree to pursue and negotiate in good faith agreements for future activities permitted by state law that are contemplated by the Tribe, including operation of a liquor distillery in Indian Country.

V. Communication and Notice

A. Designated Contacts. The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. The Parties agree that the following individuals will be designated primary contacts regarding administration of this MOA:

For the Liquor and Cannabis Board:

Licensing and Regulations Manager
Liquor and Cannabis Board
3000 Pacific Avenue SE
Olympia, WA 98504-3080
360-664-1650

For the Tribe:

Michael Rogers
Tribal Administrator
Shoalwater Bay Indian Tribe
PO Box 130
Tokeland, WA 98590
mrogers@shoalwaterbay-nsn.gov
360-267-6766

The Parties agree that if either Party believes that the goals and objectives of this MOA are not being met, that they will meet promptly to discuss any issues and concerns.

B. Notice. Any notice that may be or is required to be sent under this MOA must be sent as follows:

If to the Liquor and Cannabis Board:

Licensing and Regulation Manager
Liquor and Cannabis Board
3000 Pacific Avenue SE
Olympia, WA 98504-3080

With a copy to:

LCB Enforcement Captain, Region 1
Roberson Building, Ste 208
6240 Tacoma Mall Blvd
Tacoma, WA 98409-6819

If to the Tribe:

Michael Rogers
Tribal Administrator
Shoalwater Bay Indian Tribe
PO Box 130
Tokeland, WA 98590
mrogers@shoalwaterbay-nsn.gov
360-267-6766

With a copy to:

Tribal Chairman
Shoalwater Tribe
PO Box 130
Tokeland, WA 98590

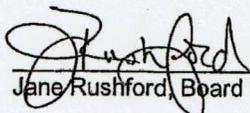
VI. Effect, Duration, and Amendment

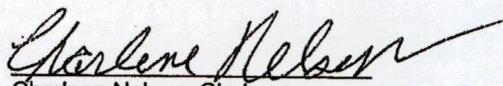
- A. This MOA supersedes and replaces the Memorandum of Agreement between the Shoalwater Bay Indian Tribe and the Washington State Liquor and Cannabis Board Concerning Authorization of Liquor Sales dated July 11, 2017.
- B. While the Parties intend to reach a perpetual agreement related to licensing of tribal liquor sales, this MOA will remain in effect for an initial term of five (5) years unless the Parties mutually agree in writing that the MOA should be vacated or terminated and superseded by a new MOA between the Parties within that time frame. Should the Parties fail to negotiate a perpetual agreement during the initial term of this MOA, the MOA will automatically renew for additional one-year periods unless either Party provides written notice to the other, no later than 120 days before the expiration of the then-current one-year period, that it wishes to modify the terms of the MOA.
- C. Amendment. No amendment or alteration of this MOA may arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, approved by the Parties and signed by their duly authorized representatives, expressly stating the Parties' intention to amend this MOA.

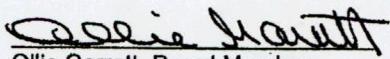
This MOA is hereby made this 28th day of August, 2018.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD

SHOALWATER BAY INDIAN TRIBE


Jane Rushford, Board Chair


Charlene Nelson, Chairman
Shoalwater Bay Indian Tribe


Ollie Garrett, Board Member

Russell Hauge, Board Member

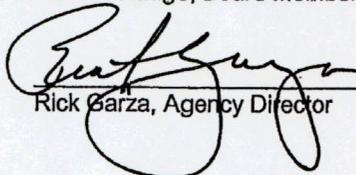

Rick Barza, Agency Director

Exhibit A

Operating Plan

Locations where alcohol is or will be served on Shoalwater Lands by the Tribe and/or WBE.

Exhibit A

Operating Plan

Locations where alcohol is or will be served on Shoalwater Lands by the Tribe and/or WBE

#	Location	Type of Establishment	Hours Alcohol is Typically Sold	Nature of Alcohol Service
081516	Shoalwater Bay Casino 4112 HWY 105 Suite A Tokeland, WA 98590	Casino	Sun-Thurs 10am-midnight Fri-Sat 10am-2am	Beer/wine/spirits Orders taken and delivered by servers at guests' locations on gaming floor; beverage cart; additional temporary service bars set up for some special occasions.
415441	Sand Verbena Seafood and Grill 4115 HWY 105 Suite B Tokeland, WA 98590	Fine Dining	Mon-Sun 8am-9pm	Beer/wine/spirits Table service; tastings.
406216	Georgetown Station Convenience Store 4115 HWY 105 Suite A Tokeland, WA 98590	Convenience Store	Mon-Sun 7am-10pm	Packaged beer/wine for off-premises consumption; tastings; sales to on-premises licensees with and without delivery.
423498	Smoke N' Spirits 4112 HWY 105 Suite B Tokeland, WA 98590	Spirits Retailer	Sun-Thurs 10am-10pm Fri-Sat 10am-midnight	Spirits retail.

EXHIBIT B
OPERATING PLAN:
Safety/Training Provisions

Because the introduction, possession, and sale of liquor in Indian Country has, for more than 150 years, been clearly recognized as matters of special concern to Indian tribes, The Tribe takes liquor regulation and safety extremely seriously. As a result, the Tribe has imposed strict policies and practices on its Tribal Enterprises that go above and beyond the State's requirements. Safe liquor consumption by its patrons is a top priority of the Tribe, and the Tribe makes a great effort to protect the public safety and community interest and trains its staff accordingly. The Tribe also evaluates events, utilizes its resources, and evaluates risk to best address, monitor, and appropriately control the sale and service of liquor at its current location(s) and venue(s) to preserve the public's safety.

A. Training.

1. Mandatory Alcohol Server Training. The following Tribal Enterprise employees must obtain and maintain a valid MAST permit through the Tribe's training program:
 - a. Managers and supervisors that supervise the sale and/or service of alcohol at all venues.
 - b. Servers and bartenders at all venues.
 - c. Security staff (does not include Tribal police or Tribal Gaming Commission agents).
2. Additional training by the Tribe. The Tribe also provides ongoing training of all food and beverage service teams to heighten awareness related to public safety, including avoiding service to minors and intoxicated persons.
3. Additional training by the Board. Upon the Tribe's request, Board staff members will work with the Tribe to provide any requested training and technical assistance for the prevention of violations of alcohol laws. Board staff members will meet with the Tribe and with Tribal Police as the Parties may deem appropriate for further training, collaboration, and communication on liquor issues.

B. Safety and Security Measures.

1. Minors in General. To ensure that alcoholic beverages are not sold to or consumed by persons under age 21, the Tribe has implemented the following measures:

- a. Staff request ID from any guest appearing to be age 30 or under who is requesting to purchase an alcoholic beverage.
 - b. Staff request ID from any guest in possession of an alcoholic beverage who appears to be of questionable age, and if guest cannot produce valid ID, the beverage is confiscated and Security is notified if necessary.
 - c. Staff accept only Board-approved forms of ID, including:
 - i. Driver's license, ID card, or Instruction Permit issued by any U.S. state or Canadian province.
 - ii. Washington temporary driver's license with valid or expired picture identification to confirm the presenter's identity.
 - iii. Tribal enrollment card.
 - iv. Passport from any nation.
 - v. U.S. Military ID.
 - vi. Merchant Marine card issued by U.S. Coast Guard.
2. Minors in the Casino. In addition to the above measures for Minors in General, the Tribe has implemented the following measures specifically to ensure that alcoholic beverages are not sold to or consumed by persons under age 21 at the Shoalwater Bay Casino:
- a. The Casino has only 1 public entrance. One or more trained and MAST-certified Security Officers are posted at or near the entrance at all times. Security also maintains video surveillance of the premises. And, there are roving Security Officers as well.
 - b. In addition, the Casino maintains very extensive and sophisticated video surveillance of the premises. With advanced pan, tilt, and zoom capabilities, Surveillance agents are able to clearly view virtually any activity that occurs on the Casino premises. They monitor live footage 24 hours a day, and the footage is also recorded.
 - c. Security Officers and Tribal Gaming agents are in close contact with one another at all times.
 - d. Both Security Officers and Tribal Gaming agents are vigilant for any signs of possible alcohol sales to or consumption by persons under age 21.

- e. If a person under age 21 attempts to purchase an alcoholic beverage, MAST-certified staff notify Security, who take appropriate action as described below.
 - f. If Security or Tribal Gaming observes a person under age 21 to be in possession of alcohol or to be exhibiting possible signs of intoxication, Security makes contact with the individual and takes appropriate action as described below.
 - g. If Security determines a person under age 21 is in possession or under the influence of alcohol (even if the alcohol was not consumed on premises), Security contacts law enforcement. Security also prepares a written incident report which is circulated to appropriate Tribal as well as Tribal Gaming personnel.
 - h. In addition, individuals under age 21 who are found to be in possession or under the influence of alcohol are refused service from the Casino until their 21st birthdays. A formal, written refusal of service is processed through Security,
3. Intoxicated persons. To ensure that alcoholic beverages are not consumed by persons who appear to be intoxicated, The Tribe has implemented the following measures:
- a. All staff involved in the sale and service of alcoholic beverages are trained how to recognize the signs of intoxication.
 - b. Staff will refuse to sell alcoholic beverages to any person who appears to be intoxicated.
 - c. Sales for off-premises consumption. If a guest who appears to be intoxicated attempts to purchase packaged alcoholic beverages for off-premises consumption, staff will politely but firmly decline to make the sale. Staff request assistance from the manager on duty when necessary. In the event the guest becomes aggressive or belligerent after being refused service, staff or the manager will contact Security immediately. Security will contact law enforcement if necessary. Staff and managers (and Security, if applicable) will appropriately report and document the incident in accordance with policy.

EXHIBIT C

OPERATING PLAN: Enforcement/Compliance Plan

A. Licensing.

1. Tribal Enterprises. The Shoalwater Tribe's liquor enterprises are a component of the Tribe by corporate charter of Willapa Bay Enterprises. Accordingly, the Tribe and its Tribal Enterprises do not require licenses to sell or serve alcohol.

B. Enforcement.

1. Premises Checks.

- a. By the Tribe. The Shoalwater Tribal Police or other authorized agency may conduct its own premises checks in Indian Country to observe compliance with applicable liquor laws and this MOA and to provide support and education to Tribal Enterprises and staff. To the extent it is informed of the results of such premises checks, the Tribe will share the results of the premises checks with the Board.
- b. By the Board. The Board, through its staff, may also conduct premises checks. Prior to conducting any such check, the Board will contact the Shoalwater Tribal Police to provide reasonable notice of such premises check, prior to conducting the check. Tribal Police and/or the Tribe may observe the premises check provided they do not interfere with the check. The Board will share the results of such premises checks with the Tribe.
- c. Cooperation. Should either Party have any concerns arising out of a premises check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the premises checks themselves or of liquor service by the Tribal Enterprise that was checked.

2. Compliance Checks-Minors.

- a. By the Tribe. The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Shoalwater Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. To the extent it is informed of the results of such checks, The Tribe will provide the results of the checks to the Board. No criminal action may be taken against any minor who purchases alcohol as part of such a compliance check.
- b. By the Board. Board staff may also conduct compliance checks. Prior to conducting any such check, the Board will contact the Shoalwater Tribal Police to provide reasonable notice of such compliance check, prior to conducting the check. Tribal Police/the Tribe may observe the check, provided they do not interfere with the check. The Board will share the results of such compliance checks with the Tribe.

- c. Cooperation. Should either Party have any concerns arising out of a compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the compliance checks themselves or of liquor service by the Tribal Enterprise that was checked.

C. Complaints.

1. Tribal Enterprises. When a complaint regarding liquor sales or service at any Tribal Enterprise is received by either the Tribe or the Board, or when the Tribe or the Board otherwise have reason to suspect a violation either through a premises check or compliance check, the following steps will occur:
 - a. Receipt of Complaint.
 - i. By the Tribe. If the complaint is received by the Tribe, it will be communicated to the Tribe's Administrator. The Administrator will then document the complaint and provide a copy to the Board staff within seven (7) days.
 - ii. By the Board. If the complaint is received by the Board, it will be communicated to the Tribal Administrator in writing within seven (7) days.
 - b. Investigation. The Board will investigate the complaint in its discretion and in accordance with its policies and procedures.
 - c. Alleged Violation.
 - i. Employee. If the investigation is of an alleged violation by the Tribe or Tribal Enterprise employee holding a MAST permit, the Board will provide a copy of any written report to the Tribal Administrator. The Board may take any action against the employee in accordance with its laws and regulations. Notice of any additional action taken against that employee by the Tribe will be provided to the Board. If the employee is a Tribal Member, the Tribe will investigate and take such enforcement action as is consistent with Tribal laws and procedures.
 - ii. Tribal Enterprise.
 - (a) If the investigation is of an alleged violation by the Tribe or a Tribal Enterprise, the Board will provide a copy of any written report to the Tribal Administrator. The Board may take any action against the Tribal Enterprise consistent with applicable laws and regulations, specifically to the extent applicable WAC 314-29-020, which addresses Group 1 violations against public safety. Group 1 violations include: (1) violations involving minors (sale or service to a minor/minor frequenting); (2) sale or service to apparently intoxicated person; (3) conduct violations (disorderly conduct, licensee or employee intoxicated, criminal conduct*); (4) lewd conduct*; (5) refusal to

* The Tribe may assert, among other things, that some State prohibitions against "criminal" or "lewd" conduct as used in WAC 314-29-020 do not apply to tribes, tribal government agencies, tribal employees, or in Indian Country, or that some "criminal" or "lewd" conduct does not fall within the scope of the Board's authority under 18 U.S.C. § 1161.

allow inspection/obstructing law enforcement officer from performing duties; and (6) condition of suspension violation (failure to follow any suspension restriction while liquor license is suspended). If the Tribe disagrees with the action taken by the Board, the Tribe may proceed under the dispute resolution provisions contained in Section IV(G) of this MOA. Notice of any additional action taken against any employee of a Tribal Enterprise by the Tribe will be provided to the Board.

- (b) If the Board alleges that the Tribe is not complying with any of the provisions of Exhibits A or B of this MOA, the Board and the Tribe will seek resolution in accordance with the dispute resolution process outlined in Section IV(G) of this MOA.
- (c) For purposes of this Section only, each "location" in Exhibit A will be deemed a separate location and violations against one location will not affect other locations.

D. Amendment. Should the Tribe desire in the future to take over more of the enforcement responsibilities, the Parties agree to meet to negotiate to amend this MOA in good faith.

implementation of their supporting HCPs. The primary purpose of the scoping process is for the public and other agencies to assist in developing the PEIS by identifying important issues and alternatives that should be considered. However, this scoping process would also be used to inform single-project EISs if we determine it is more appropriate to prepare a separate EIS for each of the proposed permit actions.

The Service is requesting data, comments, new information, and/or recommendations from the public, other governmental agencies, the scientific community, Native Hawaiian organizations or entities, industry, or other interested parties related to our development of the PEIS or individual EISs. We seek specific comments on:

1. Biological information and relevant data (e.g., range, distribution, population size, and population trends) for the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel;
2. Potential direct and indirect impacts on the human environment that would occur as a result of the continued operation of these wind energy facilities and the proposed increase in authorized take of the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel;
3. Whether a programmatic NEPA approach, as proposed, or separate NEPA evaluations for each of the four wind energy projects, is appropriate;
4. Possible alternatives to the proposed ITP actions that the Service should evaluate;
5. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns in the vicinity of any of the four wind project sites, including their mitigation areas, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Other past, present, or reasonably foreseeable future activities on the islands of Oahu, Maui, and Hawaii that may contribute to the cumulative impact on the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel.

Once the draft PEIS (or individual EISs) and draft HCPs are prepared, there will be further opportunity for comment on the content of these documents through an additional public comment period.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in ADDRESSES. Before including your address, phone number, email

address, or other personal identifying information in your comment, you should be aware that your entire comment(s)—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment(s) to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the PEIS, will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Darren LeBlanc or Michelle Bogardus at the Service's Pacific Islands Fish and Wildlife Office (see FOR FURTHER INFORMATION CONTACT). To allow sufficient time to process requests, please call no later than 14 days in advance of the meeting dates.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

Dated: January 31, 2018.
Theresa E. Rabot,
Deputy Regional Director, Pacific Region, U.S.
Fish and Wildlife Service.

[FR Doc. 2018-11821 Filed 5-31-18; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/
A0A501010.999900 253G]

Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation Liquor Ordinance; Repeal and Replace

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (the Tribe) Liquor Control Ordinance (the Ordinance). The Ordinance certifies the Tribe's liquor licensing laws to regulate and control the possession, sale, and consumption of liquor within the jurisdiction of the Tribe's reservation. The Ordinance repeals and replaces the previous liquor control ordinance

published in the Federal Register on November 14, 1979, and any and all previous statutes.

DATES: This Ordinance takes effect July 2, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, OR 97232; telephone: (503) 231-6702; fax: (503) 231-2201.

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 Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

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 the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation adopted Resolution Number: 02-16-18-07 (Liquor Control Ordinance) on February 16, 2018. The statute repeals and replaces the previous liquor control ordinance published in the Federal Register on November 14, 1979 (44 FR 65675).

Dated: May 14, 2018.
John Tahsuda,
Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

SHOALWATER BAY INDIAN TRIBE

TRIBAL CODE

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 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.

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

(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.

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. The Tribe reserves the right to enter into any agreement with the State of Washington related to taxation in lieu of, or in addition to, this Chapter 10.9, as the Tribe deems necessary.

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 thirtieth (30th) day after 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.

[FR Doc. 2018-11839 Filed 5-31-18; 8:45 am]

BILLING CODE 4337-15-P

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 Shoalwater Bay 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

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 of 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.

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.

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) day's 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; provided that this waiver shall not waive sovereign immunity to allow the award of money damages, attorney 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 waive 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.

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 last day of the Tribal fiscal year. 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 Tribe may negotiate at its 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 Shoalwater Bay 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**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.