

TITLE 5
TRIBAL EMPLOYMENT RIGHTS ORDINANCE
STANDARDS AND PROCEDURES FOR EMPLOYMENT PRACTICES AND
APPLICATION OF INDIAN PREFERENCE

5.1 Short Title

5.1.01 The short title of this Ordinance shall be the Tribal Employment Rights Ordinance, or TERO.

5.1.01(a) Enforcement of Ordinance NO. 93-0-01, Certification of Indian Firms. The Tribal Employment Rights Commission is authorized to certify that an enterprise meets the definition of an Indian firm as set forth in **Section 2.04** for the purpose of Indian preference, and for documentation of minority small business contract eligibility or claimed exemptions from State taxation and wage performance bond requirements; provided, however, that certification as provided herein shall not require the Commission to advocate the claims of private individuals and entities before any agency of another government.

5.2 Definitions

5.2(a) “Indian” means any member of any federally recognized Tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States pursuant to its trust responsibility to American Indians. **See 24CFR 1000.48 (b)(1) and 25CFR 41.3 (h)(i). See Amendment #001**

5.2(b) “Karuk Reservation” means the aboriginal territory of the Karuk People and all lands of the Karuk Tribe of California, including Indian Country as defined at **18 U.S.C. section 1151, as follows:**

Except as otherwise provided in **sections 1154 and 1156** of this title, the term “Indian Country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

5.2(c.) “Employer” means any person, company, contractor, subcontractor or entity located or engaging in commercial or employment activity within the Karuk Reservation. And which employs two or more persons. See section 5.2(b), 18 U.S.C. section 1156

5.2(d) “Indian Firm” means a firm or business certified by the Commission as eligible for Indian Preference in contracting or subcontracting; provided that Indians hold at least 51% ownership interest in such firm or business and exercise majority management control.

5.2(e) “Commission” and “Office” means the Tribal Employment Rights Commission and its office.

5.2(f) “Council” means the Karuk Tribal Council.

5.2(g) “Court” except where otherwise specified, means the Tribal court having jurisdiction over civil actions.

5.2(h) “ Person” means natural persons, either tribal member or non-tribal member, and foreign and domestic corporations and tribal governments and their political subdivisions.

5.2(I) “Resident Indian” means an Indian living within the Karuk Reservation.

5.2(j) “Threshold” means a level above which Indian preference will be required as established by:

- (i) Job Description;
- (ii) Interview Committees;
- (iii) Skills Test;
- (iv) Request for Proposals, Notice of Funds Availability and License requirements;
- (v) Other Written Requirements.

5.3 Establishments of Tribal Employment Rights Commission and Office

5.3.01 Establishments and purpose of the Commission. The Karuk Tribe hereby establishes the Tribal Employment Rights Commission for the purpose of;

5.3.01(a) Implementing and enforcing the provisions of this Ordinance in order to promote the employment of the Tribal members.

5.3.01(b) To insure that this Ordinance, the Personnel Policies and Procedures of the Karuk Tribe, Unemployment laws, Disability and Workman’s Compensation Insurance, or other Council enactment’s and policies regulating employment practices of the Tribe, its entities or other employers or contractors within the Reservation, or within the jurisdiction of the Tribe, are complied with.

5.3.02 General Powers of the Commission

5.3.02(a) Organizational Authority; The Commission may hire staff, obligate funds appropriated by the Council, and secure and obligate funding from Federal, State or other sources to carry out its duties and functions under this Ordinance upon receiving approval of

such action from the Council. The Commission is further authorized and directed to adopt and request Council Approval of such regulations as are necessary to enable it to carry out its duties and functions. The Commission shall report directly to the Tribal Council.

5.3.02(b) Regulatory Authority

(i) The Commission shall issue rules, regulations, interpretation of laws, and guidelines for Indian preference necessary to implement this Ordinance. Such rules and regulations shall become effective upon written approval of the Council. The Commission shall take all reasonable steps to insure that the general Reservation community, businesses, contractors, employers or other entities dealing with employment on the Reservation or within the jurisdiction of the Tribe, be on notice of all Indian Preference and employment related laws.

(ii) The Commission shall maintain an Indian Skills Bank as a means of providing qualified Indian employees to employers, contractors and subcontractors. The Commission shall also actively recruit and certify Indian firms as eligible for Indian preference in contracting and subcontracting.

(iii) The Commission is authorized to certify Indian Firms, from on or off the Reservation, for purposes of Indian preference, minority small business contract eligibility, exemption from state taxation and wage performance bond requirements, and other purposes.

(iv) The Commission shall register off-reservation contractors and subcontractors and employers, approve Indian Preference Plans, and issue work permits.

(v) The Commission is authorized and directed to investigate complaints regarding any violation of the provisions of this Ordinance. The Commission may also investigate possible violations on its own initiative.

5.3.02(c) Adjudicatory Authority The Commission may hold hearings on and determine any matter under its authority, including but not limited to hearings necessary to the issuance, modification, and revocation of any permit, license, or assessment authorized hereunder, as well as any adjudicatory hearing regarding violations of the provisions of this Ordinance. The Commission shall develop procedures to govern its hearings, and is authorized to issue compliance orders and to impose civil penalties in the form of fines and sanction.

5.302(d) Cooperative Agreement with Other Governments The Commission may negotiate, and upon Council approval, enter into cooperative agreements with agencies of the state and federal government in order to implement the intent of this Ordinance, and to eliminate unlawful discrimination against Indians, and to provide for review of other employment related issues. Between the Tribe, State and Federal Government.

5.3.03 Composition of the Commission The Commission shall be composed of five (5) members and one (1) alternate. Three (3) members of the Commission shall be Council members, or Tribal members appointed by the Council, two members selected by the Council shall not be an elected representative of the Tribe and may be a non-tribal member of the

Reservation Community. Each Commissioner shall serve for a term of three years, except two of the first Commissioners appointed by the Council shall serve a term of two (2) years, after which their successors shall serve a term of three (3) years. Commissioners may be removed by the Council at any time for cause, subject to notice and opportunity for a hearing before the Council.

5.3.03(a) Decisions of the Commission shall be made by Majority vote. A quorum shall consist of any three (3) of the five (5) Commissioners.

5.3.03(b) Any Commissioner who is also on the staff of the Council shall be disqualified from any involvement in decisions affecting the Tribal Department or entity with which he or she is employed.

5.3.04 Officers The officers of the Commission shall be a Chairperson, Vice-Chairperson, Secretary, and Treasurer, all to be selected by the Commission from among its members. The Officers shall be appointed each year by the Commission at its first meeting. All officers shall be members of the Commission. Unless an officer resigns, dies or is removed prior thereto, an officer shall hold office until a successor has been chosen and qualified. Any officer may resign at any time by delivering a written resignation to the Chairperson or Secretary.

5.3.05 Powers of the TERO Director. The Commission may, with the approval of the Tribal Council, hire a Director. The Director shall have those powers delegated by the Commission as it deems necessary to carry out this Ordinance. The Director shall be the investigating agent for the Commission responsible for investigating, researching, reporting and documenting any information required by the Commission. The Director shall report directly to the Commission.

5.4 Indian Employment Preference Policy and Procedures

5.4.01 All employers shall extend a preference to qualified Indians, as provided herein, in all aspects of employment, including but not limited to, recruitment, hiring, contracting and sub-contracting. No employer shall recruit, hire or otherwise employ any non-Indian for any employment position covered by this Ordinance, unless and until the Commission has been provided reasonable opportunity to furnish written notice to such employer that no qualified Indians are available for such position.

5.4.02 Applicability Unless clearly and expressly prohibited by Federal or other Tribal law, this Ordinance shall apply to all employers, including but not limited to: the Council and all of its programs, departments, and chartered entities or enterprises; private employers, independent contractors and sub-contractors; including those performing work for the Council, the State of California or the United States.

5.4.03 Covered Position The Indian employment preference policy of this section shall apply to each and every job classification, skill area, or craft recognized or utilized by an employer, including, but not limited to, administrative, supervisory, and professional classifications.

5.4.04 Qualified Indians: Employment Criteria An Indian shall be qualified for employment in a position if he or she meets the threshold requirements for such position, and such Indian shall be accorded the preferences to which he or she is entitled under this Ordinance. No employer may utilize any employment criterion that is not legitimately related to the performance of the position.

5.4.05 Eligible Indians** All employers, including the Karuk Tribe and its programs, departments chartered entities, and enterprises shall, for all positions funded by Tribal funds, extend Indian Preference according to the following priorities:

- (a) Members of the Karuk Tribe
 - (b) Descendants of Karuk Tribal Members
 - (c) Spouse or Parent of dependant Karuk Tribal Member
 - (d) Other local Indians
 - (e) Other non-local Indians
 - (f) Other Persons
- **Rating amended 10/28/04

5.4.06 Funding For any position not funded exclusively by Karuk Tribal funds, all employers, including the Karuk Tribe, shall extend first priority Indian preference to all local resident Indians on an equal basis, irrespective of the preference priorities established in **section 5.4.05** of this Ordinance.

5.4.07 Notice Of Employee Rights All employers subject to this Ordinance shall prominently display a notice to all employees and applicants for employment of their rights under this Ordinance.

5.4.08 Employer Retaliation Prohibited It shall be violation of this Ordinance for any employer to take any adverse personnel or hiring action or to retaliate in any way, against any person who attempts to exercise rights protected under this Ordinance. Employers found by the Commission, pursuant to an adjudicatory hearing, to have engaged in retaliation shall be subject to appropriated sanctions pursuant to **section 5.3.02(c)**.

5.5 Establishment Of Tribal Employment Rights Office Fees

5.5.01 There is hereby established a Tribal Employment Rights Fee to be paid to the Commission by each prime contractor, and each employer operating within any area of Karuk Tribal Jurisdiction, whose total contract or annual gross revenues is \$2,500.00 or more. The fee shall be equivalent to one percent (1%) of the total gross value of any contract initiated within the Karuk Reservation or one percent (1%) of the total annual gross revenues of businesses within the Karuk Reservation. The total TERO fees shall either be deducted from the first payment made to Contractor at the beginning of the contract or paid in incremental payments to coincide with the contractual payment schedule. The proceeds of the fees shall be placed in a separate account for use in implementing this Ordinance, or other purpose approved by the Commission and the Council and shall be administered and governed under guidelines approved

by the Tribal Fiscal Department. A contractor or employer failing to pay the Tribal Employment Rights Office Fees shall be subject to sanctions, pursuant to **section 5.3.02(c)**.

5.6 Special Requirements for Contractor and Subcontractors

5.6.01 The requirements of this Section apply to all employers engaging in commercial or employment activities within the Reservation, pursuant to public or private contract:

5.6.02 Certification by Commission Any contractor or sub-contractor claiming eligibility for Indian preference under this title shall submit documentation acceptable to the Commission, pursuant to its authority under **Section 5.3.02 (b) (iii)**, that it is an Indian firm as defined in **Section 5.2(d)**.

5.6.03 Indian Preference Plan Each contractor shall include in its bid, an Indian Preference plan for the master contract and any subcontracts. The plan shall indicate the name of the proposed subcontractor, whether the subcontractor is an Indian owned firm and if not, information on the good faith steps taken to identify Indian firms for the subcontract.

5.6.04 Failure to submit Indian Preference Plan An apparent successful bidder who fails to submit an Indian preference plan prior to award of the contract may be considered a non-responsive bidder for the purpose of awarding the contract.

5.6.05 Amendments to Plan If awarded the bid, the contractor shall not deviate from the plan or add or delete any existing new subcontract or subcontractors without the written consent of the Commission or its Office. Any amendments to the Indian Preference Plan must be in writing and approved prior to the date of implementation.

5.6.06 Bid Shopping Prohibited A contractor is prohibited from engaging in bid shopping as a means of avoiding its Indian subcontract preference obligation. Bid shopping is defined as any practice in which a bidder or contractor informs a prospective subcontractor that it will receive a subcontract only if it offers a price lower than that proposed by another firm.

5.7 Job Categories

5.7.01 Identification of Regular, Permanent Employees Prospective contractors and bidders shall identify regular, permanent employees, including those of subcontractors, in the bid package. Such employees may be on the project whether or not they are Indian. A regular, permanent employee is one who is and has been on the contractor's or subcontractors annual payroll for six (6) months prior to the Request for Proposal, or is an owner of the firm. The fact that an individual has worked for the contractor on previous projects shall not of itself qualify that individual as a regular, permanent employee. Exceptions for superintendents and other key personnel may be granted by the Commission on a case by case basis. It shall be evidence creating a rebuttal presumption that any contractor or sub-contractor filling vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract on the Karuk Reservation that such actions were intended to circumvent the provisions of this Ordinance, and upon request from the Commission or its Office, such contractor or sub-

contractor shall provide evidence acceptable to the Commission rebutting said presumption. The Commission may impose sanctions pursuant to **Section 5.3.02(c)** for violation of this **Section 5.7.01**, and such sanctions may include cancellation of the contract or subcontract as well as fines and penalties.

5.7.02 Lay Offs No Indian worker shall be laid off as long as a non-Indian worker in the same craft or position is still employed or as long as the Indian meets the threshold qualification for the job, unless such non-Indian has been employed for more than ninety (90) days longer than such Indian. If the contractor lays off by crews, qualified Indians shall be transferred to any crew that will be retained, as long as there are non-Indians in the same craft or position employed elsewhere on the Reservation under the same contract.

5.7.03 Reporting Requirements Each employer shall submit annual reports to the Commission on a form provided indicating the number of employees including a separate tally of Indians it has on its workforce, hires, fires and other information as may be identified on the form. An employer who fails to submit annual reports shall be subject to sanctions, pursuant to **Section 5.3.02 9(c)**.

5.8 Implementation

5.8.01 In implementing the requirements of this Ordinance, the Commission or its Office may:

(a) Training Programs Require employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Indians on and near the Karuk Reservation. Such training programs when required shall be noted in the Request for Proposal and shall be included in the bid package. If required training programs are not included in the bid package, the Commission shall give due consideration to the increase in cost, if any for providing the program.

(b) Attend or monitor all job interviews as a non-voting participant.

(c) Prohibit an employer from establishing extraneous qualification criteria or other requirements that serves as barriers to Indian employment.

(d) Enter into agreements, subject to approval by the Council, with unions and other employers to insure compliance with this Ordinance.

(e) Require employers to give preference in the award of contracts and subcontracts to certified Indian owned firms and businesses.

(f) Establish programs to provide counseling and support to Indian workers to assist

them in retaining employment. Employers may be required to participate in and/or cooperate with such support and counseling programs.

5.8.02 Issue Permits Issue permits for the implementation of the provisions of this Ordinance and other agreements entered into under the authority of this Ordinance.

5.9 Enforcement by Tribal Employment Rights Office Commission.

5.9.01 In implementing this Ordinance the Commission and its Office, in addition to all other powers contained in this Ordinance, shall have the following powers of enforcement.

(a) **Investigation Monitoring** To investigate and monitor complaints, concerns, and inquires regarding Indian preference and other employment related concerns.

(b) **Issue Notice of Non-Compliance and Compliance Orders.** To issue notices of non-compliance with this Ordinance or other rules, regulations or policies within its jurisdiction, and to issue such orders as reasonably necessary to remedy the non-compliance.

(c) **Hearings** To hold such hearings as may be necessary to resolve complaints and hear concerns regarding matters covered under this Ordinance.

(d) **Employment on Karuk Lands** “No person shall be required, as a condition of employment or continuation of employment on Karuk Lands, to (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; (iv) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization; or (v) be recommended, approved, referred or cleared through a labor organization.” **See Section 164 of the National Labor Relations Act (NLRA)**

5.10 Appeals

5.10.01.1 Decisions of the Commission may be appealed to The Tribal Council. The Tribal Council is hereby authorized to hear and dispose of appeals brought under this section. The Council may delegate this authority to Court defined in **Section 5.2(g)**.

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AMENDMENT #001

5.2 **Definitions**

5.2(a) “Indian” means any member of any federally recognized Tribe, or any person who furnishes documentary proof that he or she is recognized as an Indian by the United States pursuant to its trust responsibility to American Indians. **See 24CFR 1000.48(b)(1) and 25CFR 41.3(h) (i).**

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AMENDMENT #002

5.9 Enforcement by Tribal Employment Rights Office Commission.

5.9.01 In implementing this Ordinance the Commission and its Office, in addition to all other powers contained in this Ordinance, shall have the following powers of enforcement.

(d) Employment on Karuk Lands “No person shall be required, as a condition of employment or continuation of employment on Karuk Lands, to (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; (iv) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization; or (v) be recommended, approved, referred or cleared through a labor organization.” **See Section 164 of the National Labor Relations Act (NLRA)**

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