



Smith River Rancheria
140 Rowdy Creek Road
Smith River, CA 95567
Tel.: (707) 487-9255 Fax: (707) 487-0930

Kara Brundin Miller, Chairperson
Loren J. Bommelyn, Vice-Chairperson
Terile A. Keevil, Secretary
Denise L. Padgette, Treasurer

Marian M. Lopez, Council Member
Sharyne R. Harper, Council Member
Brock O. Richards, Council Member
Russ Crabtree, Tribal Administrator

RESOLUTION NO. 06—11

DATE APPROVED: April 25, 2006

RESOLUTION: To authorize and approve the Smith River Rancheria Children's Code

WHEREAS: The Smith River Rancheria is a federally recognized Indian tribe located in the State of California and organized pursuant to the Constitution of the Howonquet Indian Council of the Smith River Rancheria which was duly adopted by the members of the Smith River Rancheria; and

WHEREAS: The Smith River Rancheria Tribal Council is the duly elected governing body of the Smith River Rancheria with the Constitutional duties and responsibilities to preserve, protect and promote the best interests of the Smith River Rancheria; and

WHEREAS: The Constitution of the Howonquet Indian Council of the Smith River Rancheria Article IV Section 1(a) delegated to the Tribal Council the power and authority to represent the Rancheria and act in all matters that concern the general welfare of the Rancheria, and Article IV Section 1(g) specifically delegated to the Tribal Council the power and authority to establish and prescribe rules for governing Rancheria courts; and

WHEREAS: Public Law 280, 28 U.S.C. 1360, does not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system; and

WHEREAS; The establishment of The Children's Code of the Children's Division of the Smith River Tribal Court is necessary to secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the Tribal Court.

WHEREAS: Establishment of a Children's Division of the Smith River Tribal Court and adoption of a comprehensive Children's Code is in the best interests of the

membership and furthers the administration of justice within the Tribe's Jurisdiction, as it will provide a primarily non adversarial forum for culturally appropriate resolution of child welfare issues coming before the Children's Division.

THEREFORE BE IT RESOLVED; that the Tribal Council of the Smith River Rancheria does hereby:

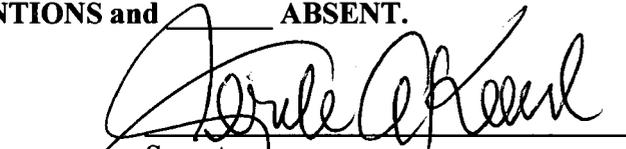
1. Authorize the adoption of the Children's Code as it is in the best interests of the membership and furthers the administration of justice in cases involving children and families within the Tribe's Jurisdiction; and
2. State that the Chairperson and Secretary of the Smith River Rancheria Tribal Council are hereby authorized to sign this Resolution and any and all other documents which are necessary to effectuate the intents and purposes of this Resolution.


Chairperson


Secretary

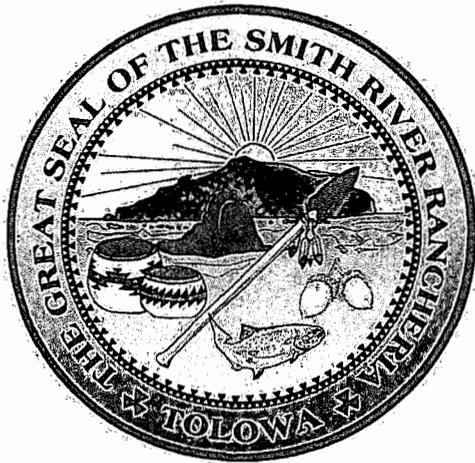
CERTIFICATION

I hereby certify that the Smith River Rancheria Tribal Council met in a duly called and noticed meeting on the 25th day of April 2006, at which ____ Tribal Council members were present to constitute a quorum and that this Resolution was approved by a vote of ____ FOR, ____ OPPOSED, ____ ABSTENTIONS and ____ ABSENT.


Secretary

CHILDREN'S CODE

CHILDREN'S DIVISION OF THE
SMITH RIVER RANCHERIA TRIBAL COURT



ESTABLISHED BY RESOLUTION OF THE TRIBAL COUNCIL

OF THE

SMITH RIVER RANCHERIA

Adopted April 25, 2006

TABLE OF CONTENTS

SECTION 1. PURPOSE AND PLACEMENT PREFERENCES	1
A. Purpose	1
B. Tribal Placement Preferences.....	2
SECTION 2. DEFINITIONS	2
SECTION 3. JURISDICTION AND CASE TRANSFERS	3
A. Tribal Court Jurisdiction.....	3
B. Transfer of jurisdiction to Tribal Court	4
C. Transfer from Tribal Court to State or other Tribal Court.....	5
D. Intergovernmental Agreements and Full Faith and Credit.....	5
E. Intervention under the ICWA.....	6
SECTION 4. INVESTIGATION, REMOVAL AND NOTICE	6
A. Investigation.....	6
B. Authority to Remove and Place in Temporary Custody.....	6
SECTION 5. NOTICE AND SERVICE OF NOTICE OF REMOVAL.....	6
A. Removal – Notice to the Parent, Guardian or Custodian.....	7
SECTION 6. FILING A YOUTH IN NEED OF CARE PETITION	7
A. Grounds for the Petition.....	7
B. Notice upon filing of a Petition.....	8
C. Service of Summons.....	8
SECTION 7. SHELTER CARE HEARING	8
SECTION 8. CASA APPOINTMENTS.....	9
A. Court Appointed Special Advocates.....	9
B. CASA Qualifications and Duties	9

SECTION 9. DIVERSION / PEACEMAKER/MEDIATION / FAMILY UNITY	10
SECTION 10. CASE PLANS AND EVIDENCE	10
A. Case reports and plans	10
B. Evidence	11
C. Confidentiality	11
SECTION 11. JURISDICTION HEARING	11
A. Timing	11
B. Purpose	11
C. Findings	11
SECTION 12. PLACEMENT AND SERVICES (DISPOSITION) HEARING	12
A. Timing	12
B. Evidence	12
C. Findings	12
SECTION 13. STATUS REVIEW HEARINGS	14
A. Purpose	14
B. Findings	14
SECTION 14. PERMANENCY HEARINGS	15
A. Timing	15
B. Findings	15
SECTION 15. ACTIONS OF THE CHILDREN’S COURT	16
A. General authority	16
B. Custody of child pending hearing	16
C. Medical care and examinations	16
D. Judgment for support	16
E. Removal from Tribal lands	17
SECTION 16. RECORDS OF THE CHILDREN’S COURT	17
A. Caption Headings	17
B. Court Records	17

SECTION 17. TRIBAL SOCIAL WORKERS AND ICW COMMITTEE	17
SECTION 18. SMITH RIVER CHILD AND FAMILY SERVICES	18
A. Duties.....	18
B. Use of other Tribal resources.....	19
SECTION 19. DUTY TO REPORT CHILD ABUSE AND NEGLECT.....	19
A. Duty.....	19
B. Mandatory Reporters.....	19
C. Immunity.....	19
SECTION 20. GUARDIANSHIPS.....	20
A. Purpose.....	20
B. Types of Guardianship.....	21
C. Guardianship of Property.....	21
D. Temporary Guardianship.....	21
E. Permanent Guardianship.....	21
F. Who May File Guardianship Petition.....	21
G. Contents of Guardianship Petition.....	21
H. Guardianship Report.	22
I. Management of Property	22
SECTION 21. MODIFICATION OF PARENTAL RIGHTS	23
SECTION 22. ADOPTIONS.....	28
SECTION 23. APPEALS.....	32
CERTIFICATION.....	32

SMITH RIVER RANCHERIA

CHILDREN'S CODE

SECTION 1. PURPOSE AND PLACEMENT PREFERENCES

A. Purpose

The Smith River Rancheria's Tribal Court, when exercising jurisdiction under this Code, shall be known as the "Children's Division of the Smith River Tribal Court," or, alternatively, "the Tribal Court."

There is no resource that is more vital to the continued existence and integrity of the Smith River Rancheria than its children and the Tribe has a direct interest in protecting children who are members of the Smith River Rancheria or are eligible for membership in the Tribe.

This Code shall be liberally construed and interpreted to fulfill the following purposes whenever possible:

- (1) To secure for each child coming before the Court the care, guidance, and control--preferably in her or his own home--that will serve the welfare and the best interests of the child, his or her family, and the Smith River Tribal Community;
- (2) To preserve and strengthen the unity of the Indian family, preferably by only separating children from their parents when absolutely necessary;
- (3) To preserve and strengthen each child's Tribal, cultural, or ethnic identity whenever possible;
- (4) To take such actions that may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (5) To provide a continuum of services for children and their families, with emphasis whenever possible on early intervention, prevention and community-based alternatives;
- (6) To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the court; and
- (7) To provide a non-adversarial forum for culturally appropriate resolution of child welfare issues coming before the Tribal Court.

B. Tribal Placement Preferences

In the event a child falling under the Tribal Court's jurisdiction is placed outside the child's home and such placement can secure the best care, guidance, and control for the child, the Tribe hereby establishes the following placement preferences, in the order of preference:

- (1) A member of the child's extended family, according to tribal laws, customs and traditions.
- (2) Another member of the child's Tribe.
- (3) Another Indian family.
- (4) An institution for children approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- (5) A non-Indian foster home located on or near Tribal lands and licensed or approved by the Tribe.
- (6) A non-Indian foster home located off Tribal lands and licensed or approved by the Tribe.

Within each placement preference category, preference shall be given to a placement on or near Tribal lands. The Tribal Court shall apply these placement preferences in all proceedings pursuant to this Code and no deviation from these preferences shall be made without a finding that such deviation is in the best interest of the child.

SECTION 2. DEFINITIONS

"Enters Foster Care" for purposes of Title IV-E foster care funding means the earlier of the date the Tribal Court found the child to be abused or neglected; or sixty (60) days after the child's actual removal.

"Foster Care" means the substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home.

"Guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person and decision making. The term legal guardian means the caretaker in such relationship.

"Indian Child" means a child who is an unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of that tribe.

"Indian Child Custody Proceeding" means all proceedings, whether voluntary or involuntary, involving out of home placement or foster care of an Indian Child.

"Tribal Court" means the Tribal Court of the Smith River Rancheria.

"Tribal Lands" include all lands the land bounded by Wilson Creek to the South, the Sixes River to the North, East to the watershed on the Coastal Range, and West to Point St. George Lighthouse in the Pacific Ocean, to the extent not inconsistent with federal law, as well as such other lands as may hereafter be acquired.

"Tribe" means The Smith River Rancheria.

SECTION 3. JURISDICTION AND CASE TRANSFERS

A. Tribal Court Jurisdiction

- (1) The Children's Division of the Tribal Court shall have jurisdiction over Indian children, their parents, guardians, legal custodians and Indian custodians and all necessary members of the household involved in any Indian child custody proceeding governed by this Code. Unless the Tribal Court discharges the child, the Court for cause shown may reopen the case at any time and take such action with respect to a child as it deems appropriate.
- (2) The Tribal Court shall have jurisdiction over abused and neglected children, which includes any unmarried child under the age of eighteen (18) years whose parent, guardian, legal custodian, or Indian custodian has:
 - a. abandoned him or her;
 - b. subjected him or her to mistreatment or abuse, whether physical, emotional or sexual;
 - c. failed to protect him or her from such mistreatment or abuse; or
 - d. failed or refused to provide proper or necessary subsistence, education, medical care, shelter, a safe environment or any other necessary care for his or her health, guidance, or well-being.
- (3) The Tribal Court shall have jurisdiction in child custody proceedings concerning any child of a member of the Tribe before the court, including adopted children;
- (4) The Tribal Court shall have jurisdiction in Indian child custody proceedings concerning any children residing on Tribal lands, for whatever reason, as long as the parents, guardians, or custodians have consented to the jurisdiction of the Tribal Court; and
- (5) The Tribal Court shall have jurisdiction in proceedings concerning any Indian

child of another Tribe, so long as the Tribal Court (or governing body, if acting in an adjudicatory capacity) of such tribe has validly consented in writing to the Smith River Rancheria's Tribal Court's exercise of jurisdiction, such consent has been filed with the Smith River Rancheria's Tribal Court and jurisdiction accepted.

- (6) The jurisdiction of the Tribal Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children that come before the court as well as those who have been declared to be wards of the Tribal Court. The Tribal Court shall also have the power to impose fines, issue and enforce subpoenas, and issue and enforce stay away, contempt, protection, diversion and detention orders and any other orders as appropriate.
- (7) Exclusive Jurisdiction. The Tribe may Petition the Secretary of the Department of the Interior to Reassume Exclusive Jurisdiction; in such case, upon Secretarial approval, the Tribe shall have exclusive jurisdiction over Indian Child Welfare cases involving all Indian children domiciled or residing on all lands and service areas set forth in such Petition.
- (8) Concurrent Jurisdiction. The jurisdiction invoked by this Code over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any Indian Tribe, any state, or any political subdivision thereof. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal arguments to make a prompt jurisdictional determination for each such controversy.
- (9) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:
 - a. Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
 - b. One or more of the parties is not a person over whom the Tribal Court may properly exercise its jurisdiction; or
 - c. The case is of such a nature that the Tribal Court should not hear it.

B. Transfer of jurisdiction to Tribal Court

The Smith River Tribal Court judge is authorized to formally accept the transfer of jurisdiction from any state or other tribal court, so long as the other Tribe's Tribal Court (or governing body if acting in an adjudicatory capacity) has validly consented in writing to the transfer of jurisdiction.

- (1) A party interested in transferring jurisdiction to the Smith River Tribal Court must first file a petition to transfer, along with any supporting documentation,

stipulations or legal authorities, as appropriate or necessary, with the Tribal Court.

- (2) Upon issuance of a Tribal Court order accepting transfer of jurisdiction, the transferring court shall consider the transfer. Both courts must approve of the transfer.
- (3) The transferring court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. Sec. 1901-1963, where they do not conflict with the provisions of this Code.
- (4) After another court transfers a case to the Tribal Court's jurisdiction and transmits all documents and legal and social records, the Tribal Court shall proceed with the case as if the petition had been originally filed in the Tribal Court.

C. Transfer from Tribal Court to State or other Tribal Court

- (1) In any proceeding before the Tribal Court, any interested party may petition to transfer the proceedings to an appropriate state or another tribal court where the state or other tribe have a significant interest in the child and the transfer would be in the best interests of the child and the child's tribe.
- (2) If the Tribal Court determines that transfer to another tribal or state court is in the best interest of the child, the Court shall transmit all documents, legal and social records or certified copies thereof, to the receiving court if the transfer is granted.

D. Intergovernmental Relationships and Full Faith and Credit

- (1) **Policy.** It is the policy of the Smith River Rancheria to encourage cooperation and the formation of agreements between the Tribe and any tribal, state, federal or non-governmental organization that can assist in providing care and support to Indian children. It is also the policy of the Smith River Rancheria to ensure that other governments and agents of those governments respect its sovereign status and the jurisdiction of its Tribal Court.
- (2) **Agreements.** The Smith River Rancheria may enter into such intergovernmental agreements with the State of California, other states and Indian Tribes, as it deems appropriate for the provision of care to children in need of care, the orderly transfer of cases between jurisdictions and division of jurisdictional authority over children subject to the Children's Code. In the event of conflict between the Children's Code and a subsequent agreement entered into by the Tribal Council, the agreement shall control over the relevant section of the Children's Code that is subject to the agreement.
- (3) **Full Faith and Credit.** State court orders involving children under the jurisdiction of the Tribal Court may be recognized by the Court only after a full independent review of such state proceedings has determined that:
 - a. The state court had jurisdiction over the child;
 - b. The applicable provisions of the Indian Child Welfare Act were properly followed;

- c. Due process was provided to all interested persons participating in the state proceeding; and
 - d. The state court proceeding does not violate the public policies, customs or common law of the Smith River Rancheria.
- (4) Court orders of other Tribal courts involving children over whom the Tribal Court may take jurisdiction shall be recognized by the Court after the court has determined that:
- a. The other tribal court exercised proper subject matter jurisdiction and personal jurisdiction over the parties, and;
 - b. Due process was accorded to all interested parties participating in the other tribal court proceeding.

E. Intervention under the ICWA

The Smith River Community and Family Services, through its internal polices and after obtaining a Tribal Court order when feasible, shall be authorized to intervene on behalf of the Tribe in all state court proceedings that implicate the ICWA and involve a Tribal child, whether or not enrolled. The Tribe shall intervene in such matters unless such intervention would be impracticable under the circumstances of the case.

Comment [SD1]: ICWA (19)(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

SECTION 4. INVESTIGATION, REMOVAL, AND NOTICE

A. Investigation

All reports of alleged child abuse or neglect shall be investigated by the Smith River Community and Family Services or other appropriate agency in a manner that proves to be timely and diligent unless the Tribal Court directs otherwise.

B. Authority to Remove and Place in Temporary Custody

If the person investigating a report of child abuse or neglect finds that any of the following grounds for removal have been met, such persons shall arrange for removal the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement, without order from the Tribal Court:

- (1) When the child is abandoned, lost, or seriously endangered in his or her surroundings or seriously endangers others and immediate removal appears to be necessary for the child's protection or the protection of others;
- (2) When there are reasonable grounds to believe that the child has run away or escaped from his parents, guardian, or legal custodian; or
- (3) When there are reasonable grounds to believe that the child is in imminent danger of serious physical or psychological harm.

SECTION 5. NOTICE AND SERVICE OF NOTICE OF REMOVAL

A. Removal - Notice to the Parent, Guardian or Custodian

Smith River Community and Family Services and/or law enforcement shall make all reasonable efforts, and shall document such efforts, to immediately notify, through the most efficient means available, the parents, guardian or custodian of the Tribal Court receiving actual notice that the child was removed from the home or otherwise detained.

SECTION 6. FILING A CHILD WELFARE PETITION

A. Grounds for the Petition

A Child Welfare Petition (the "Petition") may be filed by any interested party when a child is known or believed to be abused or neglected. The Petition shall state the specific facts concerning:

- (1) the name, address, gender and age of the child;
- (2) the names and address of the child's parents and any custodians of the child;
- (3) the names and addresses of any other person or Tribe with an interest in the child;
- (4) the nature and extent of the child's alleged injury, abuse or neglect;
- (5) any evidence of injuries, abuse or neglect (including reports from doctors, public health nurses, health assistance, teachers, and witnesses to injury, abuse or neglect, etc. and the date, time and location supporting allegations of abuse and neglect);
- (6) any information that may be helpful in identifying the cause of the child's alleged injuries or neglect;
- (7) a statement identifying of what Tribe(s), if any, the child is a member or eligible for membership; and
- (8) the basis for the Court's jurisdiction;

If the child is placed or detained outside of the home, the petition shall state where the child is placed (subject to applicable child welfare confidentiality policies), the facts necessitating placement, and the date and time of the placement. If the child has been removed from the home, he or she must be returned home if a Petition has not been filed within forty eight (48) hours excluding weekends or holidays of the date of removal.

B. Notice upon filing of a Petition

Upon the filing of a Petition, the Judge or Clerk of the Tribal Court shall issue a notice which may be in the form of a summons directing the parents or guardians of the child to be present in Court for hearing at the time and place fixed in the notice.

The Summons shall contain a statement, when appropriate, that the modification of the parent/child legal relationship is a possible remedy under the proceedings as well as any other legal rights of the child, the parents or guardian, or any other respondent, including the right to have an attorney present at the hearing shall be on the Summons.

If the whereabouts of the parents or guardians are unknown, the Tribal Court may proceed to take any action to protect the child. Any person served with notice who fails to appear without reasonable cause may be subject to contempt of Court and a bench warrant may be issued. The returns or proofs of service shall be filed in the record of the case.

C. Service of Summons

- (1) Summons shall be served personally, at least two days before the time fixed in the summons for the appearance of the person served.
- (2) If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found within the tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Tribal Court as to any absent parent, guardian, or legal custodian, if notice has been given in the following manner:
 - a. When the residence of the person to be served is outside Tribal lands, a copy of the Summons shall be sent certified mail with postage prepaid to such person at his or her place of residence with a return receipt requested. Service of Summons shall be deemed complete upon return of the requested receipt.
 - b. When the person to be served has no residence within Tribal lands and his or her place of residence cannot be determined after due diligence, service may be made by publication in a newspaper of general distribution for three (3) consecutive weeks.

SECTION 7. SHELTER CARE HEARING

- (1) The Shelter Care Hearing regarding the removal or detention of a child shall be held before the end of the third working day (72 hours) following the filing of the Petition.
- (2) In the event a child is not removed or detained, the Shelter Care Hearing shall be held before the end of the fifteenth (15th) day (not counting weekends and holidays) following the filing of the Petition.
- (3) The purpose of the Shelter Care Hearing is to determine whether probable cause exists that the allegations in the petition are true. During the hearing, the court

- shall advise the parties of the reason for the hearing and of their basic rights.
- (4) Any agency reports shall be received; allegations of abuse or neglect shall be admitted or denied.
 - (5) Missing parties and relatives shall be noted and notice to the parties shall be reviewed.
 - (6) The court shall make specific findings as to whether and why Continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child
 - (7) The court shall specify whether reasonable efforts have been made to prevent placement.
 - (8) The court shall specify the terms of any visitation.
 - (9) Possible Outcomes of the Shelter Care Hearing:
 - a. The Child Welfare Petition may be dismissed and the child remains or is returned to home with direction to the parties concerning future parental conduct and the provision of services to the child and parents;
 - b. The child may remain or be returned to the home of the parents, guardian or custodian under the supervision of the court, pending the Jurisdiction Hearing;
 - c. The child may be continued in the child's out-of-home placement pending the Jurisdiction Hearing; or
 - d. The child may be continued in the child's out-of-home placement pending a mediation or family unity conference.
 - (10) All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to copies of court documents, including petitions and reports, no less than forty eight (48) hours before the hearing whenever possible, unless deemed inappropriate by the court. Missing parties and relatives shall be noted and notice to the parties shall be reviewed.

SECTION 8. CASA APPOINTMENTS

A. Court Appointed Special Advocates (CASAs) Appointments

- (1) The Tribal Council may develop and implement a Court Appointed Special Advocate (CASA) or Guardian Ad Litem (GAL) program, or may reach agreements with local CASA programs and state courts regarding the appointment of CASAs to Tribal Court.

SECTION 9. DIVERSION / MEDIATION / FAMILY UNITY

A. Diversion

- (1) At any time in the proceedings, the Tribal Court judge may order the case stayed or suspended pending successful completion of a diversion plan or program.

B. Peacemaker/Mediation / Family Unity Conferencing

- (2) The Tribal Court Judge, at any stage of the proceedings under this Code, may order the relevant parties to participate in Peacemaking/Mediation. Mediations so ordered shall be conducted pursuant to the Smith River Rancheria's Mediation Program's written guidelines.
- (3) Additionally, the Tribal Court Judge may order the child's family to participate in Family Unity Conferencing, to provide the child's family with an opportunity to establish a plan that will ensure the safety of the child. Family Unity Conferencing shall be conducted and facilitated according to that program's written guidelines. The Children's Code recognizes a preference for family decision making opposed to judicial intervention and determination, thereby encouraging families to take seriously the issues with which they are presented.
- (4) Once the parties have reached a mediated/facilitated plan for the child, the plan shall be presented to the Tribal Court Judge who shall review the plan, listen to any argument by any of the professionals or family members involved in the case, and shall approve, approve with minor modifications, or disapprove of the plan.
- (5) If the judge disapproves the plan, the judge has the discretion to either send the family back for an additional conference or mediation, or may set the case for hearing. If the judge approves the plan, he or she converts the plan, including any judicial modifications, into a valid Tribal Court order.

SECTION 10. CASE PLANS AND EVIDENCE

A. Case reports and plans

Unless waived by the Tribal Court (only for non-IV-E cases), the Smith River Community and Family Services or other agency designated by the court shall develop a case plan in all cases.

For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence.

The court, either on its own motion or if so requested by the child, the child's parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.

The case plan shall be made available to the court, and the parties as deemed appropriate by the

court at least seven (7) court days prior to the hearing at which it will be considered. The case plan for each child involved in an Indian child custody proceeding must contain all of the factors set forth in the Smith River Community and Family Services policies.

B. Evidence

The Smith River Rancheria's Rules of Evidence shall be followed. However, as a general rule, where the Tribe's rules are silent as to a particular evidentiary issue, the federal rules of evidence may be followed. The exception to these rules is that hearsay evidence shall be admissible in proceedings under this Code, except that a finding of fact cannot be supported by hearsay alone.

C. Confidentiality

All matters under this Code shall be strictly confidential and heard in closed Court, excluding all persons except parents, guardians, the attorney for the child, witnesses called by the Court, the CASA, Tribal social workers and with the permission of the Court others having a direct interest in the matter.

SECTION 11. JURISDICTION HEARING

A. Timing

Subject to (C) (6) below, the Jurisdiction Hearing shall be held no later than twenty-one (21) days following conclusion of the Shelter Care Hearing or family unity conference, whichever occurs later.

B. Purpose

The purpose of the Jurisdiction Hearing is for the Court to determine whether continuing court involvement (jurisdiction) is necessary to protect the well-being of the child, and to determine whether continuation in the home is contrary to the welfare of the child and whether reasonable efforts have been made to prevent the child's removal from home and to safely reunify the family.

C. Findings

- (1) The Court shall find the allegations of the petition to be true or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.
- (2) Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the Jurisdiction Hearing.
- (3) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the Court may proceed immediately to consider such additional or different matters raised by the evidence.
- (4) In such event, the Court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence. If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party,

or on its own motion, if it finds such continuance to be in the best interests of the child or any other party to the proceedings materially prejudiced by the change in allegations.

- (5) The burden of proof lies with the petitioner (the person filing the petition). The petitioner must prove that the allegations raised in the petition are more likely true than not, that is, by a preponderance of the evidence, and that the best interests of the child and the child's Tribe will be served by continued court intervention.
- (6) After making the necessary findings but before judicial ruling/determination on the Petition, the Tribal Court may continue the hearing from time to time, allowing the child to remain in his or her own home or in the temporary custody of another person or agency, subject to such conditions of conduct and of visitation or supervision by the Smith River Community and Family Services as the Tribal Court may order, if:
 - a. Consent is given by the child and his or her parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceedings, including their right to have a determination made either dismissing or sustaining the petition; and
 - b. Such continuation shall extend no longer than three (3) months without review by the court. Upon review the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

SECTION 12. PLACEMENT AND SERVICES (DISPOSITION) HEARING

A. Timing

The Placement and Services Hearing shall be held no later than sixty (60) days after issuance of a Determination order. The Tribal Court shall hear evidence regarding the proper disposition best serving the interests of the child and his or her tribe.

B. Evidence

The evidence shall include, but not necessarily be limited to, the social study and other reports, and such other oral and documentary facts as the parties may present.

C. Findings

- (1) If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.
- (2) The Tribal Court shall determine:
 - a. The appropriate disposition of the case and long-term plan for the child;
 - b. Where the child should be placed;

- c. Whether the proposed case plan reasonably address the problems and needs of the child and parent;
 - d. Whether reasonable efforts were made to eliminate or prevent the need for removal from the child's home.
- (3) The court may find that out-of-home placement is not needed to protect the child, but may continue court intervention and supervision due to unresolved problems in the home.
- (4) The court may find that the child shall remain out of the home. The grounds for continued removal are:
- a. The child has no parent, guardian or custodian available, willing and capable to care for the child;
 - b. The child is likely to suffer serious emotional or physical injury inflicted upon them by other than accidental means;
 - c. The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well being;
 - d. The child has been sexually abused or sexually exploited; or
 - e. The child, as a result of emotional abuse or neglect, has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.
- (5) The court may find that out-of-home placement is necessary, but with the performance of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court shall specify actions, and the time frames for such actions, that the parents, guardians or custodians must accomplish before the child is returned. The order shall also specify the responsibilities of any support agency or personnel to be involved.
- a. The Tribal Court may order a trial home visit, for no more than six (6) months, unless the Court authorizes them for a longer period. The Court order must explicitly extend the trial home visit.
 - b. While the child is on a trial home visit, the "clock stops" for the mandatory termination or modification petition filing deadline ("15 of the last 22 months"). If the trial home visit is over seven (7) months long, the clock starts over.
- (6) The court may find that out-of-home placement continues to be necessary and further that the child shall not be returned to the home, absent further order of the court. The court shall specify what steps the parents, guardians or custodians shall take to demonstrate their abilities to care for their child, and specify what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned home.

- (7) In addition to the placement disposition alternatives, the court may order the child, parents, custodians or guardians to attend any of the following, if the court determines they are related to the circumstances which caused the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family:
 - a. Parenting education classes;
 - b. Alcohol or substance abuse treatment;
 - c. Counseling for victims or perpetrators of domestic violence; or
 - d. Any other services that the court determines may be useful in aiding family reunification.
- (8) The court may continue the Placement and Services Hearing, on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause. If the hearing is continued, the court shall make an appropriate order for care of the child during the continuance.
- (9) In scheduling investigations and hearings, the court shall give priority to proceedings concerning children who have been removed from their homes before an order of disposition has been made.
- (10) If a parent, guardian, custodian fails to appear for the hearing, the court may find such parent, guardian or custodian in default, and enter any orders it could otherwise enter.
- (11) Before finding a parent, guardian, or custodian in default, the Court must be satisfied that actual notice has been given or that all reasonable possible steps have been taken to provide such notice.
- (12) If the parent, guardian, or custodian is found in default, the court shall specify the facts, grounds and Children's Code sections upon which it relied to make such finding.

SECTION 13. STATUS REVIEW HEARINGS

A. Timing

The status of all children shall be reviewed by the Tribal Court at least every ninety (90) days at a hearing to determine whether court supervision shall continue. In no event shall a status review hearing for children placed in foster care or another out of home arrangement be made less frequently than once every six (6) months from the date the child is considered to have entered foster care.

B. Purpose and Findings

- (1) A child shall be returned home at the Status Review Hearing unless the Tribal Court find that a reason for removal as set forth above in this Children's Code still exists. The Court may, however, due to unresolved problems in the home,

- continue court intervention, services and supervision as appropriate.
- (2) If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for Family Unity Conferencing.
 - (3) The purpose of the Status Review Hearing is for the Tribal Court to:
 - a. review the placement and plan for assuring that the child receives safe and proper care;
 - b. determine the continuing need for and appropriateness of the placement;
 - c. determine the extent of compliance with the case plan;
 - d. determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
 - e. project a likely date by which the child may be returned and safely maintained at home or placed for adoption or placed in another permanent living arrangement;
 - f. if the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child; and
 - g. in the case of a child who has attained age sixteen (16), determine the services needed to assist the child to make the transition from foster care to independent living.
 - (4) The Tribal Court, at any Status Review Hearing, held no sooner than twelve (12) months and no later than eighteen (18) months from issuance of the Placement and Services orders, must order a permanent plan, which may include an order that a petition for guardianship, or, only in extreme circumstances, a petition for modification of the parent/child relationship be filed.

SECTION 14. PERMANENCY HEARINGS

A. Timing

A Permanency Hearing must be held no later than twelve (12) months from the date the child enters foster care.

B. Findings

- (1) The Tribal Court must make a finding that the Tribe's Community and Family Services have made reasonable efforts to finalize a permanency plan for the child. The permanency plan may be to continue reunification services to reunify the family or to secure the child a new permanent home. This finding must be made within twelve (12) months from the date the child enters foster care, and it must then be made every twelve (12) months thereafter.
- (2) The Court must also make a finding that reasonable efforts have been made to prevent the child's removal from home. The Court may find that a lack of efforts is reasonable, such as when there is no safe way to make efforts to prevent removal.
- (3) The Court's reasonable efforts findings must be detailed. They must include

relevant case facts.

- (4) The Court may waive reasonable efforts to reunify if it finds aggravated circumstances, such as conviction of certain felonies involving crimes against children. If reasonable efforts are waived, a separate reasonable efforts finding is not required.
- (5) The Court may determine at a permanency hearing that there is a compelling reason that reunification, adoption, guardianship, and relative placement are not the child's best interests. If it makes such a finding, the Court may order another planned permanent living arrangement.
- (6) The Court may order reunification as the permanent plan if the parents have been diligently working toward reunification, and reunification is expected in a time frame consistent with the child's developmental needs.

SECTION 15. ACTIONS OF TRIBAL COURT

A. General authority

Upon an affidavit sworn to by a law enforcement officer or any other person, and upon the examination of other witnesses if required by the judge, that there is probable cause to believe that a child is being or has been abused or neglected as defined herein in any place within the jurisdiction of the Court, the Court shall make such orders for the commitment, custody, protection and care of the child. The Court shall additionally take such other actions as it may deem advisable and appropriate in the interest of the child and the interests of the Tribe, including protection orders related to domestic or family violence.

B. Custody of child pending hearing

Pending final disposition of the case, the child shall be subject to the order of the Court and may be permitted to remain in the control of parents, guardians or persons having her or his custody or the child welfare or probation office, or she or he may be ordered to remain in an appropriate placement provided by the Tribe or designated by the Court.

C. Medical care and examinations

The Tribal Court may order necessary medical examinations and care as may be required for children under its jurisdiction.

D. Judgment for support

The Tribal Court may, by order, direct the person or persons required by law to support the child to pay for the support of the child in such amount as the Court may determine to be fair and reasonable, including the cost of the temporary placement of the child pending hearing. Such

orders shall have the force and effect of judgment for money and shall be enforceable as are other judgments for money.

E. Removal from Tribal Lands

The Court may permit removal of a neglected or abused child from Tribal lands by the person or institution in whose physical custody the child is given on condition that such custodian will return the child on order of the Tribal Court.

SECTION 16. RECORDS OF THE SMITH RIVER TRIBAL COURT

A. Caption Headings

The captions for all child welfare actions shall be titled "In re the Matter of (child's initials), a Minor."

B. Court Records

The Court shall maintain a confidential record of all proceedings under this Code in records labeled "Records of the Smith River Tribal Court." The confidential records of proceedings under this Code shall not be open to public inspection.

SECTION 17. TRIBAL SOCIAL WORKERS

Tribal social workers shall:

- (1) Look after the interests of neglected or abused children subject to the Tribe's jurisdiction and in accordance with tribal laws, customs and traditions;
- (2) Make investigations and file petitions;
- (3) Be present in Court when cases are heard concerning children;
- (4) Prepare pre-placement reports and detailed case plans, as set forth in Section 10, for the Court with information and assistance as it may require;
- (5) Locate, certify (subject to Tribal Council authorization) and supervise placements; and
- (6) Furnish such other related services as may be directed by the Court.

SECTION 18. SMITH RIVER COMMUNITY AND FAMILY SERVICES

A. Duties

The Smith River Rancheria's Community and Family Services shall have the following powers, duties, and responsibilities:

- (1) Process all Indian Child Welfare ("ICW") notices sent to the Tribe, assist the Court in intervening in Indian child custody proceedings, assist the Court in petitioning for transfer of Indian child custody proceedings to the Court where appropriate, and carry out all other duties and responsibilities regarding all Indian child custody matters pursuant to the instructions or order of the Court.
- (2) Receive and investigate reports of suspected child abuse and neglect involving Tribal children.
- (3) Subject to the Tribe's confidentiality policies, receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.
- (4) Determine whether a Tribal child should be placed into protective custody pursuant to the emergency provisions of this Code, and provide crisis counseling during the intake process when such counseling appears to be necessary.
- (5) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.
- (6) Make a placement and services report and recommendation to the Court in child welfare proceedings, including a plan of rehabilitation, treatment and care.
- (7) Supervise and assist Tribal children pursuant to child welfare dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the Tribal child and the child's family.
- (8) Accept legal care, custody and control of Tribal children when ordered by the Tribal Court.
- (9) Initiate petitions for the termination or modification of parental rights or investigate and report to the Tribal Court on petitions to modify parental rights brought by others.
- (10) If specifically authorized by the Tribal Council, retain counsel to assist in carrying out these duties and to represent the Tribe in special matters relating to this Code.

- (11) Perform any other functions ordered by the Court in matters related to this Code.
- (12) Develop case plans and conduct case plan reviews pursuant to placement and service orders.
- (13) Negotiate agreements for services, record sharing, referral, and funding for child welfare services pursuant to placement and service orders.
- (14) Provide measures and procedures for preserving the confidential nature of child welfare services records within the Community and Family Services office.
- (15) File and mail such reports as may be required by this Code.

B. Use of other Tribal resources

- (1) In carrying out its powers, duties, and responsibilities under this Code, Community and Family Services may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Tribe, both from within and without the Tribe. Community and Family Services shall be required to identify and use qualified tribal or other resources, if available and appropriate.
- (2) The Court may order the provision of psychiatric, psychological, or therapeutic counseling, or other social services by an appropriate department or employee of the Tribe or other qualified agency in any proceeding under this Code.

SECTION 19. DUTY TO REPORT CHILD ABUSE AND NEGLECT

A. Duty

Any person who has a reason to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to Smith River Community and Family Services. Those persons reporting may remain anonymous.

B. Mandatory Reporters

Those persons who are mandated to report suspected abuse or neglect to the proper authorities include any physician, nurse, dentist, optometrist, or any other medical or health professional; school principal, school teacher, or other school official; social worker, child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the court, or other judicial system official.

C. Immunity

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution for such good faith reporting.

SECTION 20. GUARDIANSHIPS

A. Purpose

- (1) The Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the Court's jurisdiction. Such appointment may be made on the petition of a relative or other person on behalf of the child, or a petition of the child if at least fourteen (14) years or age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given on any person having the care of the child, and to such other relatives of the child as the court may deem proper.
- (2) If a child is under the age of fourteen (14) years, the court may nominate or appoint his or her guardian. If he or she is fourteen (14) years of age or older, he or she may nominate his or her own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if, after being duly cited by the court, he or she neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.
- (3) When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he or she attains that age, may nominate his or her own guardian, subject to approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and care and management of his or her property until such child arrives at the age of eighteen (18), marries, is emancipated by the court, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority without express written consent of the court, to disposed of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.
- (4) The court may order that the court disburse monthly reimbursement payments to the person or agency to which custody is granted under this code, provided the tribal council has appropriated sufficient funds. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the tribal code.

B. Types of Guardianship

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

C. Guardianship of Property

The court may appoint a guardian of the property if a child person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reached eighteen (18) years of age or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

D. Temporary Guardianship

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be modified if the court determines that is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

E. Permanent Guardianship

The Court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no modification of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

F. Who May File Guardianship Petition

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

G. Contents of Guardianship Petition

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address and tribal affiliation of the petitioner;

- (2) The full name, gender, date and place of birth, residence and tribal affiliation of the proposed ward;
- (3) The basis for the court's jurisdiction;
- (4) The relationship of the proposed guardian to the proposed ward;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (6) The type of guardianship requested; and the basis or facts supporting the guardianship request;
- (7) A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested)

All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

H. Guardianship Report

- (1) Upon the filing of a guardianship petition, the court shall immediately request that Smith River Community and Family Services or other qualified agency conduct a guardianship report on the proposed guardian and the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.
- (2) No determination can be made on a guardianship petition until the report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court no later than ten (10) days before the hearing. The court may order additional reports as it deems necessary.
- (3) There shall be a Jurisdiction Hearing and Placement and Services for Guardianship Hearing and Order.

I. Management of Property

In the event that a guardian shall receive any money or funds of any child during his or her term as guardian, before taking and receiving into custody such money or funds, the court must require of such person a bond with sufficient surety to be approved by the court and in such sum as he or she shall order, conditioned that the guardian will faithfully perform the duties of his or her trust, and the following conditions shall form the part of such bond without being expressed therein:

- (1) To make an inventory of all the estate of the ward that comes into his or her possession or knowledge and to return the same within such time as the court may order, and;
- (2) To dispose of and manage the estate according to laws and for the best interests of the ward, and faithfully discharge his or her trust in relation thereto, and also in relation to the care, custody and education of the ward, and;
- (3) To render an account on oath of property, estate and money of the ward in his or her hands and all the proceeds or interests derived therefore, and of the management and disposition of the same, within three (3) months after the appointment, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the ward if he or she be of full age, or the legal representative, and to pay over and deliver all the estate, monies and effects remaining in his or her hands, or due on such settlement to the person who is legally entitled thereto.

The funds of any child must be used by his or her guardian solely for the support and education of such child and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonable be afforded according to the income and estate of said ward.

If determining to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather to managed for the child reaches the age of eighteen (18) or is emancipated by the court.

SECTION 21. MODIFICATION OF PARENTAL RIGHTS

A. Purpose

As a general rule, it is against the Smith River Rancheria's policy and philosophy to terminate parental rights for the Tribe's children. This section shall be construed in a manner consistent with the philosophy that all parties shall be secured their rights as assured by the Tribe's Constitution; that the family unit is of most value to the tribal community and individual family members when that unit remains intact; and that the parent-child relationship is of such vital importance that modification of parental rights should be used only as a last resort when, all efforts have failed to avoid modification and it is in the best interests of the child and tribe concerned to proceed under this section.

The purpose of this section is to provide for the voluntary and involuntary modification of the parent-child relationship and for the substitution of parental care and supervision by judicial process, for those extremely rare circumstances where it is in the child's and the Tribe's best interests to modify parental relationships.

B. Grounds For Involuntary Modification

The Tribal Court may modify parental rights to a child without the parent's consent only if, by proof beyond a reasonable doubt, it finds that modifying parental rights is in the best interest of the child and the Tribe based on one of the following grounds:

- (1) Abandonment. If the parent has not contacted the child by telephone, letter or in person, or provided any financial support for more than one (1) year without a break, or has had only marginal contacts for twenty-four (24) out of the latest forty-eight (48) months, a presumption shall exist that there is no parental relationship existing. The burden shall then be on the parent to prove that such a relationship does exist. The evidence necessary to rebut this presumption may include, but shall not be limited to, information about efforts to maintain the parent-child relationship, including a showing of regular visits, telephone calls or letters or monetary support. A termination petition must be filed within sixty (60) days of a judicial determination that the child is an abandoned infant;
- (2) Physical Injuries. Willful and repeated physical injuries of the child by the parent(s); or that the parent(s) knew that another individual willfully caused physical injuries and failed to remove the child from the abusive situation, to ask law enforcement to remove the individual, or to take other steps to protect the child;
- (3) Sexual Abuse. Willful and severe or repeated acts of sexual abuse or sexual exploitation by the parent or parents or that the parents knew that another individual willfully and severely or repeatedly caused acts of sexual abuse or sexual exploitation and failed to remove the child from the depraved situation and/or to ask law enforcement to remove the individual;
- (4) Emotional Harm. The return of the child may result in serious permanent emotional damage as supported by the best evidence available;
- (5) Severe Neglect. Pervasive and uncorrectable failure or refusal to provide proper or necessary subsistence, education, medical care, shelter, a safe environment or any other necessary care for the child's health, guidance, or well-being.
- (6) Domestic or Family Violence. There is a severe pattern of domestic or family violence that has continued despite all efforts to end it in order to protect the child.

C. Pre-Filing Requirements

A petitioner seeking involuntary modification of the parent-child relationship must establish the following:

- (1) The child has been an abused or neglected child under this Children's Code for at least a one-year period of time, and has been removed from his or her parent at the time of this modification hearing for a maximum period of 15 of the previous 22 months, unless a compelling reason not to file a termination or modification petition exists;

- (2) The court has entered an order which states what the parent was required to accomplish to correct his or her underlying problem(s);
- (3) The social service agency involved has made a good faith attempt to offer or provide all court ordered services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);
- (4) There is little likelihood the conditions will be remedied so that the child can be returned to the parents in the near future;
- (5) Continuation of the current parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and
- (6) Not returning the child to his or her parent is the least detrimental alternative that can be taken.

D. Who May File Modification Petition

A petition may be filed by:

- (1) Either parent when modification is sought with respect to the other parent;
- (2) An authorized Tribal representative;
- (3) Any other person possessing a legitimate interest in the matter; or
- (4) A parent may file a petition for the voluntary modification of his or her parental rights.

No parental rights may be modified unless a petition has first been filed, notice has been given, and a hearing held in accordance with the provisions of this section.

E. Contents of the Termination or Modification Petition

The petition for modification of parental rights shall include the following to the best information and belief of the petitioner:

- (1) The name, place of residence and tribal affiliation of the petitioner (if other than an authorized Tribal representative);
- (2) The full name, gender, date and place of birth, residence and tribal affiliation of the child;
- (3) The basis for the court's jurisdiction;
- (4) State the relationship of the petitioner to the child, or the fact that no relationship exists;
- (5) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (6) If the child's parent(s) is a minor, the names and addresses of the parents' parents or guardian; and if such parent has no parent or guardian, the members of such parent's extended family;

- (7) The name and address of the person or agency having legal or temporary custody of the child;
- (8) The grounds on which the modification is sought under this Children's Code (unless voluntary modification);
- (9) A statement that the pre-filing requirements set forth in this Children's Code have been met (unless involuntary modification); and
- (10) A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this section are unknown, the petition shall so state. The petitioner shall sign and date the petition.

F. Notice

After a petition for the involuntary modification of parental rights has been filed, the Tribal Court shall set the time and place for hearing and shall cause notice thereof to be given to the petitioner, the parents of the child, any guardian of the person of the child, the person having legal or temporary custody of the child, and the child's extended family as determined by the court. If the child's parent(s) is a minor, notice shall also be given to that parent's parents or guardian of the person unless the Tribal Court is satisfied, in exercise of its discretion, that such notice is not in the best interest of the parent and that it would serve no useful purpose.

G. Service

Notice shall be given by personal service. If service cannot be made personally, the Tribal Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Tribal Court may authorize service by publication in either the tribal newspaper or a newspaper of general circulation in the county where the court is located, once a week for three consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made by publication. Except where service is by publication, notice shall include a copy of the petition.

H. Waiver

Notice and appearance may be waived by a parent in writing before the Tribal Court, or in the presence of and witnessed by a clerk of the court, provided that such parent has been apprised of the meaning and consequences of the modification action. Any parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

I. Pre-Modification Report

- (1) Upon the filing of a petition under this section for the involuntary modification of parental rights, the Tribal Court shall order that the Smith River Community and Family Services or another qualified agency prepare and submit to the court a report in writing. The report shall be submitted to the court no later than ten (10) days before the hearing with copies given to the parents. The purpose of the report

is to aid the Tribal Court in making a determination on the petition and shall be considered by the Tribal Court prior thereto. The Tribal Court may request additional reports where it deems necessary.

- (2) The report shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and other such facts as may be pertinent to the parent and child relationship. The report shall include a recommendation and the reasons therefore as to whether or not the parent and child relationship should be modified.

J. Relinquishment Of Parental Rights

Parental rights may be relinquished (voluntarily modified) by a parent in writing, if signed by the parent in the presence and with approval of the court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of the child. The Tribal Court shall ensure that the parent understands the consequences of the voluntary modification prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he or she does not understand English.

K. Hearing

The hearing procedures shall be in accordance with those set forth in this Children's Code.

L. Burden of Proof

The burden of proof lies with the petitioner to prove the allegation(s) in the modification petition are supported by evidence beyond a reasonable doubt and that the best interests of the child will be served by modification of parental rights. Pre-modification reports shall be received in evidence so long as the preparer is available to be cross-examined.

M. Findings of Facts And Conclusions of Law

- (1) The Tribal Court shall make formal findings of fact and conclusions of law as a basis for the written order modifying the parent-child relationship.

N. Result of Modification Order

Upon the modification of parental rights, all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control, visitation, or support existing between the child and parent shall be severed, unless otherwise modified as directed by the Tribal Court. Any support obligation existing prior to the effective date of the order modifying parental rights shall not be severed or modified. Modification of the rights of one parent shall not affect the rights of the other parent. A modification order shall be considered as a factor in whether or not the child inherits property or other interests from the parent whose rights were modified. A parent whose rights were modified shall not, however, inherit from such child after modification.

O. Child's Continued Right to Benefits

An order modifying the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Children's Code be deemed to affect any rights and benefits that the child derives from the

child's descent from a member of a federally recognized Indian tribe.

P. Custody After Modification Order

If upon entering an order modifying the parental rights of a parent there remains no parent having parental rights, the Tribal Court shall commit the child to the custody of a social services agency for the purpose of placing the child for adoption, or in the absence of an adoptive home, the agency may place the child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the child. The custodian shall have the authority to consent to the adoption of the child, the marriage of the child, and the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent.

Q. Future Status Review Hearings

If a child has not been adopted or permanently placed within six (6) months of the modification order, another six (6) month Status Review Hearing will be held. Such six (6) month hearings will continue until the child is adopted or permanently placed.

SECTION 22. ADOPTIONS

A. Open Adoptions

Adoptions under this Children's Code shall be in the nature of "Open Adoptions." The purpose of such open adoptions is to not permanently deprive the child of connections to, or knowledge of, the child's biological family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end, the following shall apply and be contained in all adoptive orders and decrees:

- (1) The adoptive parents and the adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as set forth herein;
- (2) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her natural family and tribal heritage;
- (3) The adoptive child and members of the child's natural extended family (including parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents;
- (4) Adoption shall not serve to prevent an adopted child from inheriting from a natural parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice-versa, in the same manner as if natural parents and child.

B. Consent

- (1) When Not Required. Written consent to an adoption is not required if:
 - a. The parent has abandoned the child;

- b. The parent's rights have been terminated or modified;
 - c. The parent has relinquished parental rights; or
 - d. The parent has been declared incompetent.
- (2) When Required. Written consent to an adoption is required of:
- a. The biological or adoptive mother;
 - b. The biological, adoptive, or acknowledged father;
 - c. The custodian, if empowered to consent;
 - d. The court, if the custodian is not empowered to consent; and
 - e. The child, if over twelve (12) years of age.

C. Execution of Consent

Written consent to an adoption shall be executed and acknowledged before the Tribal Court. Consent shall not be accepted or acknowledged by the Tribal Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the person consenting to the adoption does not understand English. Consents of a child over the age of twelve (12) years shall be made orally either in open court, or in chambers with only the judge and any other person(s) he or she deems necessary, and the child present.

D. Who May File

Any person may file a petition for adoption. The petition may be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said parents shall not be required to join in the petition.

E. Contents of Petition

The petition for adoption shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address, and tribal affiliation of the petitioner;
- (2) The full name, the gender, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
- (3) The name by which the proposed adoptee shall be known if the petition is granted;
- (4) The basis for the courts jurisdiction;
- (5) If the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest;
- (6) The relationship of the petitioner to the proposed adoptee; and
- (7) The names and addresses of any person or agency whose consent to aid adoption is necessary.

F. Multiple Adoptees

Where there is more than one proposed adoptee, and these proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.

G. Signing

All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the court.

H. Notice

Notice shall be provided in accordance with the notice procedures set forth in this Children's Code except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated or modified.

I. Home Studies

When a petition for the adoption of a child is filed with the Tribal Court, the Tribal Court shall immediately request that the social services department or other qualified agency conduct a home study on the petitioner and report on the child. The home study and report shall relate the circumstances of the home, the petitioner and his or her ability, both physical and mental, to assume the responsibilities of a parent to the child. The home study shall contain other pertinent information designed to assist the court in determining the best placement for the child. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult.

J. Timing

No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Tribal Court. The home study shall be submitted to the Tribal Court no later than ten (10) days before the hearing. The home study and report may be consolidated into one document. The court may order additional home studies or reports as it deems necessary.

K. Withdrawal of Consent

Any consent given under the provisions of this Children's Code may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such a withdrawal. All withdrawals must be in writing and notarized or witnessed by a clerk of the court, with the original being filed with the Tribal Court.

L. Vacating Decree

Within six (6) months after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he or she had prior to the entry of the decree.

M. Adoption Preferences

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (1) A member of the child's extended family, according to tribal laws, customs and traditions.
- (2) Another member of the child's Tribe.
- (3) Another Indian family.
- (4) Another family, provided the adoptive parents agree to maintain a meaningful and consistent cultural connection between the child(ren) and the Tribe.

N. Hearing Procedures

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The Tribal Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Tribal Court shall examine:

- (1) Validity of written consent;
- (2) Modification of parental rights order;
- (3) Length of time of the child's dependency by the court;
- (4) Special conditions of the child;
- (5) Parent communication with the child;
- (6) Minor's consent to adoption, if over twelve (12) years of age;
- (7) Home studies or other reports; and
- (8) Order of preference of placement.

O. Appearance And Examination

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing, the Tribal Court shall advise the party(s) of their basic rights as provided herein. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.

P. Denial

If the Tribal Court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements of this section have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this Children's Code.

Q. Consolidation

Proceedings for modification of the parent-child relationship and proceedings for adoption may be consolidated and determined at one hearing provided that all the requirements of this section are complied with fully

SECTION 23. APPEALS

A. Who Can Appeal

Any party to a Tribal Court proceeding may appeal a final Court order.

B. Time Limit for Appeal

Any party seeking to appeal a Court order shall file a written notice of appeal with the Court no later than twenty (20) days after notice of the final order has been given.

C. Appellate Justice

Upon receipt of a Notice of Appeal to the Tribal Court, an appointed Appellate Justice will hear the appeal within a reasonable time.

D. Record

For purposes of appeal, a record of proceedings shall be made available to the child, the child's parent, guardian or custodian, the child's counsel or advocate and others upon court order. The appealing party shall pay costs of obtaining this record.

E. Stay of Proceedings Pending Appeal

A court order may be stayed by such appeal

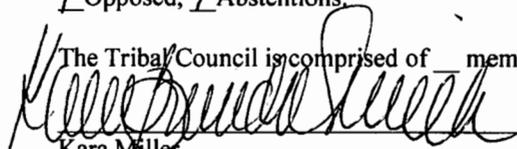
F. Conduct of Proceedings

All appeals shall be conducted in accordance with the Tribe's Rules of Court as long as those provisions are not in conflict with the provisions of this Children's Code.

CERTIFICATION

The undersigned Tribal Chairperson of the Smith River Rancheria hereby certifies that the foregoing Children's Code is a true and correct copy of the Children's Code that was approved by a vote conducted on the 26 day of April, 2006, was duly adopted by a vote of 5 For, 1 Opposed, 1 Abstentions.

The Tribal Council is comprised of members of which (a quorum) voted.

 Date: April 25, 2006
Kara Miller
Tribal Chairperson

The Tribal Council adopted Resolution 06-11,