National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-08-12

To: Narcisco Cunanan, Chairman
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244
Fax-(360) 592-5721

Francine Adams, Chairperson
Nooksack Gaming Commission
P.O. Box 960
Deming, WA 98244
Fax (360) 592-2111

Edward Wurtz, General Counsel
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244
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## NOTICE OF VIOLATION

1. Notification of Violation
The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Nooksack Indian Tribe (Tribe), which operates the Nooksack River Casino in Deming, Washington, has violated the NIGC regulations by failing to submit a timely annual audit.

2. Authority

Under the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, and any approved tribal gaming ordinance. 25 U.S.C. § 2713 and 25 C.F.R. § 573.3.

3. Applicable Laws

A. 25. U.S.C. § 2710(b)(2)(C). IGRA requires an annual audit of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC.

B. 25 C.F.R. §§ 571.12 and 571.13. NIGC regulations require that a tribe engage an independent certified public accountant to provide an annual independent audit to be prepared in accordance with generally accepted accounting principles and conducted in accordance with generally accepted auditing standards of the financial statements of each gaming operation on Indian lands and submit a copy of the audit report(s) and any management letter(s) setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year.

C. Title 56, Gaming Ordinance of The Nooksack Indian Tribe, 56.05.020 Audits provides: The Commission shall cause yearly independent audits to be conducted of all gaming activities in Class II and Class III Gaming, and said audits shall be provided to the Chairman of the National Indian Gaming Commission.

4. Role of Independent Audit Report

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

5. Circumstances of the Violation

A. The Tribe is a federally recognized Indian Nation with tribal headquarters in Deming, Washington.

B. The Tribe has operated its gaming facility, the Nooksack River Casino, from 1994 to the present. The fiscal year for the Casino ran from January 1, 2007 to December 31, 2007.

C. IGRA requires that tribes submit annual audits of each gaming facility. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations require that a tribe cause to be conducted an annual independent audit of the financial statements of each gaming operation on Indian lands by engaging an independent certified public accountant to provide an annual independent audit to be prepared in accordance with generally accepted accounting principles and conducted in accordance with generally accepted auditing standards. A copy of the audit report and management letter setting forth the results of the annual audit must be submitted to the NIGC within 120 days after the end of each fiscal year. 25 C.F.R. §§ 571.12, 571.13.

D. Based on the close of the Tribe's fiscal year and the requirement for submission on or before 120 days from the close of the fiscal year, the Tribe's independent annual audit by a certified public accountant prepared in accordance with generally accepted accounting principles and conducted in accordance with generally accepted auditing standards, was due to the NIGC on or before April 29, 2008.

E. On April 28, 2008, Ryan Becker, Nooksack River Casino Chief Financial Officer, submitted financial documents he called "a draft audit" of the gaming operation's 2007 fiscal year to the NIGC. The submitted financial documents were not signed by the certified public accountant that performed the "draft audit."

F. Pursuant to the American Institute of Certified Public Accountants, in order to be in compliance with generally accepted accounting principles and generally accepted auditing standards, an independent standard certified public accountant audit must include the signature of the accountant who did the audit. See Public Company Accounting Oversight Board, Reports on Audited Financial Statements, AU Section 508.08(i), auditor's standard report.

G. Immediately upon receipt of the draft audit submission from the Tribe, the NIGC staff spoke with Mr. Becker by telephone and advised him that what he called a "draft audit" without a certified public accountant signature could not fulfill the Tribe's obligation to submit a copy of an annual independent audit pursuant to 25 C.F.R. §§ 571.12, 571.13.

H. On June 30, 2007, the Tribe submitted an annual independent audit report to the NIGC which was 60 days late.

6. Measures Required to Correct the Violation

Audits must be received within 120 days of the end of a gaming operation's fiscal year. 25 C.F.R. § 571.13. While there is no remedial action that can correct the violation of failing to submit the 2006-2007 audit on a timely basis, improved controls to assure timely compliance of the next audit should be put in place.

7. Appeal

Within thirty (30) days after service of this Notice of Violation, The Tribe may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal, and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

Within ten (10) days after filing a notice of appeal, the Tribe must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. The Tribe may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

8. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against Tribe in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 25 of July, 2008.

PHILIP N. HOGEN
Chairman

ANTONIA COWAN
Staff Attorney

## Certificate of Service

I certify that this **Notice of Violation** was sent by facsimile transmission and certified U.S. mail, return receipt requested, on this 25TH day of July, 2008 to:

Narcisco Cunanan, Chairman
Nooksack Indian Tribe
P.O.Box 960
Deming, WA 98244
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Shakira Ferguson

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