National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-07-06

To: Puyallup Tribe of Indians
Attn: Herman Dillon, Sr. (Agent for Service of Process)
Chairman of the Puyallup Tribal Council
3009 E. Portland Ave.
Tacoma, WA 98404

1. Notification of Violation

The Chairman of the National Indian Gaming Commission ("NIGC") hereby gives notice that the Puyallup Tribe of Indians ("Tribe" or "Respondent"), located in Tacoma, Washington, has violated the Indian Gaming Regulatory Act ("IGRA"), NIGC regulations and the approved Puyallup Tribe of Indians Tribal Gaming Ordinance ("Ordinance"), Res. No. 060900, as follows:

Count 1: The Tribe has failed to submit a timely audit report for the gaming operation known as BJ's Bingo, in violation of IGRA, 25 U.S.C. § 2710(b)(2)(C), NIGC regulations, 25 C.F.R. §§ 571.12 and 571.13, and the Tribe's Ordinance, Sections 4.03(b)(iv) and 5.01.

Count 2: The Tribe has failed to submit a timely Agreed Upon Procedures ("AUP") report for the gaming operation known as BJ's Bingo in violation of NIGC regulations, 25 C.F.R. § 542.3(f).

2. Authority

Under 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 IGRA, NIGC regulations, or any provision of a tribal gaming ordinance, regulation or resolution approved by the Chairman. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3.

3. Applicable Federal Laws and Tribal Ordinance Provisions

A. IGRA provides that an individually owned Class II gaming operation that was operating on September 1, 1986, may continue to operate if such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance approved by the NIGC in accordance with 25 U.S.C. § 2712; income to the Indian tribe from such gaming is used only for the purposes described in 25 U.S.C. § 2710(b)(2)(B); not less than 60 percent of the net revenues is income to the Indian tribe; and the owner of such gaming operation pays an appropriate assessment to the NIGC under 25 U.S.C. § 2717(a)(1) for regulation of such gaming. 25 U.S.C. § 2710(b)(4)(B)(i).

B. IGRA provides that the NIGC shall monitor Class II gaming conducted on Indian lands on a continuing basis. 25 U.S.C. § 2706(b)(1).

C. IGRA provides that the NIGC may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of Class II gaming conducted on Indian lands and other matters necessary to carry out the duties of the NIGC under this chapter. 25 U.S.C. § 2706(b)(4).

D. IGRA provides that the NIGC shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter. 25 U.S.C. § 2706(b)(10).

E. 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. 25 U.S.C. § 2710(b)(2)(C).

F. NIGC regulations require that a tribe cause to be conducted annual independent audits 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 fiscal year. 25 C.F.R. §§ 571.12 and 571.13.

G. The Tribe's Ordinance requires that the Tribe cause to be conducted annually an independent audit of gaming operations and to submit the resulting audit report to the NIGC. *Puyallup Tribe of Indians Tribal Gaming Ordinance* Sections 4.03(b)(iv) and 5.01.

H. NIGC regulations require that each Class II Tribal gaming authority, in accordance with the Tribal gaming ordinance, establish and implement tribal internal control standards ("TICS") that equal or exceed the level of control set forth in the NIGC Minimum Internal Control Standards ("MICS"). 25 C.F.R. § 542.3(c).

I. NIGC regulations require that each Class II gaming operation develop and implement an internal control system that, at a minimum, complies with the TICS. 25 C.F.R. § 542.3(d).

J. NIGC regulations require that a tribe cause an independent certified public accountant ("CPA") to perform an AUP to verify that the gaming operation is in compliance with the NIGC MICS and submit two copies of the report to the NIGC within 120 days of the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f).

K. The Tribe's Ordinance was enacted in order to set the terms and conditions for gaming activity conducted within the exterior boundaries of the Puyallup Indian Reservation. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Section 1.01.

L. The Ordinance authorizes Class II gaming as defined in IGRA and by regulations promulgated by the NIGC. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Sections 2.03 and 3.01.

M. The Ordinance authorizes the Tribe to license and regulate Class II gaming activities owned by any person or entity other than the Tribe and conducted on Indian lands within the Tribe's jurisdiction. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Section 4.04(a).

N. An individually owned Class II gaming operation that is licensed and regulated by the Tribe, and was operating on September 1, 1986, may continue to operate if the gaming operation remains in full compliance with all applicable Tribal and federal laws. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Section 4.04(b)(i)(A).

O. The Ordinance requires that each place, facility, or location on Indian lands within the Tribe's jurisdiction which conducts Class II gaming must be subject to annual outside audits that are provided to the Tribe and the NIGC. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Section 4.03(a) & (b)(iv).

P. The Ordinance requires that the Tribe promulgate regulations for control of internal fiscal affairs of all gaming operations, including prescribing minimum procedures for safeguarding the gaming operation's assets and revenues, including recording of cash and evidences of indebtedness, and mandatory count procedures. Such procedures shall establish a controlled environment, accounting system and control procedures that safeguard the assets of the organization, assure that operating transactions are properly recorded, promote operational efficiency, and encourage adherence to

prescribed policies. *Puyallup Tribe of Indians Tribal Gaming Ordinance,* Section 5.02(a).

4. Role of Independent Audit Report and Agreed Upon Procedures

Submission of the annual independent audit report by a firm of CPAs is critical to the NIGC's mission to protect the integrity of Indian gaming. A CPA 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.

Submission of the AUP report by a firm of CPAs is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct testing and identify internal control deficiencies provides a certain level of assurance as to the security of tribal gaming revenues. Since gaming transactions are based on cash or cash equivalents, gaming operations generally are considered to possess a high level of inherent risk. The AUP report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, the adequacy of the internal control standards associated with gaming and gaming related transactions and activities.

5. Circumstances of the Violation

A. Respondent is a federally recognized Indian tribe with tribal headquarters in Tacoma, Washington.

B. Respondent has licensed an individually owned Class II gaming operation known as BJ's Bingo, located within the exterior boundaries of the Puyallup Indian Reservation and the City of Fife, Washington.

C. The fiscal year for BJ's Bingo ends on March 31 of every calendar year.

D. BJ's Bingo operated gaming activities, and Respondent regulated such gaming activities, during all or part of the fiscal year ending March 31, 2007.

E. 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 and submit a copy of the audit report(s) and management letter(s) setting forth the results of the annual audit(s) to the

NIGC within 120 days after the end of each fiscal year of the gaming operation. 25 C.F.R. §§ 571.12, 571.13. "Gaming operation" means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. 25 C.F.R. § 502.10.

F. The audit report for tribal licensee BJ's Bingo was due to the NIGC on July 30, 2007. As required by NIGC regulations, the annual audits are due 120 days after the end of the gaming operation's fiscal year, but because that day (July 29, 2007) fell on a Sunday, the report was due the following business day (July 30, 2007).

G. The audit report was received by the NIGC on October 5, 2007. Therefore, the audit report was 67 days late.

H. NIGC regulations require that tribes submit AUP reports for each gaming facility within 120 days after the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f).

I. The AUP submission for tribal licensee BJ's Bingo was due to the NIGC on July 30, 2007. As required by NIGC regulations, AUP submissions are due 120 days after the end of the gaming operation's fiscal year, but because that day (July 29, 2007) fell on a Sunday, the AUP submission was due the following business day (July 30, 2007).

J. The AUP submission was received by the NIGC on October 15, 2007. Therefore, the AUP submission was 77 days late.

6. Measures Required to Correct the Violation

Late submission of an annual audit cannot be corrected. NIGC regulations require that audits be received within 120 days of the gaming operation's fiscal year end. 25 C.F.R. §§ 571.12 and 571.13

Late submission of an AUP report cannot be corrected. NIGC regulations require that AUP reports be received within 120 days of the gaming operation's fiscal year end. 25 C.F.R. § 542.3(f).

7. Appeal

Within thirty (30) days after service of this NOV, Respondent 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. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this NOV.

Within ten (10) days after filing a notice of appeal, Respondent 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 Respondent wishes to present oral testimony or witnesses at the hearing, Respondent 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. Respondent 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 Respondent in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent may submit written information about the violation to the Chairman within fifteen (15) days after service of this NOV (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 6th of December, 2007.

Philip N. Hogen, Chairman
National Indian Gaming Commission

Carrie Newton Lyons, Staff Attorney
National Indian Gaming Commission

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 6th day of December, 2007 to:

Puyallup Tribe of Indians
Attn: Herman Dillon, Sr. (Agent for Service of Process)
Chairman of the Puyallup Tribal Council
3009 E. Portland Ave.
Tacoma, WA 98404

Jerrie L. Moore

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