National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-06-15

To: Clarence Atwell, Jr., Chairman
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1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Santa Rosa Rancheria Tachi-Yokut Tribe, formerly known as the Santa Rosa Rancheria, Santa Rosa Rancheria Tachi Tribe and the Santa Rosa Band of Tachi Yokut Tribe (Respondent or Tribe), located in Lemoore, California, is in violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations for failure to conduct background investigations, including federal criminal history checks, on key employees and primary management officials, failure to make eligibility determinations of suitability for employment in a gaming operation based on sufficient background investigations, and failure to notify the NIGC when it licenses key employees and primary management officials.

2. Authority

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

3. Applicable Federal and Tribal Laws

A. 25 U.S.C. § 2710(b)(2)(F)(i) – IGRA requires that a tribe have in place an adequate system to ensure that background investigations are conducted on key employees and primary management officials of a gaming operation.

B. 25 U.S.C. § 2710(b)(2)(F)(ii)(I) – IGRA requires that tribal gaming operations issue tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses.

C. 25 U.S.C. § 2710(b)(2)(F)(ii)(II) – IGRA requires that a tribal gaming operation shall maintain a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment.

D. 25 U.S.C. § 2710(b)(2)(F)(ii)(III) – IGRA requires that a tribal gaming operation notify the Commission of the background investigation results before issuing a license to key employees or primary management officials.

E. 25 C.F.R. § 502.14 –NIGC regulations provide define key employee to mean: (a) A person who performs one or more of the following functions: (1) Bingo caller; (2) Counting room supervisor; (3) Chief of security; (4) Custodian of gaming supplies or cash; (5) Floor manager; (6) Pit boss; (7) Dealer; (8) Croupier; (9) Approver of credit; (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices; (b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or, (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

F. 23 C.F.R. § 502.19 – NIGC regulations define primary management official to mean: (a) The person having management responsibility for a management contract; (b) Any person who has authority: (1) To hire or fire employees; or (2) To set up working policy for the gaming operation; or (c) The chief financial officer or other person who has financial management responsibility.

G. 25 C.F.R. § 556.4 – NIGC regulations require that a tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

H. 25 C.F.R. § 522.2(h) and 25 C.F.R. § 556.4(a)(14) – NIGC regulations require that a tribe shall collect fingerprints from an applicant for a primary management official or key employee position and conduct a criminal history check including a check of the criminal history record information maintained by the FBI.

I. 25 C.F.R. § 556.4(b) - NIGC regulations require that a tribe shall conduct an investigation sufficient to make a suitability determination regarding the licensing of the person pursuant to 25 C.F.R. § 558.2.

J. 25 C.F.R. § 556.5(a) - NIGC regulations require that when a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed employment application.

K. 25 C.F.R. § 556.5(b) – NIGC regulations require that, before issuing a license to an employee, a tribe shall forward to the Commission an investigative report on each background investigation including the following: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The basis for those conclusions.

L. 25 C.F.R. § 556.5(c) – NIGC regulations require that a tribe shall include a copy of the eligibility determination made by the tribe pursuant to 25 U.S.C. § 558.2 with the investigative report forwarded to the Commission.

M. 25 C.F.R. § 558.2 – NIGC regulations require that an authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

N. 25 C.F.R. § 558.3(a)(1) NIGC regulations require that a tribal gaming operation forward the Commission a completed application for employment when a key employee or primary management official begins work at a tribal gaming operation.

O. 25 C.F.R. § 558.3(a)(2) NIGC regulations require that a tribe conduct a background investigation pursuant to 25 C.F.R. Part 556 to determine the eligibility of key employee or primary management official for continued employment in a gaming operation.

P. 25 C.F.R. § 558.3(b) NIGC regulations require that, upon completion of a background investigation and a determination of eligibility for employment in a gaming operation, a tribe shall forward a report to the Commission within sixty (60) days after an employee begins work or within sixty (60) days of the Chairman's approval of an ordinance under 25 C.F.R. Part 523.

Q. 25 C.F.R. § 558.3(b) NIGC regulations require that a gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.

R. Section 2.37 of the Tribal Gaming Ordinance of the Santa Rosa Rancheria Tachi-Yokut Tribe (Ordinance), approved by the NIGC Chairman on February 1, 2006, provides a definition for key employee. Under the Ordinance, key employee means a person who performs one or more of the following functions: (1) Bingo caller; (2) Counting room supervisor and Personnel; (3) Chief of security, or any person who supervises or directs other employees engaged in providing security or surveillance services; (4) Custodian of Gaming supplies or cash; (5) Floor manager, manager or General manager; (6) Pit boss; (7) Dealer; (8) Croupier; (9) Approver of credit or whose recommendation in this regard are ordinarily sought or followed; or (10) Custodians of gambling devices including persons with access to cash and accounting records within such devices; If not otherwise included, any other Person whose total cash compensation is in excess of $50,000 per year; or if not otherwise included, an other person who supervises or directs other employees engaged in the control of Gaming assets and revenues and record keeping, including the recording of cash and evidence in indebtedness, and the maintenance, review, or control of the records, accounts, and reports of transactions; or If not otherwise included, the four most highly compensated persons in the Gaming Facility, or Any Applicant or Person the Tribal Commission finds is important or necessary to the operation of the Gaming Facility.

S. Section 2.49 of the Ordinance provides a definition for primary management official. Under the Ordinance, primary management official means: the person having management responsibility for the overall operation of the enterprise or Facility, or a management contract; or, any person who has authority to (1) Hire and fire employees; or (2) Set up working policy for the Gaming Operation; or the Chief Financial Officer or other Person who has financial management responsibility.

T. Section 5.1.1 of the Ordinance requires that each Key Employee and Primary Management Official have a current and valid license issued by the Tribal Commission.

U. Section 5.3.2 of the Ordinance requires that the Tribal Gaming Commission shall review diligently, the information provided in the Tribal Gaming License Application, including, but not limited to, contacting and investigating all resources identified in the Tribal Gaming License Application.

V. Sections 5.3.2 and 5.9 of the Ordinance require that an authorized Tribal official review a gaming license Applicant's prior activities, criminal record (if any), reputation, habits, and associations in order to make an eligibility determination for key employees and primary management officials and where it is determined that the Applicant is unsuitable for work in a gaming facility that the Tribe or a management contractor shall not employ the Applicant.

W. Section 5.3.3 requires that the Tribal Gaming Commission will provide a written report as to the findings and conclusions of the background investigation including, but not limited to: steps taken in conducting diligence, results of the conducted diligence and conclusions from review of conducted diligence before issuing a key employee or primary management official a license.

X. Section 5.3.4 of the Ordinance requires that the Tribal Gaming Commission transmit the Applicant's Application, file, and eligibility determination to the NIGC.

Y. Section 5.3.5 of the Ordinance requires that the Tribal Gaming Commission shall maintain the Applicant's file, including applications, background investigation reports.

Z. Section 5.4 of the Ordinance requires that key employee and primary management official license applications submitted to the Tribal Gaming Commission shall be forwarded to the NIGC, which shall be the Tribal Gaming Commission's authorized entity for processing fingerprint cards for background investigations. The background investigation shall, at a minimum, include a check of criminal history records information maintained by the Federal Bureau of Investigation.

AA. Section 5.7 permits the Tribal Gaming Commission to issue a temporary license which may last no longer than 90 days to an Applicant who has completed a license application.

BB. Section 5.8.1 provides that upon completion of the necessary background investigation, and after the Tribe has complied with the 30-day NIGC review requirements found in 25 C.F.R. § 558.3 and §558.4, the Tribal Commission may issue a license on a conditional or unconditional basis.

CC. Section 5.8.2 of the Ordinance states that any employee license shall be valid for a period of two (2) years.

4. Role of Background Investigations and Employee Licensing

The background investigation and licensing process for Key Employees and Primary Management Officials is crucial to maintaining the integrity of Indian gaming. Submission of the completed application, background investigation report, and licensing determination to the NIGC so that it may object to the issuance of a license is an integral part of this process as laid out in the IGRA. Gaming is a cash intensive business that requires a carefully screened employee base and careful implementation of internal controls. The background investigation and licensure process helps insure that employees who have access to cash and other gaming resources are worthy of positions of trust. Accordingly, under IGRA, the licensure of Key Employees and Primary Management Officials is a key tribal governmental responsibility.

5. Circumstances of the Violation

A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Lemoore, California.

B. Respondent operated its gaming facility, The Palace Indian Gaming Center (The Palace), located at 17225 Jersey Avenue, Lemoore, California, during all or part of the following years: 2000, 2001, 2002, 2003, 2004, 2005, and 2006.

C. As of February 7, 2006, at least ninety one (91) licensing files were complete but were not completed within the required timeframe. The submission of the investigative report and eligibility determination, or Notification of Results, was not submitted to the NIGC within 60-days of date of employment. Each of these employees has been employed for over 90-days without being properly licensed, including seventy five (75) employees who had been employed for over a year.

   i. Fifty six (56) of these files were for employees defined as key employee or primary management official pursuant NIGC regulations and the Tribal Gaming Ordinance. The Tribe has chosen to adopt a broader definition of key employee which resulted in an additional thirty five (35) employees being defined as key employees or primary management officials.

D. In addition, as of February 7, 2006, at least forty three (43) licensing files for current key employees and primary management officials were identified where the NIGC did not receive a copy of the investigative report and eligibility determination, or Notification of Results, despite the fact that each employee had been employed in excess of 90-days. At least thirty five (35) of these employees had been employed for over a year without being properly licensed.

   i. Thirty two (32) of these employees are defined as key employees or primary management officials pursuant to NIGC regulations and the Tribal Gaming Ordinance. The Tribe has chosen to adopt a broader definition of key employee which resulted in an additional eleven (11) employees being defined as key employees or primary management officials.

E. In addition, as of February 7, 2006, at least forty five (45) licensing files for current key and primary management officials did not contain an eligibility determination and the NIGC did not receive a copy of the investigative report and eligibility determination, or Notification of Results, despite the fact that each employee had been employed in excess of 90-days. At least twenty seven (27) of these employees had been employed for over a year without being properly licensed.

   i. Thirty (30) of these employees are defined as key employees or primary management officials pursuant to NIGC regulations and the Tribal Gaming Ordinance. The Tribe has chosen to adopt a broader definition of key employee which resulted in an additional fifteen (15) employees being defined as key employees or primary management officials.

F. In addition, as of February 7, 2006, at least seventy six (76) licensing files for current key employees and primary management officials, as defined by NIGC regulations and the Tribal Gaming Ordinance, did not contain an investigative report and eligibility determination. Further, the NIGC did not receive a copy of the investigative report and eligibility determination, or Notification of Results, despite the fact that each employee had been employed in excess of 90-days. At least forty seven (47) of these employees had been employed for over a year without being properly licensed.

G. In addition, as of February 7, 2006, at least six (6) licensing files for current key employees and primary management officials did not contain Criminal History Record Information, an investigative report, and an eligibility determination. Further, the NIGC did not receive a copy of the investigative report and eligibility determination, or Notification of Results, despite the fact that each employee had been employed in excess of 90-days. Five (5) of these employees had been employed for over a year without being properly licensed.

i. Three (3) of these employees are defined as key employees or primary management officials pursuant to NIGC regulations and the Tribal Gaming Ordinance. The Tribe has chosen to adopt a broader definition of key employee which resulted in an additional three (3) employees being defined as key employees or primary management officials.

H. The Tribe is in violation of the IGRA, NIGC regulations, and the Tribal gaming ordinance as follows:

1. The IGRA and NIGC regulations require the Tribe to conduct background investigations of applicants for key employee or primary management official positions 25 U.S.C. § 2710(b)(2)(F)(i); 25 C.F.R. §§ 556.4, 558.3(a)(2). That background investigation shall be sufficient to enable the Tribe to make an eligibility determination of an individual's suitability to work in the Tribe's gaming operation. 25 C.F.R. § 556.4(b). The Tribe's gaming ordinance requires the Tribal Gaming Commission shall conduct a background investigation of each key employee and primary management official sufficient to make an eligibility determination. Ordinance § 5.3. The Tribe's gaming ordinance further requires that the Tribal Gaming Commission shall review diligently, the information provided in the license application of each key employee and primary management official, including criminal record, if any. Ordinance § 5.3.2. The Tribe has failed to conduct background investigations on its currently employed key

employees or primary management officials, or, if it has begun the background investigations, has obtained only partial results insufficient to enable the Tribe to make eligibility determinations of suitability for work in a gaming facility.

2. NIGC regulations require the Tribe to create and forward to the NIGC background investigation reports including: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The bases for those conclusions. 25 C.F.R. §556.5(b). The report must be forwarded to the Commission within sixty (60) days after an employee begins work. 25 C.F.R. § 558.3(b).The Tribe has failed to prepare background investigation reports for its employees, and has further failed to forward such reports to the NIGC within sixty (60) days after an employee has begun work.

3. NIGC regulations and the Tribe's gaming ordinance require the Tribe to collect fingerprint cards from each applicant, and to process the cards for criminal history checks through the FBI fingerprint database. 25 C.F.R. § 556.4(a)(14); Ordinance § 5.4. The Tribe is to send the fingerprint cards to the NIGC for processing. Ordinance § 5.4. The Tribe has failed to forward fingerprint cards to the NIGC for processing of FBI criminal history checks.

4. The IGRA, NIGC regulations, and the Tribe's gaming ordinance require the Tribe to make an eligibility determination of a person's suitability to work in a gaming operation. 25 U.S.C. §2710(b)(2)(F)(ii)(II); 25 C.F.R. §§ 556.5(c), 558.2; Ordinance § 5.3.2. The Tribe is to forward such eligibility determination to the NIGC when forwarding the background investigation report. 25 C.F.R. § 558.2; Ordinance § 5.3.4. The Tribe has failed to make eligibility determinations of a person's suitability to work in a gaming operation and has failed to forward such eligibility determinations to the NIGC.

5. The IGRA and the Tribe's gaming ordinance require the Tribe to issue a Tribal license to each primary management official and key employee. 25 U.S.C. § 2710(b)(2)(F)(ii)(I); Ordinance § 5.1.1. The Tribe may not issue a license until the Tribal gaming commission has reviewed the applicant's background investigation. Ordinance § 5.8.1. The Tribe must notify the Commission of the background investigation results before issuing a license to a key employee or primary management official. 25 U.S.C. § 2710(b)(2)(F)(ii)(III); Ordinance § 5.8.1. The Tribe has

failed to review applicants' background investigation reports, including the results of federal criminal history checks, prior to issuing gaming licenses to key employees and primary management officials.

6. NIGC regulations require that a gaming operation shall not employ a primary management official or key employee who does not have a license after ninety (90) days. 25 C.F.R. § 558.3(b). The Tribe allows employees to work with a temporary license for no more than ninety (90) days, after which the employees must receive a tribal employee license valid for a period of two years. 25 C.F.R. § 522.2(b), (c), (f), (h) and Ordinance §§ 5.7 and 5.8. Respondent has failed to notify the NIGC of licenses issued to key employees or primary employment officials.

I. Since the February 7, 2006, site visit, the Tribe has proceeded to process the background investigations, make eligibility determinations, submit investigative reports and eligibility determinations, or Notification of results, to the NIGC and issue licenses.

6. Measures Required to Correct these Violations

In order to correct the past and ongoing violations of the IGRA, NIGC Regulations, and the Tribe's gaming ordinance, Respondent must:

A. Within 15 days, starting from the date of service of this Notice of Violation, collect fingerprint cards from all current casino employees who hold key employee or primary management official positions at the Casino and send them to the NIGC with appropriate fees for processing;

B. Within 30 days, starting from the date of service of this Notice of Violation, perform complete background investigations and obtain FBI criminal history checks on all current primary management officials and key employees and create background investigation reports;

C. Within 45 days, starting from the date of service of this Notice of Violation, review the completed background investigation reports, containing FBI criminal history information, key employees or primary management officials and make eligibility determinations of suitability for employment in a gaming operation;

D. Within 60 days, starting from the date of service of this Notice of Violation, notify the NIGC whether a key employee or primary management official has been granted a Tribal gaming license and submit to the NIGC a copy of the completed employment application, background investigation report, and eligibility determination;

E. Commencing 90 days after date of service of this Notice of Violation, not employ any persons hired as of the date of service of this Notice of Violation, as key employees or primary management officials whose ninety (90) day temporary licenses have expired;

F. Licensing for all new key employees and primary management officials hired after the date of service of this Notice of Violation be completed within ninety (90) days from date of hire; and

G. Notify the NIGC in 15 day intervals, starting from the date of service of this Notice of Violation, of the measures taken to correct this violation. The required information must be submitted to the Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

7. Appeal

Within 30 (thirty) days after service of this Notice of Violation, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request in writing 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 Notice of Violation.

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, in writing, 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. Temporary Closure Order or Fine--Submission of Information

The violation cited above may result in a temporary closure order or 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 15 days after service of this notice of violation (or such longer period as the Chairman of the Commission 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 20th day of July, 2006.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

ESTHER F. DITTLER
Staff Attorney