

NATIONAL INDIAN GAMING COMMISSION

NOTICE OF VIOLATION and TEMPORARY CLOSURE ORDER

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Art George, Chairman (Agent for Service of Process)
Nooksack Gaming Commission
P.O. Box 960
Deming, WA 98244-0960

1. Notification of Violation and Temporary Closure Order

The Chairman of the National Indian Gaming Commission (NIGC or Commission) hereby gives notice that the Nooksack Indian Tribe (Tribe or Respondent), located in Deming, Washington, has substantially violated the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Tribe's gaming ordinance by: Failing to maintain the Tribe's sole proprietary interest and responsibility for the conduct of the gaming activity; failing to conduct background investigations, including federal criminal history checks, on Primary Management Officials; failure to issue a license to all Primary Management Officials; and failing to maintain and operate its gaming facility in a manner that adequately protects the environment, and the public health and safety. The Respondent has further violated IGRA and NIGC regulations by failing to submit an attestation certifying that by issuing the facility license, the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety.

As a consequence of the substantial violations, under 25 U.S.C. §§ 2705 and 2713(b), the Chairman hereby gives notice that the Respondents are ordered to cease and desist from all gaming activity at the Nooksack Northwood Casino located at 9750 Northwood Road in Lynden, Washington effective immediately.

2. Authority

Under IGRA and NIGC regulations, the 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 or resolution approved by the Chairman.¹ Further, under IGRA, the NIGC

¹ 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3.

Chairman may issue an order of temporary closure of an Indian gaming operating for a substantial violation of IGRA, NIGC regulations, or an approved tribal ordinance.² NIGC regulations also provide that “[s]imultaneously with or subsequently to the issuance of a notice of violation..., the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more[] substantial violations are present.”³

3. Applicable Federal Law and Tribal Ordinance Provisions Relating to Failure of a Tribes to Maintain Its Sole Proprietary Interest and Responsibility for the Conduct of any Gaming Activity

- A. 25 U.S.C. § 2710(b)(2)(A) – IGRA requires that a tribal gaming ordinance must provide that a tribe have the sole proprietary interest and responsibility for the conduct of any gaming activity.
- B. 25 C.F.R. § 522.4(b)(1) – NIGC regulations also mandate that the gaming ordinance provide that the tribe shall have the sole proprietary interest and responsibility for the conduct of any gaming operation.
- C. Section 56.04.010(d) of the Tribe’s Gaming Ordinance, Resolution 93-47, (Ordinance), approved by the NIGC Chairman on October 27, 1993, requires the Tribe, or a tribally-charted corporation wholly owned by the Tribe, shall have sole proprietary interest and responsibility for the conduct of any gaming activity.

4. Applicable Federal Law and Tribal Ordinance Provisions Relating to Failure to Conduct Background Investigations and Issue Licenses to Primary Management Officials

- 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 primary management officials.
- B. 25 U.S.C. § 2710(b)(2)(F)(ii)(I) – IGRA requires the issuance of a tribal license for primary management officials 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 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 to the effective

² 25 U.S.C. §§ 2705(a)(l) and 2713(b)(l).

³ 25 C.F.R. § 573.4(a).

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 tribe notify the Commission of the results of a background check before the issuance of a license to a Primary Management Official.
- E. 25 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 and fire employees; or (2) To set up working policy for the gaming operation; (c) The chief financial officer or other person who has financial management responsibility; or (d) Any other person designated by the tribe as a primary management official.
- F. 25 C.F.R. § 556.4 – NIGC regulations require that a tribe shall perform a background investigation for each primary management official.
- G. 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 position and conduct a criminal history check, including a check of criminal history records information maintained by the Federal Bureau of Investigation.
- H. 25 C.F.R. § 556.5(a) – NIGC regulations require that a tribe conduct an investigation sufficient to make a determination concerning the eligibility of a primary management official for granting of a gaming license, an authorized tribal official shall review a person's: (1) Prior activities; (2) Criminal record, if any; and (3) Reputation, habits, and associations.
- I. 25 C.F.R. § 556.5(b) – NIGC regulations require that if the authorized representative, in applying the standards adopted in a tribal ordinance, determines that licensing 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, an authorizing tribal official shall not license that person in a primary management official position.
- J. 25 C.F.R. § 556.6(a) – NIGC regulations require that when a tribe employs a primary management official, the tribe shall maintain a complete application file containing the information listed under § 556.4(a)(1) through (14).

- K. 25 C.F.R. § 556.6(b)(1) – NIGC regulations require that before issuing a license to a primary management official, a tribe shall create and maintain an investigative report on each background investigation. An investigative report shall include all of the following: (i) Steps taken in conducting a background investigation; (ii) Results obtained; (iii) Conclusions reached; and (iv) The basis for those conclusions.
- L. 25 C.F.R. § 556.6(b)(2) – NIGC regulations require that tribes to submit a notice of the results of the applicant's background investigation to the Commission no later than 60 days after the applicant begins work. The notice of results shall contain: (i) Applicant's name, date of birth, and social security number; (ii) Date on which applicant began or will begin work as a primary management official; (iii) A summary of the information presented in the investigative report, which shall at a minimum include a list of: (A) Licenses that have previously been denied; (B) Gaming licenses that have been revoked, even if subsequently reinstated; (C) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and, (D) Every felony of which the applicant has been convicted or any ongoing prosecutions; and (iv) a copy of the eligibility determination made under § 556.5.
- M. 25 C.F.R. § 558.3(a) – NIGC regulations require that after a tribe provide a notice of results of the background check to the Commission, a tribe may license a primary management official.
- N. 25 C.F.R. § 558.3(b) – NIGC regulations require that within 30 days after the issuance of the license, a tribe shall notify the Commission of its issuance.
- O. 25 C.F.R. § 558.3(c) – NIGC regulations require that a gaming operation shall not employ a primary management official who does not have a license after 90 days.
- P. Section 56.04.020(a)(ii) of the Tribe's Ordinance, defines primary management official to mean: (A) The person having management responsibility for a management contract; (B) Any person who has authority to: (1) hire and fire employees; or (2) set up working policy for the gaming operation; or (C) the chief financial officer or other person who has financial management responsibility.
- Q. Section 56.04.010 of the Tribe's Ordinance establishes the Nooksack Gaming Commission. The Nooksack Gaming Commission was empowered to establish a system which adequately checks the background of the primary management officials, and that oversight of said individuals and their management is conducted on an ongoing basis; and provides for verification of background check results by the Chairman of the National

Indian Gaming Commission before any licenses are issued, for Class II and III Gaming.⁴ This system shall include: (i) tribal licenses for primary management officials with prompt notification to the NIGC of the issuance of such licenses; (ii) 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; and, (iii) notification by the Indian tribe to the NIGC of the results of such background check before the issuance of any such licenses.

- R. Section 56.04.020(c) of the Tribe's Ordinance provides that the Nooksack Gaming Commission shall conduct a background investigation of each primary management official, to collect fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h), and to conduct an investigation sufficient to make a determination under Section 56.04.020(d) of the Tribe's Ordinance.
- S. Section 56.04.020(d) of the Tribe's Ordinance provides that the Nooksack Gaming Commission 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 primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a primary management official position.
- T. Section 56.04.020(e)(iii) of the Tribe's Ordinance provides that a gaming operation shall not employ as a primary management official a person who does not have a license after 90 days.
- U. Section 56.04.020(f)(ii) of the Tribe's Ordinance provides that the Nooksack Gaming Commission shall submit a copy of the eligibility determination provided in Section 56.04.020(d).
- V. 25 C.F.R. §573.4(a)(5) – NIGC regulations state that simultaneously with or subsequently to the issuance of a notice of violation under §573.3, the Chair may issue an order of temporary closure of all or part of an Indian gaming operation if a gaming operation operates for business without either background investigations completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in 25 C.F.R. §558.3(b).

⁴ Ordinance, § 56.04.010(g).

W. 25 C.F.R. § 575.4 – NIGC regulations permit the Chair to issue a civil fine of \$50,276 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under 25 C.F.R. §573.3.

5. Applicable Federal Law and Tribal Ordinance Provisions Relating to Failure to Submit Attestation

- A. Pursuant to 25 U.S.C. § 2710(b), a separate license issued by the Indian tribe shall be required or each place, facility, or location on Indian lands at which class II gaming is conducted.
- B. 25 U.S.C. § 2710(d) states that Class III gaming activities shall be lawful on Indian lands only if such activities are authorized by an ordinance or resolution that meets the requirements of 25 U.S.C. § 2710(b).
- C. 25 C.F.R. § 559 – NIGC regulations establish notification and submission requirements for gaming facility licenses.
- D. 25 C.F.R. §559.1 – NIGC regulations explain that the purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming and obtains an attestation certifying that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner that adequately protects the environment and the public health and safety, pursuant to the Indian Gaming Regulatory Act.
- E. 25 C.F.R. §559.4 – NIGC regulations require that a tribe shall submit to the NIGC Chair with each facility license an attestation certifying that by issuing the facility license, the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety. This means that a tribe has identified and enforces laws, resolutions, codes, policies, standards or procedures applicable to each gaming place, facility, or location that protect the environment and the public health and safety, including standards, under a tribal-state compact or Secretarial procedures.

6. Applicable Federal Law and Tribal Ordinance Provisions Relating to Failure to Maintain and Operate the Gaming Facility in a Manner which Adequately Protects the Environment and the Public Health and Safety.

- A. 25 U.S.C. §§ 2710(b)(1)(B) and (d)(1)(A) – IGRA requires that to lawfully operate Indian gaming, a tribe must have a tribal gaming ordinance approved by the NIGC Chairman.
 - B. 25 U.S.C. § 2710(b)(2)(E) – IGRA requires that a tribal gaming ordinance must provide that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.
 - C. 25 C.F.R. §§ 522.4(b)(7) and 522.6(b) – NIGC regulations also mandate that the gaming ordinance provide that the tribe shall construct, maintain, and operate a gaming facility in a manner that adequately protects public health and safety.
 - D. Section 56.08.040 of the Tribe's Ordinance requires that the construction, maintenance, and operation of any Class II and III Gaming facility shall be in a manner that adequately protects the environment and the public health and safety.
7. 25 C.F.R. §573.4(a)(12) – NIGC regulations state that simultaneously with or subsequently to the issuance of a notice of violation under §573.3, the Chair may issue an order of temporary closure of all or part of an Indian gaming operation if a gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chair under 25 C.F.R. part 522.
8. **Circumstance of Violation 1 - Failure to Maintain the Tribe's Sole Proprietary Interest and Responsibility for the Conduct of any Gaming Activity**
- A. Respondent is a federally recognized Indian Tribe with tribal headquarters located in Deming, Washington.
 - B. Respondent operates the Nooksack Northwood Casino located at 9750 Northwood Road in Lynden, Washington.
 - C. NIGC defers to the Secretary of the United States Department of the Interior (DOI) in areas which the Secretary has expertise. In a letter dated October 17, 2016, the Principal Deputy Assistant Secretary – Indian Affairs informed Robert Kelly Jr., as Chairman of the Nooksack Tribe that he is aware that four Council members' terms expired in March 2016, an election was never held to fill their seats, and that the Council currently consists

of four members, one of which was allegedly recalled via an election on April 2016.⁵ The Principal Deputy Assistant Secretary, citing to Article II, Section 4 of the Nooksack Constitution and Bylaws, noted that “[a]t any special or regular meeting of the tribal council, five (5) members present shall constitute a quorum and the tribal council may proceed to transact any business that may come before it. The Principal Deputy Assistant Secretary concluded that because the Tribe lacks a quorum to conduct tribal business as required by the Nooksack Tribe’s Constitution and Bylaws, the Department will only recognize those actions taken by the Council prior to March 24, 2016, when a quorum existed, and will not recognize any actions taken since that time because of the lack of a quorum. The Principal Deputy Assistant Secretary stated that the DOI was not interpreting the Tribe’s Constitution or interfering in internal tribal matters, rather DOI was acting pursuant to the government-to-government relationship between the United States and the Nooksack Tribe, and therefore, would only recognize action taken in accordance with the Tribe’s Constitution and Bylaws. The Principal Deputy Assistant Secretary added that under Federal law, the United States has a duty to ensure that tribal trust funds, Federal funds for the benefit of the Tribe, and the day-to-day government-to-government relationship is with a full quorum of the Council as plainly stated in the Tribe’s Constitution and Bylaws.

- D. On November 14, 2016, in a letter to Robert Kelly, Jr., as Chairman of the Nooksack Tribe, the Principal Deputy Assistant Secretary reiterated that pursuant to the Nation-to-Nation relationship, the DOI would not recognize actions taken by Chairman or the current Tribal Council members without a quorum consistent with the Tribe’s Constitution.⁶ Accordingly, until the Council is seated through an election consistent with tribal law and the decisions of the Northwest Intertribal Count System, the DOI would not recognize any referendum election, and the Tribal Council Primary Election scheduled for December 17, 2016, or the Tribal Council Regular Election scheduled on January 21, 2017. The DOI offered the Tribe assistance and support to carry out elections.
- E. On December 23, 2016, in a letter to Robert Kelly, Jr., as Chairman of the Nooksack Tribe, the Principal Deputy Assistant Secretary again explained that pursuant to the Tribe’s Constitution and Bylaws, the Tribal Council is no longer operating with a quorum and therefore lacks authority to conduct business on behalf of the Tribe.⁷ Accordingly, DOI would recognize only those actions taken by Tribal Council prior to March 24, 2016,

⁵ See Letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, Dep’t of the Interior, to Robert Kelly, Jr. Chairman, Nooksack Tribe (Oct. 17. 2016).

⁶ See Letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, Dep’t of the Interior, to Robert Kelly, Jr. Chairman, Nooksack Tribe (Nov. 14. 2016).

⁷ See Letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary – Indian Affairs, Dep’t of the Interior, to Robert Kelly, Jr. Chairman, Nooksack Tribe (Dec. 23, 2016).

when a quorum existed, and would not recognize any subsequent action until a valid election, consistent with the Tribe's Constitution and the decisions of the Tribe's Court of Appeals, the Northwest Intertribal Court System, is held and a quorum of council members is archived. The Principal Deputy Assistant Secretary stated that the lack of a quorum results in an inability to take official action.

- F. IGRA, NIGC regulations, and the Tribe's Ordinance require that the Tribe maintain sole proprietary interest in and responsibility for the conduct of its gaming activity.⁸
- G. The Commission is committed to the principle that tribal gaming under IGRA must be conducted by federally recognized leadership.⁹ Moreover, the plain meaning of IGRA established that only tribes recognized by the Secretary, acting through their designated representatives, may engage in gaming.¹⁰ Implicit in the requirement that a tribe maintain the sole proprietary interest in its gaming, is that there be a tribe or tribal government to exercise that interest. Here, there is no quorum on the Tribal Council and, as such, no governing Tribal body to exercise the sole proprietary interest over its gaming operation or administer the revenues derived from that gaming establishment.
- H. Furthermore, the entity that was established by the Tribe to govern the operation of the Facility – NBC II – also lacks a quorum and is unable to serve the role established by its corporate Charter. Meaning, there is no tribal entity with the power to control, or exercise a proprietary interest, over its gaming operation. When a tribal council can no longer make decisions or properly govern, it is “no longer possible for the NIGC to ensure that the tribe [is] the primary beneficiary of the gaming operation, that gaming add[s] to the strength of tribal government or tribal economic development, or that gaming support[s] tribal self-sufficiency.”¹¹

9. Circumstances of Violation 2 – Failure to Conduct Background Investigations and Issue Licenses to Primary Management Officials

- A. Respondent is a federally recognized Indian Tribe with tribal headquarters located in Deming, Washington.
- B. Respondent operates the Nooksack Northwood Casino located at 9750 Northwood Road in Lynden, Washington.

⁸ 25 U.S.C. § 2710(b)(2)(A); 25 CFR § 522.4(b)(1); Ordinance, § 56.04.010(d).

⁹ NIGC Commission Decision, In the Matter of: Sac & Fox Tribe of the Mississippi in Iowa, NOV/CO-03-02 - Order Granting Petition to Reopen, (Dec. 19, 2003).

¹⁰ NIGC Commission Decision, In the Matter of: Sac & Fox Tribe of the Mississippi in Iowa, NOV/TCO CO-03-02 - Decision and Order (Sept. 10, 2003).

¹¹ *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 760 (8th Cir. 2003)

- C. The Nooksack Tribal Council incorporated Nooksack Business Corporation II (NBC II) under Tribal law on March 6, 2007, by Tribal Council Resolution No. 07-29, to promote economic development. The Nooksack Tribal Council amended the NBC II charter and then dissolved NBC II on April 16, 2012.¹² The Nooksack Tribal Council then established The Woods,¹³ another Tribal corporation wholly owned by the Tribe, and granted it the full authority to conduct gaming necessary to operate the Tribe's gaming facility.¹⁴ However, in October of 2012, the Nooksack Tribal Council revoked the dissolution of NBC II and provided that no entity other than NBC II shall be permitted to operate all or any portion of the Tribe's gaming facility.¹⁵ NBC II Charter states that the purposes of the corporation are: 1) to engage in any type of lawful business, enterprise or venture; 2) to provide for the efficient and effective utilization of the resources of the Tribe in a manner which protects the long-term interests of the Tribe; 3) to promote the economic development of the Tribe; 4) to accomplish the segregation of tribal business interests, assets and liabilities; and 5) to provide a vehicle for the Tribe to accomplish the financing of projects used by the Tribe for any purpose.¹⁶
- D. The Charter requires that at a meeting of the Board, a quorum shall consist of five voting Corporate Directors, and a majority of the quorum of the Board shall carry any issue.¹⁷
- E. The NBC II Charter provides that the business affairs of the corporation shall be managed exclusively by the Corporate Board (Board),¹⁸ which shall consist of:
- a. The Chairman of the Tribal Council, designated as the Chairman/CEO of the Corporation.
 - b. The Vice-Chairman of the Tribal Council, designated as the Vice-Chairman/Vice CEO.
 - c. The Treasurer of the Tribal Council, designated as the Treasurer of the Corporation.
 - d. The Secretary of the Tribal Council, designated as the Secretary of the Corporation.
 - e. The remaining Tribal Council members shall be members of the Corporate Board.
 - f. All members shall be voting members.

¹² See Nooksack Tribal Council, Resolution # 12 -43 (April 16, 2012).

¹³ See Nooksack Tribal Council, Resolution # 12 -45 (April 16, 2012).

¹⁴ See Nooksack Tribal Council, Resolution # 12 -111, p. 2 (Oct. 26, 2012).

¹⁵ *Id.*

¹⁶ Charter of Incorporation, Article VII (April 16, 2012).

¹⁷ *Id.*, §§ 9 & 10.

¹⁸ *Id.*, Article XI, § (2).

F. NBC II Board Members are primary management officials:

- a. The NBC II Board members: approve various contracts, including for leasing, purchases, and, settlement of disputes with gaming machine vendors; approves contracts for purchase of surveillance and kitchen equipment; approves contracts for software maintenance and support; approves contracts for repair of the facility; has unrestricted access to all casino records including, financials records; approve casino expenditures of more than \$10,000; approve purchases of gaming machine purchases over \$10,000; approved certain construction in excess of \$50,000; and provide secondary signatures on Nooksack Northwood Casino checks over \$3,000, all of which demonstrates financial management responsibility.
- b. In addition, NBC II Board members have access to restricted areas of the gaming facility.

G. On May 3, 2017, Dustin Thomas, NIGC Acting Director of Compliance issued a letter of concern to the Chairman Kelly, pursuant to 25 C.F.R. § 573.2, regarding the Tribe's failure to conduct background investigations on and issue licenses to primary management officials. Specifically, the letter requested the Tribe provide evidence of background investigation, eligibility determination, and notice of results for Robert Kelly, Jr. in his capacity as Chairman of NBC II. The letter also requested that the Tribe provide evidence that Nadene Rapada, in her capacity as Secretary of NBC II, and Robert Solomon, in his capacity as a NBC II Board Member, either possess current gaming licenses or evidence of current complete background investigations, eligibility determinations, and notice of results.

H. On May 16, 2017, Senior Tribal Attorney Charles N. Hurt, Jr. responded to Acting Director Thomas' Letter of Concern. Mr. Hurt's letter acknowledges that the NBCII Board serves as the governing body of the Nooksack Northwood Casino, but claims that the Board has delegated the day-to-day management and operation of the facility to a management team. As detailed in paragraph F of this section, the NBCII Board has engaged in management of the Casino.

I. The Nooksack Tribal Gaming Commission has not performed background investigations, has not submitted notices of results, and has not provided notice of licensing decisions for members of NBC II.

J. Licenses previously issued to NBC II Board Members have expired.

10. Circumstances of Violation 3 – Failure to Submit Attestation

- A. Respondent is a federal recognized Indian Tribe with tribal headquarters located in Deming, Washington.
- B. Respondent operates the Nooksack Northwood Casino located at 9750 Northwood Road in Lynden, Washington. The Nooksack Northwood Casino was open during the following periods: January 1, 2014 to December 31, 2014; January 1, 2015, to December 31, 2015; January 1, 2016, to December 31, 2016; and, January 1, 2017, to the present.
- C. On October 31, 2014, the Nooksack Gaming Commission issued a facility license to the Nooksack Northwood Casino for the period of October 31, 2014, to October 31, 2017.
- D. The Respondent submitted a copy of the renewed license to the NIGC on January 12, 2017. This submission did not include the required attestation that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety
- E. On July 23, 2015, NIGC staff contacted Charlott Melland, Executive Director of the Nooksack Gaming Commission, via email and requested submission of the required attestation.
- F. On January 17, 2017, NIGC staff again contacted Charlott Melland, Executive Director of the Nooksack Gaming Commission, by email and requested a submission of the required attestation.
- G. On January 18, 2017, in an effort to facilitate submission of the required attestation, NIGC staff spoke with Charlott Melland, Executive Director of the Nooksack Gaming Commission and inquired if she had any questions regarding the requirements. Director Melland stated that she did not and would work on submitting the information.
- H. On January 19, 2017, in an effort to facilitate submission of the required attestation, NIGC staff sent an email to Charlott Melland, Executive Director of the Nooksack Gaming Commission, as a follow up to the January 18, 2017 reminding of the need to submit the required attestation.
- I. On May 15, 2017, while on a site visit conducted at Nooksack Tribal Government Offices, NIGC informed the Tribe's attorney, Rickie Armstrong, that the Tribe had not

submitted the required attestation, and requested his assistance in facilitating the submission of the required attestation.

- J. As of today's date, the required attestation has not been received by the NIGC.
- K. The Chairman has not issued a letter of concern related violation 2. Pursuant to 25 C.F.R. § 573.2(d), the Chairman may take enforcement action without first having issued a letter of concern if the enforcement action states the reasons for doing so. As specified above, the NIGC has requested the attestation on five separate occasions to no avail. Given the correspondence between the United States Environmental Protection Agency and the Tribe, it appears that the Tribe has not submitted the attestation because it is unable to certify that it enforces the laws, standards, or procedures applicable to its gaming facility.

11. Circumstances of Violation 4 – Failure to Maintain and Operate the Gaming Facility in a Manner which Adequately Protects the Environment and the Public Health and Safety.

- A. Respondent is a federal recognized Indian Tribe with tribal headquarters located in Deming, Washington.
- B. Respondent operates the Nooksack Northwood Casino located at 9750 Northwood Road in Lynden, Washington. The Nooksack Northwood Casino was open during the following periods: January 1, 2014 to December 31, 2014; January 1, 2015 to December 31, 2015; January 1, 2016 to December 31, 2016; and, January 1, 2017 to the present.
- C. On March 27, 2017, the United States Environmental Protection Agency (EPA) informed the Nooksack Indian Tribe that it plans to issue six Unilateral Administrative Orders to address serious violations of the Safe Drinking Water Act (SDWA) relating to the Tribe's public water systems (Systems), including the System providing water to the Nooksack Northwood Casino.¹⁹ The EPA informed the Tribe that it would issue the Unilateral Orders unless, by April 3, 2017, the Tribe signed and returned Administrative Orders of Consent (Consent Orders) or provided evidence that the underlying violations were fully returned to compliance.
- D. On April 6, 2017, the EPA informed the Tribe that it had issued six Unilateral Orders to the Tribe as the EPA determined that violations of the SDWA occurred at six water Systems, including the Nooksack Northwood Casino Water System.²⁰ The Orders require

¹⁹ See Letter from Edward J. Kowalski, Director, EPA - Office of Compliance and Enforcement to Bob Kelly, Chairman, Nooksack Indian Tribe (March 27, 2017).

²⁰ See Letter from Edward J. Kowalski, Director, EPA - Office of Compliance and Enforcement to Bob Kelly, Chairman, Nooksack Indian Tribe (April 6, 2017).

the Tribe, as owners and operators of the Systems, to comply with the SDWA. The EPA informed the Tribe that the Order becomes effective immediately upon receipt and remain effective until: 1) the Tribe demonstrates compliance with the regulations contained therein; and 2) EPA issues a closure letter. The EPA issued the Orders because the Tribe failed to sign and return the Consent Orders previously provided to the Tribe. The Administrative Compliance Order noted several violations which relate to: 1) collecting lead and copper samples at certain points in the distribution system; 2) with regards to groundwater systems, development and approval of a corrective action plan to address significant deficiencies that have existed since August 15, 2013; 3) submission to the EPA of the results of test measurement and analysis; and 4) notification to persons served by the system of certain violations of drinking water regulations.

- E. The “significant deficiencies” identified by the EPA “have the potential to impair [the Nooksack Northwood Casino’s] water quality and jeopardize public health.”²¹
- F. By failing to adhere to the requirements of the SDWA, and meet the requirements of the EPA’s Orders, the Tribe has failed to maintain its gaming facility in a manner that adequately protects the environment and the public health and safety.
- G. In 2002, the Commission issued an interpretive rule regarding its authority under 25 U.S.C. 2710(b)(2)(E).²² The rule sets forth a process to follow when the Commission determines that a tribal government has failed to enforce environmental, public health and/or safety standards. The rule provides if the absence of standards or failure to enforce does not present immanent jeopardy to the environmental, public health or safety, the Commission will refer the matter to the appropriate tribal regulatory authority. The Commission will proceed to enforcement only where no corrective action has been undertaken within a reasonable time and such inaction results in a condition of imminent jeopardy to the environment, public health and safety. The Commission provided that a finding of imminent jeopardy includes situations where conditions are present that pose a real and immediate threat to public health and well-being, which, if uncorrected, could result in serious illness or death. The concern here, as indicated by the letters from the EPA, is that the water quality, specifically in relation to lead and copper is unknown, both of which if present and uncorrected have the potential to jeopardize public health. Information attained from the EPA website indicates that long term exposure to lead and copper could result in serious illness or death. Therefore, and because the Tribe has not completed corrective action after first being notified by the EPA of the issue in 2013, the

²¹ See Letter from Lisa Jacobsen, Tribal Drinking Water Coordinator, EPA, to Joseph Johnson-Bob, Nooksack Indian Tribe (Oct. 23, 2013).

²² See 67 Fed. Reg. 46109 (July 12, 2002).

Chairman proceeds to enforcement rather than simply referring the matter to the Tribe's governing body.

- H. The Chairman has not issued a letter of concern related to violation 3. Pursuant to 25 C.F.R. § 573.2(d) the Chairman may take enforcement action without first having issued a letter of concern if the enforcement action states the reasons for doing so. The NIGC was recently made aware of the EPA's action against the Tribe for failure to adhere to the requirements of the SDWA. Upon learning of the EPA's letters and Actions, NIGC Staff immediately contacted the EPA to determine the seriousness of the violation and the risk posed to facility patrons and employees. Due to the potential for imminent jeopardy to the health and safety of patrons and employees of the Nooksack Northwood Casino by the Tribe's failure to adhere to the requirements of the SDWA, as specified in the EPA's action against the Tribe, the Chairman determined that a letter of concern would cause unacceptable delay. An immediate enforcement action and closure of the facility is needed to ensure the protection of the environment and the public health and safety.

12. Measures Require to Correct Violation 1

As indicated in the Secretary's letters, the Tribe must hold a valid election and achieve a quorum of council members who may then exercise the responsibility to maintain the Tribe's sole proprietary interest and responsibility for its gaming.

13. Measures Required to Correct Violation 2

There is no way to correct the late submissions and employment beyond 90 days without a license of primary management officials employed by the Tribe. In order to correct 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, collect fingerprints from all primary management officials currently unlicensed and forward them to the NIGC with appropriate fee for processing;
- B. Within 30 days, starting from the date of service of this Notice, perform complete background investigations and obtain FBI criminal history checks.
- C. Within 45 days, starting from the date of service of this Notice, make the required eligibility determination.

- D. Within 60 days, starting from the date of service of this Notice, prepare the required investigative report and submit the notice of results with eligibility determination to the Commission.
- E. Within 90 days, starting from the date of service of this Notice, submit the required notice of licensure, or if the Tribe does not issue the license, notify the Commission and also submit the eligibility determination and notice of results.

According to the Nooksack Business Corporation II charter, only members of the Nooksack Tribal Council may serve as Members of the NBC II Board. The Department of the Interior has taken the position that “[f]ollowing the “recall” of Position B Councilmember Carmen Tageant for “treason,” the only members of the Nooksack Tribal Council who, after March 24, 2016, hold office by virtue of winning a majority of votes in a general election were Council Chairman Robert Kelly, Council Secretary Nadene Rapada, and Position A Councilmember Robert Solomon.”²³ Accordingly, NIGC will only accept licensing submissions for those three members as board members of the Nooksack Business Corporation II. All other individuals claiming to be NBC II board members must refrain from activities that are deemed to be management of the Tribe’s gaming operation. Please keep in mind that even with evidence of background investigations and licensure of the recognized NBC II Board Members, those three members will not represent a quorum according to the Nooksack Business Corporation II charter.

14. Measures Required to Correct Violation 3

The Tribe must submit the required attestation certifying that by issuing the facility license, the Tribe has determined that its maintenance and operation of the gaming facility is conducted in a manner which adequately protects the environment and the public health and safety as the Tribe has identified and enforces all laws, resolutions, codes, policies, standards or procedures applicable to the Nooksack Northwood Casino. We note that in order to meet this standard, the Tribe must first resolve its violations with the EPA.

15. Measures Required to Correct Violation 4

To correct this substantial violation, the Tribe must close its gaming operation until such time as the Tribe can operate its facility in a manner which protects the public health and safety, which includes compliance with EPA’s orders regarding violations of the SDWA.

²³ See *Nooksack Indian Tribe v. Zinke et. al.*, No. 2:17-cv-00219-JCC, Dkt. 26, n. 6 (W.D.WA April 3, 2017).

16. Closure Order

Under the authority of 25 U.S.C. § 2713(b) and 25 C.F.R. §§ 573.4(a) and (b), the Chairman gives notice that the Respondents are ordered to cease and desist from all gaming activity in the Nooksack Northwood Casino. This order is effective immediately. The Chairman may rescind the Temporary Closure Order for good cause shown.²⁴

17. Expedited Review

Under 25 C.F.R. § 573.4(c), within seven days after service of this Order, any party served with this Order may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two days after his receipt of a timely request. Within two days after the expedited review provided by 25 C.F.R. § 573.4(c), the Chairman must decide whether to continue the Order and must provide an explanation of the basis for the decision.

18. Fine; Submission of Information

The substantial violation cited above may additionally result in the assessment of civil fines against the Respondents in an amount not to exceed \$50,276 per violation per day.²⁵ Under 25 C.F.R. § 575.5(a), Respondents 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 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.

19. Appeal

Within thirty (30) days after service of this Notice of Violation, the Tribe may appeal to the full Commission. The Tribe may request a hearing under 25 C.F.R. Part 584, or 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 under 25 C.F.R. Part 585. In either event, a notice of appeal shall be submitted to the National Indian Gaming Commission, 1849 C Street, NW, MS# 1621, Washington, DC 20240. Please also provide a copy via e-mail to Michael_Hoenig@nigc.gov. The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must reference this NOV.

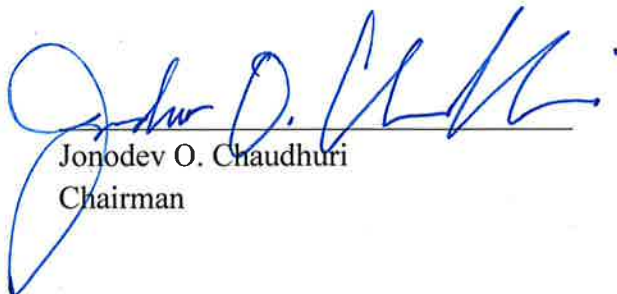
If the Tribe elects to have a hearing, within ten (10) days after filing a notice of appeal, it must file with the Commission a brief that states with particularity the relief desired and the grounds

²⁴ 25 C.F.R. § 573.4(c)(3).

²⁵ Annual Adjustment of Civil Monetary Penalty to Reflect Inflation, 82 Fed. Reg. 12,068 (February 28, 2017) (codified at 25 C.F.R. part 575).

therefore and that includes, when available, supporting evidence in the form of affidavits.²⁶ If the Tribe wishes to present oral testimony or witnesses at the hearing, it must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of the proposed witnesses and the general nature of their expected testimony, whether a closed hearing is request and the reasons therefore.²⁷

Dated this 15th of June, 2017



Jonodev O. Chaudhuri
Chairman

²⁶ 25 C.F.R. § 584.3(b)(2).

²⁷ 25 C.F.R. § 584.3(b).