



February 27, 2012

Via U.S. Mail

Bruce "Two Dogs" Bozsum, Chairman
Mohegan Tribe of Indians of Connecticut
One Mohegan Sun Boulevard
Uncasville, CT 06382

Re: Review of financing documents for the Mohegan Tribe of Indians of Connecticut

Dear Chairman:

This letter responds to the request on behalf of the Mohegan Tribe of Indians of Connecticut (Tribe) and the Mohegan Tribal Gaming Authority (MTGA) for the National Indian Gaming Commission's Office of General Counsel to review several agreements and documents related to the refinancing of existing debt. Specifically, you have asked for an opinion whether these agreements and documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the documents violate IGRA's requirement that a Tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Financing Documents") most of which are unexecuted, but were represented to be in substantially final form:

- 11 ½% second lien senior secured notes due 2017 indenture marked on top of front page as "CONFIDENTIAL DRAFT 2/17/12" and at bottom left of every page as "NY1785242.24" (2nd Lien Indenture);
- Form of note attached as exhibit A to the 2nd Lien Indenture marked at the bottom left corner of every page as "NY1785242.24" (2nd Lien Note);
- Amended and restated second lien security agreement marked on top of front page as "DRAFT TO NIGC 2/16/12" and at bottom left corner of every page as "SD\829794.3" and "SD\830249.2" (2nd Lien Security Agreement);
- Amended and restated second lien pledge agreement marked on top right of the front page as "DRAFT TO NIGC 2/25/12" and at bottom left corner

of every page as “SD\829793.3” and “SD\830250.2” (2nd Lien Pledge Agreement);

- Amended and restated second lien open-end leasehold mortgage deed, assignment of leases and rents and security agreement, marked at top right as “NIGC DRAFT 2/24/12” and at bottom left of every page as “701142229” and “SD\830299.3” (2nd Lien Leasehold Mortgage);
- Amended and restated second lien open-end mortgage deed, assignment of leases and rents and security agreement related to fee land owned by Mohegan Golf, LLC, marked at top right as “NIGC DRAFT 2/16/12” and at bottom left of every page as “701142229” and “SD\830298.3” (2nd Lien Golf Course Mortgage);
- Executed second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., dated October 26, 2009 (2009 Pocono Downs Mortgage);
- Executed second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., dated October 26, 2009 (2009 Lehigh Mortgage);
- Executed second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., dated October 26, 2009 (2009 Lackawanna Mortgage);
- Executed second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., dated October 26, 2009 (2009 Mill Creek Mortgage);
- First Modification to second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., marked in top right hand corner as “NIGC DRAFT 2/17/12” and bottom left corner as “701141312” and “SD\830476.3.” (1st Modification to 2009 Pocono Downs Mortgage);
- First Modification to second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., marked in

top right hand corner as “NIGC DRAFT 2/17/12” and bottom left corner as “701141312” and “SD\830476.3.” (1st Modification to 2009 ;

- First Modification to second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., marked in top right hand corner as “NIGC DRAFT 2/17/12” and bottom left corner as “701141312” and “SD\830476.3.” (1st Modification to 2009 Lackawanna Mortgage);
- First Modification to second open-end mortgage, assignment of lease and rents and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., marked in top right hand corner as “NIGC DRAFT 2/17/12” and bottom left corner as “701141312” and “SD\830476.3.” (1st Modification to Mill Creek Mortgage);
- 10 ½% third lien senior secured notes due 2016 indenture marked on top of front page as “CONFIDENTIAL DRAFT 2/17/12” and at bottom left of every page as “NY\1973383.9” (3rd Lien Indenture);
- Form of note attached as exhibit A to the 3rd Lien Indenture marked at the bottom left corner of every page as “NY\1973383.3” (3rd Lien Note);
- Third lien security agreement marked on top of front page as “DRAFT TO NIGC 2/16/12” and at bottom left corner of every page as “SD\829794.3” (3rd Lien Security Agreement);
- Third lien pledge agreement marked on top right of the front page as “DRAFT TO NIGC 2/25/12” and at bottom left corner of every page as “SD\829793.3” (3rd Lien Pledge Agreement);
- Third lien open-end leasehold mortgage deed, assignment of leases and rents and security agreement, marked at top right as “NIGC DRAFT 2/24/12” and at bottom left of every page as “701142229” and “SD\830032.3” (3rd Lien Leasehold Mortgage);
- Third lien open-end mortgage deed, assignment of leases and rents and security agreement related to fee land owned by Mohegan Golf, LLC, marked at top right as “NIGC DRAFT 2/16/12” and at bottom left of every page as “701142229” and “SD\829946.4” (3rd Lien Golf Course Mortgage);

- Open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Downs Racing, L.P., received via e-mail on 2/17/2012 and marked on the bottom left of every page as “SD\830545.1” (3rd Lien Pocono Downs Mortgage);
- Open-end mortgage and security agreement related to certain fee property located in Lehigh County, Pennsylvania, owned by Downs Racing, L.P., received via e-mail on 2/17/2012 and marked on the bottom left of every page as “SD\830544.1” (3rd Lien Lehigh Mortgage);
- Open-end mortgage and security agreement related to certain fee property located in Lackawanna County, Pennsylvania, owned by Downs Racing, L.P., received via e-mail on 2/17/2012 and marked on the bottom left of every page as “SD\830539.1” (3rd Lien Lackawanna Mortgage);
- Open-end mortgage and security agreement related to certain fee property located in Luzerne County, Pennsylvania, owned by Mill Creek Land, L.P., marked at the top right as “NIGC DRAFT 2/17/12” and on the bottom left of every page as “OHSUSA:750009457.3” and “SD\830478.4” (3rd Lien Mill Creek Mortgage);
- 11% senior subordinated notes due 2018 indenture marked on top of front page as “CONFIDENTIAL DRAFT 2/17/12” and at bottom left of every page as “NY\2029979.7” (Senior Subordinated Notes Indenture);
- Form of note attached as exhibit A to the Senior Subordinated Notes Indenture marked at the bottom left corner of every page as “NY\2029979.7” (Senior Subordinated Note);
- Amended and restated deposit account control agreement with Bank of America, N.A. as depository, marked at top right as “NIGC SUBMISSION draft 2/26/12” and at bottom left as “701145030.7 11038050” (Bank of America Deposit Account Control Agreement);
- Amended and restated collateral agency and intercreditor agreement marked at the top right as “DRAFT TO NIGC 2/17/12” and “(Account – With Activation, Multi-Lender)” and at bottom left of every page as “700401950.9 11038050” (Collateral Agency and Intercreditor Agreement); and,
- Amended and restated deposit account control agreement with First National Community Bank as depository bank marked at top right as “DRAFT TO NIGC 2/17/12” and at bottom left of every page as

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“701056531.5 11038050” (First National Deposit Account Control Agreement).

Collectively, the Financing Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* www.nigc.gov/Reading_Room/Management_Review_Letters.aspx. Applying the same analysis here, it is my opinion that collectively the Financing Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the Financing Documents are represented to be in substantially final form, and if they change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC’s website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 25 U.S.C. § 552(b).

I am also sending a copy of the Financing Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Senior Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Jo-Ann Shyloski
Associate General Counsel

cc: Paula Hart, Director
Office of Indian Gaming
(via US Mail w/ incoming)

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