



August 16, 2011

Via U.S. Mail

Brian Cladoosby, Chairman
Swinomish Indian Tribal Community
11404 Moorage Way
LaConner, WA 98257

Felis Gallues
Wells Fargo Bank, National Association
5340 Kietzke Lane, Suite 201
Reno, NV 89511

Re: Review of financing documents for the Swinomish Indian Tribal
Community

Dear Chairman Cladoosby:

This letter responds to your July 18, 2011 request on behalf of the Swinomish Indian Tribal Community (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review the Tribe's financing documents with Wells Fargo. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the financing 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:

- Amended and restated loan agreement marked on top right of front page as "D&W DRAFT 8/9/11" (Loan Agreement);
- Exhibits A-C to Loan Agreement marked on bottom left of first page as "4844-7067-7769\5", pgs Ex A-1 thru Ex A-6; Ex B-1 thru Ex B-6; and Ex C-1 thru Ex C-6, consisting of form term note (Exhibit A), form revolving note (Exhibit B), and form of compliance certificate (Exhibit C);
- Schedule 5.3 entitled Gaming Insurance Requirements attached to the Loan Agreement and marked at bottom left of first page as "C:\NDELOC\PARKER.BETSY\SCHEDULE 5.3 TO LOAN AGREEMENT (3).DOC 4813-8033-5882\6" (Schedule 5.3);

Chairman Cladoosby

Re: Review of financing documents for the Swinomish Indian Tribal Community

August 16, 2011

Page 2 of 3

- Springing depository agreement marked on the first page at the top right as "D&W Draft 7/18/11" and bottom left as "4827-4027-1369\6" (Springing Depository Agreement);
- Amended and restated security agreement marked on first page at top right "D&W DRAFT 7/18/11" and bottom left "4827-1470-9257\7" (Security Agreement);
- Deposit account control agreement marked on first page at the top left as "D&W DRAFT 7/18/11" and bottom left "DACA-STD-ARAN (Revised 03-15-10)" (Deposit Account Control Agreement);
- Project completion guaranty marked on first page at the top right as "D&W Draft 7/18/11" and bottom left "4850-0244-0457\5" (Project Completion Guaranty); and
- Unjust enrichment and sovereign immunity agreement marked on first page at the top right as "D&W Draft 7/18/11" and bottom left as "4816-8802-2025\5" (Unjust Enrichment Agreement).

The Financing Documents submitted by the Tribe 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 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 drafts are represented to be in substantially final form, and if the Financing Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, the NIGC FOIA Officer 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 submitted 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 Staff Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Lawrence S. Roberts
General Counsel

Chairman Cladoosby

Re: Review of financing documents for the Swinomish Indian Tribal Community

August 16, 2011

Page 3 of 3

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

James Janetta, Esq.
(via e-mail: jjannetta@swinomish.nsn.us)

Stephen LeCuyer, Esq.
(via e-mail: slecuyer@swinomish.nsn.us)

Sara Stenberg, Esq.
Dorsey & Whitney LLP
(via e-mail: Stenberg.Sara@dorsey.com)