



March 16, 2011

Donna Collins Smith, Chairwoman
Shinnecock Nation Gaming Authority
P.O. Box 2057
Southampton, NY 11969

Dear Chairwoman Smith:

This is in response to a December 22, 2010 request by your counsel, John Peebles, to review the Shinnecock Nation's "Development/Management Agreement" (Agreement) with Gateway Casino Resorts LLC. Mr. Peebles asked whether the Agreement, and a list of associated agreements, require the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act (IGRA). It is my opinion that they do.

The submission contains the Agreement as originally executed by the Tribe and Ivy Ong and ONG Enterprises on May 1, 2003. By the terms of the Agreement, Mr. Ong and ONG were to develop, construct, and "manage and operate [the] gaming facilities" for the Nation. Development/Management Agreement, Recitals §§ G, H. Mr. Ong and ONG were to be the exclusive manager responsible for hiring key employees; developing policies, procedures, and internal controls; marketing, and budgeting. *Id.* at §§ 9.1, 10.6, 10.7, 10.9, 10.10, 10.11. The Agreement was assigned to Gateway on March 19, 2004, but the duties encompassed therein remained the same and were assumed by Gateway. Assignment and Assumption of Development/Management Agreement and Enabling Agreement, § 9.

The submission also contains copies of a number of notices and correspondence as well as agreements collateral to the Agreement. IGRA defines *collateral agreement* as, "any contract...that is related, whether directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe...and a management contractor...." 25 C.F.R. § 502.5. The collateral agreements here include, for example, a March 19, 2004 Assignment to Gateway, which names Gateway manager of the facility; a March 19, 2004 "Addendum," which contemplates the acquisition and development of additional gaming sites; and a March 19, 2004 consulting agreement, which has Gateway developing internal controls and security and accounting systems for the casino.

By its terms, the Agreement is a management agreement. It is designated as such. And though the interests of Ivy Ong and ONG Enterprises, the Nation's original contractors, have been assigned to Gateway and the Agreement has been amended a number of times, the contractor's duties remain management duties. For example,

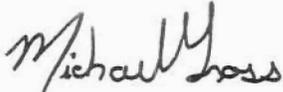
Section 9 of the Agreement is entitled, "Management of Gaming Operations" and asserts that it is engaging Gateway "for the purposes of managing the [Nation's gaming] Enterprise and training Tribal members and others in the management of the Enterprise." *Id.* at § 9.1.

Accordingly, it is my opinion that the Agreement is a management contract, and IGRA requires tribes to submit management contracts and their collateral agreements for the Chairwoman's review and approval. 25 U.S.C. § 2711; 25 C.F.R. §§ 502.15, 533.1 – 533.3. Management contracts that are not approved by the Chairwoman are void. 25 C.F.R. § 533.7.

The Nation is always welcome to submit the Agreement for approval. The requirements for doing so are set out in the NIGC's regulations at 25 C.F.R. § 533.3, and the NIGC website, www.nigc.gov, provides explanatory checklists and guides.

If you have any additional questions, please feel free to contact Staff Attorney Michael Hoenig at (202) 632-7003.

Very Truly Yours,

A handwritten signature in black ink that reads "Michael Gross". The signature is written in a cursive style with a large initial "M".

Michael Gross
Associate General Counsel, General Law

cc: John Peebles, Esq. Fredericks Peebles & Morgan LLP
Randy King, Chairman, Board of Trustees, Shinnecock Nation