



April 21, 2011

VIA FACSIMILE AND U.S. Mail

Mary Tarango, Chairwoman
Wilton Rancheria
9300 W. Stockton Blvd., Ste. 205
Elk Grove, CA 95758
Fax: (916) 683-6015

Re: Review of development and financing documents for Wilton Rancheria

Dear Chairwoman Tarango:

This letter responds to your November 23, 2009 request on behalf of the Wilton Rancheria (Rancheria) for the National Indian Gaming Commission's (NIGC's) Office of General Counsel to review the Rancheria's development and financing documents with East West Gaming LLC (East West). 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 (IGRA). You also asked for my opinion whether the development and 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 Agreements"):

- Development Agreement dated September 14, 2006 (Development Agreement);
- Amendment Number One to Development Agreement dated March 26, 2008 (1st Amendment);
- Amendment Number Two to Amended Development Agreement dated June 11, 2009 (2nd Amendment);
- Security Agreement dated September 14, 2006 (Security Agreement);
- Promissory Note dated September 14, 2006 (Note);
- Letter from Wilton Miwok Rancheria dated November 23, 2009;
- Letter from Wilton Rancheria dated June 18, 2010;
- Draft Amendment Number Three to Amended Development Agreement, Amendment Number One to Security Agreement, and Amendment Number One to Promissory Note (3rd Amendment).

On the question of management, the Agreements submitted by the Rancheria 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 Agreements are not management contracts and do not require the approval of the Chairwoman.

It is also my opinion that the Agreements do not violate IGRA's sole proprietary interest requirement. The Development Agreement provides that East West Gaming will receive a development fee of [] percent of revenues for a period of [] years from the opening of any gaming facility developed under the Agreements. The Development Agreement restricts the total development fee to a maximum of thirty percent of *net revenues*, as defined in IGRA and NIGC regulations. Per the parties' submission, the current projection of the fee is [] to [] percent of net revenue.

As part of our analysis, we closely examined the risk that East West assumed when it partnered with Wilton Rancheria. At the time the agreements were entered into, the Rancheria was a terminated tribe. East West provide the Rancheria with an approximately [] loan to assist the Rancheria in obtaining federal recognition and all the benefits associated with that recognition. Additionally, East West has lent the Rancheria an additional [] dollars to continue to fund its governing body and start the preliminary development of a gaming operation. b4

While the Rancheria is again recognized by the United States as a tribe with a government-to-government relationship, East West still faces substantial risks. There are still many unanswered questions: whether the Rancheria will find and purchase land; whether the BIA will take that land into trust for the Rancheria; whether that land will be eligible for gaming under IGRA; whether East West and the Rancheria will obtain the permanent financing necessary to build a facility; and whether the Rancheria will be able to negotiate a tribal-state compact with the state of California and whether the BIA will approve that compact. East West's risks are substantial, and the only recourse for the [] already lent to the Rancheria is permanent financing and revenues of a gaming operation.

Based on the specific facts of this situation, the development fee is not excessive in light of the substantial amount of money East West has advanced for restoration and development and the continued risk assumed that its loans and fees will only be repaid if the permanent financing is obtained and the gaming facility actually opens.

As discussed in the February 1, 2011 meeting with counsel for both parties, I am not opining on the authority of the parties to enter into these Agreements.

I anticipate that this letter will be the subject of Freedom of Information Act (FOIA) requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information

Chairwoman Tarango
Re: Review of development documents for Wilton Rancheria
April 21, 2011
Page 3 of 3

the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the Agreements 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 Dorinda Hanrahan at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts", with a stylized flourish at the end.

Lawrence S. Roberts
General Counsel

cc: Rose Weckenmann, Attorney for Wilton Rancheria
Kazhe Law

Kevin Wadzinski, Attorney for East West Gaming LLC
Drinker Biddle

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