

AUG 17 2010

OFFICE OF HEARINGS AND APPEALS  
BOARD OF INDIAN APPEALS

## Interior Board of Indian Appeals

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AUGUST 16, 2010

On July 22, 2010, the Board in its Notice of Receipt of Timely Requests for Reconsideration, Order Consolidating Proceedings, Order Concerning Briefing on

Standing and Merits and Notice of Ex Parte Communications, requested that in addition to filing a detailed request of reasons supporting its request for reconsideration

CCGJ requests that the initial filing serve as its “detailed request” for reasons supporting its request for reconsideration and that this document serve as a supplemental brief to that document.

Specifically, this supplemental brief will amend the section titled “There is new evidence that The Board failed to consider that could affect the determination.”

**There is new evidence that The Board failed to consider that could affect the determination**

The Board must vacate the final determination on the Shinnecock Indian Nation under 25 C.F.R. § 83.11(e) (10), because there is new evidence, beyond what was provided in CCGJ’s July 15, 2010 Notice of and Request for Reconsideration that also significantly alters the petitioners claim.

Attached to this brief are additional exhibits that include articles from various periodicals detailing The Nation’s statements and continued efforts for Federal recognition in order to begin the construction of a casino in Metropolitan New York.

These articles must be considered by the Board in making its final determination because they bring to light significant questions about the independence of the Shinnecock Indian Nation. The effect of the consideration of these articles will be detailed in Section VI of CCGJ’s July 15, 2010 Notice of and Request for Reconsideration

Below are quotes from the attached articles:

- *"The three Calverton sites that have been presented to Suffolk County's Gaming Task Force as possible locations for a Shinnecock Indian Nation casino are not the only ones in Riverhead Town the Shinnecoaks have been offered, according to Lance Gumbs, a senior trustee with the tribe.*

*He said other sites throughout the town, not just in Calverton, had been suggested, although he declined to name them.*

*And overall, Mr. Gumbs told reporters after Thursday's meeting of the task force, "upwards of 30 sites" in Suffolk County have been presented to the Shinnecoaks as possible homes for a casino."<sup>1</sup>*

- *"The owners of a large swath of farmland near Splish Splash in Calverton are joining a growing gaggle of Long Island landowners and developers actively inviting the Shinnecock Nation to build a casino on their property.*

*The 131-acre parcel near the water park brings to three the number of Calverton locations being shopped for potential Shinnecock Indian gaming facilities."<sup>2</sup>*

- *"Connecticut is like the aging champ, trying to keep that poker face but twitching as revenues fall even before the possible addition of casinos in Massachusetts and New York, which would mean more of a pinch.*

*New York, which is still exporting gamblers to New Jersey and Connecticut, has the biggest pile of chips to bet if it figures out where to put them down. So glut or not, New York is still looking to add capacity, which means either cannibalizing its neighbors' business or luring new suckers into the game. It is not an encouraging picture, but as they say at the casinos and the state capitals, you can't win if you don't play."<sup>3</sup>*

- *The tribe is scheduled to meet with a task force formed by the Suffolk County Legislature on Thursday to explore possible sites for a Shinnecock casino, which could bring a tax windfall for the county and whatever municipality hosts the*

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1 Gannon, Timothy. "Shinnecoaks: We've got dozens of casino options in Suffolk, Riverhead." Riverhead News-Review, Jul 29, 2010. See Exhibit 7.

2 Gannon, Timothy. "New pitch for a Calverton casino Owners of land near Splish Splash prep to woo the Shinnecoaks" Riverhead News-Review, Jul 23, 2010. See Exhibit 8.

3 Applebome, Peter "States Hooked on Gambling for Revenue" New York Times, July 25, 2010. See Exhibit 9.

*development. Mr. Gumbs said that meeting might be postponed because of the appeal.*

*A financial feasibility report contracted for a previous tribe investor showed that a casino on Long Island had the potential to grow into a multibillion-dollar annual business and one of the largest casinos in the world. It would also pose a grave threat to the viability of the two mega-casinos already in operation in southern Connecticut, Mohegan Sun and Foxwoods, according to the appeal filed by the Connecticut group.”<sup>4</sup>*

- *“They also argue federal recognition, in addition to paving the way to the possibility of gaming, brings other federal benefits, which are being held hostage by a delaying tactic focused on blocking a casino.”<sup>5</sup>*
- *“The Shinnecocks have been pursuing a casino for nearly 10 years, since the tribe tried to build a casino on land it owns near the reservation. The state and the town of Southampton blocked the plan in federal court.*

*With federal recognition, the Shinnecocks would be free to have slot machines on their reservation, though the tribe says it prefers to build a full casino elsewhere.*

*“It's not a question of whether they have the right to game at all, it's a question of where the casino would be,” says state Assemblyman Fred Thiele, an independent.”<sup>6</sup>*

The publically available information appears to show that despite the delay in Federal recognition through this appeals process, the Nation has maintained its position to fast-track a the building of a casino. By making the casino a priority, it implies that the Nation’s non-tribal investor, Gateway Casino Resorts, is directing the activities of the Nation with respect to the Casino building and therefore the Federal recognition process.

It is not apparent anywhere in the Final Determination that the Assistant Secretary ever reviewed the agreements between the Nation and Gateway Casino Resorts. These

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4 Wright, Michael “Connecticut casino employees file 11th-hour challenge to Shinnecock recognition” South Hampton News. July 20, 2010. See Exhibit 10.

5 Solnik, Claude. “Judge asks for Shinnecock decision” Long Island Business News. July 22, 2010. See Exhibit 11.

6 Moore, Martha. “Indian tribe seeks equal footing on Hamptons” USA TODAY. July 16, 2010. See Exhibit 12

agreements might show how Gateway has usurped a portion of the Nation's sovereignty and or political autonomy. It therefore becomes a necessity for the Board to reconsider its decision until such time that these documents are reviewed.

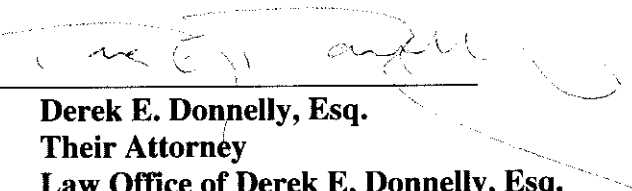
Should the Final Determination stand, CCGJ will suffer irreparable harm. The interests of CCGJ are aligned with those of the 18,000 Connecticut residents employed by Connecticut Casinos and the 9,000 residents are employed by businesses that provide goods and services to the Casinos. Of specific concern to CCGJ are the negative tax ramifications in the State of Connecticut if this recognition is to move forward. Only a reconsideration of the Final Determination will halt that harm.

Therefore, for the reasons stated in CCGJ's Notice of and Request for Reconsideration and the supplemental material provided above, it is imperative that the Board reconsider the Final Determination and the recognition of the Shinnecock Indian Nation.

Respectfully,

The Connecticut Coalition for Gaming Jobs

BY



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## **CERTIFICATE OF SERVICE**

**I hereby certify that service was provided to the following individuals or parties of record via US Mail on this the 16th Day of August, 2010.**

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## **EXHIBIT 7**

## **Shinnecocks: We've got dozens of casino options in Suffolk, Riverhead**

### **Several Riverhead locations presented to tribe**

BY TIM GANNON |STAFF WRITER

Riverhead News-Review Jul 29, 2010

Shinnecock Indian Nation trustee Lance Gumbs listens to a proposal for locating a tribal casino on land in Calverton at the county's Gaming Task Force meeting in Hauppauge last Thursday.

The three Calverton sites that have been presented to Suffolk County's Gaming Task Force as possible locations for a Shinnecock Indian Nation casino are not the only ones in Riverhead Town the Shinnecocks have been offered, according to Lance Gumbs, a senior trustee with the tribe.

He said other sites throughout the town, not just in Calverton, had been suggested, although he declined to name them.

And overall, Mr. Gumbs told reporters after Thursday's meeting of the task force, "upwards of 30 sites" in Suffolk County have been presented to the Shinnecocks as possible homes for a casino.

Everybody and their brother now is presenting different pieces to us.'

-Lance Gumbs, Shinnecock Nation

"We never realized how much land is available on Long Island until this happened," Mr. Gumbs said. "Everybody and their brother now is presenting different pieces to us."

Mr. Gumbs said the Shinnecocks hope to select a site by the end of the year. As he spoke to reporters, a real estate agent was waiting to talk to him about another site in Calverton. Mr. Gumbs said the selection process had actually been slowed by all the options the tribe has to choose from.

Representatives of two Calverton sites made presentations to the Gaming Task Force last Thursday. One, a 131-acre site adjacent to Splish Splash on Route 25, consists of two parcels, one owned by Bagatelle Associates and the other by Eletag Associates, both from Brooklyn.

Joe Nehmad, a broker for Fillmore Real Estate of Brooklyn, which represents the property owners, told the task force that one benefit of the site is its frontage on both Route 25 and the Long Island Expressway.



"This property gives you enough land to develop the project and in the future to expand, if need be," Mr. Nehmad said. He said the zoning was a negative, in that it is zoned for industrial uses, but Mr. Gumbs said later that zoning is not a factor, because if the Shinnecocks were to build a casino on off-reservation property, they would have to first buy the land and then put it in a trust with the federal government, which would supersede zoning.

"That's a very interesting piece," Mr. Gumbs told reporters afterward. "Especially with Splish Splash and Tanger right there. That's actually a very interesting piece. It would be even more interesting if the piece next to it was available."

The "piece next to it" is 134 acres of farmland owned by Marie Tooker, who showed up at Thursday's meeting with her attorney to voice support for putting the casino on the acreage adjacent to her property.

The second property discussed Thursday was the proposed Riverhead Resorts site at the Enterprise Park at Calverton (EPCAL).

That property, which totals 755 acres, is still owned by Riverhead Town, but the town is in contract to sell it to Riverhead Resorts for \$108 million. Riverhead Resorts wants to build eight year-round theme resorts, each with a hotel and restaurant and condos, according to attorney Mitch Pally. Riverhead Resorts is committed to trying to finalize the contract before the end of the year, but Mr. Pally said it's unclear whether that can happen, since the property must be subdivided first, and there are issues with the state over which government agency would lead the review of the subdivision application.

Mr. Pally said that, while the contract with the town contains a prohibition on casinos, he did have the consent of the Town Board to appear before the task force.

Whether the Town Board will actually consent to allowing a casino is not clear, based on interviews with board members.

And after Thursday's meeting, Mr. Gumbs said other issues remained unclear about a possible Shinnecock alliance with Riverhead Resorts.

For one, the Shinnecocks would have to own the land in order for it to be placed in a federal trust. That would mean Riverhead Resorts might have to do another subdivision to sell part of its land to the tribe and might possibly have to shrink the size of its proposal.

Mr. Pally said that issue has yet to be decided.

Mr. Gumbs said another concern about teaming up with Riverhead Resorts is that its resort proposal contains many of the same uses the Shinnecocks are planning.

"We not just building a casino," Mr. Gumbs said.

The third Calverton site to have been made public is a 95-acre parcel owned by Engel Burman Group in the industrial core of EPCAL. Jan Burman of that group made a presentation before the task force last month.

Meanwhile, John Paulson of the Manor Park Civic Association told the task force Thursday that 40 Brookhaven Town civic associations are now opposed to having a casino anywhere in Brookhaven Town. The town-owned Calabro Airport in Shirley is one site being considered.

"This is the people speaking, not the politicians," Mr. Paulson said.

He said casinos will bring traffic, prostitution, crime and the draining of police and government resources. Mr. Gumbs has refuted such claims and pointed to the example of the two Connecticut casinos owned by Indian tribes.

"The nation has property of its own and you can build your casinos there," Mr. Paulson said. "But when you seek to build off your land, don't get offended when we oppose it."

Mr. Gumbs said afterward that town, state and federal leaders had asked the tribe not to build a casino on 80 acres it owns off Newtown Road in Hampton Bays.

The process of getting approval for an Indian casino on non-reservation land is considered difficult, and only four off-reservation casinos have been built nationwide.

Asked about the odds, Mr. Gumbs said, "Our political people have to get behind us. You can't say you don't want it in our territory but then not support us moving it someplace else."

# **EXHIBIT 8**

## **New pitch for a Calverton casino**

### **Owners of land near Splish Splash prep to woo the Shinnecocks**

BY TIM GANNON |STAFF WRITER

Riverhead News-Review, Jul 23, 2010

The owners of a large swath of farmland near Splish Splash in Calverton are joining a growing gaggle of Long Island landowners and developers actively inviting the Shinnecock Nation to build a casino on their property.

The 131-acre parcel near the water park brings to three the number of Calverton locations being shopped for potential Shinnecock Indian gaming facilities.

The group behind the Riverhead Resorts project proposed for 755 acres at the Enterprise Park at Calverton, or EPCAL, is also pitching land for a casino site, even though the property is still owned by Riverhead Town. And developer Jan Burman recently put 95 acres he owns at EPCAL on offer as a possible casino site.

It can be a happy marriage of two compatible interests.'

Mitch Pally, Riverhead Resorts' attorney

Riverhead Resorts and the owners of the 131-acre site are both scheduled to make presentations to Suffolk County's Gaming Task Force today, Thursday, at 10 a.m. in Hauppauge. Mr. Burman made a presentation to that task force in June.

Bryan Galgano, a spokesman for county Legislator Wayne Horsley, who chairs the task force, said the people behind the three Calverton sites are the only ones to have scheduled appearances before the task force so far. The task force, whose goal is to keep any casino in Suffolk, is working with the Shinnecocks, who will make the final choice of a location.

But the tribe can't build a casino until it is granted federal recognition. That was expected to occur this week but the process got delayed after two groups filed paperwork opposing the Shinnecocks' bid. The tribe was in court yesterday to argue its case.

The 131 acres of currently vacant farmland lie on the south side of Route 25 in Calverton, immediately west of Splish Splash, and extend as far south as the Long Island Expressway.

The site has about 1,000 linear feet of frontage on Route 25 and approximately 2,400 on the Expressway, according to Joe Nehmad, a broker for Fillmore Real Estate of Brooklyn, which is representing the property owners.

It has been listed for sale online at \$60 million.

The land is zoned Industrial A, which doesn't permit casinos. But casinos are not currently permitted anywhere in New York State other than on Indian lands.

According to Riverhead Town records, the property comprises two parcels: 116.7 acres owned by Bagatelle Associates of Brooklyn and the 14.8 acres owned by Eletag Associates of Brooklyn. Both had addresses in care of Dr. Abraham Ostad of Ocean Avenue, Brooklyn.

Riverhead Resorts is seeking to buy 755 acres of land from Riverhead Town at EPCAL with the goal of building eight theme resorts, including one with an indoor ski mountain.

Mitch Pally, an attorney for Riverhead Resorts, said the development team's contract with the town prohibits casinos, but that Town Board members told him they would not object to his appearing before the county gaming task force.

"We're more than happy to talk to anybody about anything that can make this project better," Mr. Pally told the News-Review earlier this month. He said Tuesday that resorts and casinos have worked in tandem elsewhere.

"It can be a happy marriage of two compatible interests," he said. Riverhead Resorts has spoken to the Shinnecocks and given them a tour of the site, Mr. Pally said.

But Riverhead Resorts is in default on its contract with the town because it has missed two \$1.98 million payments that were required in order to get two three-month extensions of the deadline by which the sale was supposed to have been finalized. Riverhead council members Jodi Giglio and George Gabrielsen say they think the town should end its contract with Riverhead Resorts now, but the other board members want to give the group more time.

Mr. Pally has said Riverhead Resorts remains committed to the project and has already paid the town \$7 million.

"In transactions of this type, there are a lot of details that have to be worked out," Mr. Pally said. "You have major financial decisions being made by major financial institutions and you have to make sure that all the t's are crossed and the i's are dotted in order to invest the amount of money necessary for this big a project."

In order to build a casino on non-reservation land, the Shinnecocks would have to acquire the property and have it put into a federal trust. Approval from the state is also needed.

To date, only four off-reservation casinos exist in the United States, according to the Bureau of Indian Affairs.

Tribal officials could not be immediately reached for comment.

Potential casino sites outside Riverhead Town include Calabro Airport in Brookhaven, the Nassau Coliseum property in Uniondale and land near Belmont Racetrack in Elmont, among others.

# **EXHIBIT 9**

# States Hooked on Gambling for Revenue

By PETER APPLEBOME

New York Times: Published: July 25, 2010

From the beginning of our joy ride with legalized gambling, there was a worry that more gambling would mean more overextended suckers addicted to slots, poker tables, lotteries and roulette wheels.

Now we know it's true — only the addicts are not necessarily day trippers on tour buses.

They are also states, like Connecticut, New Jersey and New York — and most of their neighbors — desperate for cash, averse to raising taxes and doubling down on the one business that seemed to be eternally growing until it wasn't.

How else to explain a professed small-government conservative like Gov. Chris Christie of New Jersey last week proposing a state takeover of the floundering Atlantic City gambling strip? Casino revenue there is down almost 30 percent from the same period in 2006.

Indeed, like the ball on a roulette wheel popping up and down before it finally lands, the casino story lines are hard to keep straight.

Maybe New York will finally build one at Aqueduct. Maybe the Shinnecock Tribe will build one at the Nassau County Coliseum, or maybe it will build one somewhere in Suffolk County. But in a glutted market, can Long Island and New York City support two new casinos, let alone one? Connecticut's two mega-casinos provided less revenue to the state last year than at any time in a decade. Out of nowhere a group calling itself the Connecticut Coalition for Gaming Jobs pops up to contest federal recognition of the Shinnecoeks, for fairly obvious reasons. It's getting a little claustrophobic in here, isn't it?

"The New York metropolitan market is probably approaching saturation if it's not already there," said Robert B. Ward, deputy director of the Nelson A. Rockefeller



Institute of Government in Albany. “At some point you just end up with the shopping mall syndrome — whoever has built most recently with the shiniest properties will get the customers and the other properties will deteriorate, and no one will know what to do with them.”

According to a report in September by Mr. Ward and Lucy Dadayan of the Rockefeller Institute, state and local gambling revenues from gambling emporiums and lotteries declined nationally by 2.6 percent in 2009, the first decline in three decades. State and local revenues from commercial casinos (excluding Indian ones) in the 2009 fiscal year declined by 8.5 percent.

All three states in the New York metropolitan area get a larger percentage of their state-generated general revenue (excluding federal sources) from gambling than the national average. In the fiscal year 2008 it was 4 percent in Connecticut, 3.3 percent in New Jersey and 3.1 percent in New York, compared with 2.3 percent nationally. They are not huge percentages, but they are big enough to mean the difference between a budget that is balanced and one that is not. And that only includes direct state receipts, not jobs, revenues from shops and other economic benefits.

SO even with revenues declining, at least 25 states have contemplated expanding gambling over the past year. Mr. Christie’s plan is the latest sign of how much the states have invested.

“The states aren’t the ones who are going to go into bankruptcy,” said Michael Diamond, vice president for research at Spectrum Gaming Group, which studies the casino industry. “They might see their revenue stream come down, but they’re going to encourage as much activity as someone is willing to invest in.”

Like those dorky poker players behind wraparound shades on ESPN, all three states have a distinctive game to play. Mr. Christie’s proposal is essentially going all in on Atlantic City. It may be a somewhat dinged-up brand, but he’s betting it’s one that’s too big to fail, and, with its Boardwalk and seashore, it is the only gambling center in the region that can lure gamblers and families.

Connecticut is like the aging champ, trying to keep that poker face but twitching as revenues fall even before the possible addition of casinos in Massachusetts and New York, which would mean more of a pinch.

New York, which is still exporting gamblers to New Jersey and Connecticut, has the biggest pile of chips to bet if it figures out where to put them down. So glut or not, New York is still looking to add capacity, which means either cannibalizing its neighbors' business or luring new suckers into the game. It is not an encouraging picture, but as they say at the casinos and the state capitals, you can't win if you don't play.

# **EXHIBIT 10**

# **Connecticut casino employees file 11th-hour challenge to Shinnecock recognition**

By Michael Wright

South Hampton News. July 20, 2010

Leaders of the Shinnecock Indian Nation reacted angrily this week to word that an upstart organization claiming to represent more than 18,000 Connecticut casino employees has filed a legal objection to the Shinnecoeks' recent official recognition by the federal government—seen as a doorway to the tribe opening a casino on Long Island or in the New York City region.

Shinnecock Tribal Trustee Lance Gumbs said he has been told by the tribe's attorneys that the objection suspends the tribe's federal recognition status until the matter is resolved by the Interior Board of Indian Appeals. The move came just four days before the last window of opportunity for any objections to the tribe's official federal recognition, granted by the Bureau of Indian Affairs last month, was to close.

"It's appalling and it's a slap in the face," Mr. Gumbs said Thursday. "This is a group trying to protect Connecticut's interests—it has nothing to do with our status as a tribe. It's a slap in the face to everybody in New York."

Tribal Trustees Chairman Randy King was equally outraged. "It's unbelievable for them to come in ... at the 11th hour like this," he said. "It's an affront to our tribe's heritage and everything we've done. Why didn't they step up in December if they thought our application was so wrong?"

The Shinnecoeks were given preliminary approval of their 32-year-old federal recognition application in December, after which there was a 60-day comment period for objections or appeals to be filed. Just one appeal was filed, a request by some members of the splintered Montaukett tribe to be included in the Shinnecock application, which was set aside by the Bureau of Indian Affairs.

A New Jersey man, claiming to represent members of the Montauketts, also filed an objection to the Shinnecock federal recognition approval last week, though it is not clear what the grounds for his objection are or whether it would even be accepted by the federal bureau since other members of the Montauketts apparently penned a correspondence to the Bureau of Indian Affairs saying the man, Robert Stevenson, was not a member of the tribe.

The objection by the Connecticut group will be reviewed by a federal judge and, if granted, could mean a protracted court battle over the points of contention raised by the group.

The group, which calls itself the Connecticut Coalition for Gaming Jobs, said the tribe's business relationship with Gateway Casino Resorts—the Detroit casino development company that has spent millions of dollars on the tribe and its nine-year marathon of legal battles in exchange for a cut of future casino profits—compromises the independence of the tribe and should make them ineligible for federal recognition. The appeal filed by the tribe says that a Shinnecock-run casino near New York City would be devastating to the lives of thousands of Connecticut gaming employees.

“It’s a totally unfounded claim,” said Mark Tilden, a Colorado attorney who worked on the Shinnecoeks’ federal recognition application in recent years. “This is a speed bump in the road for the nation. We will respond to these interlopers quickly and vigorously.”

This week, members of the Shinnecock tribe, through the online social networking site Facebook.com, called for a boycott of the Connecticut casinos by New Yorkers.

Reports in the Norwich Bulletin, a newspaper in Norwich, Connecticut, said the gaming coalition’s spokesperson has said the group is also considering challenges to casino bids by tribes in Massachusetts and Rhode Island as well.

U.S. Representative Tim Bishop of Southampton blasted the attacks on the Shinnecoeks as a business concern having nothing to do with the grounds for the tribe’s deserving federal recognition. He said he would put the weight of his office on the side of the tribe in its fight to finalize their federal recognition.

“The recognition process is based on strict criteria with regard to the tribe’s indigenous and historic link to Long Island,” Mr. Bishop said. “The recognition process is separate and distinct from a discussion of gaming. I support the tribe’s request for recognition and will share that support in a letter to the Bureau of Indian Affairs.”

On June 19, the Bureau of Indian Affairs issued its final determination, granting the Shinnecoeks federal recognition, opening the door for the tribe to a host of federal aid programs—and also to the world of casino gambling. With its federal recognition looming, the tribe had begun holding meetings with local governments, developers and property owners about potential sites for a future Shinnecock casino.

The tribe is scheduled to meet with a task force formed by the Suffolk County Legislature on Thursday to explore possible sites for a Shinnecock casino, which could bring a tax windfall for the county and whatever municipality hosts the development. Mr. Gumbs said that meeting might be postponed because of the appeal.

A financial feasibility report contracted for a previous tribe investor showed that a casino on Long Island had the potential to grow into a multibillion-dollar annual business and

one of the largest casinos in the world. It would also pose a grave threat to the viability of the two mega-casinos already in operation in southern Connecticut, Mohegan Sun and Foxwoods, according to the appeal filed by the Connecticut group. Mr. Gumbs said that the Shinnecocks have reached out to the two Connecticut tribes who operate casinos: the Mashantucket-Pequot, which operates Foxwoods, and the Mohegan tribe, which operates Mohegan Sun. He said both tribes have vigorously denied having any connection to the casino employees coalition or of having had anything to do with the appeal.

“Somebody has got to be backing them,” Mr. Gumbs said. “They just filed several hundred pages of documentation. That’s not something that happens overnight and without a lot of money behind it.”

Last Updated Jul 20, 10 7:15 PM

# **EXHIBIT 11**

# Judge asks for Shinnecock decision

by Claude Solnik

Published: July 22, 2010

Long Island Business News.

Following a lengthy, emotional appeal, a federal judge yesterday instructed the federal government to set a date by which it would rule on the Shinnecoeks' 32-year-old petition for recognition.

John M. Peebles, an attorney for the Shinnecock Indian Nation, filed the argument on behalf of a speedy decision with U.S. District Court Judge Joseph F. Bianco in Central Islip.

Bianco asked the United States Department of the Interior to provide a letter by July 30 indicating a date by which it expected to rule.

The Department of the Interior already determined the tribe fulfilled the seven criteria for federal recognition.

But the process was put on hold after the Connecticut Coalition for Gaming Jobs and plaintiffs on behalf of the Montauk, also known as the Montaukett, tribe filed objections.

The federal government is handling the Shinnecock's request for recognition through a process Bianco is overseeing as part of the tribe's charge of unreasonable delays.

The tribe's lawyers argue the plaintiffs don't have standing as interested parties, haven't presented new evidence and shouldn't be allowed to block recognition.

They also argue federal recognition, in addition to paving the way to the possibility of gaming, brings other federal benefits, which are being held hostage by a delaying tactic focused on blocking a casino.

"Many tribal elders that began this long struggle have died over the last 32 years," Peebles, an attorney at Peebles, Fredericks Peebles & Morgan based in Sacramento, Calif., argued in documents filed Wednesday. "One of the Nation's elders and former trustees passed away this summer without being able to see the end to this process. Many Shinnecock children have been born within the last 32 years that are still waiting to see federal recognition."



He said the Connecticut Coalition's arguments "are wholly insufficient to establish by a preponderance of the evidence" that the tribe failed to fulfill any of the seven mandatory criteria. And arguments on behalf of the Montauk tribe, he said, also failed to find fault with the decision to recognize the Shinnecock.

"Both requests appear merely to serve as attempts to further delay an already unreasonably delayed administrative process," he argued.

Peebles said facts in the objection are known to the public and the Department of the Interior, disqualifying them as new evidence.

The Shinnecock also pointed out that the Montauk Indian Nation submitted a letter supporting their effort to be recognized and called those opposing recognition a "splinter group."

Peebles alluded to the importance of a speedy resolution, citing "harm suffered by the Nation every day that they are not placed on the list of federally recognized tribes."

The Shinnecock argue delays in federal recognition impact benefits related to healthcare, education, environmental and resource protection as well as economic development and their right to self-govern as a sovereign Indian nation.

"Any further delay in this recognition is unconscionable and should not be tolerated," the tribe argues, "particularly where the delay is being caused by non-governmental entities with no legitimate interest in the Nation's status as a federally recognized tribe."

Tom Shields, a spokesman for Gateway Casino Resorts, a Michigan-based company partnering with the Shinnecock, said it isn't clear who's behind the objections. But he said the reason for the protests is clear.

"We know the motivation," he said. "Just trying to protect the market share."

He said recognition is a key, but not the final step, in order to obtain approvals to open a casino off a reservation.

"I think the Obama Administration is still searching for its policy toward Indian gaming," he said regarding Native American casinos. "The system is not broken. There are a lot of caveats in the system. There is ample opportunity for everybody to voice their opinions. That tends to slow the process down."

# **EXHIBIT 12**

## **Indian tribe seeks equal footing on Hamptons**

Martha T. Moore, USA TODAY July 16, 2010

SOUTHAMPTON, N.Y. — Members of the Shinnecock tribe are used to the incongruity: a pocket of working-class Native Americans living on a sometimes-shabby reservation amid the wealth of Long Island's Hamptons resorts.

Their tax-free cigarette shops are down the road from designer boutiques and gourmet caterers.

Their health clinic building once served as the pro shop for the Shinnecock Hills Golf Club, a bastion of privilege built on land dotted with their burial mounds.

Their struggling oyster farm lies across Heady Creek from the oceanfront estates of millionaires.

Now the tribe — recognized by New York state in 1792 — is evolving from a local anomaly to a regional power. After 32 years of trying, the Shinnecock Indian Nation is one legal hurdle away from becoming a federally recognized Native American tribe.

That means the tribe, and its business partners, can move forward with building a Vegas-style casino on densely populated Long Island.

"We've always known who we were, but to the outside world, we're validated, so to speak," says Randy King, the tribe's chairman.

About half the nearly 1,300 Shinnecoeks live on an 800-acre reservation on Long Island's southern shore. The 200 or so houses here range from neatly kept to tumbledown to trailers. Tribe members can't get mortgages, tribe spokeswoman Beverly Jensen says, because no one has title to their own home site; the land is held in common by the tribe.

Federal recognition was set to become official next Tuesday. On Thursday, though, a group called Connecticut Coalition for Gaming Jobs filed a challenge to the recognition. That could require days to "several months" to resolve, says U.S. Rep. Tim Bishop, D-N.Y., who has supported the Shinnecoeks' efforts.

Federal recognition would bring "a sense of opportunity, maybe a sense of relief," says lawyer Marguerite Smith, a tribe member. "A sense, for my mother, that all she's ever believed about who she is has been affirmed by others."

## **Casino as bargaining chip**

It also would bring the potential for millions of dollars. In neighboring Connecticut, the Foxwoods and Mohegan Sun casinos dramatically changed the fortunes of the two tribes

that own them, and under an agreement with the state, contributed \$330 million to the public treasury over the past year.

The Shinnecocks have been pursuing a casino for nearly 10 years, since the tribe tried to build a casino on land it owns near the reservation. The state and the town of Southampton blocked the plan in federal court.

With federal recognition, the Shinnecocks would be free to have slot machines on their reservation, though the tribe says it prefers to build a full casino elsewhere.

"It's not a question of whether they have the right to game at all, it's a question of where the casino would be," says state Assemblyman Fred Thiele, an independent.

Now, local and regional officials eager to provide locations are courting the Shinnecocks.

"Those are big dollars, believe me," says Ed Mangano, Nassau County executive, who wants the casino for a development project that includes a new arena for the New York Islanders hockey team. "There's going to be gaming on Long Island, so here's an opportunity to make the most of it for the residents."

Another bargaining chip is the tribe's federal lawsuit claiming it owns thousands of acres of prime Hamptons real estate, including the site of the Shinnecock Hills Golf Club.

The tribe could agree to drop the lawsuit in return for an agreement with the state, Bishop says, which the tribe would need in order to run a full casino even with federal recognition.

The Shinnecocks' push comes as casino revenue in the region is weakening: At Foxwoods, the amount wagered on slot machines has declined for five years, falling 16% for the year ending in June from the previous year.

### **Victims of racial prejudice**

An intangible benefit of federal recognition could be smoothing the often-tense relationship between the Shinnecocks and their neighbors.

"Historically, they've viewed us as a workforce," tribe lawyer Smith says. "I think now they'll see us more as equals."

"Partners," King adds.

To Thiele, the relationship between tribe and townsfolk is "mixed."

"We all went to the same schools, we've all had common experiences growing up," he says. Yet "the Shinnecocks have been the victims of racial prejudice and economic discrimination."

Federal recognition, he says, "confers a legitimacy in the community that they felt might have been lacking through the years."

During her childhood on the reservation, Beverly Jensen says, her father hunted deer and harvested clams for his nine children.

"When I was growing up in the Southampton school system, I used to think we were poor," she says. "When I got older, I realized we weren't poor, we were traditional. My dad fed us from the earth."

That may not change, even if the tribe's fortunes do. Manicured lawns are not for her, Jensen says:

"I don't want my yard looking like the yards across the water. That's not what we aspire to."