



By U.S. mail and email

January 9, 2014

Aaron Payment
Tribal Chairperson
Sault Ste. Marie Tribe of Chippewa Indians
523 Ashmun St.
Sault Ste. Marie, MI 49783

Re: Review of turn-key development agreements for Sault Ste Marie Tribe

Dear Chairperson Payment:

This letter responds to your General Counsel's January 5, 2012 request on behalf of the Sault Ste. Marie Tribe of Chippewa Indians (Tribe), for the National Indian Gaming Commission's Office of General Counsel to review the Tribe's turn-key development agreements with Lansing Future, LLC and JLLJ Corporation. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the financing documents violate IGRA's requirement that the Tribe hold the sole proprietary interest in its gaming activity.

In my review, I considered separate, but nearly identical, turn-key facility development agreements for the Lansing and New Boston properties, both executed December 19, 2011, and both with the following exhibits:

- Exhibit A - detail of pre-effective date advances as of 12-6-2011;
 - Exhibit B - an unexecuted promissory note payable on the earlier of the date of opening the temporary facility or the maturity date;
 - Exhibit C - an unexecuted promissory note payable on the maturity date;
 - Exhibit D - fixed charge coverage ratio calculation worksheet;
 - Exhibit E - Preliminary Temporary Construction and Development Budget;
- and

- Exhibit F – Preliminary Facility Construction and Development Budget (blank).

I also reviewed two executed and undated memorandums of understanding (“the MOUs”), one with Lansing Future, LLC, and the other with JLLJ Corporation, both of which you submitted via email on May 6, 2013.

The MOUs clarify that the Developer’s authority over budget, machine placement, and other management decisions is properly limited to the pre-opening timeframe. Therefore, it is my opinion that the Turn-Key Development Agreements—together with the MOUs—are not management contracts and do not require the approval of the Chairman. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

Further, this opinion is limited to the documents listed above. The Tribe has not requested, and I express no opinion on the parcels’ eligibility for gaming under the Indian Lands Regulatory Act.

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 (25 U.S.C. § 552(b)(4)), which applies to commercial or financial information that is privileged or confidential, the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

If you have any questions, please contact NIGC Staff Attorney Jennifer Ward at (202) 632-7003.

Sincerely,



Eric Shepard
Acting General Counsel

cc: John Wernet, General Counsel, Sault Ste. Marie Tribe of Chippewa Indians