



March 29, 2024

VIA E-MAIL

Rebecca Liebing, General Counsel
Bay Mills Indian Community
12140 W. Lakeshore Drive
Brimley, MI 49715

Re: Review of Financing Agreement with Central Savings Bank

Dear Ms. Liebing:

This letter responds to your September 1, 2023, request on behalf of your client, the Bay Mills Indian Community, for the National Indian Gaming Commission (“NIGC”) Office of General Counsel (“OGC”) to review a financing agreement between Central Savings Bank and the Bay Mills Gaming Authority. Specifically, Bay Mills seeks a legal advisory opinion addressing whether the agreement constitutes a management contract, requiring the NIGC Chair’s approval under the Indian Gaming Regulatory Act (“IGRA”), and whether the agreement violates IGRA’s mandate that a tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, the “Loan Documents”):

- Affidavit of Posting;
- Agreement of Architect (as amended January 7, 2024);
- Agreement of General Contractor (as amended January 7, 2024);
- Architect’s Certificate Regarding Plans and Specifications;
- Borrower’s Closing Certificate;
- Borrower’s Certificate Regarding Plans and Specifications;
- Construction Leasehold Mortgage (as amended March 25, 2024);
- Construction Loan Agreement (as amended December 18, 2023);
- Environmental Certificate;
- Environmental Indemnification Agreement;
- Guaranty of Completion;

- Landlord Consent and Waiver;
- Landlord Consent to Leasehold Mortgage;
- Promissory Note;
- Security Agreement (as amended January 7, 2024); and
- Waiver of Sovereign Immunity.

The Loan Documents contain terms similar to other agreements OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC's website. Applying the same analysis here, it is my opinion that, collectively, the Loan Documents are not management contracts and do not require the Chair's approval. Nor, in my opinion, do they violate IGRA's sole proprietary interest mandate.

I note, however, that the loan structure provides certain rights to the lender related to the Tribe's trust lands. Since these provisions may implicate the United States' interests in lands it holds for the benefit of the Tribe, we are referring the agreements to the Department of the Interior for their information.

It is my understanding that the Loan Documents are represented to be in substantially final form. This opinion shall not apply if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements.

Please note that it is my intent to release this letter to the public through the NIGC's website. If your client has any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that your client believes should be withheld.¹ If your client objects on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act ("FOIA"),² please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ Please submit any written objection to foia@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, I will make this letter public, and objections will no longer be considered.⁵

¹ See 25 C.F.R. § 517.7(c) (2024).

² 5 U.S.C. § 552(b)(4).

³ *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019)

⁴ 25 C.F.R. § 517.7(d) (2024).

⁵ See *id.*

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If you have any questions or require anything further, please contact Staff Attorney Adam L. Candler at 202-580-5718, or by e-mail at adam.candler@nigc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be 'RC', written in a cursive style.

Rea Cisneros
General Counsel (Acting)

cc: Whitney Gravelle, President - Bay Mills Indian Community
Paula Hart, Director - Office of Indian Gaming
Candy Tierney – Bay Mills Indian Community