



December 15, 2010

VIA FACSIMILE AND U.S. MAIL

Raymond Etcitty, General Counsel
Navajo Nation Gaming Enterprise
P.O. Box 1700
Church Rock, NM 87311
Fax: (505) 905-7240

Re: Loan Agreements between the Navajo Nation Gaming Enterprise, as the borrower, and the Navajo Nation, as the lender, in connection with the Upper Fruitland Navajo Casino and Twin Arrows Navajo Casino

Dear Mr. Etcitty:

This letter responds to your November 17, 2010 request on behalf of the Navajo Nation Gaming Enterprise for the National Indian Gaming Commission's (NIGC's) Office of General Counsel to opine on whether the above-referenced agreements constitute management contracts under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2701 *et seq.* The agreements submitted are between the Navajo Nation and the Navajo Nation Gaming Enterprise and include a loan agreement, security agreement, depository agreement, and note. Based on our review of the agreements, it is my opinion that because Navajo Nation Gaming Enterprise is a wholly owned tribal enterprise, the agreements are not management contracts within the meaning of IGRA and do not require the approval of the NIGC Chairwoman.

The Navajo Nation Gaming Ordinance, codified at 5 N.N.C. § 2001 *et seq.*, establishes the framework by which Indian gaming will be conducted within the Navajo Nation. Chapter 3, Section 301, states "all gaming activities within the Nation shall be owned entirely by the Nation and conducted and operated by a Tribal Gaming Enterprise." The Navajo Nation therefore established the Navajo Nation Gaming Enterprise, 5 N.N.C. § 1701 *et seq.*, a wholly owned entity of the Nation, "to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act..., Navajo Gaming Ordinance,... and the gaming compacts entered into between the Navajo Nation and any State." 5 N.N.C. §§ 1702(A) and 1703(A).

Therefore, because the Navajo Nation Gaming Enterprise is a wholly owned entity of the Nation, it is my opinion that section 2711 of IGRA does not apply to the agreements here. It is my understanding that the drafts are represented to be in substantially final form, if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

Thank you for submitting these documents for review. I am also sending of copy of the documents to the Department of Interior, Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Dorinda Strmiska at (202) 632-7003.

Sincerely,

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

Lawrence S. Roberts
General Counsel

cc: Douglas Goe, Attorney for the Navajo Nation

Paula Hart, Director, Office of Indian Gaming Management
Bureau of Indian Affairs (w/ incoming)