

MENOMINEE/KENOSHA TRIBAL CASINO

FREQUENTLY ASKED QUESTIONS

1. What is the Menominee Tribe proposing to build in Kenosha? What casino games will be offered?

The Tribe is proposing a 116,000 square foot facility that will feature 3,100 slot machines, 75 table games, a 5,000 seat multipurpose entertainment facility, numerous food and beverage outlets, 50,000 square feet of retail space, a 400 room hotel, a conference center and a spa. When completed, total employment is expected to be 3,356 full-time equivalent employees, including senior executive management.

2. What is the project expected to cost?

The projected expenditures in anticipated capital structure for the casino and related facilities is estimated to be \$808,000,000.

3. Will any public monies from the City of Kenosha or County of Kenosha be used to develop the casino?

No. The Menominee/Kenosha tribal casino is being funded entirely from tribal or traditional investment/banking sources of funding and capital.

4. Who is assisting the Menominee Tribe with the development?

The developer for the Menominee/Kenosha tribal casino is Kenesah Gaming Development LLC (Kenesah). Kenesah is a single-member limited liability company whose sole member is Dennis M. Troha, a Kenosha-area businessman. The Mohegan Tribe has an option to become a member of the LLC. Kenesah will have no role in management or operation

of the casino; its role is to develop the casino in accordance with a development agreement Kenesah has with the Tribe.

5. Who will manage the Tribe’s casino operations?

The Tribe intends to enter into a management contract with the Mohegan Tribe to manage the Tribe’s casino operations. Such a contract must be approved by the National Indian Gaming Commission, a federal agency.

6. What development, other than the casino, will take place on the Trust Land?

The Tribe anticipates that the project will result in a “premiere entertainment destination” that will include not only the casino, but a 5,000-seat multi-purpose entertainment facility, numerous food and beverage venues, 50,000 square feet of retail space, a 400-room hotel, a conference center and a spa. The Tribe also anticipates a second hotel and water park, in addition to parking garage facilities.

7. Where is the Mohegan Tribe located? Where are their casino operations?

The Mohegan Tribe is located in Uncasville, Connecticut. Its casino operation is also located in Uncasville and is one of the largest and most successful gaming facilities in the United States.

8. How many jobs will be created at the casino and related development? What will be the average pay and benefits?

At the conclusion of construction of the casino project, the Tribe expects that the casino project will create 3,356 full-time equivalent (FTE) positions with a combined payroll of nearly

\$153,000,000 annually. Average pay and benefits per FTE position is anticipated to be \$45,587 annually.

9. Will tribal members or other Indians have a job preference?

Yes. Currently, tribal members who are otherwise qualified for a job receive a tribal preference in employment. There is no requirement that employees of the proposed casino be tribal members.

10. Will the Menominees use union labor to construct the casino?

In April of 2004, the Tribe and the Southeastern Wisconsin Building and Construction Trades Union Council, executed a project labor agreement in which the Tribe committed that all construction labor for the casino will be provided through labor unions represented by the Trades Union Council. The project will create several thousand construction jobs and estimated employee compensation for the project of \$164,000,000.

11. When will the casino be open for business?

The Tribe expects, given current project schedules, that the initial casino operations in a retrofitted Dairyland clubhouse will occur by April 1, 2006, with various phases of the construction lasting through an anticipated June, 2009, completion date.

12. Why is the Tribe placing the project land into federal trust?

Under federal law, the Tribe may only conduct gaming operations on reservation land or land held in trust for the benefit of the tribe by the U.S. government. The Tribe must therefore make a formal application to place the project land into federal trust with the United States

Department of the Interior, Bureau of Indian Affairs (BIA). BIA must then determine that the project will be (a) in the best interest of the Tribe and (b) not detrimental to the surrounding community. The Governor of Wisconsin must concur in these determinations for the project land to be placed into federal trust in order that gaming may occur on such land.

13. What laws will be applicable to the Trust Land and the casino operation?

Both federal law and laws made applicable under the tribal/state compact will be applicable to the trust land and the casino. The Compact requires that the Tribe abide by State public building and health codes. Under the proposed Intergovernmental Agreement (IGA), the Tribe will adopt certain City and County ordinances governing land use, building and site maintenance, health and food, and related matters.

14. Does the City or the County have civil jurisdiction over the trust lands?

The Tribe, City and County have agreed in the proposed IGA, that the Tribe will adopt a number of ordinances similar to the City and County for land use, public health and safety purposes. The Compact also requires that the Tribe follow State building codes concerning fire prevention, electrical matters, smoke detectors, public building standards, plumbing, wastewater treatment and standards for theaters and assembly halls. While federal law extends criminal jurisdiction of the State to enforce criminal law on the trust lands, the same does not extend to State or local civil laws.

15. Why has the proposed Trust Land acreage increased to 223 acres from 87 acres previously proposed?

The increased acreage in the current proposal from the 1998-99 proposal results from the proposed size of the entire project development and the need of the Tribe to have jurisdiction over the entire project development to facilitate BIA approval. The gaming and related amenities portion of the project will occupy the eastern portion of the parcel (approximately 125 acres), while the third-party improvements will occupy the western portion of the parcel (59 ½ acres). Approximately 39 1/3 acres are undevelopable.

16. What governmental approvals are necessary in order for the Tribe to place the land in federal trust and establish the casino?

As indicated in the answer to Question 12, the Tribe must make an application to place the land into federal trust with the Bureau of Indian Affairs. The BIA must make a two-part finding: (a) that the proposed development will be in the best interest of the Indian Tribe and (b) that the proposed development will not be detrimental to the surrounding community. The Governor of Wisconsin must concur in these BIA determinations. As part of BIA determination under (b) above, the BIA will look to whether the Tribe has sought to offset the impact of the casino development on local governments and the resulting loss of property tax base as a result of the land being placed into federal trust and thus not subject to property tax. Accordingly, the Tribe has proposed the IGA with the City of Kenosha and County of Kenosha to address such impacts. The proposed IGA will have to be approved by the Common Council of the City of Kenosha, the Board of Supervisors of Kenosha County and the Tribal Legislature of the Menominee Tribe.

17. How much time will the Bureau of Indian Affairs take to evaluate the Trust Land application?

The Tribe submitted its trust land application to BIA on July 6, 2004. According to BIA officials, the *minimum* amount of time necessary to process an application through the initial review of the application by the BIA Regional Office in Minneapolis through a recommendation and proposed findings in the BIA Washington, D.C., office will be 18 months.

18. How much time will the Governor of Wisconsin take to evaluate the Trust Land application?

Once the BIA makes its two-part determination, it will send a letter to the Governor of Wisconsin asking for the Governor's concurrence in such findings. Neither federal nor state law establishes any deadline by which the Governor must act.

19. Once the land is taken into federal trust and the casino is operating, can the Tribe annex lands adjacent to the casino property?

No, a tribe does not have the annexation powers enjoyed by cities and villages under Wisconsin law. The Tribe has also agreed in the proposed IGA to not seek to place additional lands into trust in Kenosha County without the consent of the City and County of Kenosha.

Absent the proposed IGA restriction, if the Tribe proposed to acquire land and place it into federal trust for gaming purposes, then the process detailed in Questions 12 and 16 will need to be undertaken. If, however, the Tribe proposes to place additional land it acquires into federal trust for other purposes, it must nevertheless seek the permission of the BIA to do so. The BIA would give significant weight to the positions of the local governments in Kenosha as to whether such land should be placed in federal trust for the benefit of the Tribe. The power of the Tribe to seek to place any lands into federal trust exists presently regardless of whether the casino land parcels exist or not. This power would not be exercised if the proposed IGA is approved by the parties.

20. What is the Tribal/State Compact?

The Tribal/State compact is a contract between the State of Wisconsin and the Tribe that is required under federal law for any Tribe to operate Class III gaming. The compact addresses issues such as the allocation of governmental jurisdiction among the State and the Tribe, the games authorized to be played by the Tribe, oversight of the gaming operations, payments to the State and related matters.

21. What is Class III gaming?

Under federal law, Class III gaming is defined as everything other than: (a) traditional tribal ceremonial or social games involving prizes of limited monetary value and (b) bingo and certain bingo derivatives. Consequently, most casino-type games (blackjack, video gaming machines, slot machines, roulette, craps, keno, etc.) are Class III gaming under federal law.

22. Is it true that the Tribe and its members pay no federal, state or local taxes?

No. In general, tribal members, like all other U.S. citizens, pay federal income taxes. Tribal members who live or work off-reservation are generally subject to the same array of federal, state and local taxes as is any other citizen.

23. Is it true that all sales that occur at the casino or on the Trust Land are exempt from sales tax? What about construction materials sold to the Tribe?

No. In general, sales to the Tribe or tribal members within the trust land (including construction materials sold to the Tribe and delivered to the trust land) are not subject to sales tax. The sales between non-Indian entities are subject to sales tax. Further, sales by the Tribe or

tribal members to non-tribal members of personal property are generally subject to sales tax as well. The Tribe and the County are currently negotiating an agreement regarding sales taxes.

24. Is it true that the Tribe is a sovereign nation subject only to tribal laws?

Indian tribes are described under federal law as “domestic dependent sovereigns.” As such, a Tribe and its members are generally subject to federal law as any other citizen of the United States. The Tribe’s sovereignty allows it to make laws and regulations to govern its members within the geographic boundaries of its reservation lands and trust lands. While, in general, state and local laws have no application on tribal reservation or trust lands, Congress may apply such laws and courts have held such laws may apply, depending upon a balancing of federal, state and tribal interests in any particular matter.

25. What agreements are necessary among the City, the County and the Tribe in order to take the land into trust and establish the casino?

Because the BIA looks to whether the proposed trust land acquisition will be detrimental to the surrounding community, the Tribe, the City and the County have negotiated the proposed IGA under which the local governments provide services to the project in the same manner as is done for any commercial enterprises in exchange for payments for such services, to mitigate the impacts of the project and foregone property taxes, among other issues. The proposed IGA will have to be approved by the Common Council of the City, Board of Supervisors of the County and the Tribal Legislature.

26. If the City, County and the Tribe enter into an intergovernmental agreement, what payments will be made to local governments as a result?

The Tribe will make quarterly payments to the City based upon a share of the Tribe's net win of gaming operations at the proposed casino. For the first eight (8) calendar years after the land is placed into trust or until such time as the Tribe pays its development and management fees (whichever occurs first), the Tribe will pay 3% of net win. Thereafter, the Tribe will pay 4% of net win.

In calendar years one through six of the proposed IGA if net win payments are less than \$1,000,000 and beginning in calendar year seven and thereafter if the net win payments are less than \$2,000,000, the Tribe will make an additional payment to the City equal to the \$1,000,000 or the \$2,000,000, adjusted for inflation. The \$1,000,000 annual payment will more than cover the current revenues which all units of local government receive from the property for the first six calendar years. The \$2,000,000 payment is designed to cover a projected maximum of revenues that the local units of government could receive under a non-casino, non-industrial land use scenario. Based upon the first 22 years of projected casino operations, it is not anticipated that the minimum payment provision will be invoked.

The City and the County will also be making combined payments totaling \$1,000,000 annually for school purposes from support payments received from the Tribe under the proposed IGA. In addition, the Tribe will donate an additional \$1,500,000 annually to the Kenosha School District under the proposed IGA.

The City will distribute to the County the County's share of these payments.

It is estimated that the total payments to local governments under the proposed IGA over the 22-year period for which financial projections have been made will exceed \$521,000,000.

27. Once the land is taken into federal trust, can the Tribe, the City or the County require that it be taken out of federal trust?

There is no current administrative procedure under federal law for taking land out of federal trust. An Act of Congress would be required to do so. The proposed IGA indicates that the Tribe will petition Congress to take land out of trust if that becomes necessary.

28. What is tribal sovereignty?

Tribal sovereignty is the authority of a tribal government to exercise governmental power over its members and its territory. In general, tribal authority does not reach non-member Indians or non-Indians outside of its tribal territory.

29. Is the intergovernmental agreement enforceable?

Yes. The proposed IGA will be enforceable in accordance with its terms since the Tribe, like many governments, may enter into, and be bound by, contracts so long as the Tribe consents to the enforcement of a contract by waiving its sovereign immunity to permit enforcement of the contract. Both the Tribe and its gaming authority have agreed in the proposed IGA to waive tribal sovereign immunity to permit enforcement of the proposed IGA in accordance with its terms.

30. What is the Tribe's responsible gaming program?

The Tribe has agreed in the proposed IGA to create and implement a detailed, responsible gaming policy. The Tribe will review the policies of other casino operators throughout the United States and seek the advice of the Wisconsin Council on Problem Gambling and the Kenosha County Department of Health and Human Services. The Tribe's responsible gaming policy will include (a) financial support for the Wisconsin Council on Problem Gambling and other problem gambling organizations that provide problem gaming

services in Kenosha County, (b) development of brochures, pamphlets, videos and other materials for the purpose of promoting responsible gambling, including the establishment of a help line at the casino, (c) cooperation with local area media to promote awareness of problem gambling, (d) institution of self-limitation policies, (e) institution of self-exclusion policies, (f) institution of exclusion policies, (g) training for all employees on the issue of problem gambling, (h) sponsorship and support for problem gambling conferences and workshops, (i) prohibition of underage gambling, including identification of gambling customers, display and advertisements of the legal age to gamble, heightening awareness of customer responsibility when bringing children to the casino and working with other local organizations to raise awareness, (j) prohibition on gambling by casino employees and (k) provide \$150,000 annually as a match to any Kenosha County funds for the assessment and treatment of problem gamblers.

31. Are there any minority assistance programs associated with the casino project?

Yes. The proposed IGA contains a provision that requires the Tribe to designate a compliance officer to ensure that minority recruitment and retention at the casino complies with the goal of 25% minority employment. In addition, the proposed IGA contains a provision that the Tribe will use its best efforts to award 15% of all contracts to vendors or enterprises certified as minority business enterprises and use its best efforts to award 10% of all contracts to enterprises certified as 51% owned, controlled or managed by women or Indians.

32. What is the traffic impact of the casino project?

Traffic impacts are currently being evaluated as part of the environmental impact statement (EIS) required under the Tribe's trust land application. The Tribe will be required to mitigate any impacts.

33. What is the impact of the casino project on air/water quality?

The casino project is not expected to result in a significant impact on either air or water quality. These impacts are also being studied as part of the EIS process.

34. What attempt has been made to buffer the residential development south of the casino?

As part of the land use ordinances adopted by the Tribe, the casino project must control, among other things, noise and light that comes from the facility.

35. Can the casino employees form unions?

A recent decision of the National Labor Relations Board (NLRB) issued in May, 2004 held that the National Labor Relations Act applies to casinos operated by the tribes on their lands. This decision overturns the former position of NLRB on this matter. The present position of NLRB is that the NLRB has jurisdiction over tribal casinos as employers.

36. Can casino employees gamble in the casino?

The Compact prohibits gaming by casino employees, tribal gaming commissioners, tribal officials associated with the operation of the casino, the officers, directors and employees of a management company that manages a tribal casino and the immediate family members of the individuals identified above.

37. Will a preference be given to local suppliers and contractors?

Yes. The proposed IGA provides that the Tribe shall give a preference of 3% over and above the lowest quoted price of a bidder whose principal place of business is not located in Kenosha County to those Kenosha County vendors who seek to supply services, goods or materials to the casino.

38. Will the casino be open 24 hours a day?

Yes.

39. During what hours will alcohol be offered for sale and will sales of alcohol off-premises be permitted?

Under federal law, the Compact and the proposed IGA, alcohol beverages may be served at locations at the casino where games authorized under the Compact are conducted, but only during the hours prescribed in Section 125.32(3) of the Wisconsin Statutes (not later than 2 a.m. weekdays and not later than 2:30 a.m. on Saturdays and Sundays). Alcohol beverages may not be sold at the casino for purposes of off-premises consumption.

40. Will revenue from the casino cover the costs of additional government services to be provided?

Yes. Payments from the Tribe to the City and the County under the proposed IGA are expected to exceed the costs of services to be provided to the casino and the related project as well as offset the property taxes that may have been collected on the project were the project subject to property tax. It is projected that payments in support of local governments will exceed \$521,000,000 over the next 22 years.

41. Will the police and sheriffs departments have criminal jurisdiction on trust lands?

Yes. Generally, federal law provides that, in Wisconsin, the state's criminal laws may be enforced on the trust lands by the State or local governments.

42. Can the Tribe or the casino be sued for injuries that occur at the casino or on the trust lands?

The Compact requires that the Tribe maintain general liability insurance, with limits of not less than \$250,000 for any one person and \$4,000,000 for any one occurrence for personal injury and \$2,000,000 for any one occurrence of property damage. The Compact provides that an action brought against the Tribe's insurance company for personal injury or property damage at the casino could be brought within the limits of the insurance coverages indicated here.

43. Will the casino increase calls to the police and fire departments?

While difficult to say with absolute certainty, the City anticipates that calls to the police and fire department, especially for emergency medical service, will likely increase because of the traffic and populations using the casino and project facilities, similar to what has occurred with other major commercial development. Payments under the proposed IGA are intended to mitigate such impacts.

44. Will there be residential development on the trust lands?

No. The Tribe agreed in the proposed IGA to adopt and maintain an ordinance precluding residential development on the trust lands.

45. Will any public monies from the City of Kenosha or the County of Kenosha be used to provide infrastructure to serve the casino project?

Any public monies from the City or the County to provide infrastructure to serve the casino project will be met from revenues to be paid by the Tribe to the City and County under the proposed IGA. If the additional infrastructure consists of highway or interchange improvements, a combination of federal, state and local monies, as well as tribal monies, will likely be available. Additional infrastructure in the form of expanded water and sewerage services will be paid by the Tribe as provided in the proposed IGA.

46. What is the effect of the Wisconsin Supreme Court's decision in the tribal gaming case (*Panzer v. Doyle*)?

The effect of the decision of the Wisconsin Supreme Court in *Panzer v. Doyle* on the casino project will be minimal. The Supreme Court decision in the *Panzer* case dealt largely with the authority of the Governor of Wisconsin to enter into an indefinite Compact with Wisconsin Indian tribes and dealt incidentally with the types of games the Governor could authorize the tribes to conduct in light of changes to the Wisconsin Constitution (which prohibited the State Legislature and, therefore, the Tribes, from conducting casino games beyond blackjack, slot machines and video gaming machines). Pending any changes to the law, the Tribe does not intend to conduct games beyond slot machines, blackjack and simulcasting at the proposed casino, in addition to continuing to offer dog racing.

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