



Little River Band of Ottawa Indians

375 River Street
Manistee MI 49660
(231) 723-8288

Resolution No. #02-0508-16

**Approving a Procedure for Approving Certificates of Substantial
Completion for Portions of the Work on Little River Casino
Resort's Expansion Project and Responsibilities for Preparing the
"Punch List" for Each Portion of the Work**

WHEREAS, the Band's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. §1300k et seq.); and

WHEREAS, the Band adopted a Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Band has determined that the development of the permanent casino/resort facilities is in the best, long-term interests of the Band and its members; and

WHEREAS, the Tribal Council has established, by Resolution #01-0110-03, a Construction Management Team (CMT), and assigned specific responsibilities, tasks and authorities to the CMT; and

WHEREAS, the Tribal Council has, pursuant to Resolution #01-0303-02, authorized execution of a Design/Build Agreement (AIA A191) with Cunningham-Limp Company for the design and construction of the Band's Casino Resort Expansion; and

WHEREAS, the Band has retained Bay Shores Construction & Land Development, Inc. to provide Owner's Representative services, consisting of advice and assistance to Cunningham-Limp and the CMT, in connection with the design and construction of the Band's Permanent Casino/Resort; and

WHEREAS, the Band has entered into a Second Amended and Restated Management Agreement, dated January 4, 2002, with Manistee Gaming, LLC, under which Manistee Gaming has agreed to provide assistance to the Band in coordinating the construction and opening of the permanent Casino/Resort Facilities; and

WHEREAS, the Tribal Council recognizes that its prior resolutions give multiple parties varying, and potentially conflicting, responsibilities relating to the tasks and decisions necessary to certify the "Substantial Completion" and final completion of construction work on the Casino/Resort Project; and

WHEREAS, the Tribal Council wishes to establish clearly defined procedures and responsibilities for all of the entities having responsibility for certifying the "Substantial Completion" of portions of the Casino/Resort Project, including the building conditions necessary to occupy and utilize portions of the Project, and establishing the "punch list" of items requiring completion or correction.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby establishes the following procedures for determining whether the progress of the work on a portion of the Casino/Resort Project is sufficiently complete in accordance with the Contract Documents with Cunningham-Limp Company to permit the Casino/Resort operations to occupy or utilize that portion of the Casino/Resort Project for its intended use. It is the Tribal Council's intent in establishing these procedures to do so in a manner consistent with Section 4.3 of Part 2 of the Agreement (AIA 191) with Cunningham-Limp.

- a. Representatives of Cunningham-Limp Company shall notify CMT member, Charles Fisher, of the date when it believes a portion of the Project is or will be suitable for Substantial Completion review;
- b. Charles Fisher will, in consultation with representatives of Cunningham-Limp Company, ensure that the following inspections and certifications are completed by Code Solutions, Inc., or other consultant retained by the Owner's Representative for this purpose, for those portions of the Project before a Substantial Completion review is conducted:
 1. 1996 BOCA Building Code with Michigan State Amendments;
 2. 1997 International Mechanical Code with Michigan State Amendments;
 3. 1997 International Plumbing Code with Michigan State Amendments;
 4. 1999 National Electrical Code with Michigan State Amendments;
 5. Uniform Fire Code;
 6. Michigan Barrier Free Design Law (BOCA Building Code with State Amendments/CABO ANSI A-11T.1 1992)

The consultant's review shall be conducted to determine if the work for that

portion of the Project has been completed in accordance with above building codes to permit issuance of a occupancy permit, as if the Project were required to obtain such a permit from a state or local authority.

- c. Provided Code Solutions, or any other consultant performing the inspection, has certified that the work for that portion of the Project has been completed in accordance with the above building codes, the following persons shall, in consultation with representatives of Cunningham-Limp Company, conduct the Substantial Completion review on behalf of the Band, which is contemplated by the contract documents:

1. Charles Fisher, on behalf of the CMT;
2. A representative designated by the Tribal Council;
3. A representative designated by the Manager of Little River Casino Resort.

It is the expectation of the Tribal Council that the representative designated by the Manager of Little River Casino Resort will be an individual with management responsibilities for functions that will utilize that portion of the Project subject to the Substantial Completion review.

It is further the expectation of the Tribal Council that the representatives designated above will consult with other members of the entities they represent during the performance of their responsibilities under this Resolution.

- d. It is the sense of the Tribal Council that a certification of "Substantial Completion" shall include certification that the work in that portion of the Project subject to review has been completed, in accordance with the Contract Documents, such that the area may be occupied by employees of Little River Casino Resort who have job responsibilities within that area, and the area could be utilized by such employees for its intended purpose. In accordance with the recognized meaning of "Substantial Completion" within the construction industry, a portion of the Project will be considered "Substantially Complete" if that portion of the Project requires additional work consisting of minor work that can reasonably be considered: touch-up items, clean-up, or "punch-list" items consisting of small items requiring completion or finishing, or corrective or remedial work. Provided the completion of such additional work does not substantially or materially interfere with the occupancy or use of that portion of the Project, the work shall be considered "substantially complete".


- e. The three (3) person team designated in this Resolution shall be responsible for developing the "punch list" of all items of additional work that will be required to finish that portion of the Project so that Final Payment under the Contract Documents may be made to Cunningham-Limp Company. Punch List items shall include: touch-up work, clean-up, finishing work, and correction or remediation of defective or damaged portions of the work identified during the Substantial Completion review.

IT IS FINALLY RESOLVED THAT Councilor, Charles Fisher and the Council member designated to participate in the Substantial Completion reviews, are directed to meet with representatives of Cunningham-Limp Company and management of Little River Casino Resort as soon as possible to address and further define the processes and scheduling necessary to implement the purposes of this Resolution.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 6 FOR, 1 AGAINST, 1 ABSTAINING, and 1 ABSENT, at the Closed Meeting portion of a Regular Session of the Little River Band of Ottawa Indians Tribal Council held at the Little River Band's Downtown Offices on May 10, 2002, which is a continuation of the May 8, 2002 meeting, in Manistee, Michigan. A quorum of the Tribal Council being present for such vote.


Janine M. Sam, Council Recorder


Stephen Parsons, Council Speaker

Attest:

Distribution: Tribal Council Records
Construction Management Team
Cunningham-Limp Company
Bay Shore Construction & Land Development
Tribal Ogema
Legal Department