

*16th Annual Real Property, Probate & Trust
Spring Symposia*



Capital Markets Access for Developing a Multi-Use Project On Native American Land

Jeff Carey, *Native American Banking*

(212) 449 0683

jeff_carey@ml.com

April 29, 2005



Global Markets & Investment Banking Group

Multi-Use Projects with Tribal Governments

Introduction

Project Development as Partner Aids the Self-Sufficiency of Tribal Governments

- Creates strength and self-sufficiency
- Develops strong leadership and cohesion within the Tribal community
- Improves economic stability and prosperity
- Provides job opportunity and employment for Tribal members
- Supports social and educational programs
- Fosters community and social development
- Expands the tax base for the Tribe and surrounding community
- Preserves cultural heritage



Project Development with Tribal Governments

Capital Markets Access

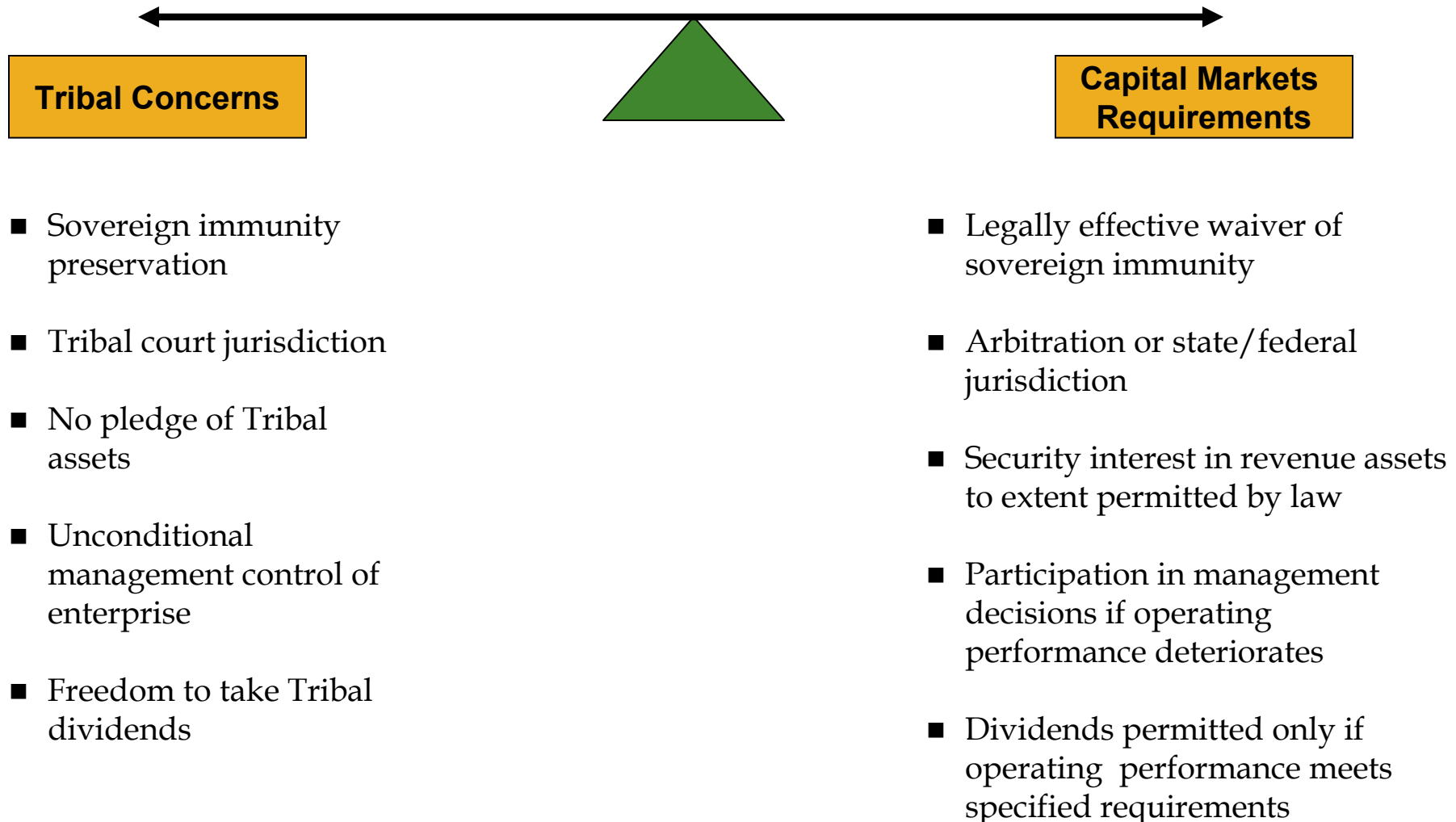
Access to the Capital Markets Supports Multi-Use Project Development

- Achieves the lowest cost of capital
- Expands the investor base
- Allows customized structuring to meet the projects financing timeline
- Diversifies Tribal government assets
- Maximizes asset management performance and growth of Tribal wealth
- Provides for Tribal members financial security
- Funds Tribal government services



Project Development with Tribal Governments

Balancing Issues to Participate in the Capital Markets



Project Development with Tribal Governments

Evolution of Capital Raising Options for Tribal Projects

	Advantages	Disadvantages	Cost
Developer / Management Company	<ul style="list-style-type: none"> ▪ Early in gaming, the only capital available ▪ Provided outside development and management expertise 	<ul style="list-style-type: none"> ▪ Cost up to 30% of net revenues ▪ Lack of control – development and operations 	Up to 30% of Net
Syndicated Bank Loan	<ul style="list-style-type: none"> ▪ Single bank negotiating on behalf of group ▪ No prepayment penalty 	<ul style="list-style-type: none"> ▪ Heavy restrictions on dividend flow to the Tribe ▪ Shorter term, generally 3-5 years ▪ Renegotiations/Additional Fees every 3-5 years 	LIBOR +100-300 bps
High Yield Bonds	<ul style="list-style-type: none"> ▪ Primary source for “Las Vegas” capital ▪ Understands Gaming ▪ Broad Market, many investors 	<ul style="list-style-type: none"> ▪ Generally, Tribal Distributions limited to 50% EBITDA ▪ 5-7 Year Debt at Taxable rates ▪ No Amortization of debt principal/refinancing risk 	6-12%
Government Bonds	<ul style="list-style-type: none"> ▪ Takes advantage of Tribe’s sovereignty to access markets ▪ Generally, no restrictions on Tribal Distributions ▪ With tax-exemption, lowest cost of long-term funds available 	<ul style="list-style-type: none"> ▪ New investor class: Seminole, Agua Caliente, Santa Ana Pueblo, Mohegan, MPTN ▪ Access through direct issuance or conduit 	5-8%



Project Development with Tribal Governments

Introduction to Tax-Exempt Bond Financing

Tax-Exempt Financing Benefits

- Provides capital structure akin to other non-tribal governments
- More flexibility than bank financings
- Longer amortization and maturity schedules – 20 to 30 years is very reasonable
- Level debt service or principal amortization where it makes strategic sense
- Limited maintenance and operating covenants
- Greater flexibility in Tribal dividends
- Lower yields compared to similarly-rated taxable debt



Project Development with Tribal Governments

Introduction to Tax-Exempt Bond Financing

Impact to Tribe

- Lower annual debt service requirements
- Enhanced operating and investment cash flows of the Tribe and its Enterprises
- Elimination of refinancing risks associated with shorter term taxable notes
- Strong basis for high credit ratings
- Broad market access
- Increased options for future financing and asset management



Project Development with Tribal Governments

BIA Loan Guaranty Program

The BIA Loan Guaranty Program Provides Valuable Credit Enhancement

- The BIA Loan Guaranty Program provides a 90% guaranty of principal on a loan to a Tribal government or Tribal enterprise
- The BIA guaranty benefits a Tribe by adding an additional security feature that enables the Tribe to access a lower cost of funds with a longer maturity
- The BIA guaranty can only be used to fund certain projects; direct gaming uses can not be financed
- The BIA participates in the negotiations with the Tribe and Lender to establish loan parameters such as maximum term, interest cost, and fees
- To protect the BIA's security interest, the BIA may require a leasehold mortgage, including FF&E
- Other restrictions could include a limitation on additional debt and adequate insurance coverage





Project Development with Tribal Governments BIA Loan Guaranty Program

Case Study: Pueblo of Santa Ana

- Merrill Lynch underwrote a \$48.5 million tax-exempt offering for the Pueblo of Santa Ana to refinance debt related to its resort and golf courses
- The financing allowed the Pueblo to extend the maturities of project related debt under a more flexible covenant structure than its prior bank debt and free-up cash flow for planned capital improvements and other tribal uses
- In addition to the \$48.5 million bond issue, Merrill Lynch also funded a \$16.6 million subordinate, 20-year loan to the Pueblo
 - The loan had a 90% guaranty of principal provided by the BIA
 - Merrill Lynch repackaged the loan into Class A and Class B Certificates and subsequently placed the Certificates with institutional investors in the secondary market
- This was the first time a BIA loan guaranty was used in conjunction with a bond financing



Project Development with Tribal Governments

BIA Loan Guaranty Program

Benefits

- The BIA Guaranty allowed the Pueblo to access a low cost of funds for a 20-year term extending beyond the current Compact length
 - Level debt service provided predictable payment stream over a longer term than a traditional taxable term loan
 - Saved the Pueblo over \$800,000 per year
- The BIA acceptance of the subordinate position on the loan enhanced the successful sale of the senior lien bonds
- The AAA rating on the Class A Certificates by Fitch Ratings was a first; reflects the strength of the BIA guaranty

Challenges

- As the first situation where a BIA Guaranty was used for a loan in conjunction with a bond issue, we encountered a few structuring challenges
- Investor inter-creditor issues
 - Leasehold mortgage requirements
 - Limitations on additional debt
 - Amortization of principal
- Fluid negotiation process with investors
- Approval process
- Interest rates reflect market rates at time of loan pricing



Project Development with Tribal Governments

BIA Loan Guaranty Program

Lessons Learned

- Acknowledgement of inter-creditor concerns
- Good faith documentation process
- Fixed versus variable rate structures and pricing
- Standstill language on leasehold was key to bond holders
- Acceptance of subordinate pledge was critical to addressing inter-creditor concerns
- Future flexibility to allow for opportunistic use of the capital markets in the future



Project Development with Tribal Governments

Capital Markets Access

Lessons for Tribal Projects

- Increased understanding of Indian Country by capital markets intermediaries and investors has increased attractive Tribal borrowing options
- Tribes deserve, and are now receiving, the same capital markets access that other, non-tribal governments have enjoyed for years
- Third party enhancement such as attractive BIA guarantees, doesn't reflect credit weakness but lowers interest cost and increases financing alternatives
- Tribes should be working with financial institutions that offer multiple debt issuance options while supporting Tribal goals, sovereignty, and economic self-sufficiency

