

## Transaction Report

### Indian Cultural Center Site

December 31, 2013

In accordance with Session Law 2013-186 (House Bill 60), Section 4. (d), this report is submitted by the Department of Administration (Department) for consultation to the Chairs of the Program Evaluation Committee and the Director of the Program Evaluation Division of the General Assembly regarding the transaction and sale of Parcel 1 of the Indian Cultural Center site to the Lumbee Tribal Administration.

House Bill 60, AN ACT TO TERMINATE LEASES AT THE INDIAN CULTURAL CENTER SITE AND THEN SELL OR ALLOCATE CERTAIN PORTIONS OF THE PROPERTY, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE, was signed by Governor Pat McCrory on June 26, 2013. Section 2 of the legislation required the Department of Administration to terminate the lease between the State and the North Carolina Indian Cultural Center, Inc., for the Indian Cultural Center site. Notice of termination was required to be given no later than 15 days after the effective date of this act. A notice of termination letter ("Termination of Lease Agreement") was sent on July 10, 2013, to The North Carolina Indian Cultural Center, Inc., and (NCICC) and to Lumbee Land Development, Inc., (Riverside Golf Course). These letters were sent via U.S. Mail / Return Receipt Requested. The termination letters required each entity to vacate the premises within sixty and thirty days respectively. The Termination of Lease Agreement sent to NCICC cited previously noticed uncured defaults by NCICC as the basis for termination of the lease.

On July 9, 2013, NCICC filed a complaint in United States District Court for the Eastern District of North Carolina (USDC-EDNC) against the State of North Carolina and the Department alleging that S.L. 2013-186 violated provisions of the United States and North Carolina Constitutions. On July 31, 2013, the Attorney General filed a Motion to Dismiss NCICC's complaint and a memorandum in support of its motion with the USDC-EDNC. NCICC filed a motion with USDC-EDNC on August 12, 2013, seeking the issuance of a temporary restraining order and preliminary injunction to enjoin the effectiveness, operation and enforcement of S.L. 2013-186 and to restrain the State and the Department from implementing the law.

The Attorney General filed a response to NCICC's motion for a temporary restraining order and preliminary injunction on August 21, 2013 and a hearing was held on the matter the following day. On August 23, 2013, the presiding judge in the USDC-EDNC issued an order holding in abeyance consideration of NCICC's request for a temporary restraining order and preliminary injunction and gave NCICC five days to respond to the State's challenge to USDC-EDNC's subject matter jurisdiction. NCICC filed its response on August 27 and the presiding judge in the USDC-EDNC issued an order on August 30, 2013, granting the State's motion to dismiss NCICC's complaint for lack of jurisdiction (said order rendering NCICC's motion for a temporary restraining order and preliminary injunction moot).

On September 3, 2013, NCICC filed a complaint in Wake County Superior Court against the North Carolina Commission of Indian Affairs, the Department, the State of North Carolina and Bill Daughtridge, Jr., as Secretary of the Department. NCICC's complaint alleged that (i) S.L. 2013-186 violates various provisions of the United States Constitution and the North Carolina Constitution, (ii) the named defendants breached the lease contract and (iii) the collective and separate actions of the defendants

violated 42 U.S.C. § 1983. The complaint also included a motion to enjoin the effectiveness, operation and enforcement of S.L. 2013-186 and to restrain the State from the enforcement of said law, from the termination of the NCICC Lease and from entering in and taking possession of the leased premises. The Attorney General filed a motion to dismiss the complaint on September 4, 2013 and additionally filed on September 5 a memorandum in opposition to NCICC's motion for a temporary restraining order and preliminary injunction. A hearing on NCICC's motion for a temporary restraining order was held in Wake County Superior Court on September 6, 2013. NCICC's motion for a temporary restraining order was denied. NCICC's action and the State's motion to dismiss NCICC's complaint are pending in Superior Court.

Upon the denial of NCICC's request for a temporary restraining order and the termination of the NCICC lease on September 8 (the expiration of the 60 notice period), the Department allowed NCICC to remain in possession of the premises for several additional days in order to continue the orderly removal of its personal property. The State took possession of the property on September 13, 2013.

Section 3 of the legislation required the Department to obtain an appraisal for Parcel 1. This appraisal was required to include both of the following:

(1) An appraisal of Parcel 1 subject to the restrictive covenants and reversion to the State provided in Section 4(a) of this act.

(2) An appraisal of Parcel 1 without the restrictive covenants and reversion to the State provided in Section 4(a) of this act.

On June 3, 2013, the Department received an appraisal of Parcel 1 (±386 acres), as-is, unencumbered by restrictive covenants or a reversionary interest in favor of the State. The value of Parcel 1 as reflected in said appraisal was \$1,170,000. The Department received an appraisal of Parcel 1, as-is, encumbered with restrictions and the State's reversionary interest on August 22, 2013. The value of the property according to this appraisal was \$351,000.

Section 4. (a) of the legislation required the Department to first offer Parcel 1 to the Lumbee Tribal Administration for purchase, subject to restrictive covenants that would run with the land, a violation of any of which would result in the property reverting to State ownership. In addition, Section 4. (b) required the Department to provide a copy of the appraisal, obtained pursuant to Section 3 of the act, to the Lumbee Tribal Administration. The Lumbee Tribal Administration had 90 days from receipt of a copy of the appraisal to enter into a contract to purchase the property for the appraised price or a negotiated price based upon the appraised price.

On September 19, 2013, three copies of the appraisal of Parcel 1, as encumbered, and a proposed Purchase and Sale Agreement (attached) were hand-delivered to the Tribal Administration's Pembroke office in separate envelopes addressed to the attention of Mr. Tony Hunt, Tribal Administrator, Mr. Paul Brooks, Tribal Chair and Ms. Pearlean Revels, Speaker of the Tribal Council. Pursuant to S.L. 2013-186, the Lumbee Tribal Administration had 90 days (December 18) from receipt of the appraisal of Parcel 1 to enter into a contract for purchase of the property.

On October 8, 2013, the Lumbee Tribal Administration requested permission to enter the property for the purpose of obtaining an appraisal. A right of entry was granted to the Lumbee Tribal Administration to have the property appraised on October 16, 2013.

A representative of the Lumbee Tribal Administration delivered a NC Bar / NC Association of Realtors standard form Contract and Broker Fee Agreement and an earnest money check for \$1,000 to the

Department on the afternoon of December 12, 2013. After review of the Tribal Administration's proposed contract and following consultation with the Department, the Attorney General informed the Tribal Administration's counsel for the transaction that the contract submitted to the Department was unacceptable. The reasons for the Department's rejection of the Tribal Administration's proposed contract included the requirement that the State warrant the condition and title of the property; the obligation of the State to pay a 5% buyer's agent commission and the failure to condition the disposition on the approval of the Council of State, the Commission on Governmental Operations, and the Program Evaluation Committee as provided in G.S. § 146 and S.L. 2013-186. The Department and the Tribal Administration then proceeded to negotiate the contract terms using the State's proposed Purchase and Sale Agreement, delivered to the Tribal Administration with the appraisal on September 19, as the basis for the discussions.

The Lumbee Tribal Administration delivered a revised contract to the Department on December 16 with terms that closely resembled the State's original proposed Purchase and Sale Agreement. The terms of the Purchase and Sale Agreement were finalized and executed copies of the contract were circulated on December 17. The final Agreement (attached) provides for the Tribal Administration to purchase the property as-is, encumbered with the restrictive covenants and a reversionary clause in favor of the State as required by S.L. 2013-186, for the appraised value of \$351,000. In accordance with the terms of the Agreement, the Tribal Administration has deposited \$1,000 in earnest money with the Department and must close within 60 days (or at such later date as agreed to by the parties following receipt of all required approvals). At the request of the Attorney General, the Tribal Administration's counsel provided the Department with an opinion letter (attached) on December 18, that the Chairman of the Tribe had the sole authority to execute contracts (including contracts for the purchase of land) and to conduct business on behalf of the Lumbee Tribe of North Carolina.

Section 4. (d) of the act allowed the Department to enter into a purchase contract with the Lumbee Tribal Administration; however, the sale shall not be finalized until after consultation with the Joint Legislative Program Evaluation Oversight Committee. The Department was also required to submit a detailed report of the transaction, including a copy of the purchase contract, to the Chairs of the Committee and to the Director of the Program Evaluation Division of the General Assembly. If the Committee does not hold a meeting to hear the consultation within 90 days of receiving the submission of the detailed report, the consultation requirement is satisfied. This consultation is in addition to any consultation with the Joint Legislative Commission on Governmental Operations that may be required under G.S. 146-27(b).