



October 15, 2024

VIA EMAIL

William Lyall, Chairman
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632

Re: Review of Third Amendment to the Credit Agreement for the Cowlitz Indian Tribe

Dear Chairman Lyall:

This letter responds to your June 11, 2024 request for the National Indian Gaming Commission's Office of General Counsel to review the Third Amendment to Amended and Restated Revolving Credit and Term Loan Agreement (Third Amendment) between the Cowlitz Indian Tribe (Tribe), the Cowlitz Tribal Gaming Authority, an unincorporated governmental instrumentality of the Tribe, and KeyBank National Association. Specifically, you have asked for my opinion whether the Third Amendment constitutes a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act (IGRA). You also asked for my opinion whether the Third Amendment violates IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions, which are unexecuted, but were represented to be in substantially final form:

- Third Amendment to Amended and Restated Revolving Credit and Term Loan Agreement between Cowlitz Tribal Gaming Authority, Cowlitz Indian Tribe, and KeyBank National Association (marked on the bottom left corner as US-DOCS\150653027.4) including the following attachments:
 - ANNEX A: Amended and Restated Revolving Credit and Term Loan Agreement, (marked on the top right corner as LW DRAFT 05/04/24 and bottom left corner as US-DOCS\150652497.1);¹ and
 - ANNEX B: Form of Manager Subordination Agreement (marked on the bottom left corner as US-DOCS\4865-4453-6195. 3126065774).

¹ Other than the Form of Manager Subordination Agreement, the Cowlitz Indian Tribe did not submit any other Appendices, Exhibits, or Schedules referenced in the Amended and Restated Revolving Credit and Term Loan Agreement for declination letter review.

Chairman Lyall

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The Third Amendment contains terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, opinion letters for which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Third Amendment is not a management contract and does not require the approval of the NIGC Chair. It is also my opinion that the Third Amendment does not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Third Amendment changes in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the documents listed above. This opinion does not include or extend to any other agreements, appendices, exhibits, or schedules not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld.² If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),³ please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.⁴ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁵ Please submit any written objection to foia@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered.⁶ If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Danielle Wu at (202) 336-3596 or by email at danielle.wu@nigc.gov.

Sincerely,



Rea Cisneros
Acting General Counsel

cc: Brie Coyle Jones, Miller Nash LLP

² See 25 C.F.R. § 517.7(c).

³ 5 U.S.C. § 552(b)(4).

⁴ 139 S. Ct. 2356 (2019).

⁵ See 25 C.F.R. § 517.7(d).

⁶ *Id.*