



July 15, 2019

Via First Class Mail and Email

Mr. Scott Wheat
P.O. Box 9168
Spokane, WA 99209
scott@wheatlawoffices.com

**Re: Review of Transaction Documents for Confederated Tribes of Coos,
Lower Umpqua and Suislaw Indians**

Dear Mr. Wheat:

This letter responds to your April 22, 2019 request for the National Indian Gaming Commission's (NIGC) Office of General Counsel to review agreements between the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and Zions Bancorporation, N.A. DBA Nevada State Bank. Specifically, you have asked for my opinion whether the agreements are management contracts or collateral agreements requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act (IGRA). You also asked for my opinion whether the agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, "the Transaction Documents") all of which are unexecuted, but were represented to be in substantially final form:

- the Credit Agreement (marked "4819-3579-7384\8" at bottom left);
 - Exhibit A – Form of Compliance Certificate;
 - Exhibit B – Form of Revolving Note;
 - Exhibit C – Form of Term Note;
 - Exhibit D – Form of Borrowing Notice;
 - Exhibit E – Form of Excess Cash Flow Certificate;
- Security Agreement (marked 4835-6537-9471\3" at bottom left);
- Deposit Account Control Agreement (marked "4838-3878-2355\2" at bottom left).

The Transaction Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Transaction Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do 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 Transaction Documents change 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 Transaction Documents listed above. This opinion does not include or extend to any other agreements 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.¹ 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),² please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ Please submit any written objection to FOIASubmitterReply@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.⁵

If you have any further questions, please contact our staff attorney, Melissa Thevenot, at (202) 336-9103.

Sincerely,



Michael Hoenic
General Counsel

cc: Townsend Hyatt, thyatt@orrick.com
Mike Pignato, pignato.michael@dorsey.com

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, at *7 (U.S., June 24, 2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*