



February 19, 2021

VIA EMAIL

Jesus Tarango, Chairman
Wilton Rancheria
9728 Kent Street,
Elk Grove, CA 95624

Re: Review of the Loan Documents for the Wilton Rancheria

Dear Chairman Tarango:

This letter responds to your December 4, 2020 request on behalf of the Wilton Rancheria for the Office of the General Counsel, National Indian Gaming Commission, to review certain loan documents. The request asks for my opinion as to whether the submitted loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act. The request also asks for my opinion as to whether the loan documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Loan Documents"):

- Credit Agreement, marked "US-DOCS\118255574.32" on each page;
- Exhibits to Credit Agreement, each labelled "NIGC Submission 12/18/2020" within the header:
 - a. Exhibit A Form of Note, marked "US-DOCS\119530419.3";
 - b. Exhibit B Form of Funding Notice, marked "US-DOCS\119530420.5";
 - c. Exhibit C-1 Form of Guaranty, marked "US-DOCS\118602087.5";
 - d. Exhibit C-2 Form of Security Agreement, marked "US-DOCS\118432284.16";
 - e. Exhibit D Form of Solvency Certificate, marked "US-DOCS\119530422.3";
 - f. Exhibit E Form of Compliance Certificate, marked "US-DOCS\119530425.5";
 - g. Exhibit F Form of Assignment and Acceptance, marked "US-DOCS\119530430.3";
 - h. Exhibit G Form of U.S. Tax Compliance Certificates, marked "US-DOCS\119530431.6";
 - i. Exhibit H Form of Closing Certificate, marked "US-DOCS\119530435.3";

- j. Exhibit I Insurance Requirements, marked “US-DOCS\54448529.20”;
 - k. Exhibit J Form of Intercompany Subordinated Demand Promissory Note, marked “US-DOCS\119530438.4”;
 - l. Exhibit K Form of Boyd Subordination Agreement, marked “US-DOCS\119333142.9”;
 - m. Exhibit L Form of Administrative Questionnaire, marked “US-DOCS\119530443.3”;
 - n. Exhibit N Form of Project Budget Amendment Certificate, marked “US-DOCS\118599076.8”;
 - o. Exhibit O Form of Construction Contract Amendment Certificate, marked “US-DOCS\119572778.4”;
 - p. Exhibit P Form of Additional Construction Contract Certificate, marked “US-DOCS\119572781.4”;
 - q. Exhibit Q Form of Consent, marked “US-DOCS\119548171.6”;
 - r. Exhibit R Form of Lien Releases;
 - s. Exhibit S Form of Project Cost Schedule Certificate, marked “US-DOCS\119596452.4”;
 - t. Exhibit T Form of Final Plans and Specifications Amendment Certificate, marked “US-DOCS\119596451.4”;
 - u. Exhibit U Form of Initial Operating Date Certificate, marked “US-DOCS\119596450.4”;
 - v. Exhibit V Form of Removal of Architect Certificate, marked “US-DOCS\119596448.4”;
 - w. Exhibit W Form of Removal of General Contractor Certificate, marked “US-DOCS\119596447.4”;
 - x. Exhibit X Form of Borrower’s Final Completion Certificate, marked “US-DOCS\119596444.4”;
- Deposit Account Control Agreement, marked “#81094795_v4” on each page;
 - Amendment Number Two to Development Agreement, marked “US-DOCS\118061835.16” on each page;
 - IP Security Agreement, marked “US-DOCS\119713532.5” on each page;
 - Securities Account Control Agreement, marked “58346381v2” on each page;
 - Consent and Agreement (Architect), marked “US-DOCS\119653296.6” on each page;
 - and
 - Consent and Agreement (General Contractor), marked “US-DOCS\119653301.2” on each page.

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The Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC's website. Applying the same analysis here, it is my opinion that, collectively, the Loan Documents are not management contracts and do not require the approval of the NIGC Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements.

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 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 Senior Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*