



May 25, 2021

VIA EMAIL

Bill Sterud, Chairman
Puyallup Tribe of Indians
3009 E. Portland Ave.
Tacoma, Washington 98404

Re: Review of loan documents for the Puyallup Tribe of Indians

Dear Chairman Sterud:

This letter responds to your May 5, 2021 request for the National Indian Gaming Commission's Office of General Counsel to review loan agreements between the Puyallup Tribal Gaming Enterprises, Inc. (Borrower) and Wells Fargo, N.A. (Administrative Agent/Lender/L/C Issuer). Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan documents 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 Loan Documents") all of which are unexecuted, but were represented to be in substantially final form:

- Amendment No. 4 among the Borrower, the Tribe, the Lenders party thereto and Wells Fargo, as agent ("Amendment No.4), (NIGC Submission Draft 5/3/2021, doc. no. 4146-6850-4364.5),
- Conformed Credit Agreement among the Borrower, the lenders party thereto, and Wells Fargo, as agent, attached as Annex A to Amendment No. 4 (reflecting changes being made to the Credit Agreement under Amendment No.4), (NIGC Submission Draft 5/3/2021, doc. no. 4145-9182-6220.7),
- Schedule 6.07 (Insurance Requirements) attached as Annex B to Amendment No. 4, (doc. no. 4154-8665-7068.2),

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- Updated Exhibit B (Form of Compliance Certificate) attached as Annex C to Amendment No. 4, (doc. no. 4143-7949-1884.3),
- Updated Exhibit C (Form of Loan Notice) attached as Annex D to Amendment No. 4, (doc. no. 4137-7728-2604.2); and
- Conformed Tribal Agreement between the Tribe and Wells Fargo, as agent, attached as Annex E to the Amendment No. 4. (reflecting changes being made to the Tribal Agreement pursuant to Amendment No. 4), (NIGC Submission Draft 5/3/2021, doc. no. 4163-9302-0716.8).

The Loan 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 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 drafts are represented to be in substantially final form, and if the Loan 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 Loan 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 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>.

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.*

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If you have any questions, please contact Associate General Counsel, Sharon Avery at (202) 632-7003 or by email at Sharon_Avery@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Robert Hunter, Staff Attorney, Puyallup Tribe of Indians (via e-mail)