



October 15, 2021

VIA EMAIL

David Barnett, Chairman
Cowlitz Indian Tribe
P.O. Box 2547
Longview, WA 98632-8594

Re: Review of Refinancing Transaction Documents

Dear Chairman Barnett:

This letter responds to your request of September 7, 2021, on behalf of the Cowlitz Indian Tribe for the National Indian Gaming Commission's Office of General Counsel to review financing Transaction Documents and related documents (the Transaction Documents), identified below, among the Tribe, The Cowlitz Tribal Gaming Authority, and KeyBank, N.A., as administrative agent together with various lenders. Specifically, you asked for my opinion whether the Transaction Documents constitute a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act and whether they violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following, represented to be in substantially final form:

- Amended and Restated Revolving Credit and Term Loan Agreement marked in lower-left hand corner with US- DOCS\124895486.15;
- Exhibit C-1 to Amended and Restated Revolving Credit and Term Loan Agreement, Form of Guaranty marked in lower-left hand corner with US- DOCS\126257470.3;
- Exhibit E to Amended and Restated Revolving Credit and Term Loan Agreement, Form of Compliance Certificate marked in lower-left hand corner with US- DOCS\124895486.15;
- Appendix A to Amended and Restated Revolving Credit and Term Loan Agreement, Form of Term A Note marked in lower-left hand corner with US- DOCS\126253996.2;
- Amended and Restated Security Agreement doc. no. US-DOCS\126065776.3; and
- Amended and Restated Subordination Agreement, marked in lower-left hand corner US-DOCS\126065774.4.

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The Transaction Documents contain terms similar to other agreements the Office of General Counsel reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Transaction Documents are not a management contract and do not require the approval of the Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Transaction Documents are represented to be in substantially final form with respect to terms affecting this opinion. If the Transaction Documents change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Transaction Documents listed above and does not include or extend to any other Transaction Documents or other documents 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 *Critical Mass Energy Project v. NRC*^[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 NIGC Senior Attorney Maria Getoff at (703) 338-7748.

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.*