



February 16, 2023

VIA EMAIL

Lori M. Stinson, Attorney General
Poarch Band of Creek Indians
5811 Jack Springs Road
Atmore, Alabama 36502

Re: Review of the 2023 Credit Documents for the Poarch Band of Creek Indians

Dear Ms. Stinson:

This letter responds to your January 25, 2023 request, on behalf of the Poarch Band of Creek Indians (“Tribe”) and PCI Gaming Authority, an unincorporated, chartered instrumentality of the Tribe, for the National Indian Gaming Commission, Office of General Counsel, to review certain loan documents and to provide an opinion as to whether these loan documents are management contracts requiring the NIGC Chairman’s approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked 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.

As an initial matter, I note that earlier draft versions of the submitted finance documents were previously reviewed by this office (along with certain accompanying exhibits) and were the subject of a declination letter issued by this office on December 1, 2022.

In my current review, I considered the following submissions (“the 2023 Credit Documents”):

- (Redlined) *Second Amendment to Credit Agreement* (marked at bottom left as “US-DOCS\134384266.18” and at top right as “NIGC Submission Draft 1/23/23”);
- Exhibit A (Redlined excerpted pages) *Credit Agreement Dated as of May 31, 2019, among PCI Gaming Authority, as Borrower, The Subsidiaries of Borrower Party Hereto, as Guarantors, The Lenders Party Hereto, The L/C Lenders Party Hereto, and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent and as Collateral Agent, and Credit Suisse Securities (USA) LLC, Capital One, National Association, and Keybank Capital Markets Inc., as Joint Lead Arrangers and Joint Bookrunners for the Transactions, and Credit Suisse Loan Funding LLC, Capital One, National Association, Comerica Bank, PNC Bank, National Association, Wells Fargo Bank, N.A., and Western Alliance Bank, as Joint Lead Arrangers and Joint Bookrunners for the Second*

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Amendment, and as amended by the First Amendment to Credit Agreement, dated as of December 24, 2019, and the Second Amendment to Credit Agreement, dated as of [__], 2023 (marked at bottom left as “US-DOCS\135059651.16” and at top right as “NIGC Submission Draft 1/23/23”); and

- *Reaffirmation Agreement of Poarch Band of Creek Indians (marked at bottom left as “US-DOCS\138568920.2” and at top right as “NIGC Submission Draft 1/23/23”).*

The 2023 Credit Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Applying the same analysis here, it is my opinion that the 2023 Credit 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 2023 Credit 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 2023 Credit Documents change in any material manner prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2023 Credit Documents and does not include or extend to any other agreements not submitted for review.

That said, a review of the redlined 2023 Credit Documents showed a small number of technical changes to the draft versions that this office previously reviewed in November of 2022. These tracked, technical changes do not affect or change the opinion issued by this office in the declination letter dated December 1, 2022. Moreover, the submitted changes do not fall within the categories discussed in the NIGC’s Bulletin # 2021-4 as implicating management or sole proprietary interest concerns.¹ Because the changes are technical in nature, and in no way change the terms of the agreement, I recommend that the parties refrain from submitting any similar changes made in the future for NIGC 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

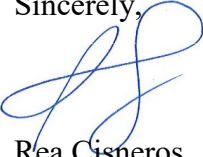
¹ On October 5, 2021, the NIGC published Bulletin # 2021-4, *Submission of Loan Documents and Financing Agreements for Review*. In that Bulletin, the NIGC discussed the “vast body of guidance” and resources available to parties to make a determination as to whether an agreement implicates management. That Bulletin also laid out a number of provisions that may raise a management or sole proprietary interest concern, assuring parties that if an agreement adheres to those principles and analysis, the NIGC’s Office of General Counsel would likely opine that it does not need to be submitted for the Chair’s approval as a management agreement. With all of this mind, Bulletin # 2021-4 set forth the NIGC’s intent that tribes and the financing entities with whom they are working look to the bulletin and the guidance referenced above to determine whether a particular finance document implicates management, as an NIGC Office of General Counsel review may not always be necessary.

² See 25 C.F.R. § 517.7(c).

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commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),³ please be advised that the information was voluntarily submitted and, as such, 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 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.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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,

Rea Cisneros
General Counsel (Acting)

cc: Townsend Hyatt, Esq.

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.*