



August 20, 2024

VIA EMAIL

David A. Hall, Esq.
Barnes & Thornburg LLP
171 Monroe Avenue NW, Suite 1000
Grand Rapids, MI 49503-2694

Re: Review of the 2024 Loan Documents for the Keweenaw Bay Indian Community

Dear Mr. Hall:

This letter responds to your June 25, 2024 request, on behalf of the Keweenaw Bay Indian Community, for the National Indian Gaming Commission, Office of General Counsel, to review certain financial loan documents and to provide an opinion as to whether these loan documents are management contracts requiring the NIGC Chair'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.

In my review, I considered the following submission ("the 2024 Loan Documents"):

- *Credit Agreement, Keweenaw Bay Indian Community And Superior National Bank Dated as of June [28], 2024* (marked at bottom left as "13609518.14" and at top right as "B&T Draft 6/21/24");
- *Term Note (Credit Agreement)* (b) (4) (marked at top left as "B&T Draft 6/21/2024");
- *Security Agreement* (marked at top right as "B&T Draft 6/21/2024");
- *Pledge Agreement* (marked at top left as "B&T Draft 6/21/2024"); and
- *Securities Account Control Agreement* (marked at top left as "B&T Draft 6/21/2024").

The 2024 Loan 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 2024 Loan Documents are not management contracts and do not require the approval of the

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NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the 2024 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 2024 Loan 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 2024 Loan Documents and 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 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*.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 <foia@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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Rea Cisneros
General Counsel (Acting)

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.*