



February 10, 2017

Via email: clifton.molatore@millernash.com
And First Class Mail

Clifton Molatore, P.C.
Miller Nash Graham & Dunn LLP
U.S. Bancorp Tower
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204

**Re: Review of the 2016 Loan Documents
for the Cow Creek Band of Umpqua Tribe of Indians**

Dear Mr. Molatore:

This letter responds to your December 23, 2016 request, on behalf of the Cow Creek Band of Umpqua Tribe of Indians, for the National Indian Gaming Commission, Office of the General Counsel, to review certain loan transaction documents and to provide an opinion as to whether or not the submitted 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 or not 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 2016 Loan Documents"):

- *Loan Agreement Among Cow Creek Band of Umpqua Tribe of Indians ("Borrower"), Umpqua Indian Development Corporation ("Corporation"), and Umpqua Bank ("Lender")*, 2016 (marked at top right as "Submission Draft 12/22/16" and at bottom right as "214700-0162/4811-6341-9452.6");
- *Promissory Note* (marked at top right as "Submission Draft 12/22/16" and at bottom right as "214700-0162/4840-1587-0781.1");
- *Collateral Trust and Security Agreement between Cow Creek Band of Umpqua Tribe of Indians, Umpqua Indian Development Corporation, U.S. Bank National Association, as Collateral Trustee and Custody Bank, Wells Fargo Bank, National Association, as Bond Trustee, and Umpqua Bank Dated as of June 15, 2006* (marked at top right as "Execution Copy");

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- *Collateral Trust and Security Agreement Joinder* (marked at top right as "Submission Draft 12/22/16" and at bottom right as "214700-0162/4850-2623-9293.1");
- *First Amendment to Collateral Trust and Security Agreement* (marked at bottom left as "51573508.3");
- *ISDA 2002 Master Agreement dated as of December __, 2016 Umpqua Bank, an Oregon state-chartered bank and Cow Creek Band of Umpqua Tribe of Indians, a federally recognized Indian Tribe* (marked at bottom left as "12-22-2016 v1");
- *Schedule to the 2002 Master Agreement dated as of December __, 2016 between Umpqua Bank, an Oregon state-chartered bank ("Party A") and Cow Creek Band of Umpqua Tribe of Indians, a federally recognized Indian Tribe ("Party B")* (marked at bottom left as "12/22/2016 v3" and at bottom right as "4843-3555-0782.1");
- *Guaranty Agreement between Umpqua Indian Development Corporation and U.S. Bank National Association, as Collateral Trustee Dated as of June 15, 2006*; and
- *Account Control Agreement* dated as of June 15, 2006.

The 2016 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 located at <www.nigc.gov>. Applying the same analysis here, it is my opinion that, collectively, the 2016 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 certain of the 2016 Loan Documents (those that are in draft form) 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 2016 Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2016 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. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to <FOIASubmitterReply@nigc.gov> within thirty (30) calendar days of the date of this letter. After this time elapses, the letter will be made public and objections will no longer be

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considered. *Id.* 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 <http://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,



Michael Hoenig
General Counsel

cc: Dirk Doyle (via email only: ddoyle@cowcreek.com)
Anthony S. Broadman (via email only: anthony@galandabroadman.com)
Jeffrey C. Nave (via email only: jeff.nave@foster.com)
Aurene Martin (via email only: amartin@spiritrockllc.com)
Catherine Shaw (via email only: catherine.shaw@millernash.com)