



January 22, 2020

By U.S. mail and email

Jeffrey C. Nave
Foster Garvey P.C.
618 West Riverside Avenue
Suite 300
Spokane, WA 99201

Re: Review of Loan Documents for the Lummi Tribe and Wells Fargo Bank, NA

Dear Mr. Nave:

This letter responds to your December 11, 2019 request for the National Indian Gaming Commission's Office of General Counsel to review a collection of financing documents among the Lummi Tribe, various lenders, and Wells Fargo Bank, NA. Specifically, you have asked for my opinion whether the documents are a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

As part of this review, I analyzed the following undated documents (collectively, the Loan Documents):

- Loan Agreement among the Lummi Tribe, Lenders, and Wells Fargo Bank, NA (NIGC Submission Draft 12/11/19, doc no. 4128-7597-7247)
- Exhibit B – Compliance Certificate (NIGC Submission Draft 12/11/19, doc. no. 4144-7843-6640.3)
- Exhibits to NEW Loan Agreement (NIGC Submission Draft 12/11/19, doc. no. 4143-5391-7728.4)
- Security Agreement (NIGC Submission Draft 12/11/19, doc. no. 4152-7244-3679.5)
- Unjust Enrichment and Sovereign Immunity (NIGC Submission Draft 12/11/19, doc. no. OHS WEST:261121830.5)
- Deposit Account and Sweep Investment Control Agreement (NIGC Submission Draft 12/11/19, doc. no. #71598919_v2)
- Schedule 5.3 – Insurance (NIGC Submission Draft 12/11/19, doc. no. 4125-2752-9248.2)

Letter to Jeffrey Nave

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The Loan Documents you have submitted contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Copies of declination letters can be found on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not a management contract and do not require the approval of the NIGC Chair. 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. 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. *See* 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 Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, , 139 S.Ct. 2356 (2019).. Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." *See* 25 C.F.R. § 517.7(d). 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. *Id.*

If you have any questions, please contact NIGC Senior Attorney Jennifer Lawson at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel