



April 5, 2017

Aaron J. Harkins
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh St.
Minneapolis, MN 55402-3901

Re: Review of Financing Documents for the Pamunkey Indian Tribe

Dear Mr. Harkins:

This letter responds to your February 21, 2017 request on behalf of the Pamunkey Indian Tribe for the National Indian Gaming Commission's Office of General Counsel to review financing documents between the Tribe and Golden Eagle Consulting II, LLC. Specifically, you have asked for my opinion whether the financing documents constitute a management contract requiring the NIGC Chair'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 submissions (collectively, "the Agreements"), which were represented to be in substantially final form:

- Development Agreement, marked in the upper right corner as NIGC Submission Draft 2-21-17;
- Developer Credit Agreement marked in the upper right corner as NIGC Submission Draft 2-21-17; and
- Developer Security Agreement marked in the upper right corner as NIGC Submission Draft 2-21-17 (together, the Financing Documents).

The Agreements contains terms similar to other agreements the Office of General Counsel has already reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion that the Agreements do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Agreements are represented to be in substantially final form with respect to terms affecting this opinion. If the Agreements change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Agreements listed above and does not include or extend to any other agreements or 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. 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 the information was voluntarily submitted and, as such, that any withholding should 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) 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 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 NIGC Senior Attorney Maria Getoff at (202) 632-7003.

Sincerely,

A handwritten signature in black ink that reads "Michael Hoenig". The signature is written in a cursive style with a horizontal line extending to the right.

Michael Hoenig
General Counsel