



November 10, 2016

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

Re: Review of Financing Agreement for the Karuk Tribe

Dear Mr. Molatore:

This letter responds to your request of September 12, 2016, that requested on behalf of the Karuk Tribe for the National Indian Gaming Commission's Office of General Counsel to review financing agreement between the Tribe and Wells Fargo Bank, N.A. Specifically, you have asked for my opinion whether the agreements constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and whether the agreement violates 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:

- Loan Agreement among Karuk Tribe, as the Borrower, the Lenders party hereto from time to time, and Wells Fargo Bank, N.A., as Administrative Agent; dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:763620015.12";
 - Exhibits to Loan Agreement and Schedule 5.3, dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:765588462.2";
- Security Agreement, dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:763711441.8";
- Security Agreement (Guarantor), dated September 12, 2016;
- Collateral Agency and Intercreditor Agreement among the Secured Creditors Named Therein, Karuk Tribe, as the Borrower, and U.S. Bank National Association, as the Collateral Agent, marked at the bottom left corner as "OHSUSA:765507443.10";
- Guarantee Agreement (Poarch Band of Creek), dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:763622292.13";
- Subordination Agreement, dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:765507724.10";
- Reimbursement Agreement, between Karuk Tribe, as Borrower, and Poarch Bank of Creeks, as Guarantor, dated November 3, 2016;
- Unjust Enrichment and Sovereign Immunity Agreement, dated September 12, 2016, and marked at the bottom left corner as "OHSUSA:764566850.9"; and,

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- Unjust Enrichment and Sovereign Immunity Agreement (Guarantor), dated September 12, 2016, and marked at the bottom left corner as “OHSUSA:765679698.3”.

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 it does 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.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, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*.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 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 Staff Attorney Esther Dittler at (202) 420-9229.

Sincerely,



Michael Hoenig
General Counsel

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517.7(c).