



December 4, 2018

Christine M. Masse, Esq.  
Miller Nash Graham & Dunn LLP  
Pier 70  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121

**Re: Review of Refinancing**

Dear Ms. Masse:

This letter responds to your request of October 31, 2018, that requested on behalf of the Cowlitz Indian Tribe (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review a financing agreement and related documents, identified below, between the Tribe and KeyBank, N.A., as administrative agent, and various lenders. Specifically, you have asked for my opinion whether the Agreement, defined below, constitutes a management contract requiring the NIGC Chairman'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 agreements (collectively, "the Agreement"), which were represented to be in substantially final form:

- Revolving Credit and Term Loan Agreement, marked at the bottom left corner as "US-DOCS\103381486.14", with:
  - Appendix A – Principal Offices, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit A-1 – Form of Term A Note, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit A-2 – Form of Revolving Note, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit B-1 – Form of Funding Notice, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit B-2 – Form of Issuance/Amendment Notice, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit B-3 – Form of Conversion/Continuation Notice, marked at the bottom left corner as "US-DOCS\103605071.2";
  - Exhibit B-4 – Form of Notice of Account Designation, marked at the bottom left corner as "US-DOCS\103605071.2";

- Exhibit C-1 – Form of Guaranty, marked at the bottom left corner as “US-DOCS\103605070.2”;
  - Exhibit A – Joinder Agreement, marked at the bottom left corner as “US-DOCS\103605070.2”;
- Exhibit C-2 – Security Agreement, marked at the bottom left corner as “US-DOCS\103434367.5”;
  - Exhibit A – Security Agreement Supplement, marked at the bottom left corner as “US-DOCS\103772729.2”;
  - Exhibit B – Deposit Account Control Agreement, marked at the bottom left corner as “US-DOCS\103697611.3”, with Exhibits A, B, and C, unmarked;
  - Exhibit C – For of Securities Account Control Agreement, marked at the bottom left corner as “US-DOCS\103697778.4”, with Exhibit A, unmarked;
  - Exhibit D – Uncertificated Securities Control Agreement, marked at the bottom left corner as “US-DOCS\103721645.2”;
    - Exhibit A, marked at the bottom left corner as “US-DOCS\103721645.2”;
- Exhibit D – Form of Solvency Certificate, marked at the bottom left corner as “US-DOCS\103605071.2”;
- Exhibit E – Form of Compliance Certificate, marked at the bottom left corner as “US-DOCS\103605081.3”;
- Exhibit F – Form of Assignment and Acceptance, marked at the bottom left corner as “US-DOCS\103605077.2”;
  - Schedule 1, marked at the bottom left corner as “US-DOCS\103605077.2”;
  - Annex 1 – Standard Terms and Conditions for Assignment and Acceptance, marked at the bottom left corner as “US-DOCS\103605077.2”;
- Exhibit H – Form of Non-Bank Certificate, marked at the bottom left corner as “US-DOCS\103605071.2”;
- Exhibit I – Form of Closing Certificate, marked at the bottom left corner as “US-DOCS\103605069.3”;
- Exhibit K – Form of Intercompany Subordinated Demand Promissory Note, marked at the bottom left corner as “US-DOCS\103605074.2”;
  - Schedule A – Transactions on Intercompany Subordinated Demand Promissory Note, marked at the bottom left corner as “US-DOCS\103605074.2”;
  - Endorsement, marked at the bottom left corner as “US-DOCS\103605074.2”;
- Exhibit L – Subordination Agreement, submitted on December 3, 2018, marked at the bottom left corner as “US-DOCS\103678442.3”;
- Exhibit M – Form of Administrative Questionnaire, marked at the bottom left corner as “US-DOCS\103605071.2”;

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- Exhibit O – Form of Joinder Agreement, marked at the bottom left corner as “US-DOCS\103605073.2”; and
  - Schedule A, marked at the bottom left corner as “US-DOCS\103605073.2”.

The Agreement 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 Agreement is not a management contract and does not require the approval of the Chairman. It is also my opinion that it does not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the Agreement is represented to be in substantially final form with respect to terms affecting this opinion. If the Agreement changes in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Agreement 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.<sup>1</sup> 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),<sup>2</sup> 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*.<sup>3</sup> Any claim of confidentiality should also be supported with “a statement or certification by an officer or authorized representative of the submitter.”<sup>4</sup> 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 Esther Dittler at (202) 420-9229.

Sincerely,



Michael Hoenig  
General Counsel

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<sup>1</sup> 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 975 F.2d 871 (D.C. Cir. 1992).

<sup>4</sup> 25 C.F.R. § 517.7(c).