



November 7, 2016

VIA FIRST CLASS MAIL

Mr. Wade T. Blackmon, Esq.
Kilpatrick Townsend & Stockton LLP
12730 High Bluff Drive, Suite 400
San Diego, CA 92130

Re: Review of loan documents for the Stillaguamish Tribe of Indians

Dear Mr. Blackmon:

This letter responds to your request of September 7, 2016 and October 19, 2016, on behalf of the Stillaguamish Tribe of Indians for the National Indian Gaming Commission's Office of the General Counsel to review a loan to the Tribe from Wells Fargo Bank, N.A. Specifically, you have asked for my opinion whether the agreements submitted constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and whether this 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 Loan Documents") which are unexecuted, but were represented to be in substantially final form:

- Loan agreement, with exhibits and schedules to the loan agreement marked at top right as "NIGC Draft (10-18-16)" and at bottom left as "US.107125755.10".
- Security agreement, dated January 12, 2012 marked at top right as "NIGC Draft (9-06-16)" and at bottom left as "US. 107527897.01".
- Second Amendment to Security Agreement, marked at top right as "NIGC Draft (9-06-16)".
- Amended and Restated Senior Credit Facilities Indicative Terms and Conditions dated June 29, 2016, "(For Discussion Purposes Only)".

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Some of these letters may be found on the NIGC website. Applying the same analysis here, it is my opinion that collectively the Loan Documents

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are not management contracts and do not require the approval of the Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms 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 listed above. This opinion 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.⁵ 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 Suzanne Nunn at (202) 632-7013.

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).

⁵ *Id.*