



November 25, 2014

**Via e-mail: maryn@lummi-nsn.gov
and First Class Mail**

Mary M. Neil, Reservation Attorney
Lummi Indian Business Council
Lummi Tribe of the Lummi Reservation
2665 Kwina Road
Bellingham, WA 98226-0302

Re: Review of Loan Documents for the Lummi Tribe of the Lummi Reservation

Dear Ms. Neil:

This letter responds to your October 16, 2014 request, on behalf of the Lummi Tribe of the Lummi Reservation, Washington ("the Nation"), for the Office of the General Counsel ("OGC"), National Indian Gaming Commission ("NIGC"), to review various amendments to certain loan documents that OGC previously reviewed and regarding which it issued a declination letter on June 28, 2011, and another one on June 7, 2012. This office first received your October 16, 2014 request on November 17, 2014.

With regard to the current request, the Nation asked for my opinion as to whether the submitted amended loan documents are management contracts requiring the NIGC Chair's approval pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Nation also asked for my opinion as to whether the amended documents violate IGRA's requirement that a tribe have sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the 2014 Loan Documents"):

- *Second Amendment to Loan Agreement*, and marked at bottom left as "OHSUSA:757862402.3";
- (OHS Draft – October 17, 2014) *Loan Agreement dated as of June 30, 2011, among Lummi Tribe of the Lummi Reservation, Washington as the Borrower, the Lenders party hereto from time to time, and Wells Fargo Bank, National Association as Administrative Agent and L/C Issuer and Wells Fargo Securities, LLC as Lead Arranger*, and marked at bottom left as "OHSUSA:757712347.6";
- Amended exhibits to amended loan agreement, and collectively marked at bottom left as "OHSUSA:759252017.2";

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- *Exhibit A Assignment Agreement* (undated);
- *Exhibit B Compliance Certificate*;
- *Exhibit E Request for Loan*;
- *Second Amended and Restated* (b) (4) *Note*, and marked at bottom left as "OHSUSA:759265042.2";
- *Amended and Restated* (b) (4) *Note*, and marked at bottom left as "OHSUSA:759265072.2";
- *Amended and Restated Deposit Account Control Agreement*; and
- (b) (4) *Lummi Tribe of the Lummi Reservation, Washington Tax Exempt Note, Tax Exemption and Nonarbitrage Certificate*, and marked at bottom left as "51398931.2".

The 2014 Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found at http://www.nigc.gov/Reading_Room/Management_Review_Letters_Declination_Letters.aspx. Applying the same analysis here, it is my opinion that, collectively, the 2014 Loan Documents are not management contracts 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 2014 Loan Documents are represented to be in substantially final form, and any further changes will not be material to OGC's analysis. This opinion shall not apply if the 2014 Loan Documents: (i) change in any material way prior to closing; (ii) are not executed; or (iii) are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2014 Loan Documents and does not include or extend to any other agreements not submitted for review.

I anticipate that this letter will be posted on the NIGC's website. Prior to posting, the NIGC FOIA Officer will notify you and provide you with an opportunity to identify and request that information subject to the exemptions under the Freedom of Information Act ("FOIA") be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact Armando Acosta, OGC Senior Attorney, at (202) 632-7003.

Sincerely,



Eric Shepard
General Counsel (Acting)