



February 24, 2017

VIA FIRST CLASS MAIL

John Warren, Chairman
Pokagon Band of Potawatomi Indians
P.O. Box 180
58620 Sink Road
Dowagiac, MI 49047

Re: Review of loan documents for the Pokagon Band of Potawatomi Indians

Dear Chairman Warren:

This letter responds to your request of January 13, 2017, on behalf of the Pokagon Band of Potawatomi Indians for the National Indian Gaming Commission's Office of the General Counsel to review certain loan documents. 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. The request also asks for my opinion as to whether the loan documents 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 Loan Documents"):

- Credit Agreement, SMRH Draft 02/07/2017, SMRH:225950668.12;
- Exhibits to the Credit Agreement;
- Security Agreement, SMRH Draft 01/12/17, SMRH:226022954.4;
- Patent, Trademark and Copyright Security Agreement, SMRH Draft 1/12/17, SMRH:226023058.4;
- Securities Account Control Agreement, SMRH Draft 1/30/17, SMRH:226023061.4;
- Deposit Account Control Agreement, SMRH 1/11/17, SMRH:226023056.2;
- Amendment No. 2 to Deposit Account Control Agreement, SMRH Draft 2/7/17, DA; and
- Fee Letter from Bank of America and Merrill Lynch, Pierce, Fenner & Smith, Inc. to Pokagon Gaming Authority, dated November 15, 2016, SMRH:225828031.5, OBNI-168123.

Chair Warren

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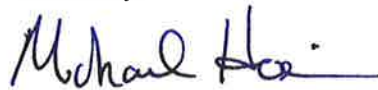
The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Some of these letters may be found on the NIGC website. Applying the same analysis here, it is my opinion that collectively the Loan Documents are not management contracts and 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

cc: Michael Phelan, Esq. (via email: mike.phelan@pokagonband-nsn.gov)

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.*