



August 8, 2018

VIA FIRST CLASS MAIL AND EMAIL

Mr. Jason Coutant, Esq.
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Tulsa, OK 74172-0148
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**Re: Review of loan documents for the San Carlos Apache Tribe of
the San Carlos Reservation**

Dear Mr. Coutant:

This letter responds to your request of June 20, 2018, for the National Indian Gaming Commission's Office of the General Counsel to review a loan to the Tribe from CrossFirst Bank. 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 among San Carlos Apache Tribal Gaming Enterprise and San Carlos Apache Tribal Public Recreation Services Authority as Borrowers and CrossFirst Bank as Lender (2018); **excluding** exhibits or schedules;
- Security Agreement between San Carlos Apache Tribal Gaming Enterprise and CrossFirst Bank (2018) (granting a lien on gaming collateral); **excluding** exhibits or schedules;
- Security Agreement between San Carlos Apache Tribal Public Recreation Services Authority and CrossFirst Bank (2018) (granting a lien on non-gaming collateral); **excluding** exhibits or schedules;
- Promissory Note (\$25,000,000 Term Note) (2018);
- Promissory Note (\$5,000,000 Revolving Note) (2018);
- Guaranty Agreement between San Carlos Apache Tribe of the San Carlos Reservation as Guarantor and CrossFirst Bank as Lender (2018); and
- Non-Interference Agreement between San Carlos Apache Tribe of the San Carlos Reservation and CrossFirst (2018).

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

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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, specifically, the schedules and exhibits to the loan agreement and the two security agreements were not submitted and were not reviewed.

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: Alexander B. Ritchey, Attorney General, San Carlos Apache Tribe
Kevin Parsi, Titla & Parsi, PLLC

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.*