



September 7, 2016

Mr. Robert J. Welch, Chairman  
Capitan Grande Band of Diegueno Mission  
Indians of California (Barona Group of Capitan  
Grande Band of Mission Indians of the Barona  
Reservation, California); Viejas (Baron Long  
Group of Capitan Grande Band of Mission Indians  
of the Viejas Reservation, California)  
Viejas Band of Kumeyaay Indians  
Attention: Chairman  
#1 Viejas Grade Road  
Alpine CA 91901

Re: Review of financing documents for the Viejas Band of Kumeyaay Indians

Dear Chairman Welch:

This letter responds to the Viejas Band of Kumeyaay Indians's request, for the National Indian Gaming Commission's Office of General Counsel to review several agreements to refinance certain of the Band's existing indebtedness and to finance the development and construction of certain improvement projects. The Tribe has asked for an opinion whether these agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. The Tribe also has asked for an opinion whether the agreements 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 Financing Documents") all unexecuted, but represented to be in substantially final form:

- **Credit Agreement** among the Viejas Band of Kumeyaay Indians, (b) (4) marked at the top right "NIGC Draft (7-15-16)";
- **Security Agreement** by the Viejas Band of Kumeyaay Indians, in favor of (b) (4) marked at the top right "NIGC Submission Draft (7-15-16)";
- **Deposit Account Control Agreement** among Viejas Band of Kumeyaay Indians, and (b) (4), marked at the top right "NIGC Submission Draft 8-19-2016";

- **Exhibits to Credit Agreement**
  - **Form of Term Loan Note**, EXHIBIT A;
  - **Notice of Borrowing**, EXHIBIT B;
  - **Notice of Account Designation**, EXHIBIT C;
  - **Notice of Prepayment**, EXHIBIT D;
  - **Notice of Conversion/Continuation**, EXHIBIT E;
  - **Form of Officer's Compliance Certificate**, Exhibit F;
  - **Form of Assignment and Assumption**, EXHIBIT G;
  - **Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Lenders)**, EXHIBIT H-1;
  - **Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Participants)**, EXHIBIT H-2;
  - **Form of U.S. Tax Compliance Certificate (Foreign Participant Partnerships)**, EXHIBIT H-3;
  - **Form of U.S. Tax Compliance Certificate (Foreign Lender Partnerships)**, EXHIBIT H-4;
  - **Form of Expansion Project Completion Certificate**, EXHIBIT I;
  - **Form of Total Expansion Project Cost Statement**, EXHIBIT J.

The Financing Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See*, generally [www.nigc.gov](http://www.nigc.gov). Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts and do not require the approval of the Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

I understand that the Financing Documents are in substantially final form with respect to terms affecting this opinion. If such terms change in any material way or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above. This opinion does not include or extend to any other agreements.

I anticipate this letter will be posted to the NIGC's website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under 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 NIGC Staff Attorney Rea Cisneros at (202) 632-7024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Hoenig".

Michael Hoenig  
General Counsel

Chairman Welch  
September 7, 2016

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cc: Jennifer Miernicki, Faegre Baker Daniels LLP (via e-mail at: [jennifer.miernicki@FaegreBD.com](mailto:jennifer.miernicki@FaegreBD.com).  
Tuari Bigknife, General Counsel of the Viejas Band of Kumeyaay Indians  
(via e-mail at: [tbigknife@viejas.com](mailto:tbigknife@viejas.com))  
Townsend Hyatt, Orrick, Herington & Sutcliffe LLP (via e-mail at: [thyatt@orrick.com](mailto:thyatt@orrick.com))