



January 24, 2017

Cody J. Martinez, Tribal Chairman
Sycuan Band of the Kumeyaay Nation
1 Kwaaypaawywy Court
El Cajon, CA 92019

Re: Review of Financing Documents for the Sycuan Band of the Kumeyaay Nation

Dear Chairman Martinez:

This letter responds to your December 29, 2016 request on behalf of the Sycuan Band of the Kumeyaay Nation (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review financing documents between the Tribe and various lenders. Specifically, you have asked for my opinion whether the financing documents constitute a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act, and whether they 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 Agreements"), which were represented to be in substantially final form:

- Credit Agreement among the Tribe as borrower, the lenders party thereto, and Bank of America, N.A as Administrative Agent and L/C Issuer, marked in the bottom left corner as SMRH: 479670864.8 and red-lined pages marked in the bottom left corner as SMRH: 479670864.9;
- Exhibit C to the Credit Agreement-Assignment of Leases and Rents, marked in the bottom left corner as SMRH: 479708809.5;
- Exhibit D to the Credit Agreement - Committed Loan Notice, marked in the bottom left corner as SMRH: 479708809.5 and red-lined pages marked in the bottom left corner as SMRH 479708809.6;
- Exhibit E to the Credit Agreement - Compliance Certificate, marked in the bottom left corner as SMRH: 479708809.5 and red-lined pages marked in the bottom left corner as SMRH 479708809.6 and SMRH 479708809.7;
- Exhibit H-1 to the Credit Agreement - Form of Revolving Note, marked in the bottom left corner as SMRH 479708809.5;
- Exhibit H-2 to the Credit Agreement-Form of Term Note, , marked in the bottom left corner as SMRH 479708809.5;

- Deposit Account Control Agreement by and among the Tribe, the Administrative Agent and Wells Fargo Bank, National Association as depository bank, , marked in the bottom left corner DACA-STD-ARAN;
- Deposit Account Control Agreement by and among the Tribe, the Administrative Agent and Fifth Third Bank as depository bank, marked in the bottom left corner as SMRH: 480276006.2;
- Notice of Grant of Security Interest in Patents by and between the Tribe and the Administrative Agent, marked in the bottom left corner as SMRH:480150541.2;
- Notice of Grant of Security Interest in Trademarks by and between the Tribe and the Administrative Agent, marked in the bottom left corner as SMRH:480150575.2;
- Notice of Grant of Security Interest in Copyrights by and between the Tribe and the Administrative Agent, marked in the bottom left corner as SMRH: 480150521.2;
- Security and Pledge Agreement by the Tribe as grantor in favor of the Administrative Agent, marked in the bottom left corner as SMRH 479650528.3; and
- Fee Letter, dated December 14, 2016, to Sycuan Band from Bank of America.

The Agreements contains terms similar to other agreements the Office of General Counsel has already reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion that the Agreements do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Agreements are represented to be in substantially final form with respect to terms affecting this opinion. If the Agreements change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Agreements listed above and 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. 25 C.F.R. § 517.7(c). 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), 5 U.S.C. § 552(b)(4), 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*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). 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. *Id.* 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 Senior Attorney Maria Getoff at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hoenic", with a long horizontal flourish extending to the right.

Michael Hoenic
General Counsel

cc: Michelle Carr, Esq. via e-mail