



December 1, 2016

Gene Whitehouse, Tribal Chairperson  
United Auburn Indian Community  
10720 Indian Hill Road  
Auburn, CA 95603

**Re: Review of the Loan Documents for the United Auburn Indian Community**

Dear Chairman Whitehouse:

This letter responds to the October 5, 2016, request on behalf of the United Auburn Indian Community for the Office of the General Counsel, National Indian Gaming Commission, to review certain loan documents. The request asks for my opinion as to whether the submitted loan documents are management contracts requiring the NIGC Chairman's approval pursuant to 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"):

- Second Amended and Restated Loan Agreement (marked 765540569.12);
- Exhibits to the Second Amended and Restated Loan Agreement (marked 765767610.3);
- Grant of Security Interest (Trademarks) (marked 765830567.2); and
- Insurance Schedule 5.3 (marked 765767726.2).

In addition, the Office of General Counsel has previously reviewed and opined upon documents collateral to the Second Amended and Restated Loan Agreement ("Collateral Documents"). In 2013, we opined upon:

- Amended and Restated Security Agreement (marked 754118171.3);
- Amended and Restated Restricted Account and Securities Account Control Agreement (marked 754149157.3); and
- Grant of Security Interest (Trademarks) (marked 754241007.1).

The Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC's 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 NIGC Chairman.

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It is also my opinion that they do not violate IGRA's sole proprietary interest requirement. Moreover, the Loan Documents do not affect the Office of General Counsel's opinions as set forth in the 2013 letter related to the Collateral Documents. Accordingly, the Office of General Counsel's opinions expressed in the September 23, 2013 letter stands as to the Collateral Documents.

It is my understanding that the 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 Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements.

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.<sup>1</sup> 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),<sup>2</sup> 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*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> 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.<sup>5</sup> 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 Staff Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel

cc: Christine L. Swanick, Sheppard Mullin Richter & Hampton LLP  
(via email: [CSwanick@sheppardmullin.com](mailto:CSwanick@sheppardmullin.com))

<sup>1</sup> 25 C.F.R. 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 975 F.2d 871 (D.C. Cir. 1992).

<sup>4</sup> 25 C.F.R. § 517.7(c).

<sup>5</sup> *Id.*