



April 28, 2020

VIA EMAIL

Gene Whitehouse, Tribal Chairperson
United Auburn Indian Community of the Auburn Rancheria
P.O. Box 699
Plymouth, California 95669

Re: Review of United Auburn Indian Community Loan Documents

Dear Chairperson Whitehouse:

This letter responds to the February 28, 2020, request on behalf of the United Auburn Indian Community of the Auburn Rancheria (Rancheria) for the National Indian Gaming Commission's Office of General Counsel to review the loan documents between the Rancheria and Wells Fargo Bank, N.A, Wells Fargo Securities, LLC, and U.S. Bank, NA. Specifically, you have asked for my opinion on whether the Loan Documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion 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 documents submitted on behalf of the Rancheria, which were unexecuted, but were represented to be in substantially final form (Collectively "Loan Documents"):

- Third Amended and Restated Loan Agreement, marked as 4129-4067-4081.7
- Exhibits to the Third Amended and Restated Loan Agreement, marked as 4159-4958-5185.2
- Schedule 5.3, Insurance Schedule, marked as OHSUSA:765767726.2.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed, opinion letters for which are available on the NIGC website. Applying the same analysis here, it is my opinion that the Loan Documents are not management contracts or collateral agreements to a management contract, and do not require the approval of the Chair.

It is also my opinion that the Loan Documents do not violate IGRA's sole proprietary interest requirement. Moreover, the Loan Documents do not affect the Office of General

Chairperson Gene Whitehouse
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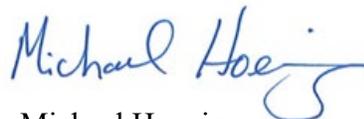
Counsel's opinions as set forth in the 2013 and 2016 letters related to the Collateral Documents. Accordingly, the Office of General Counsel's opinions expressed in the September 23, 2013 and December 1, 2016 letters stand as to the Collateral Documents.

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. *See* 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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." *See* 25 C.F.R. § 517.7(d). 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 have any questions, please contact NIGC Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a large, stylized flourish at the end.

Michael Hoenig
General Counsel

cc: Christine Swanick