



May 24, 2019

John Maier
Maier Pfeffer Kim Geary & Cohen LLP
1970 Broadway, Suite 825
Oakland, CA 94612

Re: Review of Loan Document for the Enterprise Development Authority

Dear Mr. Maier:

This letter responds to your May 8, 2019 request on behalf of the Enterprise Development Authority for the Office of the General Counsel, National Indian Gaming Commission, to review a loan document. The request asks for my opinion as to whether the submitted loan document is a management contract 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 document violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the Deposit Account Control Agreement marked #67424947_v3 (the "Loan Document"). The Loan Document is related to financing documents that were previously reviewed in draft form by the Office of General Counsel. A letter opining that the related financing documents were not management contracts requiring the NIGC Chairman's approval and did not violate the sole proprietary interest requirement was issued on July 6, 2018.

The Loan Document contains 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 the Loan Document is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

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

John Maier

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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 Staff Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

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.*