



September 13, 2018

Margaret C. Rosenfeld
Forman & Associates
4340 Redwood Highway, Suite E352
San Rafael, CA 94903

Re: Review of Financing Documents between the Cahuilla Band of Indians and First Secure Community Bank

Dear Ms. Rosenfeld:

This letter responds to your August 10, 2018 request on behalf of the Cahuilla Band of Indians (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review a Loan Agreement and related documents between the (CCRCC), which is corporation chartered under the authority of the Tribe, and First Secure Community Bank. On August 13, 2018, the OGC received additional documents (together, the Financing Agreements) related to this transaction. Specifically, you have asked for my opinion whether the Financing Agreements constitute a management contract or collateral agreement to 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 documents:

- Loan Agreement between CCRCC and First Secure Community Bank with exhibits and attachments, marked in upper right-hand corner with 08/08/2018 working draft #4;
- Security Agreement between CCRCC and First Secure Community Bank, marked in upper right-hand corner with 08/08/2018 working draft #4;
- Promissory Note between CCRCC and First Secure Community Bank, marked in upper right-hand corner with 08/08/2018 working draft #4;
- Guaranty between Cahuilla Band and First Secure Community Bank, marked in upper right-hand corner with 08/08/2018 working draft #4;
- Disbursing Agreement between CCRCC and First Secure Community Bank, marked in upper right-hand corner with 08/08/2018 working draft #4;
- Consent to Enter Trust Lands and Premises, marked in upper right-hand corner with 08/08/2018 working draft #4; and
- Deposit Account Security, Pledge and Control Agreement between CCRCC and First Secure Community Bank, with exhibits marked in upper right-hand corner with 09/05/2018 working draft (MCR).

The Financing Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed that are available on the NIGC website. Applying the same analysis here, it is my opinion that the Financing 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 Financing Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Financing Documents are represented to be in substantially final form with respect to terms affecting this opinion. If they change in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the Financing Documents listed above and does not include or extend to any other agreements or documents not submitted for review.

On July 21, 2018 the OGC received a request on behalf of the Tribe for the OGC to similarly review a Commercial Construction, Refinance, and Term Loan Agreement and related documents between the Cahuilla Economic Development Corporation, a corporation chartered under the authority of the Tribe and Pinnacle Bank, an Iowa bank wholly owned by the Sac and Fox Tribe of the Mississippi in Iowa.

These documents are the following (all unmarked):

- Commercial Construction, Refinance, and Term Loan Agreement;
- Promissory Note;
- Closing Statement;
- Assignment of Contracts, Licenses and Permits;
- Security Agreement;
- Leasehold Deed of Trust and Assignment of Leases and Rents;
- Fee Letter;
- Guaranty Agreement (Repayment and Construction Obligations);
- Security Agreement and Collateral Assignment of RSTF Payments and Tribal Tax Revenue;
- Non-Interference Agreement; and
- Tribal Consent and Transaction Specific Adoption of Certain Provisions of California Commercial Code.

These documents relate to the construction of a hotel, and are not gaming-related. No gaming will occur in the hotel. The NIGC's jurisdiction under the IGRA is confined to the regulation of gaming. *See* 25 U.S.C. §2702(3). As part of that regulation, the NIGC Chair reviews and approves management contracts for the operation of tribal gaming. *See* 25 U.S.C. § 2711. Because management contracts not approved by the Chair are void, and could result in enforcement action, the NIGC encourages tribes to submit any gaming-related agreements (financing agreements, consulting agreements, and game leases, for example) for a determination whether they are management contracts under the IGRA and thus subject to review and approval. *See* NIGC Bulletin 93-3, http://www.nigc.gov/Reading_Room/Bulletins/Bulletin_No._1993-3.aspx.

The agreements you submitted, however, do not relate to the Tribe's gaming operation or any of the gaming activity that will occur there. It appears that you have submitted these non-gaming agreements in an over-abundance of caution. We have been informed that some lenders are requiring the submission of any and all agreements for financing in Indian country to the NIGC for a declination letter prior to the approval of funding regardless of whether the agreements at issue relate to gaming. While the receipt of such a letter may give lenders comfort, the NIGC has no jurisdiction over such agreements and therefore does not have the authority to review them. Thus, while the NIGC continues to encourage the submission of gaming-related agreements, it will not review non-gaming related agreements and will not issue declination letters for such 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. 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 blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a horizontal line at the end.

Michael Hoenig
General Counsel