



August 21, 2020

VIA EMAIL

Jason Cozart, Assistant General Manager
Soboba Casino Resort
22777 Soboba Rd,
San Jacinto, CA 92583

Re: Review of Loan Documents for the Soboba Band of Luiseno Indians

Dear Mr. Cozart:

This letter responds to the August 5, 2020 request on behalf of the Soboba Band of Luiseno Indians 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. Finally, the request asks for confirmation that the loan documents do not affect the opinions expressed in a February 27, 2017 opinion letter with respect to certain security documents related to the loan documents.

In my review, I considered the following submissions (collectively, "the Loan Documents"):

1. Third Amendment to the Credit Agreement dated as of March 9, 2017, by and among the Tribe as borrower, each lender from time to time party thereto, Bank of America, N.A. as Administrative Agent and L/C Issuer, marked as "SMRH:4827-9556-5505.7" and with a draft date of August 4, 2020 on the first page;
2. A redlined conformed copy of the Credit Agreement dated as of March 9, 2017, by and among the Borrower, each Lender from time to time party thereto, and Bank of America, N.A. as Administrative Agent and L/C Issuer, as amended on February 2, 2018 (the "First Amendment") and as amended on April 30, 2020 through a limited waiver and amendment (the "Second Amendment"), and as will be amended by the proposed Third

Amendment (the “Amended Credit Agreement”) marked as “SMRH: 4836-2670-1505.7” on the first page;

3. Exhibit A to the Third Amendment (form of Compliance Certificate) marked as “SMRH: 4811-1026-7074.4” on the first page;
4. Exhibit B to the Third Amendment (form of Distribution Certificate) marked as “SMRH: 4824-1318-8802.4” on the first page.

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. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement. Finally, it is my opinion that the Loan Documents do not affect the opinions expressed in the February 27, 2017 opinion letter with respect to the Security Agreement, Intellectual Property Security Agreement, and Deposit Account Control Agreement referenced therein.

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.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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.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 <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*

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If you have any questions, please contact NIGC Senior Attorney Austin Badger at (202) 632-7003 or by email at austin_badger@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Ruben De Los Santos, Director of Finance, Soboba Band of Luiseno Indians
Devon Lee Lomayesva, Tribal Attorney, Soboba Band of Luiseno Indians
Aaron Harkins, Hogen Adams
Christine L. Swanick, Sheppard Mullin