



October 29, 2020

VIA EMAIL

Temet A. Aguilar, Chairman
Pauma Band of Mission Indians
1010 Pauma Reservation Rd,
Pauma Valley, CA 92061

Re: Review of Pauma Band's Amendment No. 2 to Amended and Restated Credit Agreement

Dear Chairman Aguilar:

This letter responds to the August 06, 2020, request on behalf of the Pauma Band of Mission Indians for the National Indian Gaming Commission's Office of General Counsel to review the Pauma Band's Amendment No. 2 to Amended and Restated Credit Agreement and Capital One, National Association. Specifically, you have asked for my opinion on whether Amendment No. 2 is a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following document submitted on behalf of the Band, which was unexecuted, but was represented to be in substantially final form:

- Amendment No. 2 to Amended and Restated Credit Agreement Draft 07/20/20; marked as "SMRH: 4833-8327-2899.3.

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

It is my understanding that the Loan 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 Loan Documents listed above and does not include or extend to any other agreements or documents not submitted for review.

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Please note it is my intent 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, highlighting the information 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, any withholding should be analyzed in accordance with 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, this 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 NIGC Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,



Michael Hoenig
General Counsel

cc: Cheryl A. Williams, caw@williamscochrane.com

¹ 25 C.F.R. § 517.7(c).

² Freedom of Information Act, 5 U.S.C. § 552(b)(4) (1966).

³ 139 S.Ct. 2356 (2019).

⁴ 25 C.F.R. § 517.7(c).

⁵ *Id.*