



December 13, 2021

**VIA EMAIL**

Erik Detlefsen, Esq.  
Dorsey & Whitney LLP  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498

**Re: Review of the 2021 Loan Documents for the San Pasqual Band of Mission Indians**

Dear Mr. Detlefsen:

This letter responds to your November 17, 2021 request, on behalf of PNC Bank, National Association, and the San Pasqual Casino Development Group, Inc., a tribally chartered corporation formed under the laws of the San Pasqual Band of Mission Indians, for the National Indian Gaming Commission, Office of General Counsel, to review certain loan documents and to provide an opinion as to whether or not these loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988. You have also asked for my opinion as to whether or not 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 submissions (collectively, "the 2021 Loan Documents"):

1. *Credit Agreement Dated as of January [ ], 2022, among San Pasqual Casino Development Group, Inc., as the Borrower, PNC Bank, National Association, as Lender* (marked at top right as "DW Draft 11/17/2021" and at bottom left as "4850-3070-3867\12");
2. *Exhibits to Credit Agreement Dated as of January [ ], 2022, among San Pasqual Casino Development Group, Inc., as the Borrower, PNC Bank, National Association, as Lender* (marked at top right as "DW Draft 11/12/2021" and at bottom left as "4842-5768-0892\3");
3. *Security Agreement* (marked at top right as "DW Draft 11/12/2021" and at bottom left as "4838-6130-4060\5");
4. *Guaranty* (marked at top right as "DW Draft 11/12/2021" and at bottom left as "4850-9521-6124\5");
5. *Revolving Credit Note* (marked at top right as "DW Draft 11/17/2021" and at bottom left as "4854-3821-9267\2"); and

*Term Note* (marked at top right as "DW Draft 11/17/2021" and at bottom left as "4890-6078-7203\2").

Letter to Erik Detlefsen, Esq.  
Re: Review of the 2021 Loan Documents for the San Pasqual Band of Mission Indians  
December 13, 2021  
Page 2 of 2

The 2021 Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Applying the same analysis here, it is my opinion that, collectively, the 2021 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.

It is my understanding that the 2021 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 2021 Loan Documents change in any material manner prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2021 Loan Documents and does not include or extend to any other agreements not submitted for review.

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.<sup>1</sup> 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),<sup>2</sup> please be advised that the information was voluntarily submitted and, as such, any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> 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 <<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>>.

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel

cc: Glenn M. Feldman, Esq., Procopio, Cory, Hargreaves & Savitch LLP (via email)  
Rob Morrison, Esq., White & Case LLP (via email)

---

<sup>1</sup> See 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 139 S. Ct. 2356 (2019).

<sup>4</sup> See 25 C.F.R. § 517.7(d).