



December 15, 2021

***VIA EMAIL***

Townsend Hyatt  
1120 NW Couch Street  
Suite 200  
Portland, OR 97209-4163

**Re: Review of Loan Documents for Viejas Band of Kumeyaay Indians**

Dear Mr. Hyatt:

This letter responds to your October 14, 2021 request for the National Indian Gaming Commission's Office of General Counsel to review a loan agreement between the Viejas Band of Kumeyaay Indians ("Band") and a syndicate of lenders to refinance existing indebtedness, construct a new parking deck, make other capital improvements, and provide for other purposes associated with the Band's gaming enterprise.

Specifically, you have asked for my opinion whether the loan agreement constitutes a management contract. You also asked for my opinion whether the agreement violates IGRA's requirement that the Band have the sole proprietary interest in its gaming activity.

In my review, I considered the following documents:

1. Amended and Restated Credit Agreement (marked bottom left as "4827-1876-1449\15" and top right as "NIGC Submission Draft 10/14/21") ("Loan Agreement");
2. Exhibits to Credit Agreement (marked bottom left as "4831-8658-8654\2" and top right as "NIGC Submission Draft 10/14/21").

(Collectively, the "Loan Documents"). The documents were unexecuted but represented to be in substantially final form.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents do not constitute a management contract and does not require the approval of the NIGC Chair. It is also my opinion that the Loan Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the draft is represented to be in substantially final form, and if the Loan Documents change in any material way prior to execution or are inconsistent with

Letter to Townsend Hyatt  
Re: Review of Loan Documents for Viejas Band of Kumeyaay Indians  
December 15, 2021  
Page 2 of 2

assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the documents listed above. This opinion 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 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.<sup>5</sup>

If you have any questions, please contact Joshua Proper at (202) 632-0294 or joshua\_proper@nigc.gov.

Sincerely,



Michael Hoenig  
General Counsel

Cc: Tuari Bigknife, Attorney General Viejas Band of Kumeyaay Indians

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<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).

<sup>5</sup> *Id.*