



December 21, 2021

***VIA EMAIL***

Cody J. Martinez, Chairman  
Sycuan Band of the Kumeyaay Nation  
2 Kwaaypaay Court  
El Cajon, CA 92019

**Re: Review of Loan Documents between Bank of America & the  
Sycuan Band of the Kumeyaay Nation**

Dear Chairman Martinez:

This letter responds to the request for the National Indian Gaming Commission's Office of General Counsel to review financing documents between the Sycuan Band of the Kumeyaay Nation and Bank of America. Specifically, you asked for an opinion whether these agreements are management contracts requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Loan Documents") submitted, all of which are unexecuted but represented to be in substantially final form:

- Amended and Restated Credit Agreement (Sycuan), marked in lower left-hand corner "SMRH:4820-8768-8700.8";
- Exhibits to Amended and Restated Credit Agreement (Sycuan 2021), marked in lower-left-hand corner "SMRH 4884-6844-3649.2";
- Bank of America Revolving Note, marked in lower left-hand corner "SMRH: 4860-1570-3044.2";
- Umpqua Revolving Note, marked in lower left-hand corner "SMRH: 4893-6242-9188.2";
- Bank of America Term Note, marked in lower left-hand corner "SMRH: 4887-1611-3924.2";
- Umpqua Term Note, marked in lower left-hand corner "SMRH: 4869-0974-4644.2";
- Amended and Restated Security and Pledge Agreement (Sycuan 2021), marked in lower-left hand corner "SMRH: 4846-5661-0558.2";

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- Copyright Security Agreement (Sycuan 2021), “marked in lower left-hand corner SMRH:4892-6443-9041.2”;
- Trademark Security Agreement ;(Sycuan 2021), marked in lower left-hand corner “SMRH: 4876-2518-9633.2”;
- Patent Security Agreement (Sycuan 2021), marked in lower left-hand corner “SMRH:4883-9628-6209.2”;
- Non-Recourse Agreement - Sycuan 2021 (Umpqua - Tax Revenue Financing), marked in lower left-hand corner “SMRH: 4895-5773-5426.3”;
- Non-Recourse Agreement - Sycuan 2021 (Pinnacle Bank Financing) marked in lower left-hand corner “SMRH:4884-0514-9699.3”;
- Umpqua DACA - Sycuan (2021 BofA Amended and Restated Credit Agreement), marked in lower left-hand corner “SMRH 4880-2776-0386.2”;
- 2021 11-18 NIGC Transmission Letter – Sycuan.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed; please refer to the agency’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 Chairman. It is also my opinion they do not violate IGRA’s sole proprietary interest requirement.

It is my understanding the Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above. This opinion does not include or extend to any other agreements or documents 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

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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).

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time elapses, the letter will be made public and objections will no longer be considered.<sup>5</sup> 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 NIGC Senior Attorney Maria Getoff at (703) 338-7748.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized "H" and a long, sweeping underline.

Michael Hoenig  
General Counsel

cc: Mark Radoff, Esq.

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