



September 09, 2022

Via Email

John A. Maier, Counsel for the Authority and the Tribe
Maier Pfeffer Kim Geary & Cohen LLP
1790 Broadway, Suite 825
Oakland, California 94612
jmaier@jmandmplaw.com

Re: Review of Development Agreement and Loan Agreement for the Ione Band of
Miwok Indians

Dear Mr. Maier:

This letter responds to your July 19, 2022 request for the National Indian Gaming Commission's Office of General Counsel to review a Development Agreement and a Loan Agreement between Sierra Entertainment, LLC and the Ione Band Economic Development Authority (Authority), an unincorporated governmental instrumentality of the Ione Band of Miwok Indians (Tribe). Specifically, you have asked for my opinion whether the Agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the Agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions, which are unexecuted, but were represented to be in substantially final form:

- Development Agreement, labeled "Draft submitted 08-29-2022 to NIGC for Declination Review", marked in lower left corner with "Development Agreement – NIGC Submittal Draft revised 08.29.2022"; and
- Loan Agreement, labeled "Draft Submitted 07-20-2022 to NIGC for Declination Review", marked in lower left corner with "Loan Agreement – NIGC Submittal Draft". (together "Agreements")

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

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It is my understanding that the drafts are represented to be in substantially final form, and if the Agreements change in any material way prior to execution or are inconsistent with 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, including but not limited to any management agreement engaging Sierra Entertainment, LLC as the manager of the developed gaming facility.

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>.

If you have any questions, please contact NIGC Staff Attorney Danielle Wu at (202) 336-3596 or by email at danielle.wu@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

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.*