



September 26, 2022

**VIA EMAIL**

Kerry Patterson, Esq.  
Procopio, Cory, Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101

**Re: Review of the 2022 Loan Documents for the Pauma Band of Luiseño Mission Indians**

Dear Ms. Patterson:

This letter responds to your July 22, 2022 request, on behalf of the Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, for the National Indian Gaming Commission, Office of General Counsel, to review certain transaction documents and to provide an opinion as to whether these transaction documents constitute a management contract 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 the transaction documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission ("the 2022 Loan Documents"):

1. **CREDIT AGREEMENT** dated as of [\_\_\_\_\_], 2022, by and between **PAUMA BAND OF LUISEÑO MISSION INDIANS**, as the Borrower, the Lenders referred to herein, as Lenders, **KEYBANK NATIONAL ASSOCIATION**, as Administrative Agent, Swingline Lender and Issuing Lender, **KEYBANC CAPITAL MARKETS INC.**, as Lead Arranger, and **KEYBANC CAPITAL MARKETS INC.**, as Sole Bookrunner (Credit Agreement) (marked at top right as "NIGC Submission Draft 07/22/2022")
  - *Exhibit A-1* to Credit Agreement **Form of Revolving Credit Note** (marked at top right as "NIGC Submission Draft 07/22/2022");
  - *Exhibit A-2* to Credit Agreement **Form of Swingline Note** (marked at top right as "NIGC Submission Draft 07/22/2022");
  - *Exhibit A-3* to Credit Agreement **Form of Term Loan Note** (marked at top right as "NIGC Submission Draft 07/22/2022");

MAILING ADDRESS: NIGC/DEPARTMENT OF THE INTERIOR 1849 C Street NW, Mail Stop #1621 Washington, DC 20040 Tel: 202.632.7003 Fax: 202.632.7066

REGIONAL OFFICES Portland, OR; Sacramento, CA; Phoenix, AZ; St. Paul, MN; Tulsa, OK; Oklahoma City, OK; Rapid City, SD

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2. **Security Agreement** (marked at top right as “NIGC Submission Draft 07/22/2022”);
3. **Capital One Deposit Account Control Agreement (Springing – Sweep)** (hereinafter “Capital One DACA I,”) (marked at top right as “NIGC Submission Draft 07/22/2022”);
4. **Capital One Deposit Account Control Agreement (Springing)** (hereinafter “Capital One DACA II,”) (marked at top right as “NIGC Submission Draft 07/22/2022”);
5. **KeyBank Deposit Account Control Agreement** (hereinafter “KeyBank DACA,”) (marked at top right as “NIGC Submission Draft 07/22/2022”).

The 2022 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 the 2022 Loan Documents are not a management contract 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 2022 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 2022 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 2022 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

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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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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 Rachel Hill, Legal Fellow, at (918) 581-6214 or Rea Cisneros, Associate General Counsel, at (202) 632-7024.

Sincerely,



Michael Hoenig  
General Counsel

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