



April 24, 2023

VIA EMAIL

Michael Hunter, Chairman
Coyote Economic Development Corporation
77 Coyote Valley Blvd.
Redwood Valley, CA 95470

Re: Review of the 2023 Loan Documents for the Coyote Valley Band of Pomo Indians

Dear Chairman Hunter:

This letter responds to your March 3, 2023 request, on behalf of the Coyote Economic Development Corporation, a federally chartered tribal business corporation wholly owned by the Coyote Valley Band of Pomo Indians, a federally recognized Indian tribe, 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 2023 Loan Documents"):

- *Amended and Restated Commercial Construction and Term Loan Agreement* (marked at top right as "03/16/2023 working draft");
- (CEDCO) *Amended and Restated Promissory Note* (marked at top right as "03/16/2023 working draft");
- (CEDCO) *Amended and Restated Security Agreement* (marked at top right as "03/16/2023 working draft");
- (CEDCO) *Amended and Restated Deposit Account Security, Pledge and Control Agreement between Coyote Economic Development Corporation, a federally chartered Tribal business corporation wholly owned by the Coyote Valley Band of Pomo Indians, a federally-recognized Indian tribe, as Borrower, Performance Equity Partners, Inc., as Lender, and Pinnacle Bank, as Depository, Dated as of November 4, 2022* (marked at top right as "03/16/2023 working draft");

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- *Amended and Restated Environmental Indemnity Agreement* (marked at top right as “03/16/2023 working draft”);
- *Amended and Restated Guaranty Agreement (Repayment Obligations)* (marked at top right as “03/16/2023 working draft”);
 - Attachment 1 *Guarantors Insurance Coverage*;
- (CVEE) *Amended and Restated Guarantor Promissory Note* (marked at top right as “03/16/2023 working draft”);
- (CVEE) *Amended and Restated Security Agreement* (marked at top right as “03/16/2023 working draft”);
- (CVEE) *Amended and Restated Deposit Account Security, Pledge and Control Agreement between Coyote Valley Entertainment Enterprises, a subordinate economic entity of and formed pursuant to the Federal Charter of Incorporation of Coyote Economic Development Corporation, a federally chartered Tribal business corporation wholly owned by the Coyote Valley Band of Pomo Indians, a federally-recognized Indian tribe, as Guarantor, Performance Equity Partners, Inc., as Lender, and Pinnacle Bank, as Depository, Dated as of November 4, 2022* (marked at top right as “03/16/2023 working draft”);
- (CVRE) *Amended and Restated Guarantor Promissory Note* (marked at top right as “03/0162023 working draft”);
- (CVRE) *Amended and Restated Security Agreement* (marked at top right as “03/16/2023 working draft”);
- (CVRE) *Amended and Restated Deposit Account Security, Pledge and Control Agreement between Coyote Valley Retail Enterprises, a subordinate economic entity of and formed pursuant to the Federal Charter of Incorporation of Coyote Economic Development Corporation, a federally chartered Tribal business corporation wholly owned by the Coyote Valley Band of Pomo Indians, a federally-recognized Indian tribe, as Guarantor, Performance Equity Partners, Inc., as Lender, and Pinnacle Bank, as Depository, Dated as of November 4, 2022* (marked at top right as “03/16/2023 working draft”);
- *Amended and Restated Non-Interference and Collateral Security Agreement* (marked at top right as “03/16/2023 working draft”);
- *Amended and Restated Collateral Assignment of Revenue Sharing Trust Fund Payments and Security Agreement* (marked at top right as “03/16/2023 working draft”); and
- *Closing Statement and Agreement* (marked at top right as “03/16/2023 working draft”).

The 2023 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 2023 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. However, this letter does not opine on the legality of a certain pledge and/or

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assignment of a particular type of collateral by the Tribe to the lender, and/or on the legality of the rights and remedies that lender may exercise to collect on that particular type of collateral in the event of default.

It is my understanding that the 2023 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 2023 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 2023 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.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 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*.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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Rea Cisneros
General Counsel (Acting)

cc: Little Fawn Boland, Esq.
Keith Anderson, Esq.
Kevin Quigley, Esq.

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.*