



February 27, 2017

Michael Castello, Tribal Administrator
Soboba Band of Luiseno Indians
23906 Soboba Road
San Jacinto, CA 92583
mcastello@soboba-nsn.gov

Re: Review of the Loan Documents for the Soboba Band of Luiseno Indians

Dear Mr. Castello:

This letter responds to the December 21, 2016, request on behalf of the Soboba Band of Luiseno Indians for the Office of the General Counsel, National Indian Gaming Commission, to review certain loan documents. The request asks for my opinion as to whether the submitted loan documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act. The request also asks for my opinion as to whether 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 Loan Documents"):

- Credit Agreement between the Borrower, the Administrative Agent and the lenders a party thereto (NIGC Submission Draft 2-8-17));
- Exhibits to Credit Agreement (NIGC Submission Draft 12-21-16);
- Security Agreement between Tribe and the Collateral Agent (NIGC Submission Draft 12-21-16);
- Deposit Account Control Agreement between the Tribe, the Deposit Account Bank and the Collateral Agent (NIGC Submission Draft 2-8-17); and
- Form of Intellectual Property Security Agreement between the Tribe and the Collateral Agent (NIGC Submission Draft 1-13-17).

The Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Some of these opinion letters may be found on the NIGC'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 NIGC Chairman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the 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 Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein. Further, this opinion is limited to the Loan Documents listed above and does not include or extend to any other agreements.

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, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*.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 <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact Staff Attorney Austin Badger at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Ruben De Los Santos, Chief Operating Officer, Soboba Band of Luiseno Indians
(via email: rdelossantos@soboba-nsn.gov)

Devon Lee Lomayesva, Tribal Attorney, Soboba Band of Luiseno Indians
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¹ 25 C.F.R. 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517.7(c).

⁵ *Id.*

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