



January 8, 2010

Mr. Thomas K. Butt
City Council Member
117 Park Place
Richmond, CA 94801

Re: NIGC-FOIA-2010-011

Dear Mr. Butt:

This is in response to your Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, request to the National Indian Gaming Commission ("NIGC") dated November 13, 2009, and received in the FOIA office November 16, 2009, for a copy of "...letter issued to the Scotts Valley Band of the Pomo Indians by the NIGC declining to approve the proposed management organization for the proposed casino...."

We have located the document responsive to your request. This nine-page document is being released with redactions taken pursuant to Exemptions (b)(4) and (b)(6). Exemption (b)(4) allows for the withholding of trade secrets and commercial or financial information obtained from a person and is privileged or confidential. This exemption has been cited to protect financial and proprietary information. Exemption (b)(6) allows for the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption has been cited to protect the names of persons mentioned in this document. A Settlement Agreement was reached concerning this action and will be posted on the NIGC's website very shortly at <http://www.nigc.gov/ReadingRoom/EnforcementActions>

Pursuant to 25 C.F.R. § 517.8, you may administratively appeal this partial denial by writing to the Office of General Counsel, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, within 30 business days of your receipt of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

As this completes the processing of your request, we are closing your file in this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura L. Corbman".

Laura L. Corbman
FOIA/PA Officer

Enclosure



SEP 28 2009

Donald Arnold, Chairman
Scotts Valley Band of Pomo Indians
81 Parr Blvd, PO Box 2008
Richmond, CA 94802
Fax (510) 234-0101

Alan H. Ginsberg
Richmond Gaming Ltd.
1551 Sandspur Rd.
Maitland, FL 32751
Fax (407) 691-5631

Dear Chairman Arnold and Mr. Ginsberg:

On September 10, 2007, the National Indian Gaming Commission ("NIGC" or "Commission") received a Class II and III gaming management contract (Contract), dated March 23, 2007, between the Scotts Valley Band of Pomo Indians (the Tribe) and Richmond Gaming Ltd. ("Richmond"). Since then, the NIGC has been reviewing the Contract and revised documents submitted by the parties and providing comments to the parties. Unfortunately, I must inform you that I disapprove the Contract for the reasons given below.

Applicable Law

The Indian Gaming Regulatory Act (IGRA) allows Indian tribes to enter into management contracts for the operation of Class II and/or Class III gaming activity if the contract has been submitted to, and approved by, the Chairman. 25 U.S.C. §§ 2710-2711. As part of the Chairman's review of a management contract, a management contractor is required to submit background information. 25 C.F.R. § 537.2.

The NIGC's requirements for submission of management contracts are outlined at 25 C.F.R. § 533.3(d). Subsection (d) requires the submission of a list of all the persons and entities with significant interests in the management contract, including in relevant part, the ten persons who have the greatest direct or indirect financial interest in a management contract and any entity with a financial interest in a management contract. NIGC regulations define *Person having a direct or indirect financial interest in a management contract* as including *when an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management*

contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract. 25 C.F.R. § 502.17(e).

After reviewing the background information the Chairman then makes a determination as to whether the information would prevent him from approving the contract. 25 C.F.R. § 537.4. NIGC regulations enumerate the criteria used by the Chairman in determining if a contract should be disapproved. 25 C.F.R. § 533.6 (b)(1)(i).

Disapproval pursuant to 25 C.F.R. § 533.6(b)(1)(iii) – providing materially false statements or information

NIGC regulations require the Chairman to disapprove a gaming management contract when any person with a direct or indirect financial interest in, or having management responsibility for, a management contract has knowingly and willfully provided materially false statements or information to the Commission or a tribe. 25 C.F.R. § 533.6(b)(1)(iii). NIGC regulations at 25 C.F.R. § 533.3(d) and § 537.1 required Richmond to submit a list of the persons and entities with a financial interest in, or management responsibility for, the Contract. During the review process, Richmond submitted five different lists. With each list, Richmond provided materially false information to the Commission.

First, on July 8, 2008, the NIGC received from Richmond list #37954.00.0001.¹ The list identified MGA Holdings I LLC (MGA I) as a [] limited partner in Richmond and MGA Holdings II LLC (MGA II) as a [] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired their interests in Richmond as of the date of the list. See Letters from Terrance Dunleavy to NIGC dated October 20, 2008, May 8, 2009, May 11, 2009, and June 30, 2009. As of the date of submission, the owners of the [] partnership interest were in fact:

- []
- []
- []
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

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In his letter dated October 10, 2008, Terrance Dunleavy stated that Warm Winds Partners Ltd., owned a limited partnership interest in Richmond from December 2004 to January 2008. Additionally, he stated that Mr. Ginsburg through his affiliate MGA Holdings I acquired the Warm Winds interest as of January 2008. However, as Mr. Dunleavy summarized in his letter of May 8, 2009, Richmond reached an agreement in January 2008 “whereby Mr. Ginsburg would acquire [] Partnership Interest and [] Economic Beneficial Interest in Richmond.” However, “due to a severe downturn in the financial markets” the parties to these transactions “could not conclude the business transactions.” [] interest was held by Warm Winds and [] interest

¹ All lists submitted by Richmond were in the form of organizational charts.

through Lawhorn. As entities with an interest in Richmond, all partners and shareholders of Warm Winds and Lawhorn are deemed to be persons having a direct financial interest in the Contract. Richmond failed to list them on lists submitted to the NIGC. Accordingly, Richmond provided materially false information about more than one third of the ownership interests in the Contract when it listed MGA I and MGA II as limited partners and did not list the actual owners of the [redacted] interest.

Second, on October 21, 2008, the NIGC received a second version of list #37954.00.0001. The list identified MGA I as a [redacted] limited partner in Richmond and MGA II as a [redacted] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired their interests in Richmond as of the date of the list. See Letters from Dunleavy to NIGC dated October 20, 2008, May 8, 2009, May 11, 2009, and June 30, 2009. The [redacted] interest they eventually acquired was held by different persons and entities. As of the date of submission, the owners of the [redacted] were in fact:

- [redacted]
- [redacted]
- [redacted]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

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Accordingly, Richmond twice provided materially false information about more than one third of the ownership interests in the Contract when it listed MGA I and MGA II as being limited partners and did not list the actual partners/owners of the [redacted] interest.

Third, on January 12, 2009, the NIGC received from Richmond two updated lists #1861323.2 and #1861323.3. List #1861323.2 was referenced as "a copy of the original organizational chart." However, it was not identical to the chart submitted in July 2008. The two new lists identified MGA I as a [redacted] limited partner in Richmond and MGA II as a [redacted] limited partner in Richmond. However, as later detailed by Richmond, MGA I and MGA II had not acquired interests in Richmond as of the date of the updated lists. See Letters from Dunleavy to NIGC dated May 8, 2009, May 11, 2009, and June 30, 2009. As of the date of submission, the owners of the [redacted] were in fact:

- [redacted]
- [redacted]
- [redacted]
- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

Accordingly, Richmond provided materially false information for the third time and fourth time when it listed MGA I and MGA II as being limited partners and did not list the actual partners/owners in lists #1861323.2 and #1861323.3.

Fourth, as of the date of submission, Richmond had not bought the "Profit Participants" financial interests from [redacted] and [redacted]. Therefore, with lists #1861323.2 and list #1861323.3, Richmond provided other materially false information when it did not list [redacted] and [redacted] as being two of the top ten persons with financial interests in Richmond and the Contract.

Fifth, on May 8, 2009, Dunleavy sent a letter along with various buyout agreements and other documents. The buyout agreements identified several new entities that have, or will have, an interest in Richmond. As such, the entities and all parties of each entity are deemed to be persons having a direct financial interest in the Contract. On June 30, 2009, the NIGC received from Richmond the updated list #1861323.4. Based on the various documents submitted by Richmond on May 8, 2009, relating to buyouts, or planned buy outs, of various persons and entities, Richmond failed to list the following persons and entities on list #1861323.4 as persons or entities having, or who were anticipated to have, a disclosable interest in Richmond and the Contract:

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- NSV Development LLC;
- NG Services LLC;
- Legacy Commercial Partners LLC;
- Legacy Partners Party Commercial LLC;
- Massée Road Investors LLC;
- ADJ Investments LLC;
- Smokey Mt. Ridge LLC;
- Guardian Smoky Mountain Ridge LLC;
- Southeastern Development Lands LLC;
- Noram Equities Ltd.;
- CED Tropical Park Inc.;
- WKN Financial Resources LLC;
- Canton Park Financial LLC;
- JJP Holdings LLC
- [redacted]
- Warm Winds Partners Ltd.;
- [redacted]
- Lawhorn Corporation;
- [redacted] and
- RSB, a sole proprietorship.

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Accordingly, and for the fifth time Richmond provided materially false information about ownership in the Contract.

The actions of Richmond are quite serious. IGRA specifically identifies protecting tribes from organized crime and corrupting influences and ensuring

that tribes are the primary beneficiary of the gaming as the objectives of IGRA. 25 U.S.C. § 2702. The provisions of 25 U.S.C. § 2711 are designed to achieve these goals. Therefore, suitability determinations on significant financial interests are necessary to keep out undesirable elements. Providing false information about financial interests makes it impossible for the Chairman to make proper suitability determinations and to enforce the law as Congress intended.

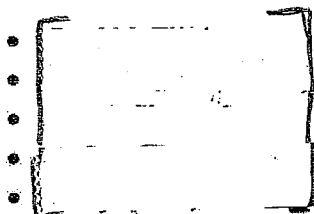
Disapproval pursuant to 25 C.F.R. § 533.6(b)(1)(iv) – refusal to respond to the Chairman’s questions

NIGC regulations require the Chairman to disapprove a gaming management contract when any person with a direct or indirect financial interest in, or having management responsibility for, a management contract has refused to respond to questions asked by the Chairman in accordance with his responsibilities. 25 C.F.R. § 533.6(b)(1)(iv). Richmond was required to respond within 30 days to written or oral questions propounded by the Chairman. 25 C.F.R. § 537.1(c)(3). The NIGC Division of Contracts was delegated authority for § 537 specifically for reviewing and processing a gaming management contract and the related background investigation of a management contractor, including requesting documentation and answers from the management contractor.

On September 27, 2007, Chris White, NIGC Financial Analyst, sent a letter to the Tribe and Richmond delineating documents that the parties needed to submit pursuant to NIGC regulations at 25 C.F.R. Parts 533 and 537. Among the items requested was the list of persons and entities having a financial interest in the contract as well as applications for each person and entity and the corresponding deposit. The NIGC requested a response in 30 days.

As detailed above, Richmond failed to list all persons and entities with a financial interest in, or management responsibility for, the Contract. Richmond’s failure to list all of the persons and entities does not negate Richmond’s responsibility to submit all of the background information required for those persons and entities as required by 25 C.F.R. § 537.1.

To date, the NIGC has not received from Richmond background information forms from:



- Warm Winds Partners Ltd; and
- Lawhorn Corporation.

Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days given for a response.

On February 26, 2008, Mr. White sent a letter to the Tribe and Richmond informing them the Contract could not be approved because it did not comply with certain provisions of 25 C.F.R. Parts 531 and 533. His letter listed 25 issues that parties needed to address. Among them, Richmond needed to submit a list of persons and entities having a financial interest in the contract as well as background information for each person and entity and the corresponding deposit.

On July 8, 2008, the NIGC received the parties' response to the letter. This response included certain Richmond background investigation applications and the list #37954.00.0001. As detailed above, Richmond failed to list all persons and entities with a financial interest in, or management responsibility for, the Contract. Richmond's failure to list all of the persons and entities does not negate Richmond's responsibility to submit all of the background information required in 25 C.F.R. § 537.1.

To date, the NIGC has not received form Richmond background information for:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Warm Winds Partners, Ltd; and
- Lawhorn Corporation.

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Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days given for a response.

On August 20, 2008, Elaine Saiz, NIGC Director of Contracts, sent a letter to the Tribe and Richmond informing them that the request to exempt [REDACTED] and [REDACTED] from the NIGC background investigation process was denied. The NIGC requested that background information for the two men be submitted within 30 days. To date, the NIGC has not received the background information from Richmond for [REDACTED] or [REDACTED].

Pursuant to 25 C.F.R. § 537.2, Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1. Richmond failed to respond within the 30 days Ms. Saiz gave for a response.

On October 21, 2008, Ms. Saiz sent a letter to the Tribe and Richmond informing them the Contract could not be approved because it did not comply with certain provisions of 25 C.F.R. Parts 531 and 533. Her letter listed 12 issues that parties needed

to address within 30 days. Among the issues was a request for Richmond to provide an updated list of the person and entities that have a financial interest in the contract.

The updated lists #1861323.2 and #1861323.3 were received on January 12, 2009, outside of the 30-day deadline Ms. Saiz provided.

On June 16, 2009, Ms. Saiz sent a letter to the Tribe and Richmond delineating six issues that the parties needed to address. Among items listed was a request for Richmond to provide an updated list of the persons and entities that have a financial interest in the contract and applications for those persons and entities within 30 days. On June 30, 2009, Richmond submitted revised list #1861323.4

Although the list was submitted within 30 days, Richmond failed to submit information within 30 days, and to date still has not submitted, background information for the following persons and entities who have a financial interest in the contract:

- NSV Development LLC;
- NG Services LLC;
- Legacy Commercial Partners LLC;
- Legacy Partners Party Commercial LLC;
- Masee Road Investors LLC;
- ADJ Investments LLC;
- Smokey Mt. Ridge LLC;
- Guardian Smoky Mountain Ridge LLC;
- Southeastern Development Lands LLC;
- Noram Equities Ltd.;
- CED Tropical Park Inc.;
- WKN Financial Resources LLC;
- Canton Park Financial LLC;
- JJP Holdings LLC
- [REDACTED]
- Warm Winds Partners Ltd.;
- [REDACTED]
- Lawhorn Corporation;
- [REDACTED] and
- RSB, a sole proprietorship.

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Richmond's failure to list all required persons and entities does not negate Richmond's responsibility to submit all of the background information required for those persons and entities as required by 25 C.F.R. § 537.1. Pursuant to 25 C.F.R. § 537.2,

Richmond is responsible for submitting all background information required by 25 C.F.R. § 537.1.

Richmond has shown a pattern of not only responding in an untimely fashion but also failing to adequately respond to NIGC requests for information. IGRA and NIGC regulations do not give management contractors discretion in when and how they will respond to NIGC requests for information. Again, a refusal to respond impairs my ability to enforce IGRA and accomplish Congress' goals as much as providing false information does.

Disapproval pursuant to 25 C.F.R. § 533.6(b)(4) – Chairman's role as a trustee

NIGC regulations require the Chairman to disapprove a gaming management contract when a "trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract" 25 C.F.R. § 533.6(b)(4).

On August 6, 2007, at a meeting between the Tribe and NIGC staff concerning the status of the parcel the Tribe intended to use for gaming, NIGC staff was informed that [redacted] ceasing to represent Richmond and would now be representing the Tribe on matters related to the Contract. As detailed above, Richmond described [redacted] as having a [redacted] interest in Richmond in July 2008. It does not appear that Richmond brought [redacted] interest until May 2009. On September 10, 2009, a copy of a waiver signed by Alan Ginsburg on July 7, 2009, related to [redacted] representation of the Tribe was provided to the Division of Contracts. No such waiver has been provided from the Tribe. b6
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I find it inconceivable that such a conflict could be waived. It appears that [redacted] only increases as the Tribe's financial interest decreases. It would seem that the conflict was only waived by Richmond and not by the Tribe. While the waiver is conditioned upon the Tribe's approval, we have not received any such communication. It is also unclear if [redacted] represent Richmond or any other parties that hold a financial interest in Richmond in other matters. As a trustee, I cannot approve a contract that counsel for the Tribe held a financial interest in during his period of representation. Further, I would not do business with an entity that has concealed or misled as much as Richmond has here and therefore, as a trustee, I cannot approve of such behavior.

Disapproval pursuant to 25 C.F.R. 531 and 533

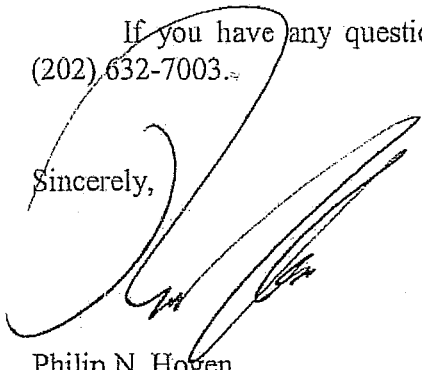
The NIGC Chairman may only approve a gaming management contract if it meets the standards of part 531 and § 533.3. The Contract does not meet all of the standards of part 531 and § 533.3. As detailed in our letter of February 26, 2008, the Contract does not contain the provisions required by: (1) 25 C.F.R. § 531.1(b), (k)(3), and (m); and (2) 25 C.F.R. § 533.3 (d)(1).

Conclusion

For the before mentioned reasons, I disapproved the Contract as required by 25 C.F.R. § 533.6(c). Because the Contract was not an approved, it is void. See 25 C.F.R. § 533.7. The parties may appeal this decision. See 25 C.F.R. Part 539.

If you have any questions regarding this disapproval, please call John Hay at (202) 632-7003.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Philip N. Hogen', is written over the word 'Sincerely,'.

Philip N. Hogen
NIGC Chairman

cc: Ed Thomas, Esq.
(510) 836-3258

Terrence Dunleavy, Esq.
(312) 609-5005