



August 9, 2016

**Via email: kpatterson@lrrc.com
And First Class Mail**

Kerry Patterson, Esq.
Lewis Roca Rothgerber Christie LLP
201 East Washington Street, Suite 1200
Phoenix, AZ 85004

Re: Review of the 2015/2016 Transaction Documents for the Jamul Indian Village

Dear Ms. Patterson:

This letter responds to your most recent July 3, 2016 request, on behalf of the Jamul Indian Village of California, for the National Indian Gaming Commission, Office of the General Counsel, to review certain financing documents and to provide an opinion as to whether or not the submitted financing documents are management contracts requiring the NIGC Chairman's approval pursuant to the Indian Gaming Regulatory Act of 1988, and whether or not the financing 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 2015/2016 Transaction Documents"):

- *\$458,000,000 Revolving Credit and Term Loan Agreement among Jamul Indian Village Development Corporation, as the Borrower, Jamul Indian Village of California, as the Tribe, and the Lenders Party hereto, as Lenders, Citizens Bank, N.A., as Swingline Lender and as Issuing Bank, and Citizens Bank, N.A., as Administrative Agent dated as of [], 2016; Citizens Bank, N.A., as Joint Lead Arranger and Joint Bookrunner, [Fifth Third Bank, as Joint Lead Arranger, Joint Bookrunner and Co-Syndication Agent, Goldman Sachs Bank USA, as Joint Lead Arranger, Joint Bookrunner and Co-Syndication Agent] (marked at bottom left as "SD\1646259.25" and at top right as "Skadden Draft 5/19/16");*
- Exhibit A-1-1 to Credit Agreement, *Form of Term B Note* (marked at bottom left as "SD\1647454.10");
- Exhibit A-1-2 to Credit Agreement, *Form of Term C Note* (marked at bottom left as "SD\1647454.10");

- Exhibit A-2 to Credit Agreement, *Form of Revolving Note* (marked at bottom left as “SD\1647454.10”);
- Exhibit A-3 to Credit Agreement, *Form of Swingline Note* (marked at bottom left as “SD\1647454.10”);
- Exhibit A-4 to Credit Agreement, *Form of Incremental Term Note* (marked at bottom left as “SD\1647454.10”);
- Exhibit B-1 to Credit Agreement, *Form of Funding Notice* (marked at bottom left as “SD\1647454.10”);
- Exhibit B-2 to Credit Agreement, *Form of Issuance/Amendment Notice* (marked at bottom left as “SD\1647454.10”);
- Exhibit B-3 to Credit Agreement, *Form of Conversion/Continuation Notice* (marked at bottom left as “SD\1647454.10”);
- Exhibit C-1 to Credit Agreement, *Form of Guaranty* (marked at bottom left as “SD\1647464.12” and at top right as “L&W Draft 06.12.2016”);
- Exhibit C-2 to Credit Agreement, *Form of Security Agreement among Jamul Indian Village Development Corporation, as the Borrower and a Grantor, and Each of the Other Grantors Party Hereto, as Grantors, and Citizens Bank, N.A., as Collateral Agent Dated as of [__], 2016* (marked at bottom left as “SD\1647551.15” and at top right as “SASMF Comments 06.13.2016”);
- Exhibit D to Credit Agreement, *Form of Solvency Certificate* (marked at bottom left as “SD\1647454.10”);
- Exhibit E to Credit Agreement, *Form of Compliance Certificate* (marked at bottom left as “SD\1648373.9” and at top right as “SASM&F Comments 06.06.2016”);
- Exhibit F-1 to Credit Agreement, *Form of Assignment and Acceptance* (marked at bottom left as “SD\1647458.16” and at top right as “L&W Comments 06.17.2016”);
- Exhibit F-2 to Credit Agreement, *Form of Affiliated Lender Assignment and Acceptance* (marked at bottom left as “SD\1647457.14” and at top right as “L&W Draft 06.17.2016”);
- Exhibit G-1 to Credit Agreement, *Form of Non-Bank Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)* (marked at bottom left as “SD\1647454.10”);
- Exhibit G-2 to Credit Agreement, *Form of Non-Bank Certificate (For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)* (marked at bottom left as “SD\1647454.10”);

- Exhibit G-3 to Credit Agreement, *Form of Non-Bank Certificate (For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)* (marked at bottom left as “SD\1647454.10”);
- Exhibit G-4 to Credit Agreement, *Form of Non-Bank Certificate (For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)* (marked at bottom left as “SD\1647454.10”);
- Exhibit H to Credit Agreement, *Form of Closing Certificate* (marked at bottom left as “SD\1647460.13” and at top right as “SASMF Comments 06.13.2016”);
- Exhibit I to Credit Agreement, *Insurance Requirements* (marked at bottom left as “SD\1648529.7” and at top right as “SASMF Comments June 7, 2016”);
- Exhibit J to Credit Agreement, *Form of Intercompany Subordinated Demand Promissory Note* (marked at bottom left as “SD\1647456.9” and at top right as “SASM&F Comments 06.06.2016”);
- Exhibit L to Credit Agreement, *Form of Administrative Questionnaire* (marked at bottom left as “SD\1647454.10”);
- Exhibit N to Credit Agreement, *Form of Joinder Agreement* (marked at bottom left as “SD\920471.2” and at top right as “L&W Comments 06.12.2016”);
- Exhibit O to Credit Agreement, *Dutch Auction Procedures* (marked at bottom left as “SD\1647462.7” and at top right as “SASM&F Comments 06.06.2016”);
- Exhibit Q to Credit Agreement, *§[] Subordinated Loan Agreement among Jamul Indian Village Development Corporation, as the Borrower, Jamul Indian Village of California, as the Tribe, the Lenders party hereto, as Lenders, and [], as Administrative Agent dated as of []* (marked at bottom left as “1312479.06B-NYCSR03A - MSW” and at top right as “SASMF Draft 7/2/16”);
- *Disbursement Agreement among Citizens Bank, N.A., as Disbursement Agent and Citizens Bank, N.A., as Administrative Agent and Citizens Bank, N.A., as Collateral Agent and Jamul Indian Village Development Corporation, as Borrower dated as of [], 2016* (marked at bottom left as “SD\1646498.22 1942499.13-NYCSR07A” and at top right as “SASM&F Comments 6/13/16”);
- Exhibit A to Disbursement Agreement, *Form of Disbursement Request* (marked at bottom left as “SD\888845.21 1932228.10-NYCSR07A” and at top right as “SASM&F Comments 6/14/16”);
- Exhibit B to Disbursement Agreement, *Form of Project Cost Schedule Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit C to Disbursement Agreement, *Form of Project Budget Amendment Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);

- Exhibit D to Disbursement Agreement, *Form of Construction Contract Amendment Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit E-1 to Disbursement Agreement, *Form of Borrower’s Opening Date Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit E-2 to Disbursement Agreement, *Form of Borrower’s Substantial Completion Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit E-3 to Disbursement Agreement, *Form of Borrower’s Final Completion Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit F to Disbursement Agreement, *Form of Consent to Collateral Assignment* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit G-1 to Disbursement Agreement, *Form of Scope Change Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit G-2 to Disbursement Agreement, *Form of Final Plans and Specifications Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit H to Disbursement Agreement, *Form of Additional Construction Contract Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit I-1 to Disbursement Agreement, *Form of Conditional Waiver and Release Upon Progress Payment* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit I-2 to Disbursement Agreement, *Form of Unconditional Waiver and Release Upon Progress Payment* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit I-3 to Disbursement Agreement, *Form of Conditional Waiver and Release Upon Final Payment* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit I-4 to Disbursement Agreement, *Form of Unconditional Waiver and Release Upon Final Payment* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit J to Disbursement Agreement, *List of Key Construction and Design Contracts*;
- Exhibit K to Disbursement Agreement, *Project Schedule*;
- Exhibit L to Disbursement Agreement, *Form of Contingency Reserve Account Disbursement Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);

- Exhibit M to Disbursement Agreement, *Form of Opening Deadline and Outside Completion Deadline Extension Certificate* (marked at bottom left as “SD\1646960.10 1932228.10-NYCSR07A”);
- Exhibit N to Disbursement Agreement, *Roadway Improvements*;
- *Intellectual Property Security Agreement* (marked at bottom left as “SD\1648753.7” and at top right as “L&W Draft 5/26/16”);
- *Deposit Account Control Agreement* (marked at bottom left as “SD\1648872.14” and at top right as “SASM&F Comments 06.06.2016”);
- *Collateral Account Control Agreement* (marked at bottom left as “SD\1649098.19” and at top right as “L&W Comments 06.12.2016”);
- *Subordination Agreement* (marked at bottom left as “SD\1647461.37 775127.18-LACSR02A-MSW” and at top right as “SASM&F Draft 07.27.2016”);
- *Consent and Agreement* (marked at bottom left as “SD\1648787.8” and at top right as “SASM&F Comments 06.06.2016”);
- *Consent and Agreement* (marked at bottom left as “SD\1648801.8” and at top right as “SASM&F Comments 06.06.2016”); and
- *Engagement Letter dated November 4, 2015* (marked at bottom left as “SD\1626513.17” and at top right as “Execution Copy”).

The 2015/2016 Transaction 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 located at <www.nigc.gov>. Applying the same analysis here, it is my opinion that, collectively, the 2015/2016 Transaction 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. Furthermore, the 2015/2016 Transaction Documents do not affect any modifications of the management contract between the Jamul Indian Village of California, the Jamul Indian Village Development Corporation, and San Diego Gaming Ventures, LLC (Management Contract).

It is my understanding that the 2015/2016 Transaction 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 2015/2016 Transaction Documents: (i) change in any material way prior to closing; (ii) are not executed; or (iii) are inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2015/2016 Transaction Documents and does not include or extend to any other agreements not submitted for review.

Lastly, it is important to note that there is mention in some of the 2015/2016 Transaction Documents that the management contract between the Jamul Indian Village

Kerry Patterson, Esq.

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August 9, 2016

Page 6 of 6

and San Diego Gaming Ventures, LLC, once approved by the NIGC Chairman, will become "Exhibit K" to the Revolving Credit and Term Loan Agreement. Obviously, this opinion will not extend to the approved management contract itself, because that document is, by its very nature, a management contract.

I anticipate that this letter will be posted on the NIGC's website. Prior to posting, the NIGC FOIA Officer will notify you and provide you with an opportunity to identify and request that information subject to the exemptions under the Freedom of Information Act be redacted or withheld. A list of the FOIA exemptions may be found at 5 U.S.C. § 552(b).

If you have any questions, please contact Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a large, stylized initial "M".

Michael Hoenig
General Counsel