



September 13, 2019

**Via email: <jtrattner@pci-nsn.gov>  
And First Class Mail**

Jeffrey B. Trattner, Esq.  
Assistant Attorney General  
Poarch Band of Creek Indians  
5811 Jack Springs Road  
Atmore, Alabama 36502

**Re: Review of the 2019 Deposit Account Control Agreement  
for the Poarch Band of Creek Indians**

Dear Mr. Trattner:

On May 24, 2019, the National Indian Gaming Commission, Office of General Counsel (“OGC”), issued a declination letter to the Poarch Band of Creek Indians (“Tribe”) and PCI Gaming Authority, an unincorporated, chartered instrumentality of the Tribe, on certain transaction documents (“the 2019 Credit Documents”). Pursuant to the 2019 Credit Agreement, the parties are required to enter into control agreements within 90 days after the closing date of the 2019 Credit Documents with respect to various deposit accounts that serve as collateral under the 2019 Credit Documents.

This letter responds to your August 27, 2019 request, on behalf of the Tribe, for OGC to review a certain transaction document and to provide an opinion as to whether or not this transaction document, individually or collectively with the 2019 Credit Documents, is 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 or not this transaction document violates IGRA’s requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission:

- *Deposit Account Control Agreement* (marked at top right as “(Account – With Activation)”) (hereinafter “2019 DACA”).

The 2019 DACA contains 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

Mr. Jeffrey B. Trattner

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located at <[www.nigc.gov](http://www.nigc.gov)>. Applying the same analysis here, it is my opinion that, individually or collectively with the other 2019 Credit Documents, the 2019 DACA is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding that the 2019 DACA is 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 2019 DACA changes in any material way prior to its execution or is inconsistent with assumptions made herein. Further, this opinion is limited to the aforementioned 2019 DACA 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. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any request to withhold will be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to <[FOIASubmitterReply@nigc.gov](mailto:FOIASubmitterReply@nigc.gov)> within thirty (30) calendar days of the date of this letter. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* 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 Armando Acosta, Senior Attorney, at (202) 632-7003.

Sincerely,



Michael Hoenig  
General Counsel

cc: Townsend Hyatt, Esq. (via email only <[thyatt@orrick.com](mailto:thyatt@orrick.com)>)