



March 16, 2012

Rhonda L. Morningstar Pope, Chairwoman
Buena Vista Rancheria of Me-Wuk Indians
P.O. Box 162283
Sacramento, CA 95816

Re: Amendments to development agreement and subordinated credit agreement

Dear Chairwoman Pope:

This letter responds to the Buena Vista Rancheria of Me-Wuk Indians' (Tribe) request for the National Indian Gaming Commission Office of General Counsel ("OGC") to review certain agreements (collectively "the agreements") between the Tribe and Buena Vista Development Company (Developer). Specifically, you have asked for our opinion regarding whether the following unexecuted documents are management contracts requiring the NIGC Chairwoman's review and approval under the Indian Gaming Regulatory Act:

First Amendment to Development Agreement (the "First Amendment");
Second Amendment to Development Agreement (the "Second Amendment"); and
Subordinated Credit Agreement (the "Credit Agreement").

You also requested an opinion regarding whether the above documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming operations. After review, it is my opinion that the documents listed above are not management contracts requiring the review and approval of the Chairwoman. Additionally, it is my opinion that the documents listed above do not violate IGRA's sole proprietary interest requirement.

By letter dated October 18, 2005 ("2005 Opinion"), the OGC opined that a development agreement (the Development Agreement) between the Tribe and Developer was not a management agreement under IGRA and did not grant the Developer an improper proprietary interest in the gaming operation. The First Amendment changes the terms of the Development Agreement by: (1) changing the manner in which interest on the interim tribal loan is calculated, (2) reducing the amount of principal under the interim tribal loan, and (3) extending the term of the development agreement from 7 years to a maximum of 8.5 years.

The change in interest rate calculation will decrease the amount of interest paid by the Tribe during the pre-opening period. Once the facility is open and until such time as there are more than 950 gaming machines in operation, interest will be calculated at a rate of prime plus 1%. After 950 machines are in operation, the interest rate will increase on a pro rata basis but will be capped at a rate equal to the yield of proposed senior notes. See Amendment § 3.1(d). It is my understanding that this change would not change the Tribe's financial obligations under the development agreement.

The Developer has agreed to reduce the principal balance of the interim tribal loan by certain amounts paid to WG-California ("WG") under licensing and consulting agreements with the Tribe.¹ The purpose of this change is to allow the Tribe and Developer to share in the costs of the services provided by WG. *Id.* at § 3.1(l). According to the parties, the extension of the Development Agreement's term is designed to mitigate the economic impact of reducing the principal balance of the interim tribal loan agreement. *Id.* at 1(b), definition of *Payment Period*.

The Second Amendment changes the terms of the Development Agreement by proscribing additional terms for the repayment of loans advanced by the Developer. The First and Second Amendments do not provide for any management functions on behalf of the Developer. Therefore, none of the changes initiated by the First and Second Amendments change the 2005 Opinion that the Development Agreement is not a management agreement requiring the approval of the Chairwoman. The First and Second Amendments do not provide for additional compensation to the Developer or change the structural relationship between the parties. Therefore, none of the changes resulting from the First and Second Amendments change the 2005 Opinion that under the Development Agreement the Tribe retains the sole proprietary interest in the gaming activity.

The Developer has agreed to release its security interest under the Amended Development Agreement and to subordinate its rights to repayment of the interim tribal loan and the development fee in favor of payments to senior notes. The purpose of the Credit Agreement is to define the Tribe's obligations in light of the senior notes and other financing agreements. The Credit Agreement specifically prohibits the Developer from managing under any circumstances. See Subordinated Credit Agreement § 9.06. Therefore, the Credit Agreement is not a management agreement requiring the approval of the Chairwoman. Further, the Credit Agreement does not violate IGRA's sole proprietary interest mandate.


Finally, I note that the agreements we reviewed were unexecuted. My opinion is limited to the agreement provisions as submitted. I anticipate that this letter will be the subject of Freedom of Information Act (FOIA) requests. Since we believe that some of the information contained herein may fall within FOIA Exemption 4, which applies to confidential or privileged financial or commercial information, the release of which could

¹ Whenever the Tribe makes a payment to WG the loan principle is reduced "by an amount equal the product of (i) the amount of such WGC Payment, multiplied by (i) the value of one minus the Phase II Expansion Ratio" See Amendment at § 3.1(l).

cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted agreements to the Department of Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Senior Attorney John Hay at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts". The signature is written in a cursive style with a large, stylized "L" and "R".

Lawrence S. Roberts
General Counsel

cc: Paula Hart, Director
Office of Indian Gaming
(via US Mail w/ incoming)