

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE**

FROM: Gordon J. MacDonald, Attorney General and
Jeff J. Rose, Commissioner of DRED

DATE: June 7, 2017

RE: Mount Sunapee Ski Area Lease

This memorandum describes recent events affecting the ownership of the entity holding the Mount Sunapee Ski Area Lease. The recent change in ownership transaction was structured in a manner to avoid triggering the assignment provision of the Lease.

A. Relevant Background Information

In June 1998, the State leased the Mount Sunapee Ski Area to Okemo Mountain Inc. (“Okemo”). The State and Okemo entered into a Lease and Operating Agreement (“Lease”). Okemo later became The Sunapee Difference (“TSD”).

In December 2008, the Lease was assigned from TSD to CLP Mount Sunapee, LLC (“CLP”), a subsidiary of CNL Lifestyles Properties. CLP chose TSD to continue as the Operator of Mount Sunapee and TSD continues today to be the Operator. The Lease provides: “The Operator may assign, or otherwise transfer any interest in this Agreement with the prior written approval of the State. Services required under this Agreement may be delegated or subcontracted by the Operator with the prior written approval of the State. Such approval shall not be unreasonably withheld.” Lease, at ¶ 22. The Department of Resources and Economic Development (“DRED”) Commissioner approved the assignment of the Lease from TSD to CLP.

In July 2016, the State amended the Lease and, among other things, established a new Lease term that runs until June 2028, with two 10 year options to extend until June 30, 2038, and June 30, 2048.

B. CNL’s Proposed Divestiture and Estoppel Agreement

In March 2015, CNL publicly announced that it would be divesting of its ski area businesses, including CLP, and confirmed this plan in January 2016. In September 2016, the State executed a Lessor Estoppel which included financing provisions for a possible acquisition of CLP and the Lease as the State had done many times in the past when financing was necessary for Mount Sunapee, including constructing new buildings, purchasing new major equipment

such as snow groomers and chair lifts, and transferring of the Lease. The Lessor Estoppel included a provision that stated:

WHEREAS, a third party not affiliated with CLP ("Purchaser") proposes to acquire 100% of the direct and/or indirect equity interests in CLP, and as a result thereof, Purchaser will indirectly acquire all of CLP's right, title and interest in and to the Lease Agreement (the "Acquisition"), and in connection therewith, CLP has requested that Lessor execute this Estoppel ...

C. Och-Ziff Identified As a Buyer

During September 2016, Attorney Anne Edwards received an email from the Operators' attorney, George Nostrand, suggesting that Och-Ziff ("Och-Ziff") might be the new owner of the Lease. Attorney Nostrand passed away suddenly on September 21, 2016, and the Attorney General's Office heard nothing further from CLP regarding the sale until March 2017.

In March, DRED started to receive contacts from the public raising concerns regarding Och-Ziff. On September 29, 2016, the U.S. Department of Justice announced that Och-Ziff Capital Management Group, LLC and a subsidiary had agreed to pay more than \$213 million in criminal penalties under the Foreign Corrupt Practices Act for a bribery scheme in several African countries. An additional \$199 million was paid to the Securities Exchange Commission in disgorgement. According to the U.S. Department of Justice, Och-Ziff agreed to implement rigorous internal controls and retain a compliance monitor for three years.

D. Och-Ziff Acquires CLP

In late April 2017, the State received a new address to send information to for the Lessee, which was CLP c/o Och-Ziff. That was essentially notification that Och-Ziff had acquired 100 percent of the equity interest in CLP, effective April 6, 2017.

As stated above, the Lease requires State approval of its transfer. However, that provision is extremely limited. There is no requirement in the Lease approving a change in ownership of the lessee.

The Lessor Estoppel Agreement, signed last September, essentially put the State on notice that CLP intended to transfer ownership of CLP and its interest in the Lease through an equity sale. As a result of the way the transaction was structured, CLP continues to exist as a legal entity in a manner to avoid triggering the assignment provision of the Lease. Through a 100% equity transfer, CLP was to be purchased by Ski Resort Sub A, LLC, which is an affiliate of Ski Resort Holdings, LLC which appears to have then transferred its rights under the purchase and sale agreement to its affiliate, the Och-Ziff Real Estate Fund. The Och-Ziff Real Estate Fund appears to be a holding of the Och-Ziff Capital Management Group, LLC. The purchase of CLP was for \$140 million in cash and \$240 million in financing.

E. Public Process

DRED will request Och-Ziff/CLP and TSD to hold a public information meeting to outline the nature of the new ownership and plans for the future at Mount Sunapee. There are no changes in the terms of the Lease and the Operator will continue to be TSD.