



February 12, 2021

***VIA EMAIL***

Rodney A. Butler, Chairman  
Mashantucket (Western) Pequot Tribe  
P.O. Box 3060  
Mashantucket, CT 06338-3060

**Re: Review of financing agreement between Ankura Trust Company,  
LLC & Mashantucket (Western) Pequot Tribe**

Dear Chairman Butler:

This letter responds to your request on behalf of Mashantucket (Western) Pequot Tribe for the National Indian Gaming Commission's Office of General Counsel to review financing documents between the Mashantucket (Western) Pequot Tribe and Ankura Trust Company, LLC. Specifically, you asked for an opinion whether the agreement is a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Financing Agreement"), all of which are unexecuted, but represented to be in substantially final form:

- Seventh Amendment to Loan Agreement – Marked as: Draft 1/20/21 in upper right-hand corner; SMRH: 4850-4123-0291.2 & #93859783v7 in lower left-hand corner.
- Loan Agreement – Marked as: Draft 1/20/21 in upper right-hand corner; #94031664v3 in lower left-hand corner.

The Financing Agreement contains terms similar to other agreements the Office of General Counsel has reviewed and analyzed, which are available on the NIGC website. Applying the same analysis here, it is my opinion that the Financing Agreement is not a management contract and does not require the approval of the Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding the Financing Agreement is represented to be in substantially final form with respect to terms affecting this opinion. If such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreement listed above. This opinion does not

Letter to Rodney A. Butler, Chairman

Re: Review of financing agreement between Ankura Trust Company, LLC & Mashantucket (Western) Pequot Tribe

February 12, 2021

Page 2 of 2

include or extend to any other agreements or documents not submitted for review. However, the prior opinions expressed in the declination letter issued by the Office of General Counsel to the Tribe in 2013 concerning those financing agreements remain in effect.

Please note it is my intent 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, highlighting the information you believe should be withheld.<sup>1</sup> If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),<sup>2</sup> please be advised that the information was voluntarily submitted and, as such, any withholding should be analyzed in accordance with the standard set forth in *Food Marketing Institute v. Argus Leader Media*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, this letter will be made public and objections will no longer be considered.<sup>5</sup> 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 NIGC Staff Attorney Mary Modrich-Alvarado at (202) 713-0206.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is written in a cursive style with a stylized flourish at the end.

Michael Hoenig  
General Counsel