



January 25, 2022

**VIA EMAIL**

Rodney A. Butler, Chairman  
Mashantucket (Western) Pequot Tribe  
2 Matt's Path  
P.O. Box 3060  
Mashantucket, CT 06338-3060

**Re: Review of the 2022 Loan Documents for the Mashantucket (Western) Pequot Tribe**

Dear Chairman Butler:

This letter responds to your December 21, 2021 request, on behalf of the Mashantucket (Western) Pequot Tribe, for the National Indian Gaming Commission, Office of General Counsel, to review certain financial loan documents and to provide an opinion as to whether these loan documents are management contracts 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 the loan documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submission ("the 2022 Loan Documents"):

- *Ninth Amendment to Loan Agreement* (marked at top right as "Submission Version," and at bottom left as "#95238541v8"); and
- *Loan Agreement Dated as of July 1, 2013, among Mashantucket (Western) Pequot Tribe, as the Borrower, The Related Subsidiaries From Time To Time Party Hereto, Ankura Trust Company, LLC, as Administrative Agent and The Other Lenders Party Hereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC, as Joint Lead Arrangers and Joint Book Managers* (marked at top right as "Conformed through the First Amendment, dated as of March 20, 2014 ... and the Ninth Amendment, dated as of [ ], 2022," and at bottom left as "#95302271v3").

The 2022 Loan Documents contain terms similar to other agreements that OGC has previously reviewed and analyzed. Applying the same analysis here, it is my opinion that the 2022 Loan 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.

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It is my understanding that the 2022 Loan 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 2022 Loan Documents change in any material manner prior to closing or are inconsistent with the assumptions made herein. Further, this opinion is limited to the aforementioned 2022 Loan Documents and does not include or extend to any other agreements not submitted for review. That said, the prior opinions expressed in the OGC declination letters issued to the Tribe on April 16, 2013, and on February 12, 2021, concerning those financing agreements, remain in effect.

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.<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 under 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, the 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 <<https://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: Jody Cummings, Esq.

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<sup>1</sup> See 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 139 S. Ct. 2356 (2019).

<sup>4</sup> See 25 C.F.R. § 517.7(d).

<sup>5</sup> *Id.*