

NATIONAL INDIAN GAMING COMMISSION

SETTLEMENT AGREEMENT

SA-23-02

This Settlement Agreement (Agreement) is entered into by and between the Turtle Mountain Band of Chippewa Indians (Tribe), located in Belcourt, North Dakota, and the Chairman of the National Indian Gaming Commission (NIGC or Commission) to resolve the issues related to Notice of Violation 23-01 (NOV-23-01)¹ and Letter of Concern dated May 4, 2022 (2022 LOC).²

RECITALS

1. Pursuant to the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the NIGC Chairman may issue a notice of violation to any person for violations of any provision of IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the NIGC Chairman.³
2. Pursuant to IGRA and NIGC regulations, the NIGC Chairman may issue civil fines not to exceed \$57,527.00 per violation against a tribe, management contractor, or individual operating Indian gaming for violations of IGRA, NIGC regulations, or any tribal ordinance or resolution approved by the NIGC Chairman.⁴ If the violation continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.⁵
3. Pursuant to NIGC regulations, prior to the Chairman taking an enforcement action, a letter of concern may be provided by NIGC staff detailing concerns regarding compliance with IGRA, NIGC regulations, or any tribal ordinance or resolution approved by the NIGC Chairman.⁶ If the letter of concern is resolved without enforcement action, NIGC staff may send an investigation completion letter.⁷
4. IGRA requires tribes to issue a separate license for each place, facility, or location on Indian lands at which gaming is conducted.⁸

¹ *Notice of Violation* from E. Sequoyah Simermeyer, NIGC Chairman to Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians regarding NOV-23-01 (February 16, 2023).

² *Letter of Concern* for Failure to Timely Submit Fiscal Year 2021 Audited or Reviewed Financial Statements for LaDot's Lounge, Knights of Columbus, and Turtle Mountain Bingo Palace (May 4, 2022).

³ 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3(a).

⁴ 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4.

⁵ 25 C.F.R. § 575.4(a)(2).

⁶ 25 C.F.R. § 573.2(a).

⁷ 25 C.F.R. § 573.2(c); 25 C.F.R. § 571.4.

⁸ 25 U.S.C. § 2710(b)(1).

5. NIGC regulations define “facility license” as the license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or III gaming.⁹
6. NIGC regulations require tribes to submit to the Chairman notice (Facility License Notice) that a facility license is under consideration for issuance at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur.¹⁰
7. NIGC regulations require tribes to submit to the Chairman a copy of each newly issued or renewed facility license within 30 days of issuance.¹¹
8. NIGC regulations require tribes to notify the Chairman within 30 days if a facility license expires.¹²
9. IGRA requires annual outside audits of each gaming operation and requires that a copy of the results of the annual audit be submitted to the NIGC.¹³
10. NIGC regulations require each tribe to submit a copy of the financial statements and audits, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit (together, AFS) within 120 days of the end of a gaming operation’s fiscal year.¹⁴
 - a. For gaming operations with gross gaming revenues of less than two million dollars (\$2,000,000.00) during the prior fiscal year, the annual AFS submission requirement is satisfied by the submission of reviewed financial statements.¹⁵
 - b. For gaming operations with gross gaming revenues of less than fifty thousand dollars (\$50,000.00) during the prior fiscal year, the annual AFS submission requirement is satisfied by the Tribe maintaining certain records, completing certain safeguards and submitting a certification within thirty (30) days of the gaming operation’s fiscal year end that the tribe reviewed the gaming operation’s financial information, and after such review, the tribe concludes that the gaming operation conducted the gaming in a manner that protected the integrity of the games offered and safeguarded the assets used in connection with the gaming operation, and the gaming operation expended net gaming revenues in a manner consistent with IGRA, NIGC regulations, the tribe’s gaming ordinance or resolution, and the tribe’s gaming regulations.¹⁶

⁹ 25 C.F.R. § 502.23.

¹⁰ 25 C.F.R. § 559.2(a).

¹¹ 25 C.F.R. § 559.3.

¹² 25 C.F.R. § 559.5.

¹³ See 25 U.S.C. § 2710(b)(2)(C) and Turtle Mountain Band of Chippewa Indians Gaming Code Chapter 25.0111(1).

¹⁴ 25 C.F.R. § 571.13(a).

¹⁵ 25 C.F.R. § 571.12(c).

¹⁶ 25 C.F.R. § 571.12(f).

- c. If the NIGC Chairman has reason to believe that the assets of the gaming operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chairman may, at his or her discretion, require any gaming operation subject to (a) or (b) above to submit additional information or comply with the annual AFS submission requirement.¹⁷
11. On February 16, 2023, the NIGC Chairman issued NOV-23-01 to the Tribe for failure to provide notice of intent to issue a facility license at least 120 days before allowing KEYA Radio Station (KEYA) to begin hosting class II and III gaming; failure to issue a facility license to KEYA where class II and III gaming was being conducted; failure to notify the NIGC within 30 days of the expiration of Chippewa Downs Racetrack (Chippewa Downs) facility license; failure to issue a facility license to Chippewa Downs where class III gaming was being conducted; and failure to submit the Chippewa Downs facility license to the NIGC within 30 days of issuance.¹⁸
12. The Tribe timely appealed NOV-23-01 on March 9, 2023.¹⁹ In its Notice of Appeal, the Tribe requested a sixty (60) day extension to file an appeal brief with the Commission and the Tribe's request was granted by the Commission on March 17, 2023.²⁰ The Tribe's initial brief is due on June 8, 2023.²¹
13. On May 4, 2022, NIGC Chief Compliance Officer issued a Letter of Concern to the Tribe for failure to timely submit fiscal year 2021 audited or reviewed financial statements for LaDot's Lounge, Knights of Columbus, and Turtle Mountain Bingo Palace.²² The 2022 LOC noted that the Tribe failed to timely submit AFS for fiscal year 2021 for LaDot's Lounge, Knights of Columbus, and Turtle Mountain Bingo Palace.²³ The 2022 LOC further noted untimely AFS submission for fiscal year 2022 would result in the Compliance Division recommending that the NIGC Chairman issue a Notice of Violation, which could result in a Civil Fine Assessment and/or Temporary Closure Order.²⁴
14. On May 5, 2022, the Tribe's Gaming Inspector submitted a corrective action plan for the timely submission of audited and reviewed financial statements for Fiscal Year 2022.²⁵

¹⁷ 25 C.F.R. § 571.12(c)(3); 25 C.F.R. § 571.12(f)(4).

¹⁸ *Notice of Violation* from E. Sequoyah Simermeyer, NIGC Chairman to Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians regarding NOV-23-01 (February 16, 2023).

¹⁹ *Notice of Appeal* from T. Michael Andrews, Attorney for Turtle Mountain Band of Chippewa Indians to National Indian Gaming Commission Office of General Counsel regarding NOV-23-01 (March 9, 2023).

²⁰ Commission's Order Denying Motion to Stay and Granting Motion to Extend Time for Filing a Brief with the Commission for 60 Days (March 17, 2023).

²¹ *Id.*

²² *Letter of Concern* for Failure to Timely Submit Fiscal Year 2021 Audited or Review Financial Statements for LaDot's Lounge, Knights of Columbus, and Turtle Mountain Bingo Palace (May 4, 2022).

²³ *Id.*

²⁴ *Id.*

²⁵ Letter from Marty M. Davis, Turtle Mountain Band of Chippewa Indians, Gaming Inspector to Thomas Cunningham, NIGC Chief Compliance Officer regarding Corrective Action Plan: Failure to Timely Submit Fiscal Year 2021 Audited and Reviewed Financial Statements for Byron Dorgan Youth Center, KEYA Radio Station, Charitable Organization – Facility licensed at LaDot's Lounge; Third Degree Knights of Columbus, Fourth Degree

The corrective action plan included, among other things, on site audit visit to be conducted no later than December 12, 2022 to obtain and review any outstanding documents necessary to complete the audited and reviewed financial statements for 2022 no later than January 15, 2023.²⁶

15. The Tribe's AFS submission for fiscal year 2022 was due January 28, 2023.
16. The Tribe submitted its AFS for fiscal year 2022 on February 28, 2023.²⁷
17. The NIGC Chairman and the Tribe desire to enter into a settlement agreement to resolve the issues related to NOV-23-01 and the Tribe's appeal of NOV-23-01.
18. The NIGC Chairman and the Tribe desire to enter into a settlement agreement to resolve the issues related to the 2022 LOC which contains similar violations related to untimeliness of submissions and to avoid the issuance of a Notice of Violation, thereby avoiding unnecessary expense or delay.

STIPULATIONS

19. The Tribe agrees that the NIGC has jurisdiction over these matters.
20. The Tribe admits that it was required to provide notice of intent to issue a facility license at least one hundred and twenty (120) days before allowing KEYA to begin hosting class II and III gaming.
21. The Tribe admits that it was required to issue a facility license to KEYA where class II and III gaming was being conducted.
22. The Tribe admits that it was required to notify the NIGC within thirty (30) days of the expiration of Chippewa Downs' facility license.
23. The Tribe admits that it was required to issue a facility license to Chippewa Downs where class III gaming was being conducted.
24. The Tribe admits that it was required to submit to the NIGC Chippewa Downs' facility license within thirty (30) days of issuance.

Knights of Columbus, and KC Building Committee, Charitable Organization – Facility licensed at Knights of Columbus Building; Turtle Mountain Pembina Powwow Committee, Charitable Organization – facility licensed at Turtle Mountain Bingo Palace; and Outdoor Recreation Development Association; Tribal Organization Parimutuel Betting – facility licensed at Chippewa Downs Racing Track (May 5, 2022).

²⁶ *Id.*

²⁷ Email from Amanda Martin, Administrative Specialist, Wipfli LLP to National Indian Gaming Commission, financials_aupfilings@nigc.gov regarding 2022 Turtle Mountain Band Gaming Operations Final Reviewed FS (February 28, 2023).

25. The Tribe admits that it was required to timely submit the Fiscal Year 2021 and 2022 AFS for all of its gaming operations.
26. The Tribe admits that it failed to provide notice of intent to issue a facility license at least one hundred and twenty (120) days before allowing KEYA to begin hosting class II and III gaming.
27. The Tribe admits that it failed to issue a facility license to KEYA prior to conducting class II and III gaming at the facility.
28. The Tribe admits that it failed to notify the NIGC within thirty (30) days of the expiration of Chippewa Downs' facility license.
29. The Tribe admits that it failed to issue a facility license to Chippewa Downs where class III gaming was being conducted.
30. The Tribe admits that it failed to submit Chippewa Downs' facility license to the NIGC within thirty (30) days of issuance.
31. The Tribe admits that it failed to timely submit Fiscal Year 2021 AFS for LaDot's Lounge, Knights of Columbus, and Turtle Mountain Bingo Palace.
32. The Tribe admits that it failed to timely submit Fiscal Year 2022 AFS for KEYA, Third Degree Knights of Columbus, Fourth Degree Knights of Columbus, and Knights of Columbus Building Committee, Byron Dorgan Youth Center, Turtle Mountain Pembina Powwow Committee, and Outdoor Recreation Development Association.
33. The Tribe is aware of its right to:
 - a. Receive a Notice of Violation for enforcement actions that may result in the imposition of a fine pursuant to 25 U.S.C. § 2713(a)(3);
 - b. Appeal NOV-23-01 to the full Commission pursuant to 25 C.F.R. part 585;
 - c. Obtain a hearing to contest the matter pursuant to 25 C.F.R. part 584; and
 - d. Appeal any final determination by the full Commission to a federal district court pursuant to 25 U.S.C. § 2714.

TERMS OF SETTLEMENT

34. This Agreement is entered into pursuant to 25 C.F.R. §585.8 and shall be effective upon the date it is signed by the last party to sign this Agreement.

35. For a period of three (3) years following the execution of this Agreement, the Tribe shall comply with all facility license notification and submission requirements for all gaming operations within its jurisdiction as required by 25 C.F.R. part 559.
36. For a period of three (3) years following the execution of this Agreement, the Tribe shall comply with all AFS submission requirements for all gaming operations as required by 25 C.F.R. §§ 571.12 and 571.13. Additionally, if any of the Tribe's gaming operations are subject to the requirements under 25 C.F.R. § 571.12(f)(1), the Tribe agrees to provide to the NIGC Rapid City Region Director its plan and procedures that will ensure compliance with the requirements under 25 C.F.R. § 571.12(f). Otherwise, the Tribe agrees to continue to submit reviewed financial statements for these operations in accordance with 25 C.F.R. §§ 571.12(c) and (e).
37. For a period of three (3) years following the execution of this Agreement, the Tribe agrees to engage an audit firm to audit or review the financial statements for KEYA, Third Degree Knights of Columbus, Fourth Degree Knights of Columbus, Knights of Columbus Building Committee, Byron Dorgan Youth Center, Turtle Mountain Pembina Powwow Committee, Outdoor Recreation Development Association, and other gaming operations within its jurisdiction no later than ninety (90) calendar days before each gaming operation's fiscal year end. The engagement letter will provide that the completed AFS are due to the Tribe no later than fifteen (15) calendar days before the AFS are due to the NIGC. The engagement letter will reference the specific date on which the Tribe's AFS are due to the NIGC pursuant to IGRA and NIGC regulations. For fiscal year 2023, the Tribe agrees to engage an audit firm in accordance with this paragraph no later than July 31, 2023.
38. For a period of three (3) years beginning with the execution of this Agreement, the Tribe agrees to provide the NIGC Rapid City Region Director with a copy of the executed engagement letter with the audit firm that will audit or review the financial statements. The copy of the executed engagement letter may be transmitted by email and is due to the NIGC Rapid City Region Director no later than sixty (60) calendar days before the fiscal year end for KEYA, Third Degree Knights of Columbus, Fourth Degree Knights of Columbus, Knights of Columbus Building Committee, Byron Dorgan Youth Center, Turtle Mountain Pembina Powwow Committee, Outdoor Recreation Development Association, and other gaming operations within its jurisdiction.
39. For a period of three (3) years beginning with the execution of this Agreement, the Tribe agrees to ensure that all of its current gaming commissioners and gaming commission staff, as well as any gaming commissioners and gaming commission staff who may be appointed or hired during the three (3) year period, complete NIGC trainings on facility licensing, small and charitable gaming operations, and gaming commission roles and responsibilities. These trainings can be completed by either the Tribe requesting site specific trainings or virtual trainings from the NIGC, or requesting trainings available in the NIGC's video library. The Tribe agrees to provide written certification, annually on or before the anniversary date of execution of this Agreement, to the Region Office listing the names of the commissioner(s) or staff, the training, and date completed.

40. The Tribe agrees to provide the NIGC Rapid City Region Director with written notice of when and how the Tribe successfully implemented each of the four (4) corrective actions described in letter dated May 18, 2023 from Tribe's counsel, Attorney Andrews, regarding Request for Settlement Conference in NOV-23-01. The written notice for each corrective action is due to the NIGC Rapid City Region Director within thirty (30) days of implementation of said corrective action. If the Tribe amends or uses an alternative corrective action, the Tribe agrees to provide the NIGC Rapid City Region Director with written notice of the change within thirty (30) days including a description of the amendment or alternative corrective action and a reason for the change. The Tribe agrees to complete implementation of all corrective actions within one (1) year beginning with the execution of this Agreement.
41. The Tribe agrees to pay a civil fine of one hundred thousand dollars (\$100,000.00). Of the one hundred thousand dollars (\$100,000.00) civil fine, the Tribe agrees to pay, and the Chairman agrees to accept, the amount of ten thousand dollars (\$10,000.00) payable to the U.S. Treasury and delivered to the NIGC at 1849 C. Street, N.W., Mail Stop #1621, Washington, D.C. 20240. The Tribe must pay the ten thousand dollars (\$10,000.00) within ten (10) days of execution of this Agreement.
42. Of the one hundred thousand dollars (\$100,000.00) civil fine, the NIGC Chairman agrees to suspend ninety thousand dollars (\$90,000.00) pending the Tribe's adherence to the terms of this Agreement. The NIGC Chairman agrees that if the Tribe fully complies with the terms of this Agreement, the ninety thousand dollars (\$90,000.00) will be waived. The Tribe agrees that if any term of this Agreement is not met, the ninety thousand dollars (\$90,000.00) will become due, and payment must be made within thirty (30) days of the Tribe receiving written notice from the Chairman. Civil fines are payable to the U.S. Treasury and must be delivered to the NIGC at 1849 C. Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
43. The Tribe agrees that, if it fails to comply with any of the terms of this Agreement, the civil fine of one hundred thousand dollars (\$100,000.00) will become fully due and payable on the date of noncompliance. In such circumstance, the NIGC will issue a written notice to the Tribe pursuant to NIGC debt collection regulations, 25 C.F.R. part 513. The Tribe further agrees that the NIGC and/or the U.S. Treasury may proceed against the Tribe to collect the debt of one hundred thousand dollars (\$100,000.00) civil fine (less amounts already paid), and may assess interest, penalties, and/or administrative costs from the date of noncompliance with the terms of this Agreement as provided in 25 C.F.R. § 513.5. In such circumstance, the Tribe waives any rights to an oral hearing under 25 C.F.R. § 513.6, but the NIGC shall provide the Tribe with a reasonable opportunity to submit written material to support a request to reconsider the determination that the Tribe is in breach of this Agreement or to challenge the method by which the NIGC calculated the debt.

44. The NIGC Chairman agrees upon execution of this Agreement to waive the right to impose any further civil fine against the Tribe related to the violations described in NOV-23-01 and the 2022 LOC.
45. The NIGC Chairman agrees upon the execution of this Agreement that the NIGC shall not institute further proceedings or actions or assess any additional sanctions for the violations related to 2022 LOC against the Tribe, unless the Tribe fails to comply with this Agreement.
46. The Tribe agrees upon execution of this Agreement to waive the right to any further proceedings before the Commission regarding NOV-23-01 and specific matters settled by this Agreement, including all rights to appeal as set forth in 25 C.F.R. parts 580-585 and judicial review pursuant to 25 U.S.C. § 2714.
47. The Tribe agrees upon execution of this Agreement to waive the right to receive a Notice of Violation related to the 2022 LOC and the right to any further proceedings before the Commission regarding the specific matters settled by this Agreement, including all rights to appeal as set forth in 25 C.F.R. parts 580-585 and judicial review pursuant to 25 U.S.C. § 2714.
48. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Tribe waives its right to any administrative review of this settlement, under 25 C.F.R. §§ 584 and 585, to seek reduction or waiver of a civil fine under 25 C.F.R. § 575.6 and the right to seek judicial review, under 25 U.S.C. § 2714. However, notwithstanding the foregoing, the only exception to this is the reconsideration as detailed in paragraph 43 above.
49. In exchange for the terms, conditions, and understandings set forth in this Agreement, the Tribe waives its right as specified in paragraph 48 above as well as any other right to seek judicial review or otherwise challenge or contest the NIGC Chairman's actions under this Agreement, including but not limited to the right to have the Chairman provide his written analysis of the factors to be considered in assessing a civil fine set forth under 25 C.F.R. § 575.4.
50. The Tribe agrees and acknowledges that this Agreement does not restrict the NIGC Chairman from issuing new notice of violations and other enforcement actions for new violations of IGRA, NIGC regulations, and/or the Tribe's gaming ordinance.
51. The Tribe stipulates that this Agreement shall constitute a final order of the Commission, final agency action, and a dismissal of the Tribe's appeal for the specific matters settled herein.

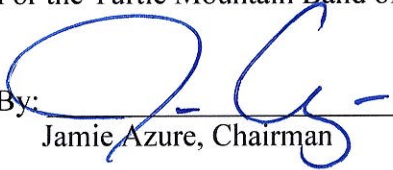
TERM OF THE AGREEMENT

52. This Agreement shall terminate upon the fulfillment of all terms listed under the Terms of Settlement.

ADDITIONAL COVENANTS

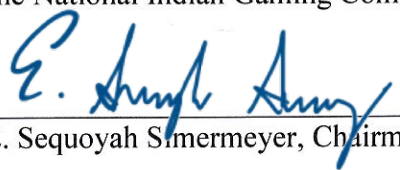
- 53. This Agreement constitutes the entire agreement between the NIGC Chairman and the Tribe relating to NOV-23-01 and the 2022 LOC. This Agreement supersedes all prior verbal or written agreements and understandings between the parties related to the subject matters. No warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modifications or waiver of any term of this Agreement, including the modification or waiver of a term, must be in writing and signed by the parties.
- 54. The NIGC Chairman and the Tribe expressly agree and acknowledge that time is of the essence in this Agreement. The recitals herein and set above shall be binding upon the parties, their agents, heirs, personal representatives, successors, and assigns.
- 55. The NIGC Chairman and the Tribe agree that, after the effective date, this Agreement shall be a public document and may be published or disclosed by either party.
- 56. This Agreement may be executed in one or more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.

For the Turtle Mountain Band of Chippewa Indians:

By:  _____
Jamie Azure, Chairman

Date: 6-1-2023

For the National Indian Gaming Commission:

By:  _____
E. Sequoyah Simermyer, Chairman

Date: 6/1/2023