



Little River Band of Ottawa Indians

2608 Government Center Drive
Manistee, MI 49660

Moved to
Open Session
08/21/19

Resolution # 19-0821-228

Granting Limited Waiver of Sovereign Immunity in connection with acquisition of a Specially Designated Merchant Retail License from the state of Michigan for the Little River Casino and Resort to be used in the Little River Trading Post.

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribe adopted amendments to the Constitution on July 11, 2016 which became effective upon approval by the Assistant Secretary-Indian Affairs on August 24, 2016; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(f) to create subordinate organizations to manage the enterprise of the Little River Band; and

WHEREAS, the Tribal Council is empowered by Article IV, Section 7(a) of the Constitution to establish laws through the enactment of ordinances and adoption of resolutions; and

WHEREAS, Article IV, Section 7(f), of the Constitution provides that Tribal Council has the power to create by ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band; and

WHEREAS, the Tribal Council adopted the Gaming Enterprise(s) Oversight Act of 2010, Ordinance #10-800-03, by Tribal Council Resolution on January 11, 2017; and

WHEREAS, Section 16.07 of the Gaming Enterprise(s) Oversight Act of 2010 states “the Oversight Task Force shall not have the power to enter into or approve any contracts for legal counsel or construction contracts, nor may the Board enter into any form of contract or agreement or initiate negotiations with any municipality, nation, Indian Tribe, state or body politic, without approval of the Tribal Council; and

WHEREAS, the Little River Casino Resort filed an application with the Michigan Liquor Control Commission to be licensed as a Specially Designated Distributor (SDD), under MCL 436.1541 of the Michigan Liquor Control Code of 1996; MCL 436.1101 et seq.; and

WHEREAS; the Tribal Council recognizes that 18 U.S.C. Section 1161 provides for shared concurrent jurisdiction over liquor transactions in Indian country among Indian tribes, states, and the federal government; and

WHEREAS, the Little River Casino Resort acknowledges that liquor transactions in Indian Country have impacts outside of Indian Country and, therefore, the State of Michigan shares an interest and governmental responsibility in effective liquor regulation at the Little River Trading Post; and

WHEREAS, the Michigan Liquor Control Commission requires, as a condition for the Little River Trading Post being granted and maintaining an SDD license, that the Little River Band of Ottawa Indians provide the Michigan Liquor Control Commission with a limited waiver of sovereign immunity in connection with its operation of the Little River Trading Post in order to address uncertainties related to the state’s ability to monitor and ensure Little River Trading Posts compliance with, and prosecute violations of, the Michigan Liquor Control Code of 1998 and the administrative rules promulgated thereunder; and

WHEREAS, the Tribal Council finds that the limited waiver of sovereign immunity in relations to the Little River Trading Post set forth in this resolution is necessary to secure a substantial benefit to the Little River Band of Ottawa Indians, and that granting the limited waiver of immunity is an acceptable accommodation to the Michigan Liquor Control Commission in consideration of the SDD license that may be granted to the Little River Casino Resort as operator of the Little River Trading Post; and

WHEREAS, the Tribal Council is authorized by resolution to waive sovereign immunity under Article XI; and

NOW, THEREFORE BE IT RESOLVED the Tribal Council approves the following grant of a limited waiver of Little River Band of Ottawa Indians tribal sovereign immunity, as to the Little River Trading Post, which shall be constructed accordingly to the express limitations and requirements stated hereunder:

(a) This limited waiver of immunity does not affect the Little River Casino Resort, Casino operations, including but not limited to the liquor sold or distributed at the Little River Casino Resort, whose address is 2700 Orchard Highway, Manistee, MI 49660.

(b) Little River Casino Resort as operator of the Little River Trading Post submits to the jurisdiction of the Michigan Liquor Control Commission in all matters that fall within its regulatory authority of the Little River Trading Post, and the Little River Band of Ottawa Indians expressly waives its sovereign immunity for such purposes. Little River Casino Resort as operator of the Little River Trading Post agrees to be bound by and adhere to the Michigan Liquor Control Code of 1998, as amended, and the rules promulgated thereunder in the same manner as any other licensee, but excluding any provisions of the Michigan Liquor Control Code of 1998 and the rules promulgated thereunder, including any other Michigan law referenced or incorporated therein, that would expand, supplement, or otherwise affect the scope and terms of Little River Band of Ottawa Indians waiver of its sovereign immunity as set forth herein.

(c) This limited waiver of sovereign immunity exclusively waives the Little River Casino Resort as operator of the Little River Trading Post's sovereign immunity (including the sovereign immunity of any of its employees, clerks, and agents). Otherwise, the waiver will not extend to any action against any other person or entity including Little River Band of Ottawa Indians or Little River Casino Resort, nor shall it in any way be deemed a waiver of any of the rights, privileges and immunities of any other person or entity including the Little River Band of Ottawa Indians or Little River Casino Resort.

(d) This limited waiver of sovereign immunity is granted solely to the Michigan Liquor Control Commission and any State or local law enforcement agency acting pursuant to the Liquor Control Code. This limited waiver shall not extend to or be exercised by any other entity or person, public or private.

(e) This limited waiver of sovereign immunity is limited to the application of the Michigan Liquor Control Code of 1998, as amended, and the rules promulgated thereunder and, specifically, to the Michigan Liquor Control Commission's exercise of state civil regulatory authority. This limited waiver of sovereign immunity excludes any criminal prosecutions that may be brought under state law.

(f) This limited waiver of sovereign immunity is limited to the following investigative and enforcement actions by the Michigan Liquor Control Commission or any State or local law enforcement agency acting pursuant to the Liquor Control Code concerning the SDD license and any permits the Michigan Liquor Control Commission grants to Little River Trading Post:

- (1) investigative actions, including the inspection of the premises designated in the SDD license, the inspection of records, wherever located, and interviewing employees of Little River Trading Post with responsibilities related to the operation of the Little River Trading Post;
- (2) administrative enforcement actions, including without limitation actions to levy fines, seize contraband alcoholic liquor, and to suspend or revoke licenses; and
- (3) judicial actions, which shall be limited to prospective injunctive relief and any enforcement and collection of civil fines levied by the Michigan Liquor Control Commission.

(g) Actions initiated by the Michigan Liquor Control Commission in accordance with this limited waiver of sovereign immunity may only be brought in the following forums:

- (1) the Michigan Liquor Control Commission,
- (2) the Little River Band of Ottawa Indians Gaming Commission,
- (3) the Little River Band of Ottawa Indians Tribal Court,
- (4) the Courts of the State of Michigan, and
- (5) the Federal Courts of Michigan.

(h) The Michigan Liquor Control Commission's recourse for the recovery of fines or, to the extent expressly authorized by this limited waiver of sovereign immunity, other enforcement actions that may involve funds or property, is limited to the assets of Little River Trading Post. Neither the Little River Band of Ottawa Indians nor Little River Casino Resort shall be liable for the payment or performance of any of the obligations of Little River Trading Post, and no recourse shall be had against any assets or revenues of the Little River Casino Resort in order to satisfy the obligations of the Little River Trading Post, including assets of the Little River Band of Ottawa Indians or Little River Casino Resort that were leased, loaned, or assigned to Little River Trading Post for its use, without transfer of title.

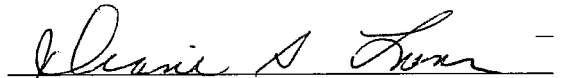
(i) This limited waiver of sovereign immunity takes effect upon the date that the SDD license, if any, granted to Little River Trading Post by the Michigan Liquor Control Commission become effective under Michigan law. This limited waiver of sovereign immunity remains in effect as long as Little River Trading Post holds any license under the Michigan Liquor Control Code.

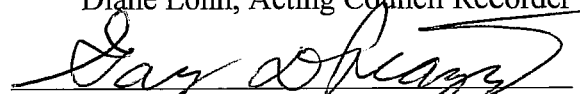
(j) If the limited waiver of sovereign immunity is rescinded or made otherwise ineffective, any license issued under the Liquor Control Code by the State of Michigan will immediately terminate.

(k) This is a limited waiver of sovereign immunity in accordance with the terms and conditions stated above. This Resolution otherwise does not waive, modify, or affect existing State, Federal, or local law.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on August 21, 2019, at the Little River Band's Government Center in Manistee, Michigan, with a quorum being present for such vote.


Diane Lonn, Acting Council Recorder


Gary DiPiazza, Acting Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court