



Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

Office of the Tribal Chairperson

7500 Odawa Circle, Harbor Springs, MI, 49740

Phone: 231-242-1401 Fax: 231-242-1411

ENERGY IMPROVEMENT PROGRAM REGULATIONS REG-WOS XXXX-XXX-XXXXXXXX-XXX

SECTION I: PURPOSE

The purpose of these Regulations is to provide guidance with a specified structure that delineates the Energy Improvement Program requirements for levying Special Assessments, Special Assessment Agreements, payments and defaults.

SECTION II: DEFINITIONS

- A. “Building”** means the structures and other improvements of every kind located, attached or erected on the Land, including, without limitation, (i) all Fixtures, (ii) all attachments, foundations, sidewalks, drives, parking areas, driveways, fences and walls and (iii) all materials located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements.
- B. “Department”** means the Little Traverse Bay Bands of Odawa Indians Department of Commerce.
- C. “Tribal Chairperson”** means the Tribal Chairperson of the Little Traverse Bay Bands of Odawa Indians.
- D. “Tribal Council”** means the Legislative body of the Little Traverse Bay Bands of Odawa Indians.
- E. “LTBB” or “Tribe”** means the Little Traverse Bay Bands of Odawa Indians.
- F. “Eligible property”** means commercial property wholly owned by the Tribe, majority owned by the Tribe or located on land held in trust by the Secretary of Interior.
- G. “Energy Improvement Program” or “EIP”** means LTBB’s Energy Improvement Program.

Approved by Tribal Council [Legislative – INSERT DATE]

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[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXXX-XXX

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- H. “Special Assessment Agreement” or “EIP Assessment”:** a document for each Energy Improvement Program project that contains the agreed upon terms of financing, such as, the length of term of the Assessment, payment requirements, interest rate, and a provision for pre-payment allowability, etc., which also carries the ability to put a lien on the property.
- I. “Third-party lender”** means the EIP lender also known as a “PACE” lender.
- J. “Owner”** means the EIP applicant(s) that owns the building(s) attached to the eligible property
- K. “Redemption Period”** means 120 days from the Notification of Default where the applicant may make all missed payments, interest and applicable late fee(s), and administrative costs; and continue making the payments as originally stated in the Special Assessment Agreement.
- L. “Special Assessment Agreement Summary”** means a document created by the Department that summarizes the main terms of the full Special Assessment Agreement including but not limited to: address of property & specific building(s) that is part of the program, name of financier, length of Assessment, amount of Assessment payments and due dates of such payments, interest rate, and determination of prepayment allowability.

SECTION III: LETTER OF LENDER CONSENT

- A. Prior to acceptance into the program, the letter of lender consent must be submitted to the Department. The letter must contain the following and be signed by the lender and the applicant:
1. Name and contact information of third-party financier
 2. Name and contact information of applicant(s)
 3. Address of property & specific building(s) that is part of the EIP
 4. The mortgage or lien holder consents to the eligible property participating in the EIP financing transaction through the LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS (“LTBB”) DEPARTMENT OF COMMERCE (“DOC”)
 5. The mortgage or lien holder will be a subordinate lienholder

Approved by Tribal Council [Legislative – INSERT DATE]

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[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXX-XXX

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6. The mortgage or lien holder consents to the levying of an assessment on the building
7. Acknowledgement that in the case of a default, the Tribe can exercise it's options to 1) assume payments as stated in the Special Assessment Agreement, 2) pay the Special Assessment in full, or 3) let the default occur.
8. Acknowledgement of the definition of "owner" and the order of distribution of funds
9. Acknowledgement that the EIP falls under the Little Traverse Bay Bands of Odawa Indians Law and is administered by the Department within LTBB, and that disputes will be handled in Tribal Court unless there is an agreement that determines otherwise.

SECTION IV: SPECIAL ASSESSMENT

- A. Acceptance into the Energy Improvement Program requires a Special Assessment Agreement for each project that contains the agreed upon terms of financing, such as, the length of term of the Assessment, Assessment payment requirements, interest rate, and a provision for pre-payment allowability, etc.
- B. Special Assessment Agreements
 1. The applicant and third-party financier will provide the Department a signed copy of the Special Assessment Agreement that will contain at a minimum the length of term of the Assessment, Assessment payment requirements, interest rate, and a provision for prepayment allowability.
 2. If the Tribe is the financier of the Special Assessment, then the Department will negotiate with the applicant the terms of the Special Assessment.
 3. The amount and payment due date for the Assessment payments will be dictated by the Special Assessment Agreement, but made no less than semi-annually whether or not LTBB or the third-party financiers are involved.
 4. All Assessment payments will be made at a minimum of semi-annually with the option of the Department or third-party financier to require monthly deposits into an escrow account and distributed semi-annually. It must be agreed upon within the Special Assessment Agreement whether or not the Department or the third-party financier requires monthly deposits into an escrow account. At any time, and at the discretion of the Department, the Department can require monthly escrow account payments.
- C. Levying of the Special Assessment Agreement
 1. If the Energy Improvement project is under \$750,000.00, then any Special Assessment Agreement will need to be approved by the Department and the

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[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXX-XXX

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Tribal Chairperson. The Department shall present to the Tribal Chairperson the full Special Assessment Agreement, a Special Assessment Agreement Summary, and an Executive Directive for the Tribal Chairperson's approval.

2. If the Energy Improvement project is \$750,000.00 or more, then any Special Assessment Agreement will need to be approved by the Department and the Tribal Chairperson, and then presented to Tribal Council in the form of a Tribal Resolution. The Department shall present to the Tribal Council the full Special Assessment Agreement, the Special Assessment Agreement Summary, the Executive Directive, and the Tribal Resolution for approval.

D. Special Assessment Amount Determination

1. The Special Assessment amounts financed by a third-party financier shall be set forth in the Special Assessment Agreement, along with payment terms.
2. If the Tribe is the financier, then the Department will determine the Special Assessment amounts based on the application process. Assessment payments will be due at a minimum of semi-annually, but could be more as determined by the Department and as stated within the agreed upon Special Assessment Agreement. Assessment payments terms will not exceed twenty-five (25) years and will be amortized over the term of the Special Assessment period.

E. Determination of Prepayments

1. Third-party financiers shall provide in the Special Assessment Agreement, whether or not prepayments are allowable.
2. If the Tribe is the financier, then prepayments may be allowed, provided that such provisions are stated within the Special Assessment Agreement.

SECTION V: CERTIFICATE OF ENERGY IMPROVEMENT LEVY

- A. Upon approval of the Resolution and/or Executive Directive, the Department will create a Certificate of Energy Improvement Levy stating that the Energy Improvement project has been levied against the applicant's building. The Certificate will be signed by the LTBB Department of Commerce Director.
- B. The Department shall file a copy of the Special Assessment Agreement, a copy of the Resolution and/or Executive Directive, and a copy of the Certificate of Energy Improvement Levy with the LTBB Enrollment Department. The Department may also file these documents with the County Register of Deeds where the property is located.

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[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXX-XXX

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SECTION VI: ASSESSMENT PAYMENTS

- A. The Department will collect or require payments to be made as stated in the Special Assessment Agreement.
 - 1. If there is a third-party financier, the applicant may pay the financier directly or the Department may remit the funds if paid directly to the Department. This must be predetermined in the Special Assessment Agreement.
 - 2. If the applicant pays the third-party financier directly, the Department may obtain or require bank records from the financier and the entity each time a payment is made.
 - 3. If the Tribe is the financier, the applicant will pay the Department directly via check and records will be maintained to show Assessment payment has been made. A separate account will be maintained within the LTBB Accounting System to document payment records.

- B. The Department may record Assessment payments and may maintain records showing the full amount financed, due date and amount due for each payment, date and amount of each payment received, and remaining balance.

SECTION VII: NOTIFICATION OF PAYMENTS DUE

If the Tribe is the financier, the Department may send written or email notification of upcoming Assessment payments, however it is up to the applicant to make payments by the timelines as established within the Special Assessment Agreement.

SECTION VIII: ESCROW ACCOUNT DELINQUENCY NOTICE

- A. If the Department requires and collects escrow account Assessment payments, the Department shall send a Notification of Delinquency to the applicant and the third-party financier if the applicant is more than ten (10) business days past the due date for an escrow account Assessment payment. The Department shall send such notification by mail or email.

- B. If the third-party financier requires and collects escrow account Assessment payments, the third-party financier shall send a Notification of Delinquency to the applicant and the Department if the applicant is more than ten (10) business days past the due date for an escrow account Assessment payment. The third-party financier shall send such notification by mail or email.

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[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXX-XXX

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- C. The applicant shall have five (5) business days of receipt of delinquency notice to acknowledge the late escrow account Assessment payment. The applicant shall also state what plans are in place to make the late escrow account payment.
- D. If the applicant is more than 60 days late for an escrow account Assessment payment, the Department will send Notification of Delinquency (mail or email notification) to Tribal Council that the applicant is late on the escrow account Assessment payments.

SECTION IX: ASSESSMENT PAYMENT DELINQUENCY NOTICE

- A. If the Tribe is the financier, the Department shall send a Notification of Delinquency to the applicant if the applicant is more than ten (10) business days past the due date for an Assessment payment. The Department shall send such notification by mail or email.
- B. If there is a third-party financier, the third-party financier shall send a Notification of Delinquency to the applicant and the Department if the applicant is more than ten (10) business days past the due date for an Assessment Payment. The third-party financier shall send such notification by mail or email.
- C. The applicant shall have five (5) business days of receipt of delinquency notice to acknowledge the late Assessment payment. The applicant shall also state what plans are in place to make the late Assessment payment. Acknowledgement of receipt and plans to make late payments shall be submitted to the Department and the third-party financier.

SECTION X: DEFAULT

- A. If the applicant is more than 90 days late for an Assessment Payment, it will be considered in default and the Department will send a Notification of Default (mail or email notification) to Tribal Council, the applicant, and the third-party financier.
- B. The Notification of Default will state the following:
 - 1. Name of applicant(s)
 - 2. Address of property & the specific building(s) that have been defaulted upon
 - 3. Full amount financed and remaining balance to be paid
 - 4. Due date and amount of missed payment
 - 5. The date in which the Department notified the applicant of being late
 - 6. The applicant's response and the date in which they responded
 - 7. The timeframe in which the next payment must be made

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REG-WOS XXXX-XXX-XXXXXXX-XXX

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8. The timeframe in which Tribal Council must respond to the notice, which is 120 days
 9. Notification of the 120-day Redemption Period for the applicant
 10. The next steps the Department must take if Tribal Council fails to respond
- C. If there is a default, Tribal Council has the option of taking over the Assessment payments, and escrow account payments if applicable, with any outstanding interest; paying off the total amount of the assessment with interest; or allowing the default to occur.
- D. If Tribal Council chooses to take over the Assessment payments, and escrow account payments if applicable, with any outstanding interest, or pay off the total amount of the Assessment with interest, Tribal Council shall approve a Tribal Resolution with appropriation of funds to be presented to the Department within the 120 days.
- E. If Tribal Council has elected not to act on the default after 120 days, the Department will issue the lien against the building and enhancements contained therein. The lien shall be filed with the Tribal Clerk, Enrollment Office and may also be filed with the County Register of Deeds where the property is located.
- F. Redemption Period. The applicant shall have a 120-day redemption period from the Notification of Default where they may make all missed payments, interest and applicable late fee(s), and administrative costs; and continue making the payments as originally stated in the Special Assessment Agreement.
1. The Department may charge a 10% redemption period fee to be collected in the event that a 10% late payment has not already been paid to the Department.
 2. The 10% redemption period fee is 10% of all missed payments.

SECTION XI: ADVERTISEMENT AND SALE OF PROPERTY

- A. After the expiration of the Redemption Period of 120 days, the Department shall advertise and offer to sell via a bid process the building(s) that has been defaulted upon.
- B. If a building is put up for sale due to a default under the Energy Improvement Program, the new owner may be required to remove the building from the land or enter into a ground lease with the Tribe. The options will be stated in the advertisement, and the specific processes will be provided upon request.

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REG-WOS XXXX-XXX-XXXXXXX-XXX

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- C. Advertisements and sales shall be posted to the Tribal website by the Department. The Department has discretion to advertise in other medias as appropriate.

- D. The advertisement may include the following, and is at the discretion of the Department:
 - 1. Address of the property & the building(s) that is for sale.
 - 2. The full sale amount.
 - i. The full sale amount will be a minimum of what is owed to the third-party financier, interest and associated costs of collection accrued, including default costs and penalties.
 - 3. A description of the building that is for sale.
 - 4. A statement in regard to the need for potential buyers to assume payments for the EIP and any underlying financier.
 - 5. Contact information for the Department.

- E. The building will be posted to the Tribal Website for bid for twenty-five (25) business days, ending at 5:00pm on the 25th business day. Bids will be accepted during this time via mail or email to the Department.

- F. Bids must contain buyer first and last name, contact phone number, contact email, and their bid amount. A person can submit a minimum and maximum bid. Placing a maximum bid increases the bid amount as necessary to compete with other bids, up to the authorized amount. The maximum bid will be taken at one bid increment (\$50) higher than the next lowest bid, within the authorized amount.

- G. Bids must also contain a statement that the bidder agrees to either continue making payments as written in the Special Assessment Agreement, or that they will pay off the Assessment in full within a specified timeframe.

- H. Additional items to be submitted as part of the bid:
 - 1. Signed Credit History Report Waiver

- I. A bidder must be 18 years or older and cannot be delinquent on any other loans in general.

- J. Bids cannot be deleted once they have been submitted.

- K. The highest bid will be posted on the Tribal Website at the end of each business week throughout the 25-business day bidding process.

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- L. The Department reserves the right to cancel the bidding process, or the sale, in which case refunds would be made.
- M. Winning bidders will be notified via email within 5 business days after bidding closes. Bidder will be responsible for the winning bid amount + 10% of the total project financing amount as a processing fee.
- N. Winning bidders have 5 business days after notification to submit full payment and any additional necessary paperwork to the Department. Failure to do so may result in the bid being rejected. Payments must be made by certified (cashier's) check only, made payable to LTBB Department of Commerce, or by wire transfer. A separate account will be maintained within the LTBB Accounting system to properly receive, track, and disperse revenue from these sales.
- O. The Department will perform a Credit History Report check on the winning bidder to ensure the following:
 - 1. There are no involuntary liens on the property, including, but not limited to, construction or mechanics liens, liens pending or judgments against the record owner, environmental proceedings, or eminent domain proceedings.
 - 2. There are no notices of default or other evidence of property-based debt delinquency have been recorded and not cured.
 - 3. The owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last two (2) years, and the property is not an asset in a current bankruptcy proceeding.
- P. The winning bidder will get a certificate of ownership to the building. The winning bidder must provide the names that will be on the certificate. This can be a person who is 18 years or older, LLCs, corporations, or other such legal entities.
- Q. The winning bidder may take possession as soon as all fees have been paid, all required paperwork has been received, and the certificate has been delivered.
- R. If the winning bidder does not complete the sale, they will be banned from participating in future bids.
- S. There are no refunds on the building(s) purchased. All buildings are sold as is/where is and without warranty.
- T. If no bids are received, the Department will repost the building for bid or it can be sold by private sale.

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REG-WOS XXXX-XXX-XXXXXXX-XXX

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- U. The assessment lien shall remain on the entire building, including building enhancements, until the entire assessment is paid in full.
- V. The assessment, together with all interest and penalties for default in payment and associated collection costs constitutes, from the date of the declared default and has priority over all other liens.
- W. Any revenue from the sale of the building shall be distributed in the following manner:
 1. Department expenses for securing deeds and taking proceedings for the default, sale or foreclosure.
 2. Private third-party that financed the new energy improvements.
 3. Holders of a loan balance secured by a mortgage or deed of trust with a first or second lien on eligible property.
 4. The EIP applicant(s) that owns the building(s) attached to the eligible property (building owner).

SECTION XII: TRANSFER OF PROPERTY OWNERSHIP

- A. If there will be a voluntary or involuntary transfer of the building, the Department must receive written or email notification and an amended Special Assessment Agreement must be created and approved by Tribal Council prior to the closing of the transfer. The new building owner must provide written agreement to the Special Assessment Agreement prior to the closing of the transfer.
- B. Prior to the approval by Tribal Council, the Department may require and complete the Credit History Report check for the new prospective owner to determine eligibility for the program, as well as charge the applicable transfer fee.

SECTION XIII: COMPLETION OF PROGRAM

Upon the applicant paying off the entire loan amount and satisfying all conditions of the program, the Department will remove the Levy, and create a Certificate of Completion to be filed with the LTBB Enrollment Department. The Department will also file the Certificate of Completion with the County Register of Deeds if the Certificate of Energy Improvement Levy was filed there. The applicant will receive a copy of the Certificate of Completion.

SECTION XIV: FEES

Approved by Tribal Council [Legislative – INSERT DATE]

Approved by Executive [TCO - INSERT DATE]

[INSERT TITLE] Regulations

REG-WOS XXXX-XXX-XXXXXXX-XXX

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- A. If the Tribe is the financier, the following fees will be paid directly to the Department:
1. A 1.5% fee for each escrow account or Assessment payment that the Department collects.
 2. A 10% fee for each late escrow account or Assessment payment.
 3. A fee in the amount of 1% of the total project finance amount for a voluntary transfer of property ownership, if a Credit History Report Check is performed. The applicant is also responsible for any additional fees incurred by LTBB on behalf of the applicant, such as fees including but not limited to: lien registry, title transfer, legal fees, etc.
 4. \$10 fee for additional certified copies of the Certificate of Levy or Certificate of Completion
- B. If there is a third-party financier, the following fees will be paid:
1. A 3% fee paid to the Department if the Department remits the Assessment payment to the private third-party financier. The 3% fee will be offset by the amount of any previous fees collected for that Assessment Payment's escrow account payments paid to the Department.
 2. A fee in the amount of 1% of the total project finance amount paid to the Department for a voluntary transfer of property ownership, if a Credit History Report check is performed. The applicant is also responsible for any additional fees incurred by LTBB on behalf of the applicant, such as fees including but not limited to: lien registry, title transfer, legal fees, etc.
 3. \$10 fee for additional certified copies of the Certificate of Levy or Certificate of Completion.

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