

Chapter 1. A Plan for the Use of the Little Traverse Bay Bands of Odawa Indians' Judgment Fund Distribution

7.101 PURPOSE

This Plan has been developed as a result of the Indian Claims commission dockets numbered 18-E, 58, 364 and the passage of Public Law 105-143, signed into law on December 15, 1997, and provides for the disbursal of judgment funds to the Little Traverse Bay Bands of Odawa Indians of Michigan. Pursuant to this law, the Little Traverse Bay Bands of Odawa Indians must submit a plan for the use of the funds to the Secretary of Interior. The Secretary shall review the plan and discuss any problems with the Tribe. After this review, the plan shall be submitted to Congress prior to the distribution of any of these funds to the Tribe.

The Plan was developed by the Tribe to use monies wisely for the Tribe's current and future well being, and to preserve its culture and history. This plan also meets all of the criteria for the Secretary and Congressional approval, including:

- A.** The needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds, have been fully ascertained and considered;
- B.** The interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds; and
- C.** Any provision, including enrollment provisions, of the constitution, bylaws, rules, and procedures of such tribe which may affect the distribution or other use of such funds are in full accord with the principles of fairness and equity.

(Source: 1998007, March 13, 1998, Section I)

7.102 SOVEREIGN IMMUNITY

Nothing in this plan shall provide, or be interpreted to provide, a waiver of the sovereign immunity from suit of the Little Traverse Bay Bands of Odawa Indians or any of its governmental officers and/or agents.

Nothing in this plan shall create a duty of financial obligation on the part of the Little Traverse

Bay Bands of Odawa Indians or any of its officers and/or agents to provide judgment fund distribution shares to an individual who alleges that he/she did not receive a per capita distribution share; provided, however, that the Little Traverse Bay Bands of Odawa Indians must show:

A. The individual's name does not appear on any of the rolls authorized under the Tribal enrollment requirements and time requirements of this plan; or

B. The individual's name: (A) appeared on one of the rolls authorized under Tribal enrollment requirements and time requirements of this plan; and, (B) a copy of the per capita share documentation is returned by the Tribal Administration as proof of distribution to the last known address of the individual entitled to a per capita share.

(Source: 1998007, March 13, 1998, Section II)

7.103 DESCRIPTION OF TRUST FUNDS

A. Land Claims Distribution Trust Fund. The share of the Little Traverse Bay Bands of Odawa Indians of Michigan (hereafter in this section referred to as the "Bands"), as determined pursuant to subsections (a)(4) and (b)(4) of section 104 of Public Law 105-143, shall be deposited by the Secretary in a trust fund to be established by the Tribal Council of the Bands to be known as the "Land Claims Distribution Trust Fund" (hereafter in this section referred to as the "Trust Fund").

The principal of the Trust Fund shall consist of:

1. the funds deposited into the Trust Fund by the Secretary pursuant to this subsection;
2. such annual earnings of the Trust Fund which shall be retained, and added to the principal;
3. such other funds as may be added to the Trust Fund by action of the Tribal Council of the Bands.

B. Management of the Trust Fund. The Tribal Council of the Little Traverse Bay Bands

of Odawa Indians will enact a statute creating a Trust Fund Board.

- 1.** The Trust Fund Board (hereafter in this section referred to as the “Board”) will be appointed by Tribal Council in accordance with the procedures established in the statute. The Board shall be the trustee of the Trust Fund and shall administer the Fund in accordance with this section. In carrying out this responsibility, the Board may retain or hire a professional trust manager and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the Trust Fund and charged against the earnings of the fiscal year in which the payment becomes due.
- 2.** The Trust Fund shall be maintained as a separate account, which shall be audited at least once during each fiscal year by an independent certified public accountant that shall prepare a report on the results of such audit. Such report shall be reasonably available for inspection by the members of the Bands.
- 3.** The Board will create Share Certificates. The face value of each Share Certificate shall be calculated by the following two steps:

 - a.** By dividing 80 % of the total dollar amount of the distribution from the United States on the date of such distribution by the number of Tribal members who are eligible to participate in the distribution under section 3(g) [WOTC 7.103(G)] of this Plan, and
 - b.** This amount will then be divided by two to determine the amount of each Share Certificate. The estimated value of each Share Certificate is \$2,000 but the exact amount will depend on the exact amount of the distribution and number of members eligible to participate in the distribution. Each eligible member will receive two Share Certificates, which added together will be worth approximately \$4,000. Each eligible member will have the option of immediately redeeming one or both of their Share Certificates, or leaving one or both of their Share Certificates in the Trust Fund. Share Certificates are redeemable at no more than face value unless they are left in the Trust Fund for ten years or until the Trust Fund reaches the value of the total amount of the original distribution from the United States, at which point each unredeemed Share Certificate will be worth \$500 more than its original face value.

C. Minor, Legal Incompetent and Incarcerated Person's Trust Fund.

1. Tribal Council shall establish a separate trust fund with segregated amounts equal to each minor, incarcerated member, or incompetent's share. The investment policy of this trust will preserve the trust corpus while obtaining the highest interest rates current money markets can safely provide. Maturity dates of investments cannot exceed the period of the trust and only the following types of investment shall be made: United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed \$1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets for the issuing bank exceed \$1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody's or A-2 by Standard and Poor's or is an obligation of a company with outstanding unsecured debt rated Aa by Standard and Poor's.
2. Minors who will have reached the age of 18 years within six months after the establishment of the Minor, Incarcerated Members and Incompetents Trust shall have their funds retained at interest in individual Indian money accounts and paid to them upon attaining their majority.
3. Upon reaching 18 years of age minor beneficiaries of the trust may make application to the Board to have their share plus interest transferred to them.
4. Release of funds regarding legal incompetents---Upon the petition of the legal guardian of the beneficiary, trust assets shall be distributed to the beneficiary as deemed appropriate by Tribal Court of the Little Traverse Bay Bands of Odawa Indians.
5. Incompetent qualified Tribal member---To be deemed incompetent under this Plan, a qualified tribal member must be declared incompetent by a court of competent jurisdiction prior to any disbursement of monies to any individuals. His/her guardian must inform the Board, with sufficient written evidence, that he/she is the incompetent's legal guardian along with the guardian and incompetent's current address(es) prior to the aforementioned disbursement. If the Board does not receive such notification, then the Board may release his/her share to the individual at his/her last known address and neither the Board nor Tribe will bear any further responsibility for the individual's funds.

6. Incarcerated qualified Tribal member---To place an incarcerated member's share in trust under section 3 (c)(1) [WOTC 7.103(C)(1)] the Board must have actual knowledge of the individual's incarceration. Incarcerated individuals should inform the Board in writing of their incarceration before any distribution of monies under this plan. If the Board does not have actual knowledge of an individual's incarceration, then the Board may release his/her share to the individual at his/her last known address and neither the Board nor Tribe will bear any further responsibility for the individual's funds, including subsequent recoupment or attachment of the individual's share by any governmental entity or creditor. The Board will disburse the individual's share from the trust account to the individual upon his/her release from incarceration. Prior to release from incarceration, the individual's share can only be disbursed by order of the Tribal Court. The Tribal Court may issue such order, in its discretion, upon petition by the incarcerated member through a guardian or Power of Attorney.

7. In the event that a minor, incompetent or incarcerated person dies while his/her money is in trust, that money shall be distributed to the member's heirs at law.

D. Land Claims Distribution Trust Fund Interest Distribution.

1. Except for the administration costs allowed under Section 3 (b)(1) [WOTC 7.103(B)(1)], interest earnings of the Trust Fund investment shall be utilized only as outlined in this subsection (D) of this plan.

2. The earnings of the Trust Fund shall be utilized to increase the principle until it reaches the amount of the original distribution to the tribe from the United States, plus an amount adequate to fund the redemption of all outstanding shares at that time, pursuant to this subsection. The Board shall have the authority to invest the principal of the Trust Fund on market risk principles that will ensure adequate increases in the principle, while at the same time protecting the principle.

E. New Trust Fund.

1. Upon the accumulation of the original principle pursuant to subsection (D)[WOTC 7.103(D)] , the Land Claims Distribution Trust Fund will become the Odawa Perpetuation Trust Fund, to be managed by the Trust Fund Board. Not more than 85% of the interest from the investment of the Trust Fund shall be distributed according to the

specific formula described herein, while no more than 5% of the interest each year shall be spent on administration of the Trust Fund, and at least 10% of the interest each year shall be re-invested in the Trust Fund.

2. Children born to members after the date of Secretarial approval of this plan who are themselves enrolled members in the Bands shall receive a one time per capita payment of an amount equal to the originally distributed two shares, upon reaching the age of eighteen.

3. Of the funds remaining, 40% of the interest each year shall be spent on programs designed to benefit Elders, 20% of the interest each year shall be spent on programs designed to benefit Youth, 20% of the interest each year shall be spent on programs for general tribal benefit, and 20% shall be spent on land acquisition or defense of treaty rights or both.

4. The Odawa Perpetuation Trust Fund shall be audited at least once during each fiscal year by an independent certified public accountant who shall prepare a report on the results of such audit. Such report shall be reasonably available for inspection by the members of the Bands.

F. No Secretarial Responsibilities for Trust Fund.

The Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the Land Claims Distribution Trust Fund or the Odawa Perpetuation Trust Fund.

G. General Provisions.

1. In the event that a tribal member eligible for a payment under this section shall die after preparation of the distribution roll, but prior to the distribution date, such payment shall be paid to the estate of such member.

2. To receive a per capita share, persons must be enrolled members of the Bands by midnight at the end of the date of approval of this plan by the Secretary. In addition, the estate of any deceased member who was living and enrolled on the date of enactment of the Michigan Indian Land Claims Settlement Act (Public Law 105-143), December 15,

1997, and the estate of any deceased member enrolled between December 15, 1997 and midnight at the end of the date of approval of this plan by the Secretary, shall also receive per capita shares.

(Source: 1998007, March 13, 1998, Section III, as amended by WOS 1998008, April 19, 1998; WOS 1998010, July 12, 1998; and WOS 1998011, September 13, 1998)