Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians
7500 Odawa Circle, Harbor Springs, Michigan 49740
Phone 231-242-1401 • Fax 231-242-1412

May 29, 2014

Re: Veto of Tribal Resolution 042914-01;
Appropriation of Funds for the 2015 Operating Budgets and Restatement of Funding Allocation for the 2015 Fiscal Year.

This memo explains the decision of the Executive Branch to veto the FY 2015 budget.

On April 29, 2014, the Tribal Council passed Resolution #042914-01 approving the Tribal Government budget for Fiscal Year 2015. This budget allocates $2,433,326 to the Legislative Branch; $1,216,000 to the Judicial Branch; $183,950 to the Office of the Tribal Prosecutor; and $27,992,830 to the Executive Branch of the LTBB Tribal Government.

1. <u>Lack of Transparency</u>

The primary reason for this veto is the failure of the budget process to comply with the requirements of WOS 2007-004, the LTBB Budget Act. The Act requires (in Tribal Code Section 6.303 F – "Tribal Citizen Input") that the Tribal Council must hold a public hearing on the budget. The Council attempted to comply with this requirement by designating a portion of its April 28, 2014 Appropriations and Finance Committee meeting as a "Public Hearing" on the 2015 budget. Only two Tribal Citizens were present for the public hearing.

The intent of Section F of the LTBB Budget Act is to provide an opportunity for LTBB Tribal Citizens to review the contents of the budget and to express their concerns prior to the passage of the budget. This opportunity for public input is required by the LTBB Constitution, which lists the following among the powers of the Tribal Council:

Article VII. Sec. D. 18 Appropriate funds, and enact a budget formulation statute that allows for public input from the Tribal membership;

In reality, the April 28 public hearing on the budget did not facilitate input from the Tribal membership. There were no printed copies of any budget worksheets for Tribal Citizens to review, and no advance copies of the proposed budget were provided to any branch except the Legislative Branch. At the hearing, the only access to budget information was through the Adobe connect system, which was not available to Tribal Citizens who attended in person. No copies were provided or made available to Tribal Citizens, in violation of the Budget Act. There was really no opportunity for Tribal Citizens to see what was in the budget.

There was also a significant lack of transparency in the manner in which cuts and changes to the budget were made by the Legislative Branch immediately prior to the April 28 public hearing. Speaking for the Executive Branch, we had absolutely no opportunity to review or compare the final budget to the version that we had submitted. There was no explanation of what had been cut or reallocated by the Tribal Council, and therefore no ability to object to any changes. This "take it or leave it" method of budget formulation is not consistent with the requirements of the Tribal Constitution and the LTBB Budget Act.

The budget development process, as it played out this spring, deprived Tribal Citizens of any meaningful opportunity to have input on the development of the budget, in violation of the Constitution. It also deprived other branches of the LTBB Tribal Government of the opportunity to give useful input on the budget and the opportunity to review cuts and changes made by the Tribal Council. The manner in which the public hearing on the budget was held did not comply with tribal law. The Tribal Council should recognize that the budget formulation process works best when information is available in advance, so that Tribal Citizens and other branches of the Tribal Government can come to the public hearing with adequate preparation, and when there is an opportunity to review and discuss cuts and modifications.

2. Addition of 35% Indirect Costs.

The Tribal Council and staff, including the Treasury Director, claim they "were not aware" of the requirement to add an additional 35% overhead for indirect costs to their original budget projections. However, email records demonstrate that as early as October 4, 2013 and again on October 31, 2013 and December 12, 2013, the CFO reminded Legislative Branch staff members of the requirement to include 35% for indirect costs. Unfortunately, Legislative Branch staff and the Treasury Director ignored this advice until the last minute, with the result that the bulk of the "cuts" made in the Tribal Council's budget were actually just a way to quickly shift enough funds around to cover the 35% indirect cost requirement. This shift had the corresponding effect of increasing the overall bottom line budget for the Legislative Branch.

Part of the justification for the establishment of the Office of the Treasury Director was to provide financial advice and budget assistance directly to the Tribal Council, to prevent the Council's being caught off-guard by issues such as the indirect cost requirement. It should be noted that the job description of the Tribal Council's Treasury Director requires:

- "Preparation of an indirect cost proposal annually."

Given that this is part of the job description for a key member of the Tribal Council's staff, it does not make sense that the staff of the Legislative Branch would later claim that they were not aware of the indirect cost requirement, or that the requirement had somehow been overlooked. It is the Treasury Director's responsibility to be thoroughly familiar with indirect cost accounting requirements as those requirements are specified and updated by the BIA or by other federal agencies.

3. Health Clinic Funding Shortfalls

The FY 2015 budget makes no provision for increases in the cost of health care for Tribal Citizens, which makes it very likely that additional requests for Supplemental Funding will eventually become necessary, as they were in fiscal year 2014. As we noted in the previous budget veto statement (dated November 14, 2013), the continued reliance on Supplemental Funding requests means that many Tribal Government departments (and the Tribal Council) can all too easily get into the habit of operating under the assumption that there is a bottomless well of funding available. This mode of thinking is dangerous, because it allows unregulated spending on items that do not align with the priorities of most Tribal Citizens and facilitates a general lack of stewardship and accountability among those elected to serve the Tribe.

4. Farm Funding

The Tribal Council has included just $67,722 in the FY 2015 budget for Ziibimijwang, Inc. (the Farm); however this appears to be just enough to cover the mortgage payment, with nothing allocated for salaries, wages, contractors, equipment, repairs, fuel, taxes, insurance, accident claims and other operating expenses. This woefully insufficient budget allocation means that unbudgeted Supplemental Funding will very likely be requested for the Farm during fiscal year 2015. The farm's budget allocation reflects a lack of planning similar to the lack of planning that went into the original purchase of the acreage.

The Executive Branch vetoed the statute to establish the farm as a non-profit corporation, but the veto was quickly overridden by the Tribal Council on May 18, 2014. The override means that the statute to establish Ziibimijwang, Inc. became effective on May 18, 2014, but the costs of the farm are now falling on the Executive Branch of the Tribal Government, (despite our repeated veto of this expensive project), because the non-profit tribal corporation does not actually exist unless and until a charter for the corporation is approved by the Tribal Council. (In the past, it has taken as long as two years for a charter to be issued.) The cost to the Executive Branch has already commenced, with no corresponding appropriation of funds, and with no ability to use Tribal Government departments and staff that are funded by indirect grant cost monies. The Tribal Facilities department, for example, has been asked to work at the farm (because it is not yet a true "stand-alone" entity), but this means that some of the department's regular work will be sacrificed, for the benefit of the farm, and this "borrowing" of Tribal Government labor will continue for an undetermined period of time.

It is difficult to see how the Farm, currently structured as an independent "charter of incorporation for non-profit purposes," can become anything other than a perpetual drain on the Tribal Government treasury. Not only was this over-priced property purchased subject to a loan, with the attendant debt service and interest expense, but the Council has also compounded the problem by establishing the Farm as a "stand-alone non-profit corporation" which actually means that the Farm will never be expected or required to earn a sufficient rate of return to repay what the Tribe will have to spend each year to maintain and operate the project.

5. CIP Cuts are Excessive and Short-sighted

The proposed FY 2015 budget reduces the Capital Improvement Projects (CIP) budget from $275,000 to $152,081. This is an irresponsible cut because the Tribal Government complex buildings that we are currently required to maintain are in excess of 12 years old, and become more expensive to maintain each passing year. Mechanical breakdowns and emergency repairs have become a fact of life in our buildings.

We are already facing a significant level of deferred maintenance resulting from previous decisions to postpone critical work on the buildings that LTBB owns and uses on a daily basis. Continuing to cut this capital budget can only mean that we are shortening the useful life of our buildings, which will prove to be much more expensive in the long run. We need to develop a master plan for future capital expenses and improvements, which will be very difficult to accomplish on a reduced budget.

In closing, we encourage the Tribal Council to reexamine the FY 2015 budget in light of the requirements of the LTBB Constitution and the Budget Act, and we urge the Tribal Council to conduct the budget process in an open and transparent manner that allows meaningful input from Tribal Citizens, and from the Executive Branch. We are sincere in our desire to work cooperatively with all branches of the LTBB Tribal Government to achieve the most effective allocation of our resources, and believe the best way to accomplish this is a much more transparent budget process.

Respectfully submitted,

Fred Kiogima
Tribal Chairman

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
7500 Odawa Circle
Harbor Springs, MI 49740

TRIBAL RESOLUTION # 042914-01

Appropriation of Funds for the 2015 Operating Budgets and Restatement of Funding Allocation for the 2015 Fiscal Year

WHEREAS The Waganakising Odawak Nation, known as the Little Traverse Bay Bands of Odawa Indians, and its citizens are vested with inherent sovereignty and right to self-governance;

WHEREAS the Little Traverse Bay Bands of Odawa Indians ("LTBB" or "Tribe) is a federally recognized Indian Tribe under Public Law 103-324, and is a party to numerous Treaties with the United States the most recent of which being the Treaty of Washington of March 28, 1836 (7 Stat. 491) and the Treaty of Detroit of 1855 (11 Stat. 621);

WHEREAS Waganakising Odawak Statute 2007-003 states that "By October 15 of each year the Tribal Council shall adopt the Tribal Government priority funding allocation which shall set forth the allocation of funds among the five divisions, (Executive, Legislative, Judicial, Prosecutor, and Election Board), for the fiscal period budgets that will begin 14 1/2 months from this date. Prior to approval of this allocation the Tribal Council may hold public hearings."

WHEREAS the Tribal Council set forth a priority allocation that requires adjustment in accordance with the allocation of the funds as set forth in the operating budgets presented by the Appropriations and Finance Committee;

WHEREAS in accordance with the Constitution, The Tribal Council shall enact an annual budget for the upcoming fiscal year. The budget shall identify all funding sources, appropriations of operating funds and Tribal enterprises. The Budget

shall be a Tribal document, dispersed to Tribal members at the annual meeting of the Tribal Membership, or made available by mail as requested by Tribal members;

WHEREAS pending the outcome of Case No. A-022-1212, Tribal Council, to conform with the lower Court decision, approves the FY 2015 budget in the form of a Resolution.

THEREFORE BE IT RESOLVED that priority allocation percentages for FY 2015 be allocated to the Tribal Government at 31.22%, Economic Development at 10.15%, General Welfare at 40.08%, Distributions at 18.04%, Donations at 0.51%, and Repayment of Debt/Tribal Priorities at 0%;

THEREFORE BE IT FURTHER RESOLVED that the Tribal Government percentage allocation from above is to be split among all Divisions, based on an anticipated amount of $12,750,000 as follows: Legislative 12.18%, Judicial 9.54%, Prosecutor 1.44 %, Election Board 1.23 %, Executive Branch 75.61%;

THEREFORE BE IT FURTHER RESOLVED that the 2015 operating budgets are adopted as presented on the approved budget summary pages one to six in the amount of $2,433,326 for the Legislative Branch; $1,216,000 for the Judicial branch; $156,504 for the Election Board; $183,950 for the Prosecutor; $27,992,830 for the Executive Branch. This total budget of $31,982,610 includes the revenues derived from the casino operation in accordance with the financing loan agreement that is subject to the above funding allocation percentages, and the revenues and expenditures anticipated to be received from grants, contracts and cost recovery programs.

FINALLY BE IT RESOLVED that monies can be transferred to another departmental budget provided it does not exceed fifteen percent (15%) of the total departmental budget from which it is being transferred and it does not create a new service or program, nor does it cause a material change in an existing service or program by altering the nature or scope of the service or program unless approved by a majority vote of the Tribal Council, in accordance with WOS 2008-004 Section V, Budget Modifications, Transfers and Rescissions.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Tribal Resolution was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians by Phone Poll of the Tribal Council held on April 29, 2014 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Bill A. Denemy	X			
John W. Keshick III	X			
Beatrice A. Law	X			
Michael J. Naganashe	X			
Aaron Otto				X
Winnay Wemigwase	X			
Marcella R. Reyes	X			
Julia A. Shananaquet	X			
Regina Gasco Bentley	X			

Date: 04-30-14 Regina Gasco Bentley
Legislative Leader Regina Gasco Bentley

Date: 04-30-14 Julie Shananaquet
Secretary Julia A. Shananaquet

Received by the Executive Office on 4-30-14 by

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 5-30-14

VETO

Fred Kiogima, Tribal Chairperson