Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians
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SEX OFFENDER REGISTRATIONAND NOTIFICATION POLICY
POL-ADM WOS 2012-008 012716-005

I. Background Information Regarding the Little Traverse Bay Bands of Odawa Indians

A. The Constitution of the Little Traverse Bay Bands of Odawa Indians (LTBB or Tribe) was adopted on February 1, 2005 as an act of inherent self-governance pursuant to the government-to-government relationship that was reaffirmed by the United States Congress on September 21, 1994 in Public Law 103-324. It is important for the implementation of SORNA to notice that the LTBB Constitution created a separation of powers and functions, one being the Judicial, Article IX(A), where the Constitution states, "The judicial power of the Little Traverse Bay Bands of Odawa Indians shall be vested in the Tribal Court system. The Tribal Court system shall be composed of a court of general jurisdiction (referred to as the "Tribal Court"), an appellate court (referred to as the "Tribal Appellate Court") and such lower courts as the Tribal Council may establish upon written recommendation from the Tribal Judiciary." **See Attachment A.**

B. The Tribe's reservation area encompasses approximately 700 square miles of land within Emmet and Charlevoix Counties in northern Lower Michigan. Listed below are the Tribal properties which include but are not limited to properties within the exterior boundaries of the reservation on property owned by the Tribe in fee or trust, regardless of location that are dispersed throughout this mapped area. There are also properties owned by the Tribe in fee or trust which are not located within the exterior reservation boundaries. **See Attachment B.**

- Government Administration Building for Executive and Legislative Branches
- Old Casino Site Building
- Odawa Casino
- Odawa Hotel
- Health Clinic
- Vacant Building in Petoskey
- Department of Commerce, Geographical Information Systems, and Planning, Building
- Law Enforcement, Tribal Court, Probation, and Human Services Building
- Wah-wahs-no-de-ke Housing Development

- Mtigwaakiis Housing Development
- Drier Road Parcel (Fish Hatchery)
- Nine Mile Point (Fishing Access)
- Taimi Hoag Nature Preserve
- Cross Village (Waterfront Park and Boat Launch)
- Beaver Island Dock
- Wilderness State Park (Cabins)
- Traditional Pow Wow Grounds
- Waawaahkesh Wild Area Open Space
- St. Martin's Island (Safe Harbor and Biological Research)
- Biindigen (Convenience Gas / Store)
- Vacant Lot (next to Biindigen)
- Mill Street Lot (House)
- Nicolet Drive (Future Development)
- Kishigo Wall Parcel (Monumental Bench)
- Former Kings Inn Motel (Future Development)
- Vacant Parcels North and South of Former Kings Inn (Future Development)
- Waterpark Mackinaw Parcel (Future Re-Development)
- Washington Street (House)
- Odawa Fishery, Inc.
- Multiple Harbor Springs Parcels (Indian Town)
- Petoskey DayCare Facility
- Gill Road Farm Parcel
- Petoskey Street (DuPlex)
- Small Mackinaw Parcel (Landlocked) (Future Development)

LTBB has 4,564 enrolled Tribal citizens as of 10/29/15, with approximately 721 Tribal citizens currently living within the reservation area. The LTBB Department of Commerce (DOC) reports that there are, 24 Tribal DBA's, and 14 businesses and 2 Chartered Incorporations incorporated under the Tribal Comprehensive Business Codes, WOS 2003-07. The types of businesses recorded by the LTBB DOC include Economic Development, Retailing, Cleaning, Designing, and Construction. The LTBB DOC supplies all businesses with the Michigan State Police Form RI-004 (09/2014) which includes Explanation of Duties to Register as A Sex Offender. Other businesses within the reservation area but not on lands owned by LTBB vary vastly with many retail merchants, some production facilities (factories), restaurants, health providers (including a hospital and emergency responders), Michigan State Police, Emmet County Sheriff's Department, Petoskey Department of Public Safety, Harbor Springs Police Department, motels, hotels, country clubs, golf courses, farming, industrial and construction services, and real estate, etc. The obligation of how these businesses will notify employees to register is strictly up to their own set standards of hiring and/or employee requirements, handbooks, policies, signed acknowledgments and

the like. The reservation area is a resort area by nature, being on the shoreline of Little Traverse Bay of Lake Michigan and in the proximity of three ski resorts and many other areas of vacationing interests. According to the latest census report of 2013 the population in Emmet County, where the majority of the reservation area exists, is 33,140 and that there is the potential of a 1.4% increase in population during seasonal months of April through July. In the Emmet and Charlevoix county reservation area there are eighteen (18) K-12 schools with a total of approximately 5,400 students.

C. LTBB Criminal Justice and Law Enforcement Infrastructure.

1. Pursuant to PL 93-638 LTBB has had a Law Enforcement Department established since 1997. In 2000, LTBB Law Enforcement executed deputation agreements with Emmet and Charlevoix County Sheriff's Offices. These agreements have been maintained since their inception. **See Attachments C and D**. In 2001, LTBB Law Enforcement was commissioned by the Bureau of Indian Affairs through a federal deputation with BIA District One for federal enforcement authority on the property owned by the Tribe in fee or trust, regardless of the location. **See Attachment E**. In 2009, LTBB Law Enforcement executed a Memorandum of Agreement with the Michigan Department of State Police and the Little Traverse Bay Bands of Odawa Indians (MSP MOA) to set forth the conditions and responsibilities of the parties concerning the use of the Michigan Sex Offender Registry by the Tribe in order to facilitate satisfying the Tribe's responsibilities under SORNA. **See Attachment F**.

2. The LTBB Law Enforcement has Officers on duty 24/7 that includes a manned Dispatch Office and approximately eleven (11) full-time officers who are State of Michigan certified and fully empowered through all three Deputation Agreements in the reservation area. The chain of command structure is set up the same as any other law enforcement agency. First, in command at the Executive Level is the Chief of Police. Second in command, First Line Supervisors which are the two (2) Sergeants, and third in command are eight (8) Patrol Officers. One officer on duty is assigned specifically to the SORNA / SORNS registry and enforcement, commonly referred to as the Registering Officer. The SORNS Point of Contact Law Enforcement Officer (Registering Officer) has the responsibility for following up on SORNS when registration or updates are conducted while he/she is off duty. All Officers are trained with specialty areas such as investigation, evidence collection, interview both with children and adults, and community policing.

3. The Tribal Judiciary is a separate branch of tribal government established by Article IX of the Tribal Constitution. **See Attachment A**. The judicial power of the Little Traverse Bay Bands of Odawa Indians is vested in a Tribal Court system composed of a court of general jurisdiction, called Tribal Court, and an appellate court, called Tribal Appellate Court. The chief judge and associate judge preside over all civil and criminal cases in Tribal Court arising under the tribal constitution, statutes, regulations, or judicial decisions of the Little Traverse Bay Bands of Odawa Indians. Tribal Court's jurisdiction is based upon the Tribe's inherent sovereignty, traditional custom, and federal law. The Tribal Appellate Court consists of a chief justice and two associate justices that hear appeals from Tribal Court. All Tribal Appellate Court decisions are final and cannot be appealed. Through this structure, the Court's vision is to secure the full enjoyment of community and personal rights guaranteed by tribal law, federal law, and the tribal constitution through a fair, just, and impartial judiciary system.

   The mission of the Tribal Court is to implement the Little Traverse Bay Bands of Odawa Indians judicial system, consistent with self-determination and the sovereign powers of the Tribe, by building on the community values of respect, culture and spirituality, that allows for unity, fairness and due process in resolving issues, conflicts and disputes within the Little Traverse Bay Bands of Odawa Indians' jurisdiction.

4. Probation, which is granted by a Judge, is a sentence that allows the offender to live in the tribal community under the supervision of the Probation Officer/Community Justice Coordinator. **See Attachment G** for Waganakising Odawak Tribal Code at WOTC 9.106 A.3; 9.106 D. This decision is made after careful study of the offender's background, behavior, and potential for success. It is based on the philosophy that the rehabilitation of some offenders might be hampered by incarceration and will be supported and encouraged by supervised freedom.

   Probation is a deemed a desirable disposition in appropriate cases because it maximizes the liberty of the offender while vindicating the authority of the law and protecting the tribal community from further violations. Probation can positively advance the rehabilitation of the offender by continuing normal community contacts such as employment, education, counseling, etc. It can minimize the impact of conviction upon innocent dependents of the offender. Probation voids the negative effects of incarceration which can severely complicate the offender's reintegration into the LTBB Tribal community. Probation/Community Justice Officers have a dual responsibility of protecting the community and promoting the

rehabilitation of offenders.

D. Notice and registration provisions are provided in the LTBB SORNS. **See Attachment H**. The forms utilized will be State of Michigan forms, the National Sex Offender Targeting Center (NSOTC) of the U.S. Marshals Service form for International Travel, and the LTBB Checklist as those attached in the LTBB Law Enforcement Sex Offender Registration Procedures Manual.

E. LTBB does not have our own Tribal Jail however LTBB negotiates with other municipalities, i.e., the Charlevoix County Jail to house our inmates. Therefore, we know through sentencing and by notification from the Tribal Court, the Tribal Prosecutor and/or the Tribal Probation Officer about the release of any incarcerated individual and whether they have already been registered or need to be processed for sex offender registration.

II. Information Regarding LTBB's Registration Process

A. The LTBB Law Enforcement has adopted our Sex Offender Registration Procedures Manual ("Manual") that provides Tribal Law Enforcement with specific guidelines for the registration process and the use of comprehensive forms used by the Michigan State Police through the Michigan Sex Offender Registry (Offender Watch). The Manual clearly specifies to whom the LTBB Sex Offender Registration applies and how offenders are processed. **See Attached I**.

B. LTBB registers and re-registers offenders by evaluating individuals who are set for arraignment in Tribal Court and by reviewing the jail roster for those already incarcerated. The recapturing, re-registering and registration of individuals who are not presently registered or whose registration requirements previously ended will be conducted by the Registering Officer by ensuring that all necessary information is obtained and entered into Offender Watch which updates NCIC and that the Michigan State Police (MSP) is also notified through Offender Watch.

C. In Section I(C)(1) of this document LTBB has declared that in 2009 the LTBB Law Enforcement executed a Memorandum of Agreement with the Michigan Department of State Police and the Little Traverse Bay Bands of Odawa Indians (MSP MOA). The purpose of the agreement concerns the use of the Michigan State Police's Sex Offender Registry (Offender Watch). In Section 5(a-b) The Michigan State Police will maintain the Sex Offender Registry including enhancements or upgrades as deemed necessary and in conjunction with the Sex Offender Registry a system of e-mail notification to third parties requesting offender data; a website accessible by the public and containing offender data; and a website containing or linking to pertinent safety, education, and corrections information. The website containing offender data shall include appropriate

permissible use and harassment warnings. **See Attachment F.**

III. The SORNA Implementation Checklist and Relevant Implementation Package Attachments.

A. The LTBB SORNA Implementation Checklist has been completed and included in this package. See Table of Contents. If there are questions regarding the LTBB SORNA Implementation Checklist they can be submitted via email to any person listed on the LTBB Point of Contact Information submitted to the SMART Office. **See Attachment J.**

B. The LTBB Tribal Council passed the Sex Offense Statute, WOS 2009-009 which was deemed enacted on April 13, 2009. The Statute was codified under Title IX. Criminal Laws, Chapter 2, in the Little Traverse Bay Bands of Odawa Indians Tribal Code of Law, section 9.201 et al.

This Sex Offense Statute (SOS) is broken down into the following sections: Short Title, Purpose, Definitions, Jurisdiction, Juvenile Transfer to Adult Division of Tribal Court, Victim's Past Behavior, Defenses to Prosecution, Levels of Risk to the Community, Limitation on Filing Complaints, Offenses, Repeated Offenders, and Multiple Offenses.

The Offenses Section of the SOS has the following offenses: Rape, Rape of a Child, Child Molestation, Sexual Misconduct with a Child, Indecent Exposure, Indecent Exposure to a Child, Public Sexual Indecency, Public Sexual Indecency to a Child, Prostitution, Child Prostitution, Sexual Exposure of a Child, Sexual Abuse of a Child, Visual Representation of a Sexual Act involving a Child, and Incest. Each of the Offenses is given either a Tier I or Tier III status. Offenses that are Tier I carry a penalty of less than one year and a fine of less than $5,000.00. Offenses that are Tier III carry a penalty of one year and a fine of $5,000.00.

LTBB has not adopted the provisions and requirements of the "Tribal Law and Order Act of 2010", hence the Tribe is only able to sentence a defendant up to one year with a maximum fine of $5,000.00. Therefore the Sex Offense Statute only reflects either Tier I which is less than one year or Tier III with the maximum penalty. The Tribal Court can determine sentences for Tier I convictions as to whether they would be a lesser risk or high risk on a case by case basis.

The Little Traverse Bay Bands of Odawa Indians has also enacted a Sex Offender Registration and Notification Statute ("SORNS"), WOS 2012-008, dated August 14, 2012. This Statute varies slightly from the Model Code that was developed by the SMART Office. One area of difference is that Little Traverse Bay Bands of Odawa Indians does not have a reservation exterior boundary acknowledged by the Secretary of Interior, so for the purposes of exercising its jurisdiction over

Indians for criminal, and both Indian and Non-Indian for civil, jurisdiction is limited. Therefore the Tribe is only exercising exclusive jurisdiction over parcels that are in trust with the Secretary of Interior. In areas within the "reservation" in accordance with the Treaty of 1855 that are not in trust, the Tribe is exercising concurrent jurisdiction with the State of Michigan. This distinction is reflected in Section IV., Notification and Registration Requirements, of the Statute. **See Attachment H.**

The other slight difference between the SMART Office Model Code and LTBB SORNS is the exercising of civil jurisdiction vs. criminal jurisdiction. In order for the Tribe to enforce exclusive jurisdiction over Non-Indians on Trust Land, the Tribe would need to enforce the failure to register as a civil offense. This allows the Tribal Court to schedule a show cause hearing for failure to register and if the person fails to register or appear before the Tribal Court, the Court can issue an arrest warrant for failure to appear and hold the individual in contempt of court and assess fines and costs as necessary.

C. The following is a list of LTBB Tribal criminal law that is relevant to the LTBB SORNA Implementation Program.

1. WOS 2009-009, Sex Offense Statute, **See Attachment K.**

2. WOS 2012-008, Sex Offender Registration and Notification Statute, **See Attachment H.**

3. WOS 2010-004 Contempt of Court Statute, **See Attachment L.**

D. LTBB Law Enforcement Sex Offender Registration Procedures Manual ("Manual"). See **Attachment I**.

E. Forms to be utilized.

1. MSP Form RI-004 (09/2014) Michigan Sex Offender Registration form which includes the Explanation of Duties as a Sex Offender. See pages 12-15 of "Manual".

2. LTBB Registration Checklist. See pages 16-17 of the "Manual".

3. MSP Form RI-004V (09/2014) Sex Offender Verification/Update Form for reporting purposes. See pages 19-20 of the "Manual".

4. United States Marshals Service NSOTC (National Sex Offender Targeting Center Form V1.0 (Feb. 2012) Notification of International Travel of Sex Offender. See page 23 of the "Manual".

5. Absconsion Notification Letter. See page 25 of the "Manual".

6. Notice of Updated Information Letter. See page 27 of the "Manual".

7. MSP Form RI-019 (06/2010) Request for Certified Records. See page 29 of the "Manual".

F. MOA, MOU, and Information Collection.

1. LTBB and Emmet County Sheriff's Deputation Agreement. **See Attachment C.**

2. LTBB and Charlevoix County Sheriff's Deputation Agreement. **See Attachment D.**

3. LTBB BIA District One - Federal Deputation. **See Attachment E.**

4. Memorandum of Agreement with the Michigan Department of State Police and the Little Traverse Bay Bands of Odawa Indians (MSP MOA). **See Attachment F.**

5. Information Collection and Submission. Relevant to the above mentioned agreements below is a description of how certain information is collected and submitted.

   a. DNA. During the offender registration verification process LTBB Law Enforcement Officers or authorized LTBB Law Enforcement personnel whose assigned duties relate to a sex offender's registration shall include collecting the offender's DNA, if the collection has not already been done, by using the Michigan State Police (MSP) Combined DNA Index System (CODIS) Unit provided kits. Law Enforcement personnel shall complete DNA collection and return the collected DNA to the MSP CODIS Unit via first class mail.

   b. NCIC/MSOR. According to the LTBB MSP MOA for the sole purpose of implementing the requirements of SORNA the Michigan State Police is charged with maintaining the Michigan Sex Offender Registry that includes enhancements, upgrades, and email notification to third parties. LTBB utilizes the Michigan Sex Offender Registry (Offender Watch) by entering all initial registration information including updates. When Offender Watch entries are completed the MSP is immediately updated and the

NCIC is also updated through the Offender Watch Registry.

c. Finger and Palm Prints. LTBB Law Enforcement Officers or authorized LTBB Law Enforcement personnel shall collect automated finger and palm prints by utilizing the Tribes Live Scan Automated Fingerprint Identification System (AFIS) for the purpose of sending an electronic version using Crossmatch Software as a part of data exchange to the MSP for the Sex Offender Registry. The AFIS also allows the LTBB Law Enforcement to conduct searches for individuals who have already been finger and/or palm printed for a previous crime.

d. The Procedures for enforcement are clearly laid out in the LTBB Law Enforcement Sex Offender Registration Procedures Manual and the Responsibilities, Rights, and Limitations are spelled out in section 4 and 5 of the MSP MOA and in our LTBB SORNS.

G. Other than the MSP MOA, **See Attachment F**; LTBB has no other executed agreements with United States Marshall Service (USMS), Federal Bureau of Investigation (FBI), International Police Organization (INTERPOL), or the Bureau of Prisons.

H. The Tribal Community Notification. See section III(F)(5)(b) of this document. Since the Michigan State Police is charged with maintaining the Michigan Sex Offender Registry (Offender Watch) that includes enhancements and upgrades, email notifications to third parties the minimum standards for SORNA are met. However, the LTBB SORNA Implementation Team has discussed the importance of the safety and well-being of our Tribal Community so we will also use the following methods for our own notification process:

a. Post a notice to our LTBB website homepage notifying the community that LTBB has implemented Sex Offender Registration according to SORNA and the LTBB Sex Offender Registration and Notification Statute and that any questions pertaining to the registration process should be directed to the LTBB Law Enforcement.

b. Post a link on the LTBB website to the Michigan State Police Sex Offender Public Registry website. The link includes an informational page on Sex Offender Registration and Reporting.

c. Utilize our Tribal Government internal email system to notify our staff about the public website.

d. Develop Sex Offender Registry general interest information posters to distribute to all LTBB Governmental Offices, LTBB Education Facilities, our Health Clinic, our Community Building, Housing and all ancillary businesses so that the public is aware of SORNA and LTBB SORNS. The poster will contain all pertinent contact information for public knowledge to access our Law Enforcement and the LTBB website that contains pertinent Sex Offender links.

e. The LTBB Communication Department publishes a monthly newsletter that is sent via first class mail to all head of household Tribal citizens. LTBB will place a notification about the LTBB SORNS and the federal SORNA in the monthly newsletter with the pertinent contact information for the public to include website addresses.

I. At this point there are no consortiums that LTBB is entering into with other tribes.

J. The Little Traverse Bay Bands of Odawa Indians has established a Sex Offender Registration and Notification Implementation and Compliance Team ("SORNS Team") that consists of our Legislative Attorney, Law Enforcement Registry Officer, Chief of Law Enforcement, the Tribal Court Administrator and Judges, the Tribal Prosecutor, the Probation Officer, the Tribal Administrator, our Grant Writer, and the LTBB SORNA Point of Contact Person. By having the Tribal Administrator on the Team it opens the doors to all the prospective departments that may need to participate to maintain compliance and enhance the implementation of SORNA. Other perspective departments may include our Housing, Communications, MIS, Education, Cultural Preservation, Human Resources, Accounting, and Elders Departments, etc.

The SORNS Team meets when there is a need due to new requirements of the federal or state SORNA or any changes integrated in the LTBB SORNS or any other supporting laws and forms, procedures or rules. At a minimum, the SORNS Team or portion of the Team will have a meeting approximately every 6 months to review the standards for compliance issues.

CERTIFICATION

As Tribal Chair this certifies that I approve this Sex Offenders Registration and Notification Policy.

Date: 2-4-16 Regina Gasco Bentley

Tribal Chair, Regina Gasco Bentley

Approved by Tribal Council 020416
Approved by the Executive 020416
POL-ADM WOS 2012-008 012716-005
Sex Offender Registration and Notification Implementation Policy