



Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

Fred Kiogima, Tribal Chairman

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Phone 231-242-1401 • Fax 231-242-1411

May 6, 2014

Re: VETO of Ziibimijwang Incorporated

The following is an explanation of the Executive's decision to veto WOS #2014 – Ziibimijwang Incorporated, the Tribal Council statute to establish Ziibimijwang, Inc. (otherwise known as "the farm") as an incorporated, non-profit chartered entity.

The original purchase of the 312-acre farm was initiated by Tribal Council through the Ad-Hoc Work Group, over a 2 ½ year period without any business plan, at a price of \$749,000. Rather than use retained or prior-year funds, the Tribal Council borrowed the entire \$749,000 at an interest rate of 6% for a term of 5 years, with a balloon payment required at the end of the 5 years.

The annual payment on this loan is currently just about \$70,000. Assuming the loan runs for the full 5 years, the Tribe will have paid a total (including interest on the loan) of \$956,285 to purchase the farm. When we add property taxes (until the land goes into trust), insurance and utilities to this number, it's fair to say that the farm really is a million-dollar purchase. This is an expensive project.

Of further concern is the fact that the equipment at the farm has not been in regular use for a number of years. It would not be a surprise if much or all of the farm equipment required extensive repairs or replacement. There are also a number of buildings on the property, including a farmhouse of approximately 2,300 square feet. The buildings are currently vacant and can be expected to require repair, upkeep and insurance.

Upon first learning of this potential purchase shortly after taking office in August 2013, I requested detailed information and a business plan, to help me and all Tribal Citizens understand the purpose of the project, as well as the total cost of purchasing and operating a farm, including our anticipated expenditures on equipment and operations, the costs of staffing and management, and the cost of insurance and other expenses required in running a farm.

The plan submitted to my office (after the purchase was finalized) estimates that the farm will lose a minimum of \$40,000 annually during the first two or three years of operation, and will then generate revenues in the range of \$12,000 to \$30,000 annually for the next three-year period. However, these revenue projections don't account for any payments on the loan used to purchase the farm. When the loan payments, taxes, capital expenditures on equipment, and other overhead costs are factored in, it becomes clear that the project will actually cost the Tribe more than the farm makes in revenue every year for the foreseeable future.

As Tribal Chairman, I have previously voiced my objection to the intention to buy a farm, primarily because there was no clear indication that it would ever be profitable. This purchase is especially troubling during the challenging economic climate that the Tribe and its business ventures are currently facing. I strongly advised against the purchase, and my position has not changed. I remain convinced that the farm operation will generate little or no revenue into the foreseeable future, and that the project will require being "subsidized" by the Tribal Council indefinitely to stay afloat, as evidenced by the history of other economic ventures that the Tribal Council has established. As the subsidy increases, the farm will become more of a drain on the Tribe's budget. I do not believe that we can continue to burden the Tribe's budget in this manner.

This method of doing business by continuing to pour the Tribe's General Fund money into unprofitable ventures has unfortunately become our norm. And we never seem to be able to cut our losses on projects that lose money. We can see examples such as Bell's Fishery/OFI, the Traditional Burial board, the day care center, and other so-called 'independent' tribal business entities that require repeated and on-going infusions of cash. These business entities have become a drag on the tribal budget, despite the fact that they were originally intended to be self-sustaining or profit making, and I anticipate that it will be no different with the farm.

Additionally, since the Ziibimijwang, Inc. statute does not require the farm to develop any annual budget in advance, we expect there will be requests for "Supplemental Funding" on short notice, as the farm experiences equipment breakdowns, weather-related challenges, and other unforeseen costs. This additional drain on the Tribe's General Fund has the potential to disrupt the tribal government budget, to the detriment of all programs and services.

As plans for the farm have evolved in a series of recent committee meetings and Tribal Council meetings, it has become apparent to all that the farm is not likely to generate enough revenue to be self-sustaining, either in the short term or in future years. But rather than take on the challenge of operating the farm at a profit, or at least a break-even basis, the Tribal Council has instead elected to issue a charter of incorporation for "non-profit purposes." The non-profit charter requires that any surplus revenues must be retained by the farm, instead of being paid into the Tribe's General Fund. However, the charter has no corresponding limit whatsoever on the amount of the Tribe's General Fund money that can flow toward the farm to supplement it, or on the length of time that the supplemental funding can continue.

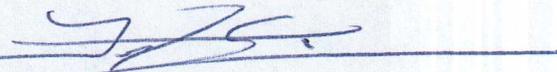
The legislation in question does not require or even suggest that the farm should return a specified amount of revenue or profit to the Tribe. As a result, even if the farm were to become profitable in future years, it would not be required to cover its own personnel, insurance, debt service or other costs.

The legislation in question does require the appointment of a Board of five to seven persons to manage the farm as a non-profit entity. These Board members will very likely receive stipends for each meeting, and travel expenses for visits to the farm, training seminars and conferences.

There is no dollar limit in the Ziibimijwang, Inc. statute for the amounts that can be spent on the Board's stipends and expense reimbursements.

This veto is not intended to diminish or discourage the success of any tribal endeavor. But as an Executive Team, we are required to look at the total picture, and to evaluate how each purchase will affect the Little Traverse Bay Bands of Odawa Indians, both in the near future and over the long run. We are interested in promoting and working on land purchases and projects that create jobs, as well as projects that are likely to become profitable and thereby increase the funds available to the Tribe. Unfortunately, this project will do neither.

Respectfully Submitted,



Fred Kiogima
Tribal Chairman

**WAGANAKISING ODAWAK STATUTE #
ZIIBIMIJWANG INCORPORATED STATUTE**

SECTION I. PURPOSE AND TITLE

- A. Purpose.** The Little Traverse Bay Bands of Odawa Indians (the “Tribe”) exercises powers of self-government over its Citizens and territory. In accordance with Article VII (D) (4) of the Tribal Constitution, the purpose of this Statute is to govern the issuance of the Little Traverse Bay Bands of Odawa Indians charter of incorporation for non-profit purposes, and regulate such tribally chartered corporation activities in accordance with Article VII (D) (4).
- B. Short Title.** This Statute shall be known and cited as the “Ziibimijwang, Inc. Statute.”

SECTION II. DEFINITIONS

- A.** “*Non-profit*” means any generated surplus revenues must be retained by the corporation for self-preservation, expansion, plans or services, and not submitted to the Tribe except for repayment of funds.
- B.** “*Organic*” means food, feed or fiber produced in a way that complies with at a minimum the USDA National Organic Program (NOP) Standards.
- C.** “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) “as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).
- D.** “*Tribal Corporation*” means any for-profit businesses and non-profit organizations formed by the Tribal Council and wholly owned by the Tribe, in accordance with WOS 2003-07, or as amended.
Ziibimijwang Incorporated Statute, Inc.

- E. *“Tribe”* or *“LTBB”* means the Little Traverse Bay Bands of Odawa Indians.
- F. *“Tribal Constitution”* means the Little Traverse Bay Bands of Odawa Indians Constitution as adopted by its membership on February 1, 2005.
- G. *“Tribal Council”* means the elected body of nine (9) Tribal Citizens of Little Traverse Bay Bands of Odawa Indians with duties found in the Tribal Constitution Article VII. *“Tribal Council”*.
- H. *“Ziibimijwang”* means *“Place of the Flowing River”*.

SECTION III. CREATION OF ZIIBIMIJWANG, INC. CORPORATE CHARTER

A tribally chartered corporation is authorized by this Statute and shall be named *“Ziibimijwang”*, Inc.” and shall be a self-sustaining non-profit entity and shall provide for the health and welfare of the Tribal Community through the use of sustainable farming with emphasis toward organic foods, providing for exercising treaty rights of hunting, fishing and gathering, agricultural activities, caring for livestock, and other activities that promote nutrition, fitness and wellbeing. The organization is recognized by the approval of the tribal corporation charter; Ziibimijwang, Inc., by Tribal Council.

SECTION IV. SCOPE OF ACTIVITIES

A. Ziibimijwang, Inc. is authorized to conduct activities on lands designated and approved by Tribal Council, including providing for the health and welfare of the Tribal Community through the use of sustainable farming with emphasis toward organic foods, providing for exercising treaty rights of hunting, fishing and gathering, agricultural activities, caring for livestock, and other activities that promote nutrition, fitness and wellbeing.

Ziibimijwang Incorporated Statute, Inc.

B. The Ziibimijwang, Inc. shall be assigned those assets as existed and are currently within any designated and approved lands, tangible and intangible properties, unless otherwise excluded by Tribal Council. Such assets shall be held by Ziibimijwang, Inc. on behalf of the Tribe. The assets assigned Tribal Council shall be independently managed by Ziibimijwang, Inc.

SECTION V. COMPOSITION and ELIGIBILITY

A. Composition

1. The Board shall consist of five (5) to seven (7) persons, of which three (3) shall be LTBB Tribal Citizens, and who meet the eligibility requirements set out in subsection (B) of this section.

2. The Board members shall have a Chairperson, Treasurer and Secretary elected by the Board members, every two years.

B. Eligibility

To serve on the Board a person must meet all of the following criteria:

- 1.** A person must be at least eighteen years of age;
- 2.** No person can serve on the Board within seven (7) years of completion of a sentence or probation upon being convicted of a felony in tribal, state or federal court, unless such conviction has been vacated or overturned.
- 3.** To be considered, a person should meet at least two of the following criteria:
 - i.** High School Diploma or General Educational Development, (G.E.D.)
 - ii.** Two years of secondary education in agriculture, natural resources, or other related field

Ziibimijwang Incorporated Statute, Inc.

iii. At least five (5) years of experience in one of the following: farming or gardening, providing for exercising treaty rights of hunting, fishing and gathering, agricultural activities, caring for livestock, and other activities that promote nutrition, fitness and wellbeing

iv. Associate or Bachelor's degree in business, grantsmanship, accounting, marketing or other expertise that promotes the scope of activities

SECTION VI. MANAGEMENT; STRUCTURE AND FUNCTION

A. Ziibimijwang, Inc. shall have sole authority and responsibility for managing Ziibimijwang, Inc., in accordance with the policies, Statutes, Resolutions, regulations as approved by Tribal Council.

B. Ziibimijwang, Inc. shall abide by all tribal and federal laws and regulations as may be applicable.

C. It is the duty of Ziibimijwang, Inc. to monitor activities and provide guidance to the management use of sustainable farming with emphasis toward organic foods, providing for exercising treaty rights of hunting, fishing and gathering, agricultural activities, caring for livestock, and other activities that promote nutrition, fitness and wellbeing operations.

D. It is the duty of Ziibimijwang, Inc. to protect assets of the Tribe and to support Tribal Governmental Services and Programs and Tribal Citizens.

SECTION VII. REPORTING TO TRIBAL COUNCIL

In order to regulate, Ziibimijwang, Inc. shall report to the Tribal Council on the following information regarding Ziibimijwang, Inc. and at the regularly scheduled Tribal Council Meetings or such special meetings as requested by the Tribal Council, at least quarterly or as requested: Ziibimijwang Incorporated Statute, Inc.

- A. Annual operating plan;
- B. Financial status, including grants, records and statements;
- C. Audits, whether internal or external;
- D. Tribal Council may request reports regarding all aspects of Ziibimijwang, Inc.

SECTION VIII. FINANCING OF ZIIBIMIJSWANG, INC. AND OTHER ACTIVITIES

- A. If funds are requested from the Tribe, Ziibimijwang, Inc. shall follow any laws, process or procedures in effect.
- B. Tribal Council approval is required for borrowing of funds. Ziibimijwang, Inc. is not authorized to enter into financing approval without prior ratification by the Tribal Council.
- C. Any lease of property, tangible or intangible, shall have Tribal Council's approval.

SECTION IX. DISSOLUTION CLAUSE

In the event that the board is no longer fulfilling the purpose of this Statute, the corporation may be dissolved by repealing this Statute.

SECTION X. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, Ziibimijwang Incorporated Statute, Inc.

paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XI. EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on April 06, 2014 at which a quorum was present, by a vote of 6 in favor, 2 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

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

Date: 4-10-14

Regina Gasco Bentley

 Regina Gasco Bentley, Legislative Leader

Date: 4-10-14

Julie Shananaquet

 Julie A. Shananaquet, Secretary

Received by the Executive Office on 4-10-14 by *[Signature]*

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: _____

VETO

 Fred Kiogima, Tribal Chairperson

Ziibimijwang Incorporated Statute, Inc.

