



Waganakising Odawak
Little Traverse Bay Bands of Odawa Indians
Regina Gasco-Bentley, Tribal Chairperson
7500 Odawa Circle, Harbor Springs, Michigan 49740
Phone 231-242-1418 • Fax 231-242-1411

May 9th, 2022

RE: Executive Veto of WOS 2022-XXX Odawa Economic Affairs Holding Corporation

The Executive Branch is not supportive of the proposed legislation, WOS 2022-XXX Odawa Economic Affairs Holding Corporation (OEAHC) Statute given the present agreements held by the corporation.

Under the Controlled Substances Act, the Federal Government classifies marihuana (also known as marijuana or cannabis) as a Schedule 1 controlled substance. It is unlawful to manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

In Section V. (B) of the proposed statute, it states that “the Odawa Economic Affairs Holding, Inc shall abide by all tribal and federal laws and regulations as may be applicable.” Considering the current leasing agreement that OEAHC has in place with Lume Cannabis Co., the corporation is already in violation of several federal laws including but not limited to maintaining drug-involved premises.

21 U.S.C § 856 explicitly states that it is unlawful to:

- (1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distribution, or using any controlled substance.
- (2) Manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

Furthermore, it is important to highlight that while cannabis has been legalized at the state level, the passage of Proposal One in Michigan does not null and void the criminalization of marijuana at the federal level. The proposal does not grant immunity to any individuals or entities from prosecution. Federal charges continue to be and have been pursued against those who violate federal laws associated with cannabis since the State of Michigan’s decriminalization of the controlled substance.

The ramifications of Odawa Economic Affairs Holding Corporation’s business decision can be severe if charges are brought forward against LTBB. The Tribe may be subject to charges such as aiding and abetting, conspiracy and attempt, money laundering, and racketeering among other charges. Consequences for such action can include civil and



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criminal penalties such as proceeds *and* property forfeiture as well as the potential ineligibility of federal grant funds.

One of our guiding directive principles is, “to promote with special care the health, educational and economic interests of all the people, especially our children and elders [...]” The work carried out by the Tribe’s elected officials should promote the protection, and expansion of our current assets. Risk assessments should be conducted and the self-assurance of a particular outcome should not dictate decision-making. Unfortunately, I do not believe that all the risks associated with leasing to a cannabis distributor were fully considered, and by entering into such an agreement, the corporation is not operating with the best economic interests of our people in mind. Any revenue generated from the agreement with Lume Cannabis Co. is in jeopardy of being seized and restrictions may be established regarding land use by the federal government should criminal charges be brought against the Tribe. We will have impaired the use of our land and eroded our tribal sovereignty in the process.

The Tribe administers services and programs that are funded in whole or in part by federal grants. The current value of these services is approximately \$17 million dollars. As a recipient of said funding, the Little Traverse Bay Bands of Odawa Indians must operate in accordance with the terms and conditions of each award as well as any other pertinent legislation enforced at the federal level. The legality of OEAHC’s leasing agreement with Lume has the potential to jeopardize the Executive Branch’s current awards and any future federal grant opportunities.

Moreover, with Tribal Council’s approval, Odawa Economic Development, Inc. (OEDMI) has entered into an agreement with the Bureau of Indian Affairs (BIA) which *also* requires the Tribe to comply with all applicable federal laws and regulations. The BIA may not only find it appropriate to dissolve their agreement with OEDMI but also seek other forms of legal action for the deliberate breach of contract based on the Tribe’s association with Lume Cannabis Co.

Considering the direct conflict of the statute’s verbiage and the actions taken by the corporation, the Executive Branch is not supportive of the proposed legislation. To protect the best interests of the Tribe and our future generations, I am vetoing WOS 2022-XXX Odawa Economic Affairs Holding Corporation.

Regina Gasco-Bentley, Tribal Chairperson



U.S. Department of Justice

*United States Attorney's Office
Western District of Michigan*

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September 4, 2019

VIA ELECTRONIC MAIL

Jeff Cobe
Chief of Police
Little Traverse Bay Band Tribal Police

Catherine Castagne
Tribal Prosecutor
Little Traverse Bay Band

Re: Controlled Substances and Related Offenses

Dear Chief Cobe and Tribal Prosecutor Castagne:

You recently asked for a brief summary of some of the federal criminal statutes related to controlled substances, particularly marijuana. You also asked for a brief summary of related offenses, such as money laundering and RICO, as well as the statutes authorizing criminal and civil forfeiture. Finally, you asked for information about federal principles governing co-conspirator liability and the liability of aiders and abettors.

I have outlined below some authority that I believe will be most informative. The below is not comprehensive, in that it does not outline all of the law in this area. But it does outline some of the more commonly used statutes.

18 U.S.C. § 2 – Aiding and Abetting

Federal law provides that whoever “aids, abets, counsels, commands, induces or procures [the commission of a crime], is punishable as a principal.” 18 U.S.C. § 2(a). The jury instructions explain that a person may be guilty as an aider and abettor “if he intentionally helped or encouraged someone else to commit the crime.”

21 U.S.C. § 841 – Prohibited Acts Related to Controlled Substances

This statute provides that it is unlawful “to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.” 21 U.S.C. § 841(a). Marijuana is a controlled substance under federal law.

21 U.S.C. § 846 – Conspiracy and Attempt

This section provides that “[a]ny person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”

The jury instructions explain that “A conspiracy is a kind of criminal partnership.” The instructions further explain that even a “slight role” in a conspiracy or a slight connection to a conspiracy can be enough to yield co-conspirator liability.

21 U.S.C. § 848 – Continuing Criminal Enterprise

This section prohibits “engag[ing] in a continuing criminal enterprise” and provides for penalties of “not be less than 20 years and which may be up to life imprisonment.”

21 U.S.C. § 856 – Maintaining Drug-involved Premises

Violations of this section are subject to both criminal and civil penalties. This section provides that it is unlawful to:

- (1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;
- (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

21 U.S.C. § 856(a).

18 U.S.C. §§ 1956, 1957 – Money Laundering

These sections prohibit laundering the proceeds of specified unlawful activities and engaging in monetary transactions in criminally derived property. Specified unlawful activities include, but are not limited to, “the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance.” 18 U.S.C. § 1961(1)(D).

18 U.S.C. § 1962 – RICO

This statute prohibits certain activities related to engaging in “a pattern of racketeering activity.” Racketeering activity includes, but is not limited to, “the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance.” 18 U.S.C. § 1961(1)(D).

21 U.S. Code § 853 – Criminal Forfeiture

This statute provides for criminal forfeiture in drug cases. Property subject to forfeiture includes proceeds of drug trafficking and property that facilitates drug trafficking.

21 U.S. Code § 881 – Civil Forfeiture

This statute provides for civil forfeiture of, among other things, controlled substances, equipment, money, personal property, and real estate.

* * *

I trust the foregoing is helpful. Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Sean M. Lewis

Sean M. Lewis

Assistant United States Attorney



Bear Creek Township
373 North Division Road
Petoskey, Michigan 49770
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January 6, 2020

Ms. Regina Gasco Bentley
Tribal Chairperson
Little Traverse Bay Bands of Odawa Indians
7500 Odawa Circle
Harbor Springs, MI 49740

Ms. Julie Shananaquet
Tribal Secretary
Little Traverse Bay Bands of Odawa Indians
7500 Odawa Circle
Harbor Springs, MI 49740

Re: Retail marijuana establishment on tribal trust property

Dear Ms. Bentley, Ms. Shananaquet, and Tribal Councilors:

The Bear Creek Township Board of Trustees (the "Township") has recently been made aware that the Little Traverse Bay Bands of Odawa Indians ("LTBBOI") is proceeding with the construction and location of what is understood to be a retail marijuana sales establishment on tribal trust property. This property is located at 1345 N US 31 Hwy, Petoskey, MI 49770.

The Township understands this property is held in federal trust for the benefit of the LTBBOI and is therefore exempt from many state and local laws, ordinances, and regulations, although the Township further understands that the sale and distribution of marijuana presently remains illegal as a Schedule I drug under the federal Controlled Substances Act (21 USC 812).

The Township wants the LTBBOI to be aware and understand that the Township opposes the opening of a retail marijuana establishment at this location. This opposition is consistent with the majority of the Township's electors, including tribal members, having voted against the statewide recreational ballot initiative in 2018. It is also consistent with the Township's resolutions and ordinances concerning medical and recreational marijuana establishments within the Township.

This opposition is also consistent with many of the collaborative health, education, safety, and welfare initiatives, including but not limited to the Safe in Northern Michigan campaign in which the LTBBOI has participated.

The Township therefore respectfully requests that the LTBBOI reconsider its support and encouragement of efforts to open up a retail marijuana establishment at this location. If you would ever like to meet with me or any other Township representatives to discuss this important issue, please let me know.

Sincerely,

Dennis Keiser, Supervisor
Bear Creek Township

WAGANAKISING ODAWAK STATUTE 2022-__
ODAWA ECONOMIC AFFAIRS HOLDING CORPORATION

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), the purpose of this Statute is to govern the issuance of the Little Traverse Bay Bands of Odawa Indians charter of incorporation for economic purpose, to provide for the management of the non-gaming, economic affairs and to delegate such management to a Tribally chartered corporation in accordance with Article VII (D) (24) 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 “Odawa Economic Affairs Holding Corporation Statute.”

SECTION II. DEFINITIONS

A. “*Gaming Commercial Enterprises*” means the Odawa Casino Resort and ancillary enterprises and activities, including the Odawa Casino Resort, related hotel and restaurant services, of the Tribe located in Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

B. “*Non-gaming Economic Affairs*” means economic development enterprises and activities not related to the gaming commercial enterprises.

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*

D. *and fourth' of the Treaty of 1855, 11 Stat.621.*" Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

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 members of Little Traverse Bay Bands of Odawa Indians with duties found in the Tribal Constitution Article VII. "Tribal Council".

SECTION III. CREATION OF THE ODAWA ECONOMIC AFFAIRS HOLDING, INC. CORPORATE CHARTER

A tribally chartered corporation is authorized by this Statute and shall be named the "Odawa Economic Affairs Holding, Inc." The organization is recognized by the approval of the tribal corporation charter; "Odawa Economic Affairs Holding, Inc." by Tribal Council.

SECTION IV. SCOPE OF ACTIVITIES

The Odawa Economic Affairs Holding, Inc. is created to act as a general-purpose holding corporation that provides services to the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs) that were either created by the Corporation or were designated by Tribal Council by approving an organizational chart and amending Corporation Charters and statutes as applicable; and assesses economic development opportunities and expansion of economic development in collaboration with the Tribally Chartered Corporations and Limited Liability Corporations (LLCs).

A. The Odawa Economic Affairs Holding, Inc. is authorized to create operating subsidiaries in accordance with tribal law, provided that they have prior approval by Tribal Council.

B. The Corporation will provide Tribal Council an annual report and audited financial statements for the Corporation and the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs)

C. The Corporation will submit an annual operational plan to the Tribal Council for approval for the Corporation and the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs).

SECTION V. MANAGEMENT; STRUCTURE AND FUNCTION

A. The Odawa Economic Affairs Holding, Inc. shall have sole authority and responsibility for managing the Odawa Economic Affairs Holding, Inc. and shall have oversight of the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs), in accordance with the policies, Statutes, Resolutions, regulations as approved by Tribal Council.

B. The Odawa Economic Affairs Holding, Inc. shall abide by all tribal and federal laws and regulations as may be applicable.

C. It is the duty of the Odawa Economic Affairs Holding, Inc. to protect assets of the Tribe and generate revenues.

SECTION VI. REPORTING TO TRIBAL COUNCIL

In order to regulate, the Odawa Economic Affairs Holding, Inc. shall provide to Tribal Council such reports for the Corporation and all the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs) as set forth in the approved Corporate Charter.

Tribal Council may request reports regarding all aspects of the Odawa Economic Affairs Holding, Inc. and the designated Tribally Chartered Corporations and Limited Liability Corporations (LLCs);

SECTION VII. FINANCING OF THE ODAWA ECONOMIC AFFAIRS HOLDING, INC. AND ACTIVITIES

- A. The annual budget for the Odawa Economic Affairs Holding, Inc. shall be approved by Tribal Council in accordance with an approval process as designated by the Tribal Council.
- B. Tribal Council approval is required for borrowing of funds. The Odawa Economic Affairs Holding, Inc. is not authorized to enter into financing approval without prior ratification by the Tribal Council.
- C. Any real property acquisition shall be in accordance with Tribal Council/Committee policy or applicable law.

SECTION VIII. 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, 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 IX. 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 adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on April 7, 2022 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Kiogima	_____	X	_____	_____
Tamara Kiogima	_____	_____	_____	X
William Ortiz	X	_____	_____	_____
Aaron Otto	X	_____	_____	_____
Melissa Pamp	X	_____	_____	_____
Marty Van De Car	X	_____	_____	_____
Leroy Shomin	_____	_____	_____	X
Marcella Reyes	X	_____	_____	_____
Emily Proctor	X	_____	_____	_____

Date: 04/07/22 _____
Emily Proctor
 Emily Proctor, Legislative Leader

Date: 04/07/22 _____
Marcella R. Reyes
 Marcella Reyes, Secretary

Received by the Executive Office on 4-8-22 by *Christine Doney*

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.

VETO

Date: 5.9.22 _____
 (K0)
 Regina Gasco-Bentley, Tribal Chairperson

Received by the Legislative Office _____ 5.9.2022
 Date