

**PROCEDURES FOR THE ADMINISTRATION OF THE USE AND DISTRIBUTION OF THE LITTLE RIVER BAND
OF OTTAWA INDIANS JUDGEMENT FUNDS, DOCKETS 18-E, 58 AND 364**

Ordinance # 98-200-04

Section 1. Purpose.

1.01. These procedures are adopted pursuant to Article IV, Section 7 of the Tribal Constitution and the Tribe's Plan for the Use and Distribution of the Little River Band of Ottawa Indians Judgment Funds, Dockets 18-E, 58 and 364 (known as the "80/20 Plan"), which has been adopted as a Tribal Ordinance. The purpose of these procedures is to clarify the process for implementing certain aspects of the 80/20 Plan and to establish procedures and forms for clarifying certain rights and responsibilities described in the 80/20 Plan.

Section 2. Disbursement of Funds.

2.01. *Request for Disbursement.* Upon receiving notice of the Effective Date of the Tribe's Plan for Use and Distribution of the Judgment Funds, the Chairperson/Speaker of the Tribal Council shall call a Special Meeting, if necessary, for the purpose of enacting a Resolution requesting the disbursement of the Tribe's share of the Judgment Funds by electronic transfer to the financial institution and account number specified in such resolution.

2.02. The Tribal Council Chairperson shall consult with the Office of Trust Management to prepare any documents necessary to complete the request for disbursement in advance of the Effective Date to expedite the completion of the disbursement.

Section 3. Establishment of Bank Accounts to Receive and Segregate Judgment Funds.

3.01. *Primary Account.* The Tribal Council shall establish a primary account with Huntington National Bank in Manistee, Michigan to receive 100% of the Tribe's share of the Judgment Funds as provided in Section 2.

3.02. Within 10 days after receipt of the Tribe's share of the Judgment Funds, the Tribal Council shall direct that the 20% share of Judgment Funds programmed for land acquisition purposes be deposited in Account No. 01182014764 at Huntington National Bank.

3.03. The 80% of the Tribe's share of the Judgment Funds remaining in the account established under Section 3.01 of these Procedures shall remain in such account for implementation of the per capita payment portion of the "80/20 Plan".

Section 4. Publication of Roll of Qualified Tribal Members.

4.01. The Tribal Registrar shall prepare a list of all Qualified Tribal Members eligible to receive a per capita share of the 80% of the Judgment Funds programmed for per capita payments. The list of Qualified Tribal Members shall be posted at the Tribal Offices and Community Center in Manistee and other suitable locations in Muskegon and Grand Rapids, Michigan.

4.02. The Tribal Registrar shall publish Notice of the availability of the list of Qualified Tribal Members in the Tribal Newsletter to permit any member to confirm that his/her name, or that of his/her children is on such list.

4.03. The Tribal Registrar shall also maintain a list of all Applicants whose applications for enrollment were submitted on or before January 30, 1998, and whose applications are still pending.

4.04. The Tribal Registrar shall make every reasonable effort, consistent with the Tribe's Enrollment Ordinance, to make a final determination on all pending applications for enrollment, which are included on the list established in Section 4.03 of these Procedures, on or before October 30, 1998. Notice of this proposed deadline shall be sent to all applicants affected by this provision.

Section 5. Distribution of One Time Per Capita Payments.

5.01. The Tribal Registrar shall provide the Tribe's Controller with an up-to-date list of the names and addresses for each Qualified Tribal Member within seven (7) days after the Tribe receives notification that the Tribe's share of the judgment funds have been transferred to the account specified in Section 3.01 of these procedures. The Tribal Registrar shall also determine the total number of persons on the roll of Qualified Tribal Members and total number of applicants still pending on the roll prepared under Section 4.03 of these Procedures.

5.02. Following verification of the total number of persons on the roll of Qualified Tribal Members and applicants pending, the Tribal Controller shall calculate each qualified member's per capita share, based upon the amount of funds remaining in the Primary Account, following transfer of the 20% of the Judgment Funds programmed for land acquisition to account No. 01182014764.

5.03. The Tribal Controller shall notify the financial institution of the amount of each qualified members' per capita share and provide the financial institution with a list of the names, social security number, and date of birth for each Qualified Tribal Member. The list provided to the financial institution shall also specify the names, social security number, and date of birth for all Minor Qualified Tribal Members, Incompetent Qualified Tribal Members and Incarcerated Qualified Tribal Members for whom trust accounts are to be established.

5.04. As soon as practical, the per capita checks for all adult qualified tribal members, other than incompetent qualified Tribal members and incarcerated qualified tribal members shall be mailed to the last known address on file with the Tribal Registrar. The per capita share of each Qualified Tribal Member shall be determined by dividing the total amount of funds held in the Primary Account on the date per capita checks are issued, divided by the total number Qualified Tribal Members and applicants still pending from the list prepared under Section 4.03 of these Procedures. Any balance remaining in the Primary Account after the per capita checks are mailed to Qualified Tribal Members shall be distributed as provided in Section 3.02 of the "80/20 Plan" and in accordance with these Procedures.

5.05. The per capita shares for minor qualified tribal members, incompetent qualified Tribal members and incarcerated qualified tribal members shall be transferred to the appropriate trust account(s) established under Section 3.04 of the "80/20 Plan" and in accordance with the approved trust agreement providing for the establishment and administration of such accounts.

5.06. In the event that the per capita share check mailed to any qualified Tribal member is not delivered or received and is returned to the Tribal Offices, such member's per capita share shall be placed in an individual, interest-bearing interest account. Such member shall have 365 days from the date such account is established to claim his/her returned payment. The Tribal Registrar shall publish a list of all qualified tribal members, whose per capita payments are being held in escrow, each month in the Tribal Newsletter. If the returned per capita payments are not claimed within the 365 day period, the amount held in such escrow account shall revert to the Tribe and shall be transferred to the Reservation Restoration Trust Fund.

5.07. Per capita payments will only be mailed to the last known address for Tribal members. Tribal members must make their own arrangements if he/she wish to have his/her per capita payment forwarded to or managed by a third person.

5.08. *Notice of Any Tax or Benefit Consequences.* It is the Tribe's belief and position that the receipt of per capita shares by Tribal members does not constitute taxable income and that the receipt of per capita benefits may not be considered as income or a resource for purposes of determining such member's eligibility for any public assistance program or benefits. The Tribe shall make every reasonable effort to verify this position and shall provide members with written notice of any tax or benefit consequences at the time per capita shares are distributed to members.

5.09. *Death of Qualified Tribal Member After Effective Date.*

(a) In the event that a qualified tribal member should die after the Effective Date and prior to the date his/her per capita payment is distributed, that individual's payment shall be distributed to his/her heirs at law. The Tribal Registrar may request a copy of the individual's death certificate or other

proof of the date of death to verify the individual's eligibility for a per capita share.

(b) If such individual had a will at the time of his/her death, such individual's heirs and the share each such heir is entitled to, shall be determined under that will.

(c) If such individual did not have a will at the time of his/her death, the individual's per capita share shall be distributed in equal shares to any surviving children, or, in the absence of surviving children, shall be distributed to any surviving spouse, or, in the absence of any surviving children or surviving spouse, in equal shares to any surviving parents, or, in the absence of any surviving children, surviving spouse, or surviving parents, in equal shares to any surviving siblings, or, in the absence of any surviving children, surviving spouse, or surviving siblings, shall revert to the Tribe. In all cases, an individual's heirs shall be determined by a court of competent jurisdiction.

(d) The Tribe shall hold such individual's per capita share in an interest bearing escrow account pending final determination of such person's heirs at law and each heir's share of such person's per capita share.

Section 6. Procedures for Release of Funds Held in Trust for Minors.

6.01. The per capita shares for any qualified tribal member who is under the age of 18 years as of the Effective Date of the plan shall be placed in a trust account in accordance with Section 3.04 of the "80/20 Plan" and the terms of the approved trust agreement establishing such accounts.

6.02. The Tribal Registrar and Tribal Controller shall provide Huntington National Bank and the financial institution in which the minors' trust accounts will be established, if different, with an up-to-date list of the name(s), address(es), date of birth and social security number(s) for all minor qualified tribal members. The Tribal Registrar shall also establish and maintain a list of the name(s), social security number(s) and addresses for parents and/or legal guardians for each minor for whom a trust account is being established.

6.03. It is the obligation of the parent(s) and/or legal guardians for each minor for whom a trust account is established to notify the Tribal Registrar of any change in address. The Tribal Registrar shall notify the financial institution administering the minors' trust accounts of any address changes for each minor.

6.04. *Release of Funds Prior to the Time a Minor Reaches the Age of 18.*

(a) The parent(s), legal guardian(s) or an emancipated minor may file a petition with the Tribal Court to request distributions from such minor's trust account prior to the time the minor reaches the age of 18.

(b) The petition filed by any such person may be in any form, but shall contain, at a minimum, the following information: (i) name, address, date of birth and social security number of minor involved; (ii) the name, address, relationship, and social security number of person making request; (iii) the reason justifying the request for a disbursement from the trust account (proposed use of the funds); (iv) the amount of money requested; and (v) any instructions for making the disbursement (i.e. who the money will be paid to, if known).

(c) A minor's co-parent and the Tribal Prosecutor shall receive notice of any petitions requesting the release of funds from a minor's trust account and may appear to object to any proposed disbursement. The Court shall also determine if a minor fifteen (15) years of age or older supports or objects to the proposed disbursement and the reason(s) for his/her support or objection.

(d) It is the Tribal Council's intention that the release of funds from a minor's trust account, except in the case of emancipated minors, not be made to cover the everyday living expenses of the minor, which are the responsibility of the parent(s) or guardian(s). Requests for disbursements should generally be made for extraordinary expenses only. Nevertheless, the Tribal Council recognizes that parents or guardians may, on occasion, be faced with extraordinary circumstances that justify the release of funds to cover what, under normal circumstances, would be considered everyday living expenses. The determination as to whether a particular release of funds will be determined on a case-by-case basis and left to the discretion of the Tribal Court.

(e) In all cases, the Tribal Court shall require the petitioning parent or legal guardian to provide an accounting and submit receipts for all expenditures made on behalf of the minor following any distributions from the trust. The failure to comply with this requirement may be used to deny future requests for disbursements.

(f) In all cases in which the release of any portion of a minor's trust account is authorized, any funds remaining in such minor's trust account shall be transferred to an interest-bearing money account.

6.05. *Release of Funds to Minors Upon Reaching the Age of 18.*

(a) The Tribal Registrar shall maintain a list of all minors reaching the age of 18 during each calendar month following the Effective Date.

(b) Upon reaching the age of 18, a qualified Tribal member, whose per capita share is held in a trust account, may request that the Tribal Registrar release the funds held in his/her trust account. All requests shall be in writing.

(c) Upon receiving a request for release of funds, the Tribal Registrar shall verify the identity, current address, age and social security number for the individual. A list of all individuals requesting release of trust funds during any calendar month shall be maintained by the Tribal Registrar for approval at the next Tribal Council meeting.

(d) Following approval by the Tribal Council, the Tribal Council Recorder/Secretary shall prepare a request for disbursement of such minor's trust account, including the per capita share and all earnings, to be forwarded to the financial institution serving as Trustee of the minor's account. The bank shall be directed to disburse funds held in that account to the individual by mailing a check to the individual's verified address.

Section 7. Procedure for Release of Funds Held in Trust for Legally Incompetent Adult Qualified Tribal Members.

7.01. The per capita shares for any qualified tribal member who has been declared incompetent by a court of competent jurisdiction may be placed in a trust account in accordance with Section 3.04 of the "80/20 Plan" and the terms of the approved trust agreement establishing such accounts.

7.02. *Limitation on Authority to Establish Trust Account Under these Procedures.* Only qualified tribal members, who have not been declared incompetent by a court of competent jurisdiction and whose legal guardians have provided the Tribal Registrar with an approved Letter of Authority evidencing his/her guardianship, will have their per capita shares placed in trust pursuant to this Section. A qualified Tribal member who has a third person managing his/her finances under any other legal arrangement, such as Social Security Payees, may arrange to have his/her per capita funds transferred to a managed account or managed by such third person; however, in the absence of a court-approved Letter of Authority designating a third person as legal guardian, individuals must make their own arrangements to have per capita funds managed by a third person and these individual's per capita share will be mailed directly to that him/her in accordance with Section 4 of these procedures.

7.03. The Tribal Registrar and Tribal Controller shall provide Huntington National Bank and the financial institution in which the incompetent qualified Tribal members' trust accounts will be established, if different, with an up-to-date list of the name(s), address(es), date of birth and social security number(s) for all incompetent qualified tribal members. The Tribal Registrar shall also establish and maintain a list of the name(s), social security number(s) and addresses for the legal guardians for each incompetent person for whom a trust account is being established.

7.04. It is the obligation of the legal guardians for each incompetent person for whom a trust account is established to notify the Tribal Registrar of any change in address. The Tribal Registrar shall notify the financial institution administering the trust accounts of any address changes for each incompetent person.

7.05. *Release of Funds for the Benefit of Incompetent Qualified Tribal Members.*

(a) The legal guardian of an incompetent person may file a petition with the Tribal Court to request

distributions from such person's trust account for the incompetent individual's health, welfare or economic security.

(b) The petition filed by any such person may be in any form, but shall contain, at a minimum, the following information:

- (i) name, address, date of birth and social security number of incompetent member involved;
- (ii) the name, address, relationship, and social security number of person making request;
- (iii) the reason justifying the request for a disbursement from the trust account (proposed use of the funds);
- (iv) the amount of money requested; and
- (v) any instructions for making the disbursement (i.e. who the money will be paid to, if known).

(c) The Tribal Prosecutor shall receive notice of any petitions requesting the release of funds from an incompetent individual's trust account and may appear to object to any proposed disbursement.

(d) The Tribal Court may, upon the request of the guardian, enter an order authorizing a regular monthly distribution to the guardian, or any other appropriate individual or entity, from the trust for the benefit of the beneficiary.

(e) In all cases, the Tribal Court shall require the petitioning legal guardian provide an accounting and submit receipts for all expenditures made on behalf of the incompetent person following any distributions from the trust.

(f) In all cases in which the release of any portion of an incompetent member's trust account is authorized, any funds remaining in such incompetent member's trust account shall be transferred to an interest-bearing money account.

Section 8. Procedure for Release of Funds Held in Trust for Incarcerated Qualified Tribal Members.

8.01. *Purpose of Trust Accounts.* The per capita shares for any incarcerated qualified tribal member may be placed in a trust account in accordance with Section 3.04 of the "80/20 Plan" and the terms of the approved trust agreement establishing such accounts. The purpose of these trust accounts is to protect and preserve incarcerated member's per capita funds and ensure that these funds are available to assist the incarcerated member support his/her family during his/her incarceration and/or to assist the incarcerated member following his/her release from confinement.

8.02. *Eligibility; Election to Utilize Trust Account.*

(a) Only those incarcerated qualified Tribal members who request and complete a General Durable Power of Attorney Form, Attachment A to these Procedures, will be eligible to have his/her per capita share placed in a trust account.

(b) Execution of the General Durable Power of Attorney Form results in the designation of a person to serve as an incarcerated individual's "attorney-in-fact", which authorizes that person to manage the incarcerated person's affairs, including his/her per capita funds. Incarcerated persons and their family members are advised to read the Power of Attorney Form and, if necessary, to consult with independent legal counsel concerning this Form.

(c) An incarcerated individual may designate any competent, adult person, including the Tribal Prosecutor, to serve as his/her attorney-in-fact.

(d) All incarcerated qualified members, who have notified the Tribal Registrar of his/her incarceration, or whose incarceration is known to the Tribal Registrar, shall be mailed a General Durable Power of Attorney, together with a copy of these Procedures.

8.03. *Termination of Power of Attorney.*

(a) The Power of Attorney Form provides that the designation of an attorney-in-fact continues until the incarcerated individual is released from confinement and provides a notice of termination, which is provided to the Tribal Registrar.

(b) An incarcerated individual may, during the term of his/her incarceration, may terminate a Durable Power of Attorney by providing written notice revoking the Power of Attorney, which is filed with the Tribal Registrar and the Tribal Court. The notice of revocation shall include the incarcerated individual's name, social security number, place of incarceration, and the name of the attorney-in-fact.

8.04. The Tribal Registrar and Tribal Controller shall provide Huntington National Bank and the financial institution in which the individual trust accounts will be established, if different, with an up-to-date list of the name(s), address(es), date of birth and social security number(s) for all incarcerated qualified tribal members. The Tribal Registrar shall also establish and maintain a list of the name(s), social security number(s) and addresses for the attorneys-in-fact designated by each incarcerated member for whom a trust account is being established.

8.05. It is the obligation of the incarcerated individual and his/her attorney-in-fact to notify the Tribal Registrar of any change in address. The Tribal Registrar shall notify the financial institution administering the incarcerated person's trust accounts of any address changes for each person.

8.06. *Release of Funds Prior to the Time an Incarcerated Member is Released from Confinement.*

(a) The attorney-in-fact may file a petition with the Tribal Court to request distributions from an incarcerated qualified member's trust account prior to the time he/she is released from confinement.

(b) The petition may be filed by the attorney-in-fact in any form, but should contain, at a minimum, the following information:

(i) name, address, projected release date and social security number of the incarcerated member involved;

(ii) the name, address, relationship, and social security number of person making request;

(iii) the reason justifying the request for a disbursement from the trust account (proposed use of the funds);

(iv) the amount of money requested; and

(v) any instructions for making the disbursement (i.e. who the money will be paid to, if known).

In most cases, written confirmation of the incarcerated individual's support should be attached to the petition.

(c) In accordance with Section 3.07 of the "80/20 Plan", requests for the release of funds from an incarcerated member's trust account should only be authorized to cover extraordinary expenses necessary for the incarcerated person's health, welfare or economic security. Expenses may also be authorized for the support, maintenance or education of the incarcerated individual's family. The determination as to whether a particular release of funds will be determined on a case-by-case basis and left to the discretion of the Tribal Court.

(d) The Tribal Court may, upon the request of the attorney-in-fact, enter an order authorizing a regular monthly distribution to beneficiary, or any other appropriate individual or entity, from the trust.

(e) In all cases, the Tribal Court shall require the petitioning attorney-in-fact to provide an accounting and submit receipts for all expenditures made on behalf of the incarcerated individual following any distributions from the trust. The failure to comply with this requirement may be used to deny future requests for disbursements.

(f) In all cases in which the release of any portion of an incarcerated member's trust account is authorized, any funds remaining in such incarcerated member's trust account shall be transferred to an interest-bearing money account.

8.07. *Release of Funds to Incarcerated Individual Upon Release from Confinement or Termination of Power of Attorney.*

(a) Upon being released from confinement, an incarcerated individual, whose per capita share is held

in a trust account, may file a notice of termination of the Power of Attorney with the Tribal Registrar. The notice of termination must be made in writing or in person.

(b) Upon receiving a request for termination of the Power of Attorney, the Tribal Registrar shall verify the identity, current address, age and social security number for the individual.

(c) Upon receiving a verified notice terminating a Power of Attorney under this Section or under Section 8.03, the Tribal Registrar shall prepare a Notice of Termination and Request for Disbursement to be forwarded to the financial institution serving as Trustee of the incarcerated individual's account. The bank shall be directed to disburse funds held in that account to the individual by mailing a check to the individual's verified address.

Section 9. Involuntary Transfers Prohibited.

9.01. Neither trust income nor principal nor any beneficiary's interest therein shall be subject to alienation, assignment, encumbrance or anticipation by the beneficiary; to garnishment, attachment, execution or bankruptcy proceedings; to claims for spousal maintenance, child support or an equitable division of property incident to the dissolution of marriage; to any other claims of any creditor or other person against the beneficiary; or to any other transfer, voluntary or involuntary, by or from any beneficiary.

10.01. Severability.

10.01. If any section, or any part of any section, of this Ordinance or the application of this Ordinance to any party, person or entity or in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction, the remainder of the section or part of this Ordinance shall not be affected thereby and shall remain in full force and effect as though no section or part has been declared to be invalid.

Section 11. No Waiver of Sovereign Immunity.

11.01. Nothing in this Ordinance shall provide or be interpreted to provide a waiver of the sovereign immunity from suit for damages of the Little River Band of Ottawa or any of its governmental officers and/or agents.