

# Management, Investment, Administration, and Oversight of Funds Controlled by the Bay Mills Indian Community

## Section 1: Purpose; Community Values.

This Ordinance is enacted to establish standards under which Bay Mills Indian Community's government and enterprise departments, elected leaders, leadership, and employees must operate in order to ensure that all trusts created under federal, state, or tribal law and all other tribal investments, including the general fund, are managed and administered for the sole benefit of the Bay Mills Indian Community and its citizens and are subject to the duties as a fiduciary in carrying out its obligations delineated in the Ordinance and in any implementing policies.

Bay Mills' government and enterprise departments, elected leaders, leadership, and employees are guided by our community values of Respect, Wisdom, Bravery, Honesty, Love, Truth, and Humility. In asset management this means honoring the environment and the resources entrusted to the Bay Mills Indian Community for the benefit of all relatives and future generations. Investments should prioritize the health and well-being of tribal citizens and the preservation of the community. Careful investment of assets over time will provide reserve funds and the ability to support major capital investment, infrastructure projects, and growth in community-oriented services that enable Bay Mills Indian Community to grow.

## Section 2: Definitions.

In this Ordinance, except where otherwise specifically provided, or the context otherwise requires, the following terms and expressions shall have the following meanings.

- A. "*Land Claims Distribution Trust*" is the non-expendable trust established by the Executive Council at the direction of Congress in §107(b)(1) of the Michigan Indian Land Claims Settlement Act (MILCSA), P.L. 105-143, 111 Stat. 2658 (Dec. 15, 1997).
- B. "*Tribal Land Trust*" is the non-expendable trust established by the Executive Council at the direction of Congress in §107(a)(1) of MILCSA.
- C. "*Asset*" is cash, cash equivalents, stocks, bonds, foreign currencies, collectibles, precious metals, real estate, commodities and other investment vehicles which provide reasonably estimable future economic benefit.
- D. "*Beneficiaries*" of the Land Claims Distribution Trust are all living and future citizens of the Bay Mills Indian Community, who meet the requisites for distribution from the Trust which are specified in §107(b)a(3) of MILCSA; "*beneficiaries*" of the Tribal Land Trust and the General Fund are all

citizens of the Bay Mills Indian Community.

- E. *“Corpus”* of a trust is the property constituting the principal, as distinct from income or interest. The initial corpus of the Land Claims Distribution Trust and of the Tribal Land Trust, respectively, were established by the Executive Council in Resolution No. 98-1-26-C. *“Cost Basis”* is the actual cost to acquire any asset which is included in a Trust.
- F. *“Elders Distribution”* is the amount determined annually to be available for distribution to eligible Tribal members pursuant to §107(b)(3) and (4) of MILCSA, utilizing the prior year’s distributed payment amount.
- G. *“Ending Cost Basis”* is determined by adding net income received during the calendar year to the beginning cost basis, and subtracting from that amount any payments from the trust during that same period.
- H. *“Fair Market Value”* is the amount comprising all the assets in the Trust, and is based on the market value ascribed to each asset at a particular point in time, which may be higher or lower than the ending cost basis, if the asset was liquidated at the time the computation is made.
- I. *“Fiduciary”* and *“Trustee”* refer to the Executive Council, and all those acting under its direction, when managing the General Fund or a Trust on behalf of its beneficiaries, with the duty to act in good faith and with care, candor, and loyalty in fulfilling this obligation under the terms of the applicable trust document; the applicable document for the Land Claims Distribution Trust is §107(b) of MILCSA, and the applicable document for the Tribal Land Trust is §107(a) of MILCSA.
- J. *“General Fund”* means the central treasury for Bay Mills Indian Community comprised of several operating accounts that are the source funds for tribal program administration and may also include certain financial instruments utilized for investment. The General Fund is not established or organized as a Trust but shall be managed with equivalent fiduciary responsibility.
- K. *“Holding Gain or Loss”* is the net change in the fair market value of a security or other form of asset from one period to another, exclusive of dividend or interest revenue recognized under accounting principles but not realized or received by the Trust.
- L. *“Income”* is the amount generated from the Trust corpus, measured by financial value derived from the fiduciary’s actions to increase the value of the Trust assets, and includes, but is not limited to, types of income including earnings, gains, proceeds, profit, return on investment, revenue, and yield.

- M. *“Interest, Dividends, Gains/Losses”* reflect actual payments made to the Trust as income in the form of interest and dividends; gains and losses are recorded only when an asset is sold, and reflects whether the sale price was more or less than the cost of acquisition.
- N. *“Investment Fee”* or *“Service Charge”* is the amount paid to the professional Trust Manager for managing the Trust, selected for that purpose by the Executive Council and embodied in a services contract.
- O. *“Investment Policy or Policies”* are directives adopted by the Executive Council, from time to time, to the Trust Manager, which provide guidance as to investment objectives, asset type allocation, performance measurements, and prohibited investments.
- P. *“Net Income”* is measured by calendar year, and is derived from the total amount of income received by the Trust from whatever source, less any losses incurred and Investment Fees or Service Charges paid. This figure determines, among other purposes, the amount subject to Elder Distribution from the Land Claims Distribution Trust under §107(b)(3) of MILCSA.
- Q. *“Nonexpendable Trust”* is a perpetual trust, with a prohibition on spending the principal of the Trust for any purpose, other than to record investment losses.
- R. *“Rate of Return”* is a measurement of the income to the Trust in the form of interest and dividends on a monthly and an annual basis, and is established as an objective in the Investment Policy for that Trust.
- S. *“Trust Manager”* is the professional trust manager selected by the Executive Council to manage and administer a Trust under the Executive Council’s direction and control.

### Section 3: Role of the Executive Council as Fiduciary.

The Executive Council, when acting as Trustee, has a fiduciary responsibility to the beneficiaries of the Trust or General Fund, and is required to do all of the following:

#### 301. Responsibilities of the Fiduciary

- A. Administer the Trust or General Fund solely in the interests of the Trust or General Fund beneficiaries;
- B. Provide maximum income for the Trust while conforming to prudent fiduciary investment principles;
- C. Make investment, expense, and savings decisions and manage the funds of a

- Trust or General Fund as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the Trust or General Fund;
- D. Exercise reasonable care, skill and caution in establishing and implementing a suitable investment strategy;
  - E. Keep informed of rights and opportunities associated with the investments in the Trust or General Fund;
  - F. Be reasonably able to understand the basic duties of prudent trusteeship;
  - G. Invest with a view both to safety of the capital and to securing a reasonable return, which requires a flexible application;
  - H. Provide adequate systems for accounting for and reporting trust balances;
  - I. Provide adequate controls over receipts and disbursements;
  - J. Provide periodic, timely reconciliations to assure the accuracy of accounts;
  - K. Ensure an audit of the Trust or General Funds at least once each fiscal year by an independent certified public accountant, with a report on the results of the audit which is available for inspection by any citizen of the Bay Mills Indian Community;
  - L. Establish and maintain consistent written policies and procedures for trust fund management, investment and accounting;
  - M. For the administration of the Land Claims Distribution Trust and Tribal Land Trust, select and hire a professional trust manager to administer and manage the funds of a Trust subject to this Ordinance, under such terms and conditions as the Executive Council determines to be appropriate; provided, such engagement shall subject the trust manager to the obligations and duties of this Ordinance as a fiduciary, with all attendant responsibilities and liabilities of this status;
  - N. For the purposes of other investments, including administration and expenditures from the General Fund, the Executive Council shall determine direction of investments, administration, and expenditures in consultation with the Chief Financial Officer; and
  - O. Identify any conflicts of interest prior to decision making and require abstention, if applicable.
302. Limitations on Fiduciary Powers – The Executive Council is not authorized to take

any of the following actions:

- A. Terminate the trust status of any Trust or General Fund subject to this Ordinance;
  - B. Modify the Investment Policies for a Trust subject to this Ordinance to mandate or permit disbursement of the Trust income in any calendar year at an amount or percentage which would eliminate subsequent year's Elder Distributions of more than a negligible amount.
  - C. Direct the Trust Manager, if any, or the Tribe's Accounting Department to make available for Elder Distribution for any calendar year an amount or percentage of Trust income which would result in negligible Elder Distributions in future years.
  - D. Direct the Trust Manager, if any, or the Tribe's Accounting Department to invest Trust funds in any economic venture in which the Tribe has a financial interest.
  - E. Misuse or improperly direct any General Fund or Trust resources. This includes directing or allocating any funds from the General Fund or Trust to any matter that Executive Council members may have a personal, financial, or other direct interest in, whereby they would benefit differently from or greater than that available to any other tribal citizen. Executive Council members must act solely in the best interests of the Bay Mills Indian Community and avoid any appearance of self-dealing, favoritism, or abuse of their fiduciary responsibilities.
  - F. Direct the Trust Manager, if any, or the Tribe's Accounting Department to use Land Claims Distribution Trust and Tribal Land Trust resources to provide financing, loans, or other financial assistance to any member of the Executive Council, or to any individual or privately held business entity with whom the Tribe is currently engaged, has previously engaged, or is considering engaging in a joint economic venture or business relationship. Such actions are prohibited to prevent conflicts of interest, self-dealing, or the appearance of preferential treatment.
303. Remedies for Violations of Fiduciary Obligations or Restrictions - In the event that a member, or members, of the Executive Council is thought to have violated the requirements for conduct of the Council as the Trustee and fiduciary of a Trust or the General Fund, subject to this Ordinance, the following procedure is established:
- A. *Detailed Complaint Required.* An adult citizen of the Bay Mills Indian Community must file a written statement with the Executive Council Secretary which details the actions or inactions taken by a member of the Executive Council which are claimed to violate a provision of Section 301 or 302 of this Ordinance.

- B. *Time of Filing.* The written statement must be received not more than six (6) months after the action/ inaction of concern occurred.
- C. *Response to Complaint.* The Executive Council Secretary shall immediately provide to all members of the Council a copy of the statement. The Council member(s) whose action/inaction generated the complaint shall be provided 20 days within which to file with the Secretary a written response. Based on the contents of the response, the Executive Council shall determine if a hearing to discuss the complaint with the Council member(s) and the complainant should be held.
- D. *Hearing on Complaint and Response.* Both the complainant and Council member(s) shall be entitled to present written evidence supporting their position; additional witnesses may be permitted if they have relevant knowledge and expertise regarding trust investment and management practices which are challenged by the complainant.
- E. *Results of Hearing.* In the event that the Executive Council finds that the provisions of this Ordinance were purposely violated by the Council member(s), the matter shall be referred to the General Tribal Council for consideration of removal of the Council member(s) from office pursuant to Article V, Section 2 of the Constitution of the Bay Mills Indian Community.
- F. *Financial Remedies.* In the event that the Executive Council finds that the provisions of this Ordinance resulted in a loss of assets to a Trust or the General Fund, or acquisition of a prohibited asset, the Executive Council shall immediately direct the Trust Manager, if any, or the Accounting Department, to investigate and report to the Council how best to remedy the financial consequences to the Trust or General Fund. In no event shall an Elder Distribution be revoked so that Tribal members are required to immediately repay funds received; however, the Council may direct that overpayment be recovered through reduction in future Elder Distribution payments.

### **Certification**

This is to certify that the above Ordinance entitled “Management, Investment, Administration, and Oversight for Funds Controlled by the Bay Mills Indian Community” was adopted at a meeting of the Bay Mills Indian Community Executive Council held at Bay Mills, Michigan on March 9, 2026, by Resolution 26-03-09B.