

Agreement w/ BMIC

State of Michigan



DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME:

*I, Candice S. Miller, Secretary of State of the State of Michigan and custodian of the Great Seal of the State, hereby certify that the attached is a true copy of a settlement of land claim signed by Governor John Engler and L. John Lufkins, President Executive Council Bay Mills Indian Community, for property located on or near Charlotte Beach, Chippewa County, Michigan as filed with this Department on September 20, 2002. *****end of certification******

*IN TESTIMONY WHEREOF, I have
affixed my signature and Great Seal of the
State, at Lansing, this 1st day of
October in the year of our Lord
two thousand and two.*



Candice S. Miller

Secretary of State.

25459W-02

This certification attests only to the authenticity of the signature of the official who signed the affixed document, the capacity in which that official acted, and where appropriate, the identity of the seal or stamp which the document bears. This certification is not intended to imply that the contents of the document are correct, nor that they have the approval of the State of Michigan.

SETTLEMENT OF LAND CLAIM

WHEREAS, John M. Engler is Governor and Chief Executive Officer of the State of Michigan, a sovereign State of the United States of America, admitted to the Union pursuant to the Act of January 26, ch. 6, 1837, 5 Stat. 144;

WHEREAS, Bay Mills Indian Community is a federally recognized Indian Tribe (reorganized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984; 25 U.S.C. § 476);

WHEREAS, Bay Mills Indian Community asserts a right to property located on or near Charlotte Beach, Chippewa County, Michigan that was deeded in trust to the Governor of Michigan in 1857 for the use and benefit of the Tribe's predecessors;

WHEREAS, the Bay Mills Indian Community has sought judicial relief in both state and federal court to resolve the Tribe's outstanding land claims to the Charlotte Beach land;

WHEREAS, the litigation involving the Charlotte Beach Lands has not resolved the Tribe's land claim for the Tribe and certain property owners, thus creating circumstances where persons in possession of these lands have clouded title to the lands and do not have full enjoyment of the lands and their property rights;

WHEREAS, the Tribe's land claim negatively impacts land values and the collection of real property taxes by local units of government;

WHEREAS, the Bay Mills Indian Community desires to settle the Tribe's land claim for the well-being and economic benefit of the Tribe and its members;

WHEREAS, the Governor, as chief executive officer of the State of Michigan, and the alleged successor trustee for the Charlotte Beach Lands, desires to settle the land claim for the benefit of the State of Michigan and, in particular, the affected Charlotte Beach landowners;

WHEREAS, State law imposes certain duties on Executive Branch officials of the State of Michigan to investigate and resolve disputes or controversies over treaty rights and other rights of Indian Tribes, including the Tribe;

WHEREAS, the parties believe that resolution of the claim will lead to a clearing of title of the Charlotte Beach Lands for the current property owners, and to improved government-to-government relations between Bay Mills Indian Community and the State of Michigan, and;

NOW, THEREFORE, the parties agree to enter into this Settlement of Land Claim, with the intent that this Settlement form the basis of action for the United States Congress to resolve and extinguish the Tribe's land claims to the Charlotte Beach Lands, and provide alternative land to be taken in trust for the benefit of the Tribe, as land obtained in settlement of a land claim under section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(i), all in accordance with the following terms and conditions:

THIS SETTLEMENT OF LAND CLAIM ("SETTLEMENT"), dated August 23, 2002, is entered into between John M. Engler, Governor of the State of Michigan, by and on behalf of the Executive Office of Governor (the "Governor"), and the Bay Mills Indian Community, a federally recognized Indian Tribe (the "Tribe") (collectively "the parties"). The parties agree that this Settlement is subject to the following terms and conditions:

1. This Settlement involves claims by the Tribe related to properties known as the "Charlotte Beach Lands" and described as Government Lots 1, 2, 3, and 4 of section 7, T45N, R2E, and Lot 1 of section 18, T45N, R2E, Chippewa County, State of Michigan. It is in the best interests of the parties that final and full resolution of any and all remaining legal and equitable claims of the Tribe to the Charlotte Beach Lands or related to alleged duties of the Governor as trustee be achieved through amicable settlement.

2. The Tribe agrees to relinquish any and all legal and equitable claims to the Charlotte Beach Lands, including any alleged duties of the Office of Governor as trustee to the Charlotte Beach Lands, conditioned upon (1) approval

by the United States of America of the extinguishment of any and all claims of the Tribe to the Charlotte Beach Lands, and (2) the provision by the United States of America of alternative land as described in paragraph 4 below, title to which is held in trust by the United States of America for the benefit of the Tribe.

3. The Governor and the Tribe understand and agree that the terms of this Settlement shall form the basis of action for the United States Congress to resolve and extinguish the Tribe's land claims to the Charlotte Beach Lands, and provide alternative land to be taken in trust for the benefit of the Tribe, as land obtained in settlement of a land claim under section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(i).

4. The Governor specifically concurs in the provision by the United States of America of the following alternative land to be held in trust for the benefit of the Tribe:

A parcel of land in the City of Port Huron, St. Clair County, Michigan, described as:

Parcel 1: A parcel of land being land outside Fort Gratiot Military Reservation, according to the plat thereof as recorded in Liber B of Plats, page 17, St. Clair County Register of Deeds Office, described as: Beginning at a point of the South Right-of-Way line of State Street (66 feet wide) and the East line of a public alley (20 feet wide) adjacent to Block 11, Port Huron and Northwestern Railway Plat, said point bearing North 85 degree 26 minutes 46 seconds East 122.79 feet along the extended North line of Lot 1, said Block 11, from its Northwest corner; thence North 83 degrees 10 minutes 11 seconds East 410.22 feet along said South line of State Street; thence South 72 degrees 55 minutes 17 seconds East 176.09 feet; thence South 44 degrees 32 minutes 48 seconds West 40.00 feet; thence South 46 degrees 27 minutes 08 seconds East 130.00 feet; thence South 27 degrees 28 minutes 45 seconds West 24.59 feet; thence South 62 degrees 31 minutes 15 seconds East 88.80 feet; thence South 46 degrees 39 minutes 21 seconds West 59.66 feet to a point of curvature, concave to the East, said curve having a radius of 810 feet and a long chord which bears South 38 degrees 02 minutes 54 seconds West 242.46 feet; thence Southwesterly 243.37 feet along the arc of said curve to its point of tangency; thence South 29 degrees 26 minutes 27 seconds West 178.90 feet to the point of curvature, concave to the East, said curve having a radius of 2210 feet and a long chord bearing South 26 degrees 08 minutes 51 seconds West 253.91 feet; thence Southerly 254.05 feet along the arc of said curve; thence North 73 degrees 10 minutes 00 seconds West 331.26 feet to the East line of said 20 foot alley; thence North 00 degrees 02 minutes 24 seconds East 703.47 feet to the point of beginning.

5. On August 20, 1993, the Governor and the Tribe signed a tribal-state gaming compact (the "Compact") under IGRA. The Compact was ratified by the

Michigan House of Representatives on September 21, 1993, and by the Michigan Senate on September 30, 1993, and became effective on November 30, 1993, when the United States Secretary of the Interior published his approval of the Compact in the Federal Register as required by 25 U.S.C. § 2710(d)(8)(D). See, 58 Fed. Reg. 63262 (1993). The Governor and the Tribe agree that Section 9 of the Compact is not implicated by provision of the alternative land by the United States of America to the Tribe. In the event that it might be determined that Section 9 of the Compact is implicated by the Tribe's conduct of gaming on the alternative land, the Governor hereby waives Section 9 of the Compact and agrees not to take any action to enforce, or aid in the enforcement of, Section 9 of the Compact.

6. The Tribe agrees as follows:

A. From and after the date upon which the United States of America accepts title to the alternative land, as described in paragraph 4 above, in trust for the benefit of the Tribe, and so long as there is a binding Class III compact in effect between the State and the Tribe pursuant to IGRA, and no change in State law is enacted which is intended to permit or permits the operation of electronic games of chance, as defined in Section 3(A)(5) of the Compact, by any other person or entity (except up to three persons or entities operating such games in the City of Detroit as permitted by the Initiated Law of 1996, as amended by MCL 432.201, *et seq.*, or a federally recognized Indian Tribe), and no other person or entity (except up to three persons or entities operating in the City of Detroit pursuant to the Initiated Law of 1996, as amended by MCL 432.201, *et seq.*, or a federally recognized Indian Tribe) within the State lawfully operates electronic games of chance, as defined in Section 3(A)(5) of the Compact, the Tribe shall make payments as provided in subparagraph 6(B) of this Settlement.

B. So long as the conditions set forth in subparagraph 6(A) remain in effect, the Tribe will make semi-annual payments as follows:

- (i) Payment to the Michigan Economic Development Corporation ("MEDC"), a Michigan public body corporate created by an interlocal agreement

effective April 5, 1999, pursuant to the Urban Cooperation Act of 1967, Act No. 7 of 1967, Ex. Sess., as amended, being sections 124.501 et seq. of the Michigan Compiled Laws, in an amount equal to 8% of the net win derived from all Class III electronic games of chance, as those games are defined in Section 3(A)(5) of the Compact, which are operated by the Tribe.

(ii) As used in this subparagraph, "net win" means the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines.

(iii) For purposes of these payments, all calculations of amounts due shall be based upon a calendar year beginning January 1 and ending December 31, unless the parties agree to a different fiscal year, and all payments due pursuant to the terms of this paragraph 6 shall be paid no later than sixty (60) days after January 1 and June 30 of each year. Any such payments due and owing from the Tribe in the year the United States of America accepts title to the alternative land in trust for the benefit of the Tribe or in the final year the Compact is in force, shall reflect the actual net win but only for the portion of the year that the United States of America holds title to the alternative land, as described in paragraph 4 above, in trust for the benefit of the Tribe or the Compact is in effect.

C. The payments contemplated by this paragraph 6 are made in consideration for exclusivity in the Tribe's gaming activities consistent with subparagraph 6(B) above, and in consideration for the other agreements contained in this Settlement.

7. Pursuant to Paragraph 8 of an August 20, 1993, Consent Judgment and Order in Sault Ste. Marie Tribe, et al. v. John M. Engler, (W.D. Mich., No. 1:90-CV-611), the Tribe is obligated to make payments in the aggregate amount equal to two percent (2%) of the net win at each Class III gaming facility derived from all Class III electronic games of chance to local units of state government in the immediate vicinity of each Class III gaming facility. The

Governor and the Tribe agree that if the Tribe operates a Class III gaming facility on the alternative lands described in paragraph 4 above, the County of St. Clair, the City of Port Huron and the St. Clair County Intermediate School District (hereinafter "Local Governments") are the local governments to which payments shall be made under this Settlement. If these Local Governments desire, they may form a Local Revenue Sharing Board under applicable state law, consisting of one representative from each entity, to receive and disburse the semi-annual payments from the Tribe as described below. Decisions of the Local Revenue Sharing Board concerning the distribution of revenues shall require the unanimous vote of the three (3) representative Local Governments. The Local Revenue Sharing Board's sole function shall be to determine and make allocations of the tribal payments subject to the following limitations:

- A. Of the payments made to each of the Local Governments, not less than one-eighth of the aggregate payments described above shall be paid to local public safety organizations for public safety purposes.
- B. Out of the aggregate payments described above, each Local Government shall receive no less than an amount equal to its share of ad valorem property taxes that would otherwise be attributed to the alternative lands and property thereon if those lands were subject to such taxation.
- C. Out of the aggregate payments described above, after deducting the payments described in subparagraphs (A) and (B), the Local Revenue Sharing Board shall allocate an additional portion of such payments to local units of government to offset the actual costs incurred by local units of government as a result of the development of a Class III gaming facility on the alternative lands. The balance of the aggregate payments remaining after reimbursement of such actual costs may be utilized for any other lawful purpose of the Local Governments.

For purposes of these payments, all calculations of amounts due shall be based upon a calendar year beginning January 1 and ending December 31, unless the parties agree to a different fiscal year, and all payments due pursuant to the terms of this paragraph shall be paid no later than sixty (60) days after

January 1 and June 30 of each year. Any such payments due and owing from the Tribe in the year the United States of America accepts title to the alternative land in trust for the benefit of the Tribe or in the final year the Compact is in force, shall reflect the actual net win but only for the portion of the year that the United States of America holds title to the alternative land in trust for the benefit of the Tribe or the Compact is in effect.

8. From and after the date upon which the United States of America accepts title to the alternative land in trust for the benefit of the Tribe, the Tribe agrees to limit its Class III gaming operations in Michigan and shall limit the number of Class III gaming licenses authorizing such gaming to two (2) licenses for facilities located within the Tribe's Chippewa County reservation and one (1) license for a facility located within the alternative land identified in paragraph 4 above.

9. Prior to November 30, 2032, the Governor, on behalf of the State, will forbear from exercising its unilateral right to renegotiate or terminate the Compact pursuant to Section 12(C) of the Compact.

10. This Settlement constitutes the entire agreement among and between the parties.. All rights and benefits herein provided by each party are conferred in exchange solely for the rights and benefits conferred by the other party in each paragraph of this Settlement. If any paragraph is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining paragraphs or provisions shall continue in full force and effect. Unless this Settlement is superseded by a subsequent tribal-state compact in accordance with IGRA, no modification of this Settlement is binding on either party unless the modification is in writing, and (a) signed by the Governor, or the Governor's delegee, and (b) approved by a Resolution of the Tribe's Executive Council.

11. The Tribe agrees that, should the Tribe bring a legal or administrative challenge to the payments specified in paragraph 6 of this Settlement, the Tribe will cease gaming activities on the alternative land. Should a suit challenging the legality or validity of the payments specified in

paragraph 6 of this Settlement be brought by any person or entity other than the Tribe, the Tribe agrees that it will take the following actions at the request of the Governor:

A. If the Tribe is not already a party to the action, it will move to intervene on the side of the party or parties who are defending the validity of the payments specified in paragraph 6 of this Settlement. Upon becoming a party, the Tribe will participate as a party in the defense of the validity of that payment.

B. If the Tribe is denied intervention, the Tribe shall seek to participate in such action as an amicus and, if permitted, will file memoranda or briefs to support the validity of the payments. The Tribe reserves the right to take actions consistent with this paragraph 11, even if not requested to do so by the Governor. The Tribe agrees that, if it fails to take the actions specified in this paragraph 11, upon request by the Governor, it will cease gaming activities on the alternative land. Absent an order of a court of competent jurisdiction to the contrary, during the pendency of any challenge to the payments specified in paragraph 6 of this Settlement, all such payments shall continue to be made by the Tribe.

12. Nothing in this Settlement is intended to or does alter any terms or provisions of either the Compact or the August 20, 1993, Consent Judgment and Order in Sault Ste. Marie Tribe, et al. v. John M. Engler, (W.D. Mich., No. 1:90-CV-611).

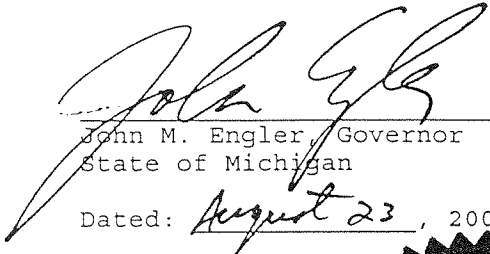
13. This Settlement shall be construed in accordance with and governed by the internal laws of the State of Michigan.

14. To the extent there is a dispute or controversy involving the terms of this Settlement, the parties agree that all actions or proceedings will be tried and litigated only in the Federal District Court for the Western District of Michigan. For the purpose of this Settlement, the Tribe expressly waives its sovereign immunity from suit and waives the jurisdiction of the Tribal Court should an action be commenced under this Settlement. This waiver is granted to the Office of Governor, the State of Michigan and the MEDC, a designated third

party beneficiary under this Settlement, solely for purposes of resolving any dispute or controversy under this Settlement, including without limitation, enforcement of the Tribe's payment obligations set forth in this Settlement. The Tribe expressly submits and consents to the personal and subject matter jurisdiction, venue, and service of process of the Federal District Court for the Western District of Michigan, including any federal court to which a decision may be appealed, with respect to any dispute or controversy arising out of this Settlement.

15. This Settlement, entered into on the date set forth above, shall be filed with the Secretary of State's Office, State of Michigan, and shall be transmitted to the United States Congress by the Governor. This Settlement shall take effect upon approval by the Governor and the Tribe and action by the United States Congress, approving this Settlement and making its terms binding and effective, resolving and extinguishing the Tribe's land claims to the Charlotte Beach Lands, and providing that the alternative land described in paragraph 4 of this Settlement be taken in trust for the benefit of the Tribe, as land obtained in settlement of a land claim under section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(b)(1)(B)(i).

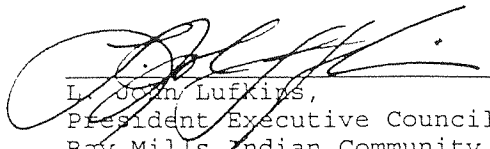
The Governor and the Tribe signify their understanding and acceptance of this Settlement by signing below.


John M. Engler, Governor
State of Michigan

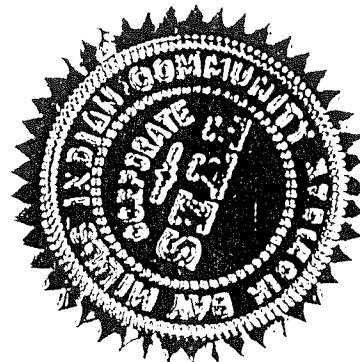
Dated: August 23, 2002

Governor's Seal




L. John Lufkins,
President, Executive Council
Bay Mills Indian Community
Dated: August 23, 2002

Tribe's Seal





STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

December 30, 2002

The Honorable Candice S. Miller
Secretary of State
Treasury Building, First Floor
430 W. Allegan
Lansing, Michigan 48918-9900

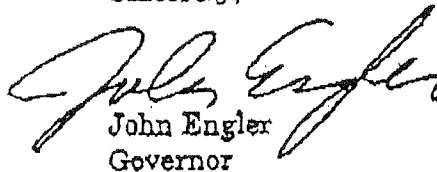
Re: Sault Tribe land claim settlement

Dear Secretary Miller:

Enclosed for filing, please find a "Settlement of Land Claim" that I have reached with the Sault Ste. Marie Tribe of Chippewa Indians. This document parallels the "Settlement of Land Claim" that I reached with the Bay Mills Indian Community earlier this year.

Thank you for your attention to this document.

Sincerely,


John Engler
Governor

JE/LB/jlf

cc: ✓Chairman Bernard Bouschor

Enclosure