

TITLE 2 - RULES OF PROCEDURE

CHAPTER 2-7 TORT CLAIMS

2-7-1 Findings and Purpose

(a) The Tribal Council finds that the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon (Tribes) provides governmental services which promote health, safety, welfare and economic security for residents of and visitors to the lands of the Tribes.

(b) The Tribal Council recognizes that the Tribes are immune from suit, except to the extent such immunity is expressly waived, and that Tribal sovereign immunity serves an important function in preserving limited Tribal resources so that the Tribes can continue to provide governmental services which promote health, safety, welfare and economic security for the residents of and visitors to the lands of the Tribes.

(c) The Tribal Council declares that the purpose of this Code is to establish a limited waiver of Tribal sovereign immunity consistent with the ability of the Tribes to continue (i) to provide governmental services which promote health, safety and economic security for the residents of and visitors to the lands of the Tribes and (ii) to provide a remedy to private persons who are injured by negligent or wrongful acts or omissions of the Tribes or its agents, employees or officers.

2-7-2 Definitions

(a) Agent - any person, whether paid or unpaid, acting on behalf of the Tribes;

(b) Employee - any person who is an employee, whether fulltime or part-time, permanent or temporary, of the Tribes;

(c) Injury - injury to a person, death, damage to or loss of property of whatever kind, which, if caused by the negligent or wrongful act or omission of a private person would be a tort under Tribal law, applicable federal law, and, to the extent consistent with Tribal law, laws of the State of Oregon in effect as of the date of this Code, regardless of the type or form of action or form of relief sought by the claimant;

(d) Office of Tribal Attorney shall mean the department of the Tribes by the same name;

(e) Officer or Official - an officer, whether elected or appointed, whether paid or unpaid, acting on behalf of the Tribes;

(f) Tribal Court - the Tribal Court established pursuant to the Constitution of the Tribes;

(g) Tribal Law - the Constitution of the Tribes, initiatives or referendums adopted by members of the Tribe in accord with the Tribe's Constitution, ordinances and other legislative enactments adopted by the Tribal Council, and common law of the Tribal Court;

(h) Tribes - the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, including but not limited to any branch, office, department, agency, commission, utility, authority, instrumentality, enterprise, corporation (whether chartered under Tribal or federal law, but excluding for purposes of this Code corporations chartered under the law of any State), or other entity of the Tribes.

2-7-3 Limited Waiver of Tribal Sovereign Immunity

(a) An action for monetary damages may be brought in Tribal Court under this Code against the Tribes by any person for any injury to that person caused (i) by an act or omission by the Tribes or (ii) by an act or omission by any agent, employee or officer acting on behalf of the Tribes and within the scope of authority of that agent, employee or officer provided that this waiver of sovereign immunity shall be limited as follows: No monetary damages shall be awarded under this section in excess of the limits of insurance maintained by the Tribes to compensate for injury claimed hereunder as set out in Section 2-7-5.

(b) An action may be brought in Tribal Court under this Code against the Tribes or an agent, employee or officer of the Tribes for declaratory, mandamus, injunctive or other extraordinary relief to compel the Tribes or any agent, employee or officer of the Tribes to perform prospectively, any responsibility of the Tribes or any agent, employee or officer of the Tribes to avoid an tortious injury. No judgment, order or award of declaratory, mandamus, injunctive or other extraordinary relief shall be entered under this Code against the Tribes or any officer of the Tribes without actual notice to the Tribes through the Secretary of the Tribal Council and the Office of Tribal Attorney, and to any agent, employee or officer of the Tribes against whom any such relief applies. The Tribal Court shall give due weight to the sovereign, governmental and public interests of the Tribes in determining whether to grant and in fashioning any declaratory, mandamus, injunctive or other prospective relief against the Tribes or any agent, employee or officer of the Tribes.

2-7-4 Procedure for Giving Notice of Claims and Filing Actions

(a) No action may be brought in Tribal Court for monetary damages under this Code and no claim shall be valid for monetary damages under this Code unless the person who claims to have suffered an injury shall send a written notice of the

claim for monetary damages as provided in Section 2-7-4(b) below by certified mail return receipt requested to the Secretary of the Tribal Council and the Office of Tribal Attorney. In the case of any claim wherein it is alleged an injury was caused by the act or omission of any Tribal commission, authority, corporation or enterprise or any agent, employee or officer of such Tribal commission, authority, corporation or enterprise, the written notice required by this section also shall be given to the chief executive officer of such Tribal commission, authority, corporation or enterprise.

(b) The written notice required by Section 2-7-4(a) shall include the following:

(1) The name and current address and telephone number of the claimant and the name and current address and telephone number of the claimant's attorney, if any; and

(2) A concise statement describing the conduct, circumstances or other facts which brought about the injury; describing the injury; stating the time and place of injury; stating the name of any Tribal employee involved, if known, and the name, address and telephone number, if known, of any other person involved or who has knowledge of the conduct, circumstances, facts or injury; and stating that amount of damages claimed.

(c) To be valid under this Code, the written notice of claim for monetary damages required by Section 2-7-4(a) shall have been given no later than one-hundred-eighty (180) days after the act or omission occurred giving rise to the injury. The written notice of claim for monetary damages shall be deemed given and effective as of the date of the last postmark of any written notice required by Section 2-7-4(a) above.

(d) No action for monetary damages may be brought under this Code until the expiration of sixty (60) days after the last notice required by Section 2-7-4(a) is given. Any action for monetary damages under this Code must be filed with the Tribal Court within two-hundred-seventy (270) days of the act or omission occurred which gave rise to the injury. No action against the Tribes under the Code shall be accepted for filing by the Tribal Court unless the claimant files proof of compliance with Section 2-7-4(a)-(c) above. No action for monetary damages shall be instituted under this Code for a sum in excess of the amount set forth in the written notice of claim required by Section 2-7-4(a), except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time notice required by Section 2-7-4(a) is deemed given in accordance with Section 2-7-4(c) or upon allegation and proof of intervening facts relating to the amount of the claim.

(e) Any person filing an action for money damages against the Tribes under this Code shall cause a copy of the complaint and summons to be served upon the Secretary of the Tribal Council, Office of Tribal Attorney, and, in the case of a

claim involving an act or omission of any Tribal commission, authority, corporation or enterprise, or any agent employee or office of any Tribal commission, authority, corporation or enterprise, then also upon the chairman or chief executive officer of such Tribal commission, authority, corporation or enterprise. Service of the complaint and summons as required by this subsection shall be completed within the time for commencing an action in Tribal Court under this Code or the time for service of a complaint and summons under rules generally applicable to actions filed in Tribal Court, whichever is less.

(f) In any action against the Tribes under this Code, whether for monetary damages or prospective declaratory, mandamus, injunctive or other extraordinary relief, the Tribes shall have not less than sixty (60) days after receipt of the complaint and summons, and such other time as the Tribal Court may allow, to file an answer or other responsive pleading or motion. No default judgment may be entered against the Tribes under this Code.

(g) The time periods for filing a notice of claim for monetary damages and for commencing an action for monetary damages under this Code do not apply in a suit for prospective declaratory, mandamus, injunctive or other extraordinary relief against the Tribes or any agent, officer or employee of the Tribes.

2-7-5 Limitations on Waiver of Sovereign Immunity

(a) No judgment, order or award pertaining to any claim for monetary damages permitted by the Code shall be for more than

(1) the limits of valid and collectible liability insurance policy or policies carried by the Tribe covering each such claim and in force at the time of such judgment order or award, including deductible amounts, to the extent appropriated or budgeted by the Tribal Council or any Tribal commission, utility, authority, corporation or enterprise, and

(2) the limits of any coverage provided for each such claim under established claim reserves

(A) appropriated or budgeted by the Tribal Council or any Tribal commission, utility, authority, corporation or enterprise, or

(B) otherwise established pursuant to any self-insured liability and/or other Tribal government claims program, approved and adopted pursuant to Tribal law. In the case of any claim wherein it is alleged an injury was caused by the act or omission of any Tribal commission, utility, authority or corporation or any agent employee or officer of such Tribal commission, utility, authority or corporation, but not otherwise the act or omission of the Tribes or defined in this Code, any judgment, order or award otherwise allowed by this Code

may be entered only against such Tribal commission, utility, authority or corporation.

(b) Any such judgment order or award of monetary damages may only be satisfied pursuant to the express terms of the policy or policies of liability insurance or established self-insurance or Tribal government claims program which is or are in effect at the time of such judgment, order or award.

(c) Notwithstanding any other provision of this Code, there shall be no waiver of sovereign immunity as to any claim of injury which is defended by the United States because such claim is deemed a claim against the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law. Upon certification by the Office of Tribal Attorney that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond. The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury. The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the Tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury.

(d) Notwithstanding any other provision of this Code, there shall be no exception to or waiver of sovereign immunity for any claim of monetary damages for any injury alleged to have resulted from any:

(1) Exercise or performance or the failure to exercise or perform a discretionary function or duty or the implementation or failure to implement decisions by the Tribes or any agent employee or officer of the Tribes whether or not the discretion be abused in any such matter;

(2) Action taken or decision made in good faith and without gross negligence in carrying out the law;

(3) Any intentional tort, including but not limited to assault battery, false imprisonment, malicious prosecution, abuse of process, libel, slander, defamation, misrepresentation, deceit, interference with contract rights, or interference with prospective economic advantage, except that this provision does not immunize the Tribes for any acts or omissions of investigative or law enforcement officers giving rise to claims for assault battery, false arrest, false imprisonment or malicious prosecution, provided that for purposes of this subsection "investigative or law enforcement officer" means any agent, employee or officer of the Tribes who is empowered to execute searches, to seize evidence, or to make arrests under Tribal law;

(4) Legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature, such as but not limited to adopting or failing to adopt a law;

(5) Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval or other authorization;

(6) Termination or reduction of benefits under a Tribal assistance program if the Tribes or any agent, employee or officer of the Tribes is authorized by law, rule or regulation to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;

(7) Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof except upon a showing of gross negligence;

(8) Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest or by a prisoner to himself or herself, except upon a showing of gross negligence;

(9) Any decision made by the Tribes or any agent, employee or officer of the Tribes in the implementation of the Indian Child Welfare Act or other laws respecting the placement or supervision of minors or incompetent persons;

(10) Any claim based upon an act or omission of any agent, employee or officer of the Tribes exercising due care, in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation be valid;

(11) Any claim based on the assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer; and

(12) The enumeration of the above immunities shall not be construed to waive any other immunities nor to assume any liabilities except as explicitly provided by the Code.

(e) The procedures and standards for giving notice of claims and commencing actions in Tribal Court provided in Section 2-7-5 of this Code are integral parts of the limited waiver of sovereign immunity provided by this Code and shall be strictly and narrowly construed. A tort claim for monetary damages against the Tribes shall be forever barred unless written notice of the claim is presented to the Tribes and an action for monetary damages relating to any such claim is commenced in Tribal Court in compliance with Section 2-7-4 of this Code.

(f) Notwithstanding any other provision of this Code, there shall be no waiver of sovereign immunity under this Code for claims relating to worker's compensation, unemployment compensation, or claims or actions relating to employment decisions.

2-7-6 Trial of Actions

All actions commenced under this Code shall be tried by Judges of the Tribal Court without a jury.

2-7-7 Extinguishment and Preservation of Certain Claims, Actions and Defenses

(a) Any liability for monetary damages assumed by the Tribes for the acts or omissions of any agent, employee or officer of the Tribes under this Code shall be the exclusive remedy available to any person who suffers an injury caused by an agent, employee or officer of the Tribes. Any claim for monetary damages assumed by the Tribes which otherwise would lie against an agent, employee or officer of the Tribes, except for this Code is forever extinguished in favor of the remedy established and limited by this Code, whether or not the person in whose favor such remedy is created exercises the right to timely present written notice of any claim and commence an action for an injury in Tribal Court under this Code.

(b) This Code expressly preserves defenses of qualified or absolute immunity to actions for monetary damages against agents, employees or officers of the Tribes in their individual capacities. By way of illustration rather than limitation, the defenses preserved by this Code include absolute legislative and judicial immunities, qualified and absolute executive immunities, and their derivatives, which were recognized in the common law and elaborated by federal courts in cases alleging violations of federal law. Except for the foregoing, this Code does not extinguish individual liability for monetary damages of or immunize any agent, employee or officer of the Tribes for an injury if it is established that liability for the act or omission of such agent, employee or officer is not assumed by the Tribes under this Code and that such act or omission was outside the scope of authority of the agent, employee or officer. Notwithstanding the foregoing, any action for individual liability of any agent, employee or officer of the Tribes which is founded on an act or omission in excess of the authority of such agent, employee or officer shall be heard only in Tribal Court.

(c) A person who suffers an injury as a result of an act or omission of the Tribes or an agent, employee or officer acting on behalf of the Tribes may not use procedures other than those established in this Code to seek monetary damages, even if another remedy may be provided by another provision of Tribal law of general application. Notwithstanding the foregoing, this Code shall not bar any person from pursuing remedies in accordance with otherwise applicable law for claims relating to

- (1) worker's compensation,
- (2) unemployment compensation, or
- (3) employment decisions.

(d) Volunteers duly authorized by the Tribes or an agent, employee or officer of the Tribes shall have the same immunities under this Code as agents, employees and officers of the Tribes.

2-7-8 Limitation on Awards, Judgments or Orders of Monetary Damages

No award, judgment or order shall be made under this Code: (i) based on strict or absolute liability; (ii) for punitive or exemplary damages; (iii) for prejudgment interest; or (iv) attorneys' fees. No award, judgment or order shall be made under this Code for pain and suffering or mental anguish and suffering or like claims in an amount greater than one hundred thousand dollars (\$100,000) for each injury.

2-7-9 Severability

If any part of this Code is declared to be invalid by the Tribal Court, all parts of this Code shall be invalid unless, within ninety (90) days of the judgment of the Tribal Court so declaring, the Tribal Council shall approve a resolution ratifying adoption of this Code without the part declared invalid. If application of this Code to any person is declared to be invalid by the Tribal Court, such invalidity shall not affect application of this Code to any other person, which may be given without such invalid application. To these ends, and consistent with this Section, the provisions of this Code are declared to be severable

2-7-10 Applicable Law

Tribal law, applicable federal law, and, to the extent adopted by 2-7-2(c), Oregon law shall apply and shall govern all claims and actions brought under this Code.

APPENDIX A

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

TORT CLAIMS

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Tort Claims" Code, Resolution No. 02-012, Ordinance No. 039, in a regular Tribal Council Meeting on January 13, 2002. Vote was 7 (for), 0 (against) and 0 (abstaining).