

Yurok Tribal Code, Amended Supreme Ordinance

YUROK TRIBE SOVEREIGN IMMUNITY ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance amending Title 1, Chapter 1.05 of the Yurok Tribal Code:

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GENERAL PROVISIONS

SECTION 4001. Short Title

This ordinance shall be referred to as the “Sovereign Immunity Ordinance.”

SECTION 4002. Legislative Findings

The Yurok Tribal Council hereby finds and declares that:

- (a) The Yurok Tribe, in which the Yurok People continue to voluntarily consent to be governed in the traditional Yurok way, possesses the inherent sovereignty of the Yurok People through an unbroken tradition of the Yurok way of life since time immemorial.
- (b) Sovereign immunity is an inherent attribute of the Yurok Tribe's authority as the governing body of a sovereign nation.
 - (1) The United States of America, in the exercise of its trust responsibility to preserve and protect sovereign tribal nations, recognizes, acknowledges, and protects the principle of tribal sovereign immunity.
 - (2) The principle of tribal sovereign immunity is well established and long recognized in federal policy, legislative enactments, and in federal judicial decisions, as well as in administrative regulations, policies, and decisions.
- (c) The Yurok Tribe's sovereign immunity exists on reservation, meaning both within the physical outer boundaries of the Yurok Tribe's Reserved lands and within the legal and political jurisdiction of the Yurok Tribe, as well as extending off reservation, meaning both in the lands beyond the geographic borders of the Yurok Tribe's reserved lands and within the legal and political jurisdictions of any other sovereign government, including subdivisions and administrative entities. The Yurok Tribe's Sovereign immunity covers the Yurok Tribe itself, and extends to the Tribe's agencies, arms, entities, and enterprises of the Tribe as well as to employees, officers, and agents acting on behalf of the Tribe and within the scope of their authority.
 - (1) Under the principle of tribal sovereign immunity, the Tribe, its agencies, arms, entities, and enterprises and its employees, officers, and agents cannot be sued in any court without the Tribe's express consent, or if the Congress of the United States has enacted specific legislation expressly waiving the sovereign immunity of Indian tribes in certain instances.
- (d) Preservation and recognition of the principle of tribal sovereign immunity is necessary to the functioning of the Tribe and its agencies, arms, entities, and enterprises, to preserve scarce tribal assets and to ensure that tribal assets, to the greatest extent possible, are preserved for programs and services that will benefit the tribal membership and their families.
- (e) The Tribal Council also recognizes, however, that the limited waiver of the Tribe's sovereign immunity is necessary to conduct tribal governmental business and to engage in contracts and agreements with non-tribal governments, persons, entities or enterprises that will further the objectives and goals of the Tribe because, without a valid waiver of tribal sovereign immunity, agreements and contracts entered into by the Tribe cannot be enforced by the non-tribal contracting party.
- (f) Waiver of the Tribe's sovereign immunity for specific transactions is an exercise of the Tribe's sovereign authority because only sovereign nations possess the authority

to waive their sovereign immunity. The Tribe has a critical interest in approving limited waivers of its sovereign immunity and in ensuring that companies, governments, and other entities who contract with the Tribe have the right to exercise the contractual remedies they have bargained for.

- (g) The intent of this ordinance is to streamline and clarify the waiver process.

SECTION 4003. Purpose

The purpose of this ordinance is to ensure the sovereign immunity of the Yurok Tribe against suit and to provide guidance for the Tribal Court, Tribal departments, and Tribal corporations in the limited circumstances in which a waiver of the Tribe’s sovereign immunity may be allowed. It is further intended to ensure consistency in all limited waivers of the Tribe’s sovereign immunity.

SECTION 4004. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 4005. Effective Date

This ordinance shall take effect immediately after its adoption by Council.

SECTION 4006. Repeal of Conflicting Ordinance Provisions

By the enactment of this Amended Supreme Ordinance, by the Tribal Council, all previous conflicting versions are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

SECTION 4007. Definitions

- (a) “Council” means Yurok Tribal Council.
- (b) “Tribe” or “Tribal” means the Yurok Tribe and the agencies, entities, arms, and enterprises of the Tribe, as appropriate, either together or separately.
- (c) “Sovereign Immunity” means immunity from suit or action of the Tribe and its agencies, entities, arms, and enterprises, including the officers, agents and employees of the Tribe when acting within the scope of their authority and duty.
- (d) “Officer” means elected members of the Tribal Council of the Tribe, senior management of the Tribe, including its agencies, arms, entities, or enterprises.
- (e) “Resolution” means a written resolution passed by a major action vote of the Tribal Council.

CHAPTER 1. SOVEREIGNTY IMMUNITY FORM AND PROCESS

SECTION 4101. Scope

The sovereign immunity of the Tribe extends to the Tribe, to tribal agencies, enterprises, arms and entities of the Tribe, and to Officers, employees and agents of the Tribe. The sovereign immunity of the Tribe may only be waived as provided in this Ordinance.

SECTION 4102. Form of Waiver

- (a) **Who May Waive Tribe's Sovereign Immunity.** The power and authority to waive the Tribe's sovereign immunity resides exclusively with the Tribal Council. The Tribal Council, by ordinance or Resolution, may delegate in part its authority to waive immunity to specific agencies, arms, entities, or enterprises of the Tribe.
- (1) Tribal Council's delegation of authority to waive the Tribe's sovereign immunity is expressly limited to the terms of the written delegation and conform to the standards laid out in this ordinance, and any purported waiver of tribal sovereign immunity in excess of the expressly delegated authority is void and of no legal effect.
 - (2) Any waiver of sovereign immunity by a tribal entity, arm, or enterprise is strictly limited to that entity or arms' sovereign immunity and is not a waiver of the sovereign immunity of the Tribe or of any other entity, arm, or enterprise of the Tribe.
- (b) **Grant of Waiver of Tribe's Sovereign Immunity.** The Tribal Council may approve and grant a waiver of the Tribe's sovereign immunity in such scope as the Tribal Council determines is in the best interest of the Tribe.
- (1) Waivers for punitive, or similar type damages are disfavored and only approved when there is substantial benefit to the Tribe, and that benefit is memorialized within the Tribal Resolution.
- (c) **Immunity of Tribal Officers, Employees and Agents.** Tribal employees, attorneys, Officers, and agents are immune from suit or action while acting within the scope of their authority, and while carrying out their job responsibilities, to the same extent as the Tribe. Any action or suit commenced against the Tribe under a waiver of sovereign immunity approved pursuant to this Ordinance shall be brought only against the Tribe, agency, entity, arm or enterprise entering into the waiver, and shall not be brought against Officers, employees or agents of the Tribe carrying out a particular contract or agreement.
- (1) No action or suit shall be brought or maintained against tribal employees, attorneys, Officers, or agents in their individual capacity, for actions taken as part of their job responsibilities and within the scope of their authority, and any relief pursuant to any such action or suit shall be for prospective injunctive relief only.
- (d) **Written Waivers Only.** Any valid and effective waiver of the Tribe's sovereign immunity must:
- (1) be in writing;
 - (2) contain a resolution to waive immunity that is:
 - (A) properly approved by Tribal Council; and,

- (B) signed by the Chairperson;
- (3) clearly and unambiguously identify the:
 - (A) appropriate body, agency, entity, arm, or enterprise of the Tribe subject to the limited waiver;
 - (B) time period subject to the limited waiver; and,
 - (C) place, conduct, or conditions subject to the limited waiver.
- (e) **Waiver and Resolution Form.** The actual waiver of sovereign immunity must be set forth with specificity in the contract or agreement waiving immunity. The Resolution approving the waiver of sovereign immunity must specifically refer to the waiver and its details, or in the alternative, the Resolution may expressly refer to the specific provision, contract, or agreement containing the waiver of sovereign immunity that is being approved, with the provision, contract or agreement attached to the Resolution.
 - (1) Any waiver of the Tribe’s sovereign immunity must be express, must use the words “limited waiver of sovereign immunity” in any sequence and must set out, in detail, the subject of waiver, time period of waiver, and conditions of waiver.
 - (2) It is the intent of the Tribe that waivers of sovereign immunity are narrowly construed by any court or arbitrator having jurisdiction to interpret a purported waiver of sovereign immunity by the Tribe; the burden of proof, therefore, lies entirely with the party claiming or advocating the existence of a waiver.
- (f) **Effectiveness.** Unless provided otherwise therein, waivers of the Tribe’s sovereign immunity shall be effective and binding upon the Tribe upon passage by the Tribal Council of an authorizing Resolution as provided in this Ordinance.
- (g) **Waiver by Ordinance.** Tribal sovereign immunity may be waived or authorized by Ordinance as specifically set forth therein and subject to any limitations or restrictions as set out therein.
- (h) **Special Tribal Court Review.** Despite any provision to the contrary, unless a contract or agreement expressly prohibits tribal court jurisdiction for the resolution of any matter arising under the contract or agreement, or allows tribal court jurisdiction for any matter arising under the contract or agreement only with the express consent of the non-tribal contracting party, the Yurok Tribal Court shall have special jurisdiction to determine whether the Yurok Tribe has validly waived its sovereign immunity in any contract or agreement.
- (i) **No Effect on Existing Waivers of Sovereign Immunity.** Nothing contained in this Ordinance shall be interpreted to invalidate an otherwise valid waiver of the Tribe’s sovereign immunity that was enacted in accordance with existing Tribal law at the time of enactment.
- (j) **Nullification by Council.** Notwithstanding any other provisions of this ordinance, any waiver, including any waiver authorized by a wholly owned Tribal corporations, may be nullified upon resolution of not less than five (5) Tribal Council members.

SECTION 4103. Dispute Resolution Not Requiring a Resolution From Council.

Any agreement providing for dispute resolution in accordance with the cultural tradition of out of court mediation or “settling up” shall not require a resolution from Council.

CHAPTER 2. REVIEW OF LEGISLATIVE ACTS AND ACTIONS

SECTION 4201. Standard of Review; Legislative Acts and Appeals

Reviews of legislative acts and appeals of Council or committee actions are only allowed under the standards described in this ordinance.

SECTION 4202. Basis for Review

Unless otherwise specified in the Constitution of the Yurok Tribe, federal statute, or Yurok Tribal ordinance, the basis for court review of any legislative act shall be under the rational basis standard.

SECTION 4203. Appeals

Appeals of Council decisions or committee actions shall only be allowed as provided for by Yurok Law as codified in the Constitution of the Yurok Tribe or in ordinances duly adopted by the Yurok Tribal Council. In such instances, the standard of review shall be arbitrary and capricious standard. In such cases the Court shall not substitute its judgment for the decision of the Council or committee. The Court’s scope of power shall only be to review the Council or committee decision for procedural deficiencies and, in any case, can only remand back to Council or the appropriate committee for proper procedure.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE AMENDED SUPREME ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON _____, AT WHICH QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 7 FOR, 1 OPPOSED AND 0 ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

DATED THIS DAY OF _____ 2024

Joseph L. James, Chairperson
Yurok Tribal Council

ATTEST:

Sherri K. Provolt, Secretary
Yurok Tribal Council