

Supreme Ordinance

Sovereign Immunity and Standards of Court Review

The Yurok Tribal Council is the duly elected and authorized Governing body of the Yurok Tribe, a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this ordinance by the power and authority granted under the Yurok Tribal Constitution. Article IV, Section 5(a) states that the Tribal Council may "enact legislation, rules and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe..."

Purpose:

The purpose of this Ordinance is to insure the Sovereign Immunity of the Yurok Tribe against suit and to provide guidance for the Court 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 in specific instances and contracts, and to restate and codify the Tribe's longstanding policy regarding sovereign immunity and any waivers thereto.

Section 1. Effective Date:

This ordinance shall be effective immediately and shall be given the maximum scope permitted by law to past, present, and future waivers of sovereign immunity of any kind.

Section 2. Application:

Notwithstanding any other provision of this, or any other ordinance, the following provisions apply to all waivers of sovereign immunity including, but not limited to: ordinances, contracts, and court interpretations of waivers of sovereign immunity.

Sovereign Immunity Can be Raised by the Tribe in a Court Proceeding at Any Time.

Section 2.1. Defenses:

To overcome the Tribe's defense of sovereign immunity there must be a showing that the Tribal Council, in accordance with the Yurok Tribe Constitution provision regarding "major actions," has unequivocally and specifically expressed a waiver of sovereign immunity as documented in a written Resolution of the Yurok Tribal Council by approval of such a waiver by no less than five (5) Tribal Council members. (Yurok Tribe Constitution, Article IV Section 5(j)).

Section 2.2. Construction of Wavier:

The Court shall narrowly construe any waiver of Sovereign Immunity.

Section 2.3. Authorization of Waiver:

Limited waivers can only be authorized by approval of not less than five (5) Yurok Tribal Council Members as per Yurok Tribal Constitution Law (Article IV, Section 5(j)) regarding passage of "legislation, ordinance or other major action." Incorporated entities including, but not limited to, the Yurok Indian Housing Authority, the Yurok Economic Development Commission and other entities as from time to time may be formed or incorporated by the Yurok Tribe or under Yurok Tribal Law are not authorized to waive sovereign immunity on behalf of the Tribe.

Section 2.4. Extent of Waiver:

There can only be limited waivers of sovereign immunity. Any elements of sovereign immunity not specifically waived by the Tribal Council shall remain in effect and, as such, are reserved on behalf of the Yurok Tribe.

Section 2.5. Extent of Immunity:

Sovereign Immunity includes the Yurok Tribe, the Tribal Chairman, the Tribal Council, Council Committees, wholly owned Tribal corporations, all Tribal employees professional consultants, and contractors to the tribe working in the course and scope of their duties and obligations owed to the Tribe through any agreement, employment, ordinance, contract, or action.

Section 2.6. Liability:

There can be no liability on the part of the Tribe or any Tribal employee resulting from a natural condition of any unimproved tribally owned property.

Section 2.7. Consistency with Yurok Constitution:

All waivers of Sovereign Immunity must be consistent with the Yurok Constitution.

Section 2.8. Affect of Limited Waiver on General Sovereign Immunity:

No specification of a limited waiver of sovereign immunity shall in any way limit the general principal of sovereign immunity.

Section 2.9. Burden of Proof:

The party asserting that a waiver of sovereign immunity applies shall bear the burden of proving by clear and convincing evidence that any such limited waiver conforms to this ordinance.

Section 2.10. Remedies:

Remedies shall be limited to remands and injunctions. In rare circumstances where specified as being available by ordinance, or a Council approved contract, specific performance may be ordered.

Section 2.11. Monetary Damages:

In no case is there a waiver of sovereign immunity for monetary damages, interest damages, punitive damages, exemplary damages or attorney fees and nothing in this ordinance or any other ordinance shall be construed as authorization for such.

There can be no general recourse against Tribal assets, cash, or future Tribal revenue.

There can be limited waivers of sovereign immunity for specified collateral as provided for in financing agreements that are approved by Council.

Section 3. 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 3.1. Basis for Review:

Unless otherwise specified by 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 3.2. Appeals:

Appeals of Council Decisions or Committee Actions Shall only be allowed as provided for by Yurok Law as codified in the Yurok Tribe Constitution or in ordinances duly adopted by the Yurok Tribal Council. In such instances, the standard of review shall be the 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 YUROK TRIBE SUPREME ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON JULY 8th 2006, AT WHICH A QUORUM WAS PRESENT AND THAT THIS ORDINANCE WAS APPROVED BY A VOTE OF 7 FOR, 0 OPPOSED, WITH NO ABSTENTIONS

DATED THIS 8th DAY OF JULY, 2006.


**Howard McConnell, Chairman
Yurok Tribal Council**

Attest:



**Cynthia McKernan
Executive Assistant**