

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As amended through Resolution No. 09-090 (July 6, 2009)*

TORT CLAIMS CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

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TORT CLAIMS CODE

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SECTION 1.01. TITLE

The title of this Code shall be the Tort Claims Code.

SECTION 1.02. FINDINGS

The Board of Trustees finds that:

- A. The Confederated Tribes of the Umatilla Indian Reservation ("Confederated Tribes") provides a broad range of governmental services, the provision of which has the potential to cause damage to property and injuries to persons in the event of the negligent action or inactions of Tribal government employees;
- B. The Confederated Tribes owns and operates several commercial enterprises serving the public where there is the potential for damage to property or injury to persons due to the negligent action or inaction of Tribal enterprise employees;
- C. Subject to the limitations set forth in this Code, persons suffering damage to their property or injury to their person due to the negligent action or inaction of Tribal government or enterprise employees should have access to a forum to address those damages;
- D. The government and enterprises of the Confederated Tribes acquire insurance (or are covered by the Federal Tort Claims Act in the case of programs operated pursuant to 638 Grants or Contracts) to compensate those persons who have suffered damage to their property or injury to their person due to the negligent action or inaction of employees of the Tribal government or enterprises;
- E. The Confederated Tribes has sovereign immunity from unconsented suit, which sovereign immunity must be waived to permit a suit against the Confederated Tribes seeking monetary damages for damage to property or injury to persons caused by the negligent action or inaction of a Tribal government or enterprise employee;
- F. It is appropriate for the Confederated Tribes to impose liability caps for claims against the Confederated Tribes for damage to property or injury to persons caused by the negligent action or inaction of Tribal government or enterprise employees; and
- G. The Umatilla Tribal Court is the appropriate judicial forum for resolving any claims against the Confederated Tribes for damage to property or injury to persons caused by the negligent action or inaction of Tribal government or enterprise employees.

SECTION 1.03. AUTHORIZATION FOR SUIT

- A. The Confederated Tribes may be sued in the Umatilla Tribal Court only when authorized by either: (1) applicable federal law, or (2) statute, ordinance or resolution approved by the Board of Trustees.
- B. No suit against the Confederated Tribes brought pursuant to this Code is authorized unless it complies with all applicable requirements of this Code and any other applicable laws of the Confederated Tribes.

SECTION 1.04. LIMITATIONS ON LIABILITY OF THE CONFEDERATED TRIBES

The Confederated Tribes shall have no liability for any claims of damage to property or injury to persons under the following circumstances:

- A. Where the Tribal government employee is acting pursuant to a 638 grant or contract funded by the Bureau of Indian Affairs (BIA), or the Indian Health Service (IHS), or any other

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federal agency or department, where the federal government has assumed liability for such damage or injury under the Federal Tort Claims Act;

- B. Where liability has been, or is hereafter assumed by a third party, including any governmental body or agency or a private entity or person, pursuant to applicable law, contract or agreement;
- C. Any claim for injury to or death of any person covered by the Confederated Tribes' Workers Benefit Code or the Workers' compensation laws of any jurisdiction; and
- D. Where the Confederated Tribes has been or is hereafter indemnified or held harmless by a third party.

SECTION 1.05. PRESERVATION OF OTHER IMMUNITIES AND DEFENSES; VICARIOUS LIABILITY; VOLUNTEERS

- A. Any liability of an entity, officer, employee or agent of the Confederated Tribes assumed pursuant to this Code is subject to any other immunity of that Tribal entity or person and is subject to any defense which would be available to the Tribal entity or person if they were private entities and/or persons;
- B. An entity of the Confederated Tribes is not vicariously liable for any injury or damage resulting from an act or omission of any Tribal officer, employee or agent if such party is not personally liable. Additionally, a Tribal entity is not vicariously liable for the actions or omissions of Tribal officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority;
- C. This section does not immunize a Tribal officer, employee or agent from individual liability, not within Tribal insurance coverage, for the full measure of the recovery applicable to a person in the private sector if it is established that such conduct was outside the scope of his or her employment and/or authority; and
- D. Volunteers duly authorized by the Confederated Tribes, or any political subdivision thereof, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the Confederated Tribes and its governmental and enterprise entities performing similar work.

SECTION 1.06. JURISDICTION IN UMATILLA TRIBAL COURT

The Umatilla Tribal Court shall have jurisdiction to hear suits against the Confederated Tribes for damage to property and injury to persons as authorized pursuant to this Code. Such suits shall be conducted pursuant to Rules of Civil Procedure, Evidence, and Appellate Procedure as adopted by the Umatilla Tribal Court or enacted by the Board of Trustees. In the absence of any such Tribal rules, the Federal Rules of Civil Procedure, Evidence, and Appellate Procedure shall apply.

SECTION 1.07. CONSENT TO SUIT AGAINST CONFEDERATED TRIBES; LIMITATIONS ON FORUM, DAMAGES, AND CLAIMS FOR RELIEF

- A. Subject to the limitations set forth in this Code, the Confederated Tribes is subject to action or suit for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a government or enterprise function. For purposes of this Code, a tort is an error or omission constituting a breach of a legal duty that is imposed by law, other than a duty arising from contract, the breach of which results in injury to a person or damage to property for which the law provides for a civil right of action for damages or for a protective remedy.

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- B. The Confederated Tribes may be sued only in the Umatilla Tribal Court and only with respect to any damages claim which is within the express coverage and not excluded by either commercial liability insurance carried by the Confederated Tribes or an established Tribal self-insured and/or other claims program of the Tribal government or enterprise, approved and adopted pursuant to the laws of the Confederated Tribes. Claims against the Confederated Tribes under this Code are further limited in that no judgment, order of award pertaining to any suit or claim permitted hereunder shall be for more than the lesser of:
1. The sum of \$200,000 for each individual claimant, but not exceeding the sum of \$500,000 for each occurrence; or
 2. The limits of valid and collectible liability insurance policies carried by the Confederated Tribes covering each such claim and in force at the time of such judgment including deductible amounts to the extent appropriated by the Board of Trustees, nor for more than the amount of coverage provided for each such claim under established claim reserves as appropriated by the Board of Trustees or otherwise established pursuant to any self-insured liability and/or other Tribal government or enterprise claims program, approved and adopted pursuant to the laws of the Confederated Tribes.
- C. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Confederated Tribes which are in effect at the time of each such judgment, order, or award.
- D. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Confederated Tribes, nor against any officer, employee or agent of the Confederated Tribes acting within the course and scope of the authority of such office, employment or agency.
- E. Notwithstanding any provisions of this subsection, there shall be no waiver of the sovereign immunity of the Confederated Tribes' entities, officials, employees or agents from claims for injury or damage alleged to have been sustained by:
1. Policy decisions or the exercise of discretion made by a Tribal official, employee or agent in the exercise of judgment or discretion vested in the entity or individual;
 2. A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a Tribal entity, officer, employee or agent from liability for false arrest, false imprisonment or malicious prosecution;
 3. Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;
 4. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, nor by the termination or reduction of benefits under a Tribal assistance program, if the Tribal entity, officer, employee or agent is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked;
 5. 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;
 6. 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, or to any other prisoner, except upon showing of gross negligence; and

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7. The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Code.
- F. Notwithstanding anything in this subsection to the contrary, in the event the Board of Trustees expressly agrees to an agreement imposing a higher liability limit for a specific Tribal program, enterprise, or under a specific contract or argument such higher liability limit shall supersede the limits set forth in this subsection for such specified Tribal program, enterprise or specific contract or agreement only.

SECTION 1.08. SUITS FOR PERFORMANCE OF DUTIES

Any officer, employee or agent of the Confederated Tribes may be sued in the Umatilla Tribal Court to compel him/her to perform his/her responsibility under the applicable laws of the United States and the laws of the Confederated Tribes.

- A. Relief awarded by the Umatilla Tribal Court for claims or suits brought under this section shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the applicable laws of the United States and the laws of the Confederated Tribes establishing the responsibility for such performance;
- B. No relief as provided under this section may be awarded by the Umatilla Tribal Court without actual notice to the defendant(s), nor before the time provided in this Code for answering complaints, motions (or order to show cause); and
- C. Nothing in this section shall be construed to supersede or waive any procedural, administrative or judicial requirement set forth in the laws of the Confederated Tribes as a prerequisite to the performance an act by an officer, employee or agent of the Confederated Tribes or relieve the petitioner from complying with such procedures.
- D. This section shall not apply to the members or officers of the Board of Trustees.

SECTION 1.09. TORT CLAIMS PROCEDURES

The procedure governing actions authorized by this Code shall be as follows:

- A. Any person or party desiring to institute suit against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes as authorized by this Code shall, as a jurisdictional condition precedent to institution of such suit, provide notice of such suit in writing to the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel.
1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of the last of the three notices to be delivered as evidenced upon such receipts, and filed together with such notices with the Umatilla Tribal Court in which such action may subsequently be commenced. The Chairman of the Board of Trustees, Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel shall ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein, and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.
2. Such notices shall state the name of each prospective plaintiff, the identify of each prospective defendant, the nature of all claims, relief which will be sought, and the correct address, name and telephone number of each prospective plaintiff's attorney or spokesman (if any).

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- a. No action shall be accepted for filing against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes unless the plaintiff has filed proof of compliance with this section by service of the notices as required by this subsection at least sixty (60) days prior to the date on which the complaint or any other action is proposed to be filed in the Umatilla Tribal Court;
- b. In any action against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes, the time for responding to the valid service of any summons and complaint shall be sixty (60) days; to valid service of any order to show cause, not less than thirty (30) days; and to valid service of any motion, not less than twenty (20) days. Any claim against the Confederated Tribes or any Tribal entity, officer, employee, or agent thereof, which is filed pursuant to this Code, is deemed generally denied sixty (60) days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of sixty (60) days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general denial thereof. These time periods may not be shortened by any Court rule or judicial order, but shall be extended by any longer period provided by other applicable law, rule, or order of Court; and
- c. Any person or party filing a complaint against the Confederated Tribes or any officer, employee or agent of the Confederated Tribes shall serve by registered mail, return receipt requested, a copy of the complaint together with summons duly issued, upon the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel. Service of summons and complaint against any officer, employee or agent of the Confederated Tribes shall be made by any means authorized under Tribal law or Rules of the Umatilla Tribal Court, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the Chairman of the Board of Trustees, the Secretary of the Board of Trustees, and the Tribal Attorney/Office of Legal Counsel.

SECTION 1.10. NO INSURANCE PURCHASE OBLIGATION

Nothing in this Code is intended to, nor shall it be construed to, impose an obligation on the Confederated Tribes to purchase or maintain liability insurance at any time or in any amount.

SECTION 1.11. STATUTE OF LIMITATIONS

A. Time for Commencement of Action.

1. **Personal Injury and Property Damage Claims.** In no event shall any action or suit against the Confederated Tribes, or its officials, employees or agents, for the negligent injury to persons or damage to property under this Code be commenced more than two (2) years from the date of the act or omission complained of.
2. **Suit to Compel Performance of Official Duty.** In no event shall any action or suit against the Confederated Tribes, its officials, employees or agents, to compel the performance of their duties as permitted under §1.08 of this Code be commenced more than one year (1) year from the date of the act or omission complained of.

B. When Action Commenced. For the purposes of determining whether an action has been commenced within the time limits in paragraph A of this section, an action shall be deemed commenced as to each defendant when:

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1. The notices required by §1.09 of this Code have been provided.
 2. The complaint has been filed in the Umatilla Tribal Court; and
 3. The complaint has been served on the defendant.
- C. No tolling. The statute of limitations set forth in this section shall not be tolled by the filing of an action in any federal or state court, or in any other tribal court except the Umatilla Tribal Court.

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APPENDIX A

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LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Tort Claims Code in Resolution No. 00-14 (March 6, 2000). It has been amended once.

Following enactment of the Tort Claims Code, its provisions have been amended as follows:

<u>Section</u>	<u>Change</u>	<u>Resolution</u>	<u>Resolution Date</u>
1.07(A)	Amended	Resolution 00-37	May 15, 2000
1.11	Added	"	"
All	Code Reformatted	Resolution 09-090	July 6, 2009