

# SKOKOMISH TORT CLAIMS ACT

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### CLAIMS AND ACTIONS

#### 15.01.010 Purpose

The purpose of this Act is to establish a limited waiver of the sovereign immunity, and to impose strict procedures under which a person may file a Tort action or claim for monetary damages against the Skokomish Indian Tribe or Skokomish Indian Tribal Enterprise, Incorporated, its agents, employees, and officers only if covered by and within the policy limits of any liability insurance maintained by the Skokomish Indian Tribe or Skokomish Indian Tribal Enterprise, Incorporated. This Act is not intended to be a general waiver of sovereign immunity, and it shall be narrowly and strictly construed. This limited waiver of sovereign immunity is conditioned upon the claimant's full and complete compliance with all of the procedures contained in this Act as well as the scope of permitted claims and actions authorized by this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### 15.01.020 Definitions

(a) "Act" means the Skokomish Tort Claims Act.

- (b) "Award" means money damages which the Tribal Court determines are payable to compensate for any injury recognized and resulting from a claim authorized under this Act.
- (c) "Board of Directors" means the sitting Directors of the Skokomish Indian Tribal Enterprise, Incorporated.
- (d) "Contract" means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.
- (e) "Dangerous condition" means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist, and which condition is proximately caused by the negligent acts or omissions of the Tribe or SITE in constructing or maintaining such facility. For the purposes of this Act, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall exist neither solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, nor by the mere existence of a natural physical condition. Nothing in this definition shall preclude an accumulation of water, snow, or ice from being found to constitute a dangerous condition when the Tribe or SITE fails to use existing means available to it for the removal of such accumulation and when the Tribe or SITE had notice of such accumulation and reasonable time to act.
- (f) "Employee" means a part- or full-time employee or an agent of the Tribe or SITE, when acting during the course of and within the scope of their employment. This term includes officers of the Tribe or SITE when they are acting to fulfill their duties to the Tribe or SITE. This does not include agents or representatives of the United States or the State of Washington or any of their political subdivisions.
- (g) "Facility" means any property owned by the Tribe or SITE that houses offices, departments, businesses, entities, and/or employees; and includes any parking areas owned by the Tribe or SITE that are contiguous to the property.
- (h) "Injury" means death, harm to a person, or damage to or loss of property which, if caused by the negligent act or omission of a person, would be a tort under Tribal law, applicable federal law, or, to the extent consistent with Tribal law, laws of the State of Washington, and which is expressly covered by the Tribe's or SITE's liability insurance without regard to any deductible amount contained in the insurance policy.
- (i) "Person" means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (j) "SITE" means the Skokomish Indian Tribal Enterprise, Incorporated, which is a federally chartered corporation wholly owned by the Skokomish Indian Tribe.
- (k) "Tort" means a civil wrong, other than breach of contract, for which a remedy may be

obtained, usually in the form of damages.

- (l) "Tribal Law Office" shall mean the legal department of the Tribe by the same name.
- (m) "Tribal Council" means the governing body of the Skokomish Indian Tribe, duly elected by the Tribal membership in accordance with the Constitution of the Skokomish Indian Tribe.
- (n) "Tribal Court" means the Courts of the Skokomish Indian Tribe.
- (o) "Tribal law" means the Constitution of the Skokomish Indian Tribe, initiatives duly adopted by members of the Tribe in accordance with the Tribe's Constitution, ordinances and other legislative enactments adopted by the Tribal Council, and the decisions of the Tribal Court.
- (p) "Tribe" means the Skokomish Indian Tribe, including but not limited to any branch, office, department, agency, commission, utility, authority, instrumentality, enterprise, corporation, or other entity of the Tribe; and excludes SITE for purposes of this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.030 Limited Waiver of Sovereign Immunity**

- (a) The sovereign immunity of the Tribe and SITE shall remain in full force and effect except to the extent that it is waived by this Act.
- (b) Members of the Tribal Council and Board of Directors shall remain immune from suit for actions taken during the course of and within the scope of their duties as members of the Tribal Council or Board of Directors, and nothing contained in this Act shall be construed otherwise.
- (c) The Tribe and/or SITE may be sued solely in the Tribal Court. Nothing contained in this Act shall be construed as a waiver of sovereign immunity from suit in any state court, federal court, or other tribal court.
- (d) The sovereign immunity of the Tribe and SITE is waived for claims and/or actions permitted under this Act and covered by liability insurance only with respect to:
  - (1) Injuries proximately caused by the negligent acts and/or omissions of the Tribe or SITE or their employees; and
  - (2) Injuries proximately caused by the condition of any facility of the Tribe or SITE, provided the claimant establishes that the facility was in a dangerous condition.
- (e) Neither the Tribe nor SITE waives sovereign immunity to suit with respect to contract claims. The provisions contained in this Act shall not limit or alter in any way the authority to enter into contracts containing a clear and unequivocal waiver of the sovereign immunity, including provisions for the enforcement thereof. Disputes alleging a breach of contract shall continue to be determined pursuant to the

principles of contract law.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.040 Volunteers**

Volunteers duly authorized by the Tribe or SITE, 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 from suit as the employees of the Tribe or SITE.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.050 Actions Outside the Scope of Employment or Authority**

This Act does not immunize employees of the Tribe or SITE from individual liability for the full measure of the recovery applicable to a claimant, if it is established that their conduct exceeded the scope of employment or authority. Claims for individual liability arising out of conduct which is found to exceed the scope of employment or authority and which arise within the exterior boundaries of the Skokomish Indian Reservation, trust or restricted lands shall be heard only in the Tribal Court.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)

#### **15.01.060 Liability for Costs and Expenses**

If the Tribal Court determines that the injuries claimed from an act or omission of an employee of the Tribe or SITE were willful and wanton or otherwise outside the scope of employment or authority, the Tribe or SITE may request and the Court may order upon such request, that the individual defendant(s) named in the claim and/or action to reimburse the Tribe or SITE for costs and expenses which may have been incurred in the defense of the defendant(s).

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.070 Limitation of Awards**

- (a) No rule of law imposing absolute or strict liability shall be applied in any claim and/or action for injuries under this Act.
- (b) No award or other judgment imposing punitive or exemplary damages, or attorney fees, shall be applied in any claim and/or action for injuries under this Act.
- (c) No award for loss of consortium shall be applied in any claim and/or action for injuries under this Act.
- (d) No award for pain and suffering or mental anguish shall be applied in any claim and/or action for injuries under this Act, except where such award does not exceed fifty (50) percent of the actual damages sustained and provided that any such award is expressly covered by the liability insurance of the Tribe or SITE without regard to

any deductible amount contained in the insurance policy.

- (e) In no case shall an award exceed the available proceeds from the liability insurance of the Tribe or SITE.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.080      Extent of Liability**

In any claim and/or action concerning a single occurrence, the maximum amount of any award under this Act, including damages, court costs, interest, and any other costs shall be:

- (a) For any injury to one person, an amount which is in accordance with the terms of the liability insurance policy of the Tribe or SITE applicable to such claim.
- (b) For any injury to two or more persons, an amount in accordance with the terms of the liability insurance policy of the Tribe or SITE applicable to such claim.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.090      Attachment Prohibition**

Neither execution nor attachment shall issue against the property or funds of SITE, the Tribe, or any of the wholly-owned enterprises of either in any claim for injury or proceedings initiated under this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.100      Procedure for Giving Notice of the Claim and Filing Actions – Written Notice of the Claim Required**

- (a) No action may be filed in Tribal Court for monetary damages under this Act and no claim shall be valid for monetary damages under this Act unless the person who claims to have suffered an injury, prior to the filing of any action in Tribal Court, first files with the Tribal Court a written notice of the claim for monetary damages. A certified copy of the written notice of the claim must be provided to the Tribal Law Office, on the same date as the written notice of the claim is filed with the Tribal Court.
- (b) The written notice of the claim shall contain the following:
  - (1) The name and address of the claimant and the name and address of the claimant’s representative, if any;
  - (2) A designation of whether or not the claim is against the Tribe and/or SITE and/or their employee(s);
  - (3) A concise statement of the factual basis of the claim, including the date, time,

place, and circumstances of the act, omission, or condition complained of;

- (4) The name of any person and employee involved, if known;
  - (5) A concise statement of the nature and the extent of the injury claimed to have been suffered;
  - (6) A statement of the amount of monetary damages that is being requested; and
  - (7) When the claim is one for death by negligent act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.
- (c) The written notice of the claim required under this Section shall be valid only if:
- (1) It is filed with the Tribal Court and given to the Tribal Law Office no later than one hundred eighty (180) days after the act or omission occurred giving rise to the injury as required in subsection (a) of this Section; and
  - (2) It contains all of the information required in subsection (b) of this Section.
- (d) Upon receipt of the written notice of the claim required by this Section, the Chief Financial Officer of the Tribe and/or SITE shall cause the claim to be submitted to the insurance company or companies. If a claim is rejected by the insurance company or companies or the parties have reached an impasse as to the dollar value of a claim, the claim may be taken to the Tribal Court, provided all jurisdiction prerequisites set forth in this Act have been satisfied.
- (e) No action for monetary damages may be brought in Tribal Court under this Act until the expiration of sixty (60) days after the date of the written notice of the claim required by subsection (a) of this Section is given.
- (f) No action for monetary damages shall be accepted for filing by the Tribal Court unless the claimant at the same time files written proof of compliance with this Section.
- (g) No action for monetary damages may be brought in Tribal Court under this Act for damages in excess of the amount set forth in the written notice of the claim required by this Section. Damages sought in excess of the amount stated in the written notice of the claim may be awarded by the Tribal Court only if the claimant proves the increased amount is based upon evidence not reasonably discoverable at the time the notice was given, or upon proof of intervening facts relating to the amount of the claim.
- (h) Any person filing an action in Tribal Court for damages under this Act shall cause a copy of the complaint and summons to be served upon the Tribal Law Office. The Tribe, SITE, and any defendant 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 Tribe, SITE, and/or employee under this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.110 Statute of Limitations**

Any action for monetary damages under this Act must be filed with the Tribal Court within two hundred seventy (270) days from the date that the act or omission occurred which gave rise to the injury. Any action for monetary damages under this Act that is not timely filed with the Tribal Court is time-barred by this statute of limitations.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.120 Trial of Actions**

Any action for monetary damages commenced under this Act shall be tried by a judge of the Tribal Court without a jury.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.130 Applicable Law**

Any action for monetary damages brought under this Act shall be determined by the Tribal Court in accordance with Tribal law. In the absence of specific Tribal law, the Tribal Court may refer to applicable federal law, and to the extent consistent with Tribal law, the laws of the State of Washington, but in no case shall the laws of the State of Washington be deemed or construed to have been adopted as Tribal law for the purposes of this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

#### **15.01.140 Preclusion and Limitation of Claims and Actions; Limitations on Waiver of Sovereign Immunity by this Act**

- (a) No judgment, order or award pertaining to any claim and/or action for monetary damages authorized by this Act shall be for more than the limits of a valid and collectible liability insurance policy or policies carried by the Tribe or SITE covering each such claim.
- (b) Notwithstanding any other provision of this Act, there shall be no permitted claim or waiver of sovereign immunity as to any claim of injury which is defended by 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 Tribal Law Office 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.

- (c) Notwithstanding any other provision of this Act, no claim shall be permitted under this Act and there shall be no exception to or waiver of sovereign immunity for any action or claim to monetary damages for any injury alleged to have resulted from any:
- (1) Exercise, performance, or the failure to exercise or perform a discretionary function or duty, or the implementation or failure to implement discretionary decisions by the Tribe or SITE or any agent, employee or officer of the Tribe or SITE whether or not the discretion was abused in any such matter; and/or
  - (2) Action taken or decision made in good faith and without gross negligence in carrying out the law; and/or
  - (3) Intentional torts; and/or
  - (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; and/or
  - (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; and/or
  - (6) Termination or reduction of benefits under a Tribal assistance program, if the Tribe or any agent, employee or officer of the Tribe is authorized by law, rule or regulation or policy to determine whether or not such authorization or benefits should be issued, denied, suspended, or revoked; and/or
  - (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; and/or
  - (8) 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; and/or
  - (9) Decision made by the Tribe or any agent, employee or officer of the Tribe in the implementation of the Indian Child Welfare Act or other laws respecting the placement or supervision of minors or incompetent persons; and/or
  - (10) Claim based upon an act or omission of any agent, employee or officer of the Tribe or SITE exercising due care, in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation is valid; and/or
  - (11) Claim based on the assessment or collection of any tax, or the detention of any goods or merchandise by any law enforcement officer; and/or

- (12) Claims for breach of contract; and/or
- (13) Failure to discover violations of any provisions of law requiring inspections of property; and/or
- (14) Failure to respond to a fire or to provide firefighting services or protection; and/or
- (15) Claims under any theory of product liability; and/or
- (16) Floods, floodwaters, flood fighting activities, flood control structures, levees, dikes, drainage systems and other features or structures whose purpose is, in whole or in part, to control flooding or water levels, including those contained in conservation projects, and all related activities including construction, improvement, repair and maintenance activities; and/or
- (17) Worker's compensation claims; and/or
- (18) Unemployment compensation claims; and/or
- (19) Employment decisions; and/or
- (20) Patron disputes governed by STC 4.02.110.

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 this Act.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
 Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

**15.01.150 Extinguishment and Preservation of Certain Claims, Actions and Defenses**

- (a) Any liability for monetary damages assumed by the Tribe or SITE for the acts or omissions of any employee of the Tribe or SITE under this Act shall be the exclusive remedy available to any person who suffers an injury caused by an employee of the Tribe or SITE. Any claim for monetary damages assumed by the Tribe or SITE which otherwise would lie against an employee of the Tribe or SITE except for this Act is forever extinguished in favor of the remedy established and limited by this Act, 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 in Tribal Court under this Act.
- (b) This Act expressly preserves defenses of qualified or absolute immunity to actions for monetary damages against employees of the Tribe and SITE in their individual capacities. By way of illustration rather than limitation, the defenses preserved by this Act include absolute legislative and judicial immunities, qualified and absolute executive immunities, and their derivatives.
- (c) A person who suffers an injury as a result of an act or omission of the Tribe or SITE or

their employee may not use procedures other than those established in this Act to seek monetary damages, even if another remedy may be provided by another provision of Tribal law of general application. Notwithstanding the foregoing, this Act shall not bar any person from pursuing remedies in accordance with: patron disputes governed by STC 4.02.110; and/or otherwise applicable law or policies of the Tribe or SITE for claims relating to worker's compensation, unemployment compensation, or employment decisions.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

## **ENACTMENT**

### **15.01.160 Severability**

If any provision of this Act, or its application to any person or circumstance is held invalid, the remainder of the Act, or the application of the provision to other persons or circumstances, is not affected.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

### **15.01.170 Effective Date**

This Act shall take effect immediately upon enactment, and amendment hereto.

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Courts Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)

### **LEGISLATIVE HISTORY**

Enacted by Resolution No. 2020-118 (October 7, 2020) (Recodification – Tribal Court Project)  
Amended by Resolution No. 2022-020 (February 23, 2022) (Recodification – Tribal Courts Project)