

**Dry Creek Rancheria  
Band of Pomo Indians**

Government Code

**TITLE 11. TRIBAL TORT LIABILITY CODE**

TABLE OF CONTENTS

CHAPTER 1. PURPOSE AND CONSTRUCTION  
SECTION 1. Short Title  
SECTION 2. Purpose and Construction  
SECTION 3. Applicability  
SECTION 4. Definitions

CHAPTER 2. TRIBAL TORTS CLAIM ACT  
SECTION 1. Authorization for Suit; Limitations on Forum, Damages, and Claims for Relief  
SECTION 2. Tribal Government Liability in Tribal Court  
SECTION 3. Actions Against Tribal Officers or Employees  
SECTION 4. Disposition of Claim Prerequisite to Suit  
SECTION 5. Procedure for Giving Notice of Claims to the Board of Directors and Filing Actions  
SECTION 6. Evidence Presented with Claim  
SECTION 7. Exceptions  
SECTION 8. Specific Findings Required for Judgment  
SECTION 9. Order of Judgment  
SECTION 10. Limitation on Awards, Judgments, or Orders of Monetary Damages  
SECTION 11. Costs  
SECTION 12. Collateral Source Benefits  
SECTION 13. Adjustment of Claim  
SECTION 14. Judgment as Bar

CHAPTER 3. APPORTIONMENT OF FAULT  
SECTION 1. Comparative Negligence  
SECTION 2. Pro Rata Shares  
SECTION 3. Joint and Several Liability Abolished; Exceptions; Apportionment of Degrees of Fault; Definitions  
SECTION 4. Subrogation and Contribution From Joint and Several Tortfeasors  
SECTION 5. Right of Contribution  
SECTION 6. Contribution; Enforcement  
SECTION 7. Effect of Impairment Due to Alcohol or Drugs  
SECTION 8. Settlement, Release, or Covenant Not To Sue  
SECTION 9. Scope of Contribution and Comparative Negligence

CHAPTER 4. MISCELLANEOUS PROPERTY TORT PROVISIONS

- SECTION 1. Liability for Condition and Use of Land
- SECTION 2. Negligence Per Se; Violation of Code.
- SECTION 3. Duty to Trespassers
- SECTION 4. Duty to Licensee
- SECTION 5. Duty to Invitees
- SECTION 6. Duty of Owner, Lessee, or Occupant of Premises to Recreational Users; Liability; Definitions
- SECTION 7. Public Buildings
- SECTION 8. Liability for Tribal Vehicles
- SECTION 9. Negligent Entrustment of a Motor Vehicle or Other Property

CHAPTER 6. OTHER PROVISIONS

- SECTION 1. Liability Insurance
- SECTION 2. Sovereign Immunity
- SECTION 3. Applicable Law
- SECTION 4. No Jury Trial
- SECTION 5. Extinguishment and Preservation of Certain Claims, Actions, and Defenses
- SECTION 6. Severity and Effect

**CHAPTER 1. PURPOSE AND CONSTRUCTION**

**SECTION 1. Short Title**

This Code shall be known and cited as the **Dry Creek Rancheria Tribal Tort Code**.

**SECTION 2. Purpose and Construction**

(A) The Tribal Council finds that the Dry Creek Rancheria Band of Pomo Indians provides governmental services which promote health, safety, welfare, and economic security for residents of and visitors to the Dry Creek Rancheria.

(B) The Tribal Council recognizes that the Dry Creek Rancheria is 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 Dry Creek Rancheria can continue to provide governmental services which promote health, safety, welfare, and economic security for the residents of and visitors to the Dry Creek Rancheria.

(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 Tribe to continue (i) to provide governmental services which promote health, safety, and economic security for the Tribal members and visitors to the Dry Creek Rancheria and (ii) to provide a remedy to private persons who are injured by negligent or wrongful acts or omissions of the Tribe or its agents, employees, or officers.

### **SECTION 3. Applicability**

This Code, the Dry Creek Rancheria Tribal Tort Claims Codes applies to actions, incidents, or matters which occur on Dry Creek Rancheria property or by the Tribe.

This Code does not apply to any action, incident, or matter on any of Dry Creek's casinos or the surrounding casino premises including parking lots, hotels, etc.

### **SECTION 4. Definitions**

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

(A) "Act" means acts and omissions.

(B) "Agent" means any person, whether paid or unpaid, acting on behalf of the Tribe.

(C) "Assumption of the Risk" means knowingly accepting the risks and dangers associated with any act.

(D) "Contributory Negligence" means the negligence of a plaintiff which is a contributing cause that cooperates with the negligence of the defendant in causing the plaintiff's injury.

(E) "Comparative Negligence" means negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is sought.

(F) "Contribution" means a right that exists in favor of a tortfeasor against whom a judgment is rendered who has paid more than his pro rata share of the common liability from other tortfeasors whose negligence contributed to the injury; his total recovery is limited to the amount paid by him in excess of his pro rata share.

(G) "Defendant" means the person against whom a claim is made in a lawsuit and includes counter-defendants and cross-defendants.

(H) "Duty" exists when a person is legally required to conduct himself in a particular manner at the risk that if he does not do so he may be liable to another to whom the duty is owed for injury suffered by that person.

(I) "Dry Creek Rancheria or Tribe" means the Dry Creek Rancheria Band of Pomo Indians, a federally recognized Indian Tribe organized pursuant to § 16 of the Indian

Reorganization Act of 1934, (48 Stat. 984) 25 U.S.C. § 476 et seq. and includes the Tribe, its departments, its employees, servants, agents and attorneys, its enterprises, political subdivisions, departments and its funded programs unless such programs would be subject to the Federal Tort Claims Act.

(J) "Employee" means any person who is an employee, whether full-time or part-time, permanent or temporarily of the Tribe including officers, directors, servants, or agents of the Tribe. Tribal Employee also includes elected and appointed officials of the Tribe, its boards or commissions, and Tribal volunteers.

(K) "Exemplar Damages" means damages awarded to a plaintiff over and above what will barely compensate him for his property loss, where wrong done him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of defendant.

(L) "Fault" means the failure to fulfill a legal duty. It includes, but is not limited to, acts proximately causing or substantively contributing to injury or damages sustained by a person, and includes intentional acts, negligence in all of its degrees, comparative negligence, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of product, products liability, and misuse, modification or abuse of a product.

(M) "Gross Negligence" means conduct which involves negligence plus knowledge of facts which would lead a reasonable person to realize: (1) that the conduct creates an unreasonable risk of physical harm to another or to the actor, and (2) that such risk of physical harm is substantially greater than that which is necessary to make the actor's conduct negligent. Gross negligence of an actor requires a reckless disregard for the safety of the actor or others

(N) "Injury" means 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 California 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.

(O) "Intentional Tort" means torts where the actor desires to cause the consequences of his act, or where the actor knows or should know that the consequences are substantially certain to result from the act.

(P) "Invitee" means either a public invitee or a business visitor. A public invitee is a person who is invited to enter and remain on land as a member of the public for a purpose for which the land is held open to the public. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

(Q) “Joint Liability” means liability that is owed to a third party by two or more other parties together. The joint obligator has the right to insist that the co-obligator(s) be joined as a co-defendant with him (i.e. that they be sued together).

(R) “Joint and Several Liability” means defendants who are responsible together and individually. Joint and Several liability allows the person who has been harmed to sue and recover from both wrongdoers or from either one of the wrongdoers. The plaintiff cannot receive double compensation.

(S) “Licensee” means a person who comes on to the premises for his own purposes but with the possessor's consent.

(T) “Negligence” means conduct which falls below the standard established by law or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that of a reasonable person under similar circumstances. Negligence includes both acts and omissions.

(U) “Negligence Per Se” is an act or omission resulting in damage to another which is strictly declared and treated as negligence, because the act or omission is a violation of a particular statute or Code.

(V) “Non-economic Loss” means damages or loss due to pain, suffering, inconvenience, physical impairment, physical discomfort, or other non-economic loss.

(W) “Non-Member” means a person who is not an enrolled member of the Dry Creek Rancheria Band of Pomo Indians.

(X) “Occurrence” means an event, including continuous or repeated exposure to conditions, which results in personal injury, bodily injury, wrongful death, or property damage.

(Y) “Tribal Attorney” means attorney or law firm designated by Tribe as a Tribal Attorney.

(Z) “Officer or Official” means an officer, whether elected or appointed, whether paid or unpaid, acting on behalf of the Tribe.

(AA) “Person” means any individual, partnership, corporation, association, government, or private organization of any kind other than Dry Creek Rancheria.

(BB) “Personal Injury” means bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.

(CC) “Plaintiff” means a person who makes a claim against another in a lawsuit and includes counter-plaintiffs and cross-plaintiffs.

(DD) “Possessor of Land” means a person who occupies land or who last occupied land with the intent to control it; or a person who is entitled to immediate occupation of the land, so long as no other person is occupying the land. A Possessor of Land includes, among other persons, renters, lessees, or squatters. Possessor of Land shall not include a Lessor or the Tribe as the Assignor of a land assignment to a tribal member. In the case of a land assignment, the tribal member assignee is considered the Possessor of Land, not the Tribe.

(EE) “Products Liability” means the liability of a manufacturer, distributor, or seller of a product for damages for bodily injury, death, or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use, or consumption of any product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or failure to provide proper instructions for the use or consumption of any product.

(FF) “Punitive Damages” are damages in a tort action having the character of a punishment or a penalty; damages inflicting a punishment or penalty.

(GG) “Self-Insurance Program” means that underlying layer of financial responsibility established by written form instead of insuring against such loss through insurance. In most cases, the party will self-insure up to a certain amount and then cover any loss in excess of the set amount with insurance. Any form of Self-Insurance program for the Tribe must be approved and adopted pursuant to an authorizing resolution of the Tribal Council.

(HH) “Several Liability” means liability separate and distinct from the liability of another to the extent that an independent action may be brought without joinder of others.

(II) “Strict Liability” means liability without fault arising from an abnormally dangerous condition or activity, and also includes products liability.

(JJ) “Torts” includes, but is not limited to, intentional torts, negligent torts, and torts arising in strict liability.

(KK) “Trespasser” means a person who enters or remains upon the land of another without permission or right to do so created by the possessor's consent or otherwise.

(LL) “Tribal Court” means the Tribal Court established pursuant to the Dry Creek Rancheria Judicial Code.

(MM) "Tribal Entity" means any entity created or owned by the Tribe for business, economic development, or governmental purposes, and any entity which is controlled by the Board of Directors. An entity shall be deemed to be controlled by the Board of Directors if a majority of the persons serving on the body which governs the entity are chosen by the Board of Directors or are required to be members of the Board of Directors; provided, that such entity is not a corporation or limited liability company organized under state law. Tribal entities include, but are not limited to, the River Rock Entertainment, Dry Creek Development, Pomo Ridge Distribution, AVV Ventures, other tribal enterprises, and other organizations entitled or denominated authority, enterprise, agency, commission, committee, corporation, task force or terms of like import, including all branches, programs, and services of the Tribal government.

(NN) "Tribal function" includes all functions performed for the Tribe, including all Tribal entities, as a part of or incidental to one's duties as employee, official, person acting in another capacity on behalf of the Tribe, regardless of whether the function is governmental or proprietary in nature. Activity which is conducted primarily for the purpose of producing a pecuniary profit is within the scope of and governed by this Chapter.

(OO) "Tribal law" means the Dry Creek Articles of Association and Tribal Codes, initiatives, referendums, or resolutions adopted by the Tribal Council in accord with the Tribe's Articles, codes and other legislative enactments adopted by the Tribal Council, and common law of the Tribal Court.

(PP) "Tribal Officer or Employee" includes:

- (1) Any elected official of the "Tribe" means the Dry Creek Rancheria Band of Pomo 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 Dry Creek Rancheria.
- (2) Any employee of the Tribe;
- (3) Any volunteer acting on behalf of the Tribe in a recognized program for volunteers;
- (4) Any police officer employed by another jurisdiction who at the time of the injury is exercising authority under tribal law by reason of a cross-deputization agreement, a mutual aid agreement, or similar agreement; and
- (5) Any member of a board, council, commission, authority, task force, or other body of the Tribe; while such person is acting in the course of official duties, employment, authorization, service, or volunteer work for

the Tribe. The term does not include independent contractors or the employees or agents of independent contractors.

(QQ) "Trier of Fact" means a judge in all trials under or matters under this Code. The judge has the exclusive obligation to make findings of fact in contrast to rulings of law which must be made by the judge.

(RR) "Tort" means a claim for injury, loss of property, or personal injury that is recognized as common law embodied in the Restatement Second of Torts, as modified and updated from time to time, and any successor edition or version, subject to the exceptions and modifications set forth in this Code.

(SS) "Tortfeasor" means a wrong-doer; one who commits or is guilty of a tort.

## CHAPTER 2. TRIBAL TORTS CLAIM ACT

### SECTION 1. Authorization for Suit; Limitations on Forum, Damages, and Claims for Relief

The Tribe may be sued in the Dry Creek Rancheria Tribal Court only when explicitly authorized by either (1) Code or resolution of the Tribal Council, or (2) applicable federal law.

The Tribe may only be sued with respect to claimed damages which are within the express coverage, and not excluded from coverage, by either commercial liability insurance contracts carried by the Tribe or their established Tribal self-insurance program, approved and adopted pursuant to the laws of the Tribe. All claims are further subject to the following provisions and limitations.

(A) No judgment, order, or award pertaining to any permitted claim under this Chapter shall be for more than the lesser of:

(1) The sum of \$250,000 for each individual claimant, but not exceeding the sum of \$1,000,000 for each accident or occurrence, or \$250,000 for wrongful death: or

(2) The limits of valid and collectable liability insurance policies carried by the Tribe covering such claim or occurrence including such deductible amounts to the extent appropriated by the Tribal Council, nor for more than the amount of coverage provided for each claim or occurrence under established claim reserves as appropriated by the Tribal Council or otherwise established pursuant to any self insured claims program of the Tribal Government, approved and adopted pursuant to the laws of the Tribe or the limitation stated in paragraph A of this section.

(B) Any such judgment, order, or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance or established self-insurance program of the Tribe which is in effect at the time of the claim or occurrence.

(C) The Tribe expressly reserves the right to raise Sovereign Immunity for claims or judgments that cannot be satisfied by the Liability Insurance or the Self-Insurance program.

## **SECTION 2. Tribal Government Liability in Tribal Court**

(A) Absolute Immunity. The Tribe and its Tribal employees shall not be liable for acts and omissions of its employees constituting:

- (1) Policy decisions or the exercise of discretion vested in the Tribe or a Tribal Employee;
- (2) Executive, judicial, legislative, or administrative action or inaction including but not limited to:
  - (a) The adoption or failure to adopt a law or policy, or enforcement or the failure to enforce a law;
  - (b) Refusal, termination, or reduction of benefits under any Tribal assistance program if the Tribe or Tribal Employee is authorized to determine whether or not such benefits should be issued, denied, terminated, or reduced;
  - (c) Discretionary determinations of whether to seek or provide the resources necessary to purchase equipment, to construct or maintain facilities, roads, or the like, to hire personnel, or to provide governmental services of any kind;
  - (d) Plans or designs for construction, maintenance, or improvements of Tribally, federally or state owned, controlled or maintained rights-of-way, easements, highways, roads, streets, and bridges;
  - (e) Probation, parole, furlough, 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;
  - (f) 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;

(g) Any 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;

(h) 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

(B) Qualified Immunity. Unless a Tribal employee acting within the scope of his employment intended to cause injury or was grossly negligent, there shall be no exception to the sovereign immunity of the Tribe or Tribal employees and neither the Tribe nor a Tribal employee shall be liable for damages alleged to have been caused by the Tribal employee for actions or omissions normally protected by qualified or conditional immunity, including, but not limited, to the following events:

- (1) 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 for which absolute immunity does not apply;
- (2) Failure to make an arrest or failure to retain an arrested person in custody;
- (3) Any escaping or escaped person or prisoner, a person resisting arrest, or injury by a prisoner to himself or herself, or to any other prisoner;
- (4) Probation, parole, furlough or release from confinement of a prisoner or from the terms and conditions of his probation, parole, furlough, or release from confinement, or from the revocation of his probation, parole, furlough, or release from confinement for which absolute immunity does not apply;
- (5) Failure to discover violations of any provisions of law requiring inspections of property;
- (6) Failure to respond to a fire or to provide fire fighting services or protection;
- (7) Failure to respond to medical emergencies or to provide emergency medical services;
- (8) Injuries caused by a contractor's employee or a contractor of the Tribe acting within the scope of the contract. The Qualified immunity provided in this section shall not apply to the contractor or the contractor's

employees.

(C) Other Immunities.

(1) Nothing in this Section shall be interpreted to grant immunity to a Tribal employee for individual liability for the full measure of recovery applicable to a person if it is established that the Tribal employee's conduct was outside of his scope of authority or employment;

(2) Tribal volunteers acting within the course and scope of their authority or employment shall have the same degree of responsibility for their acts and enjoy the same immunities and defenses as Tribal employees.

(3) The Tribe is not liable and there shall be no exception to the Sovereign Immunity of the Tribe or Tribal employees for the following events:

(a) Under any theory of products liability;

(b) For an injury to the driver of a motor vehicle who is found to be driving while intoxicated or was driving recklessly;

(c) Any claim by a Tribal employee covered by worker's compensation;

(d) Acts of Tribal employees who a Court determines to be guilty of a criminal offense, unless the Tribe knew of the Tribal employees propensity for that action. This subsection does not apply to acts or omissions arising out of the operation or use of a motor vehicle;

(e) For vicarious liability for injuries or damages resulting from any act of a Tribal employee unless the Tribal employee is personally liable. Notwithstanding the foregoing, the Tribe shall not be vicariously liable for the acts of Tribal employees who act without Tribal authorization or whose acts are otherwise outside or beyond the course and scope of the Tribal employee's authority or employment;

(D) The Tribe specifically reserves, states, and declares:

(1) In addition to the immunity and other defenses provided by this Code, the Tribe shall be entitled to any defense which would be available to the Tribe if it was a private entity or to a Tribal member if he/she were a non-member,

(2) The enumeration of the above immunities shall not be construed to waive any other immunities, nor assume any liability except as explicitly provided in this Code. Any other section in this Code that limits the Tribe's right to raise sovereign immunity shall only apply in the Dry Creek Rancheria Tribal Court and shall not be construed to limit the use Tribe's Sovereign Immunity in any other Court(s).

**SECTION 3. Actions Against Tribal Officers or Employees**

(A) Every Tribal officer or employee shall be immune from tort liability for injuries to persons or damage to property for which the Tribe is liable under Chapter 2. The exclusive remedy is against the Tribe, as provided in Chapter 2.

(B) Whenever a claim is made or a civil action is commenced against a Tribal officer or employee for injuries to persons or property caused by negligence of the officer or employee while in the course of employment and while acting within the scope of his or her authority, the Tribe may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the claim and to appear for and represent the officer or employee in the action. The Tribe may compromise, settle, and pay the claim before or after the commencement of a civil action. Whenever a judgment for damages is awarded against a Tribal officer or employee as a result of a civil action for personal injuries or property damage caused by the officer or employee while in the course of employment and while acting within the scope of his or her authority, the Tribe may indemnify the officer or employee or pay, settle, or compromise the judgment.

(C) Whenever a criminal action is commenced against a Tribal officer or employee based upon the conduct of the officer or employee in the course of employment, if the employee or officer had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the Tribe may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action.

(D) This section shall not be construed as imposing any liability on the Tribe, nor does it waive or alter in any way the sovereign immunity of the Tribe.

**SECTION 4. Disposition of Claim Prerequisite to Suit**

(A) An action shall not be instituted upon a claim against the Tribe under this Code unless the claimant shall have first presented it to the Tribe and been finally denied by the Tribe in writing and sent by certified or registered mail. The failure of the Tribe to make final disposition of a claim within 180 days after it is filed shall at the option of the claimant any time thereafter be deemed a final denial of the claim for purposes of this Code.

(B) An action under this Code shall not be instituted for any sum in excess of the amount of the claim presented to the Tribe, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Tribe, or upon allegation and proof of intervening facts relating to the amount of the claim.

(C) Disposition of the claim by the Tribe shall not be competent evidence of liability or amount of damages.

**SECTION 5. Procedure for Giving Notice of Claims to the Board of Directors and Filing Actions**

(A) The written notice required by Section (4)(A) shall be sent to the Secretary of the Tribal Council by certified mail return receipt requested. 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 or director of such Tribal commission, authority, corporation, or enterprise.

(B) The written notice required by Section (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 the amount of damages claimed.

(C) To be valid under this Code, the written notice of claim for monetary damages required by Section (4)(A) shall have been given no later than 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 (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 (4)(1) is given or is certified by the Tribe. 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 Tribe under

the Code shall be accepted for filing by the Tribal Court unless the claimant files proof of compliance with Section (4)(A)-(C) above.

(E) 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 (4)(A), except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time notice required by Section (4)(A) is deemed given in accordance with Section (4)(C) or upon allegation and proof of intervening facts relating to the amount of the claim.

(F) Any person filing an action for money damages against the Tribe under this Code shall cause a copy of the complaint and summons to be served upon the Secretary of the Tribal Council, 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 chairperson 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.

(G) In any action against the Tribe under this Code, whether for monetary damages or prospective declaratory, mandamus, injunctive, or other extraordinary relief, the Tribe 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 under this Code.

(H) 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 Tribe or any agent, officer, or employee of the Tribe.

(I) In action in which any claim is asserted against the Tribe or a Tribal employee, upon written demand of a Tribal Attorney made at or before the time of answering, and sent to the opposing party and filed with the Court where the action is pending, the place of trial of any such action shall be changed to the Dry Creek Rancheria Tribal Court.

(J) A person under 18 years of age, or of unsound mind or a person who has been judged by a court to be an incompetent person shall file a claim within 270 days after the disability ceases.

**SECTION 6. Evidence Presented with Claim**

(A) Death. In support of a claim based on death, the claimant shall submit the following evidence or information:

- (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
- (2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.
- (3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.
- (4) Degree of support afforded by the decedent to each survivor dependent upon him or her at the time of death.
- (5) Decedent's general physical and mental condition before death.
- (6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts for payment for such expenses.
- (7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.
- (8) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the death or the damages claimed.

(B) Other Personal Injury. In support of a claim for personal injury not involving death, including pain and suffering, the claimant shall submit the following evidence or information:

- (1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Tribe.
- (2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity of future treatment, a statement of expected expenses for such treatment.

(4) If the claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and the wages or salary actually lost.

(5) If the claim is for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the personal injury or the damages claimed.

(C) Property Damage. In support of a claim for injury to or loss of property, real or personal, the claimant shall submit the following evidence or information:

- (1) Proof of ownership.
- (2) A detailed statement of the amount claimed with respect to each item of property.
- (3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.
- (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.
- (5) Any other evidence or information which may have a bearing on either the responsibility of the Tribe for the injury to or loss of property or the damages claimed.

(D) For claims involving less than \$10,000 the Tribe may, in its discretion, require less formal information or evidence than that required above. A claimant may contact the Dry Creek Rancheria's Risk Management Department for information regarding such less formal procedures.

**SECTION 7. Exceptions**

The Tribe shall not be liable under this Code for:

(A) Any claim based upon an act or omission of a Tribal officer or employee exercising due care, in the execution of a tribal code or Code, whether or not such code or Code is valid.

(B) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; *provided*, that the Tribe shall be liable for acts or omissions of Tribal investigative or law enforcement officers for any claim arising, on or after the date of enactment of this Code, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution.

(C) Any punitive damages.

(D) Any damages for loss of consortium.

(E) Any claim founded upon a provision of:

(1) A constitution, statute, or regulation of the United States or any State; or

(2) A Code of any unit of local government;

(3) A code of the Tribe that does not by its terms expressly provide for a remedy under this Chapter; or

(4) The Articles of Association of the Tribe.

(F) Any claim brought by an employee of the Tribe based upon injuries sustained by a Tribal employee arising out of and in the course of employment. In all such cases worker's compensation shall be the sole and exclusive remedy.

(G) Any claim brought by a person for injuries sustained arising out of and in the course of that person's employment for which the person is covered by or eligible for benefits under a worker's compensation system of a state, another Indian tribe, a self-insurance plan, or any other entity.

(H) Any claim which is subject to the Federal Tort Claims Act, codified in part as 28 U.S.C. '2671 *et seq.*, because it resulted from the performance of programs carried out under Pub. L. 638 contracts or grants or was otherwise covered by the Act. In all such cases the Federal Tort Claims Act shall provide the sole and exclusive remedy.

(I) Any claim based upon the act or omission of an independent contractor or an employee or agent of an independent contractor.

#### **SECTION 8. Specific Findings Required for Judgment**

(A) Prior to the entry of judgment, the Tribal Court shall make specific findings of the following:

(1) Apportionment of fault, as provided in Chapter 3.

(2) Any past economic and non-economic damages, separately itemized.

(3) Any future damages and the periods over which they will accrue, on an annual basis, for each of the following types of future damages:

(a) Medical and other costs of health care.

(b) Lost wages or earnings or lost earning capacity and other economic loss.

(c) Non-economic loss.

(d) Any collateral benefits, as provided in Chapter 3.

(B) The calculation of future damages for types of future damages described in Section 9 shall be based on the costs and losses during the period of time the plaintiff will sustain those costs and losses. In the event of death, the calculation of future damages shall be based on the losses during the period of time the plaintiff would have lived but for the injury upon which the claim is based.

(C) In this section "future damages" means damages arising from personal injury which the Tribal Court finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of body function, and pain and suffering.

#### **SECTION 9. Order of Judgment**

(A) After making the specific findings as provided in Section 8, the Tribal Court shall enter an order of judgment. The order of judgment shall be entered against each defendant, including a third-party defendant, in the following order and in the following judgment amounts:

(1) All past economic damages, less collateral source payments as provided for in Chapter 2.

(2) All past non-economic damages, subject to the cap imposed by Chapter 2.

(3) All future economic damages, less medical and other health care costs, and less collateral source payments determined to be collectible under Chapter 2 reduced to gross present cash value.

(4) All future medical and other health care costs reduced to gross present cash value.

(5) All future non-economic damages reduced to gross present cash value, subject to the cap imposed by Chapter 2.

(6) All taxable and allowable costs. Interest prior to entry of judgment shall not be allowed.

(B) As used in this section, "gross present cash value" means the total amount of future damages reduced to present value at a rate of 7% per year for each year in which those damages accrue, as found by the Tribal Court as provided in Chapter 2.

(C) If the plaintiff was assigned a percentage of fault under Chapter 4, the total judgment amount shall be reduced by an amount equal to the percentage of plaintiff's fault. When reducing the judgment amount as provided in this subsection, the court shall determine the ratio of total past damages to total future damages and shall allocate the amounts to be deducted proportionally between the past and future damages. The cap for non-economic damages imposed by Section 10 shall be imposed before the reduction of the judgment under this subsection.

#### **SECTION 10. Limitation on Awards, Judgments, or Orders of Monetary Damages**

No award, judgment, or order shall be made under this Code: (A) based on strict or absolute liability; (B) for punitive or exemplary damages; (C) for prejudgment interest; or (D) 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 \$100,000 for each injury.

#### **SECTION 11. Costs**

(A) In the discretion of the Court, costs may be awarded to the successful party in any tort action except as otherwise provided in this section.

(B) Costs may include the reasonable amounts of money actually expended or owed by a party including:

- (1) Costs of filing and service of process.
- (2) Costs of preserving testimony including depositions and video depositions.
- (3) Actual reasonable costs of travel and lodging for necessary witnesses who actually appear and testify at trial.
- (4) Expert witness fees.
- (5) Any other actual costs reasonable and necessarily incurred by a party.

(C) When exercising its discretion in awarding costs under this Section, the Court may consider any or all of the following when awarding costs to a successful party:

- (1) The reasonableness and necessity of the cost.
- (2) The relative abilities of the parties to pay costs.
- (3) The relative merits of each party's position.
- (4) The good or bad faith efforts of each party in pursuing the action, including the cooperation or non-cooperation of a party in the pre-litigation, discovery, and trial phases of the action.
- (5) Any other facts the court deems relevant in assessing costs.

(D) No person shall be jailed because he is unable to pay costs awarded against him.

(E) Unless allowed and recoverable under the Tribe's Liability Insurance or Self-Insurance Plan, costs shall not be awarded against the Tribe.

#### **SECTION 12. Collateral Source Benefits**

(A) In a personal injury action under this Code in which plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a collateral source shall be admissible to the Tribal Court. If the Tribal Court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source, the Tribal Court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source by an amount equal to the sum determined pursuant to Section 12(B). This reduction shall not exceed the amount of the judgment for economic loss or that portion of the findings of the verdict which represents damages paid or payable by a collateral source.

(B) The Tribal Court shall determine the amount of the plaintiff's expense or loss which has been paid or is payable by a collateral source.

(C) Within 10 days after findings for the plaintiff, plaintiff's attorney shall send notice of the judgment by registered mail to all persons entitled by contract to a lien against the proceeds of plaintiff's recovery. If a contractual lien holder does not exercise the lien holder's right of subrogation within 20 days after receipt of the notice of the judgment, the lien holder shall lose the right of subrogation.

(D) As used in this section, "collateral source" means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care

corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or Medicare benefits. Collateral source does not include life insurance benefits or benefits paid by a person or legal entity entitled by law to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages. Collateral source does not include benefits paid or payable by a person or legal entity entitled by contract to a lien against the proceeds of a recovery by a plaintiff in a civil action for damages, if the contractual lien has been exercised pursuant to Section 12(C).

(E) For purposes of this Section benefits from a collateral source shall not be considered payable or receivable unless the Tribal Court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

### **SECTION 13. Adjustment of Claim**

The Tribe may consider, ascertain, adjust, determine, compromise, and settle any claim presented under this Chapter. The offer of a compromise or settlement shall not be construed as or constitute evidence of an admission of liability or the amount of damages by the Tribe. The acceptance by a claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the Tribe and against the agent, employee, or officer of the Tribe whose act or omission gave rise to the claim, by reason of the same subject matter.

### **SECTION 14. Judgment as Bar**

The judgment in an action under this Code shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the Tribal officer or employee whose act or omission gave rise to the claim.

## **CHAPTER 3. APPORTIONMENT OF FAULT**

### **SECTION 1. Comparative Negligence**

(A) Contributory negligence shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm to a person or property, provided that the contributory negligence of said person is not more than fifty percent (50%) of the total fault. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person recovering.

(B) Assumption of the risk shall not bar a recovery in any tort action by any person or his legal representative to recover damages for negligence resulting in injury or harm to a person or property, provided that the assumption of the risk of said person is not more than fifty percent (50%) of the total fault. Any damages allowed shall be

diminished in proportion to the amount of negligence attributed to the person recovering.

(C) If a person's contributory negligence or assumption or risk is more than fifty percent (50%) of the total fault, then that person shall not recover.

(D) The court shall, and when requested by any party shall:

(1) If a jury trial:

(a) Direct the jury to find separate special verdicts determining the total amount of damages and the percentage of fault attributable to each actor whether or not a party; and

(b) Inform the jury of the consequences of its determination of the percentages of fault; and

(c) Inform the jury that in the event that it finds that a plaintiff's contributory negligence or assumption of the risk is more than fifty percent (50%) of the total fault then that person shall not recover and its verdict must be for the defense.

(2) If a trial to the court without a jury: make special findings of fact, determining the total amount of damages and the percentages of fault attributable to each actor whether or not a party. In the event the court finds that a plaintiff's contributory negligence or assumption of the risk is more than fifty percent (50%) of the total fault then that person shall not recover and its finding must be for the defense.

### **SECTION 2. Pro Rata Shares**

In determining the pro rata share of each party in the entire liability:

(A) Their relative degrees of fault shall be the basis for allocations.

(B) If equity requires, the collective liability of some as a group may constitute a single share.

### **SECTION 3. Joint and Several Liability Abolished; Exceptions; Apportionment of Degrees of Fault; Definitions**

(A) In any action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several only and is not joint, except as provided in Section (D). This means that each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. Separate judgment shall be entered in a judgment

against the defendant for that amount. To determine the amount of damages to be entered against each defendant, the trier of fact shall multiply the total amount of damages recoverable by the plaintiff by the percentage of each defendant's fault, and that amount is the maximum recoverable against that defendant.

(B) In assessing percentages of fault, the trier of fact (the Court) shall consider the fault of all persons who contributed to the alleged injury, death, or damage to property, regardless of whether the person was or could have been named as a party to the suit. Negligence or fault of a nonparty may be considered if the plaintiff entered into a settlement agreement with the nonparty or if the defending party gives notice before trial that a nonparty was wholly or partially at fault. Assessments of percentages of fault for nonparties shall be used only as a means for accurately determining the total fault. Assessment of fault against nonparties does not subject any nonparty to liability in this or any other action, and it may not be introduced as evidence of liability in any action against the nonparty.

(C) The relative degrees of fault of the claimant, and the relative degrees of fault of all defendants and nonparties, shall be determined and apportioned as a whole at one time by the trier of fact. If two or more claimants have independent claims, then a separate determination and apportionment of the relative degrees of fault of the respective parties, and any nonparties at fault, shall be made with respect to each of the independent claims.

(D) Joint and several liability only applies if more than one person was acting in concert or if a person was acting as an agent, employee, or servant of another.

#### **SECTION 4. Subrogation and Contribution From Joint and Several Tortfeasors**

If a judgment has been entered against the Tribe pursuant to this Chapter, the Tribe may seek subrogation where it is available by law or by contract and recover contribution from each co-defendant and joint and several tortfeasor where appropriate as provided in Chapter 4. Nothing in this section shall be construed as a consent by the Tribe to suit in any forum other than the Tribal Court as provided in this Code.

#### **SECTION 5. Right of Contribution**

(A) A right of contribution shall only be available:

- (1) Where more than one person was acting in concert; or
- (2) Toxic waste tort cases.

(B) If two or more persons become jointly and severally liable in tort for the same injury to a person or property or for the same wrongful death, there is a right of

contribution among them even though judgment has not been recovered against all or any of them.

(C) No tortfeasor shall be compelled to make contribution beyond his own pro rata share of the entire liability.

(D) There shall be no right of contribution against the Tribe or a Tribal Employee acting within the course and scope of his employment.

(E) There shall be no right of contribution in favor of any tortfeasor who the trier of fact finds was grossly negligent or who had intentionally, willfully, or wantonly caused or contributed to the injury.

(F) A tortfeasor who enters into a settlement agreement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury is not extinguished by the settlement whether or not the amount paid in the settlement is in excess of what was his pro rata share or what is reasonable. Conversely, a tortfeasor who fails to enter into a settlement with a claimant shall not be entitled to a credit for settlement sums paid or promised to a claimant by a settling tortfeasor whether or not the total amounts paid to the claimant in such circumstances exceeds the total verdict or what is reasonable.

(G) Nothing in this section shall be construed to impair any right of indemnity or subrogation under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from any obligee for any portion of his indemnity obligation.

(H) This section shall not create a right of contribution against any employer or other person who has paid or who is liable for workmen's compensation in connection with an injury or death, unless the employer or other person is subject to direct suit.

#### **SECTION 6. Contribution; Enforcement**

(A) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(B) If a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one defendant against other judgment defendants by motion on notice to all parties to the action.

(C) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution; any separate action by him to enforce contribution must be

commenced within six (6) months after the judgment has become final by lapse of time for appeal or after final appellate review.

(D) If there is judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless:

(1) The tortfeasor has paid the judgment and has commenced an action for contribution within six (6) months after payment, or

(2) The tortfeasor agreed while the action is pending against him to discharge the common liability (i.e. joint and several liability) and has within six (6) months after the agreement paid the liability and commenced an action for contribution.

(E) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair a right of contribution.

(F) The judgment of the Court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right of contribution. If the claimant's case is tried, the trier of fact shall apportion and determine the respective degrees of fault of the defendants to the action.

#### **SECTION 7. Effect of Impairment Due to Alcohol or Drugs**

(A) It is an absolute defense in an action under this Code that the individual upon whose personal injury the action is based had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of the impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the personal injury. If the individual described in this subsection was less than 50% the cause of the accident or event, an award of damages shall be reduced by that percentage.

(B) As used in this section:

(1) "Impaired ability to function due to the influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. An individual is presumed under this section to have an impaired ability to function due to the influence of intoxicating liquor or a controlled substance if, under a

standard prescribed by California Civil or Penal codes, a presumption would arise that the individual's ability to operate a vehicle was impaired.

#### **SECTION 8. Settlement, Release, or Covenant Not To Sue**

If a settlement, release, or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death all of the following apply:

(A) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; and

(B) It discharges the tortfeasors to whom it is given from all liability for contribution to any other tortfeasors; and

(C) A tortfeasor who fails to enter into a settlement with a claimant is not entitled to a credit for settlement sums paid or promised to a claimant by a settling tortfeasor.

#### **SECTION 9. Scope of Contribution and Comparative Negligence**

(A) Among two or more persons strictly liable in tort, the relative degree of fault of each is the degree to which each contributed to the defect causing injury to the claimant.

(B) In the event that a claimant acts intentionally or is grossly negligent, that claimant shall be presumed to be one hundred percent (100%) at fault for the injury or harm and shall not recover, except as provided in Section 6(C).

(C) In the event that a claimant and one or more defendants acted intentionally or were grossly negligent, the relative degree of fault is the degree to which those persons who acted intentionally or were grossly negligent contributed to the injury or harm.

### **CHAPTER 4. MISCELLANEOUS PROPERTY TORT PROVISIONS**

#### **SECTION 1. Liability for Condition and Use of Land**

The purpose of this Chapter is to outline the duties owed by a possessor of land to trespassers, licensees and invitees. There shall be no other classification or sub-classification of a person who enters or remains on land. In addition, this Chapter outlines the liability of drivers of motor vehicles.

#### **SECTION 2. Negligence Per Se; Violation of Code.**

A person who violates any Tribal Code, regulation, or other law governing the conduct of a person is negligent per se whether or not such person has actual

knowledge of such Tribal Code or law. A person's ignorance of such Tribal Code or law shall not be a defense.

### **SECTION 3. Duty to Trespassers**

A possessor of land shall not be liable to any trespasser for any injury or harm to that trespasser except where the possessor intentionally injures such trespasser.

### **SECTION 4. Duty to Licensee**

(A) A possessor of land is subject to liability to licensees for injury to harm caused to them by the possessor's failure to carry on his activities with reasonable care for their safety "if," but only if:

- (1) The danger is not open and obvious, or
- (2) The possessor should reasonably expect that the licensee will not discover or realize the danger, and the licensee does not know or have reason to know of the possessor's activities and of the risks involved.

(B) A possessor of land is subject to liability for injury or harm caused to a licensee by a condition on the land if, but only if:

- (1) The provisions of Section 2 do not apply, and
- (2) The possessor actually knows of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should reasonably expect that they will not discover or realize the danger, and
- (3) The possessor fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition or of the risk involved, and
- (4) The condition is not open or obvious and the licensee does not know or have reason to know of the condition or the risk involved.

### **SECTION 5. Duty to Invitees**

(A) A possessor of land is subject to liability to his invitees for injury or harm caused to them by his failure to carry on his activities with reasonable care for their safety if, but only if:

- (1) The danger is not open and obvious, or
- (2) The possessor should reasonably expect that the invitee will not discover or realize the danger, and the invitee does not know or have reason to know of the possessor's activities and of the risks involved.

(B) A possessor of land is subject to liability for injury or harm caused to an invitee by a condition on the land if, but only if:

- (1) The provisions of Section 2 do not apply, and
- (2) The possessor fails to exercise reasonable care to protect invitees against the danger if, but only if: (a) he knows or by the exercise of reasonable care would discover the condition, and should reasonably realize that it involves an unreasonable risk of harm to invitees, and (b) the possessor should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it. Where a warning would be insufficient to make the dangerous condition reasonably safe, the possessor must take further precautions.

(C) A possessor of land is not subject to liability for injury or harm to his invitees if the activities or the condition on the land is open and obvious.

### **SECTION 6. Duty of Owner, Lessee, or Occupant of Premises to Recreational Users; Liability; Definitions.**

(A) Notwithstanding any other section of this Code, an owner, lessee or other occupant of premises does not:

- (1) Owe any duty to a recreational user to keep the premises safe for such use.
- (2) Extend any assurance to a recreational user through the act of giving permission to enter the premises that the premises are safe for such entry or use.
- (3) Incur liability for any injury to persons or property caused by any act of a recreational user.

(B) As used in this section:

- (1) "Owner, Lessee or Other Occupant" includes the Tribe.
- (2) "Premises" means water courses, lakes, rivers, agricultural, range, mining, forest land, natural land, and any other similar land which the Tribe or any other person makes available to recreational users, with or without a permit, along with any buildings or other structures on such lands.

## **SECTION 7. Public Buildings**

The Tribe is liable for personal injury and property damage resulting from a dangerous or defective condition of a public building owned or occupied by the Tribe if the Tribe had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinarily observant person for a period of 90 days or longer before the injury took place.

## **SECTION 8. Liability for Tribal Vehicles**

(A) All motor vehicles owned, operated, maintained, or used by the Tribe shall be covered by insurance covering bodily injury and property damage.

(B) The Tribe shall be liable for personal injury and property damage arising from the ownership, operation, maintenance, or use by any Tribal officer or employee, of a motor vehicle of which the Tribe is the owner or operator, to the extent and under the conditions of any insurance coverage on the vehicle, and to that extent and under those conditions only. The Tribe shall not be liable for any damages in excess of such insurance coverage, or under conditions not covered by such insurance.

## **SECTION 9. Negligent Entrustment of a Motor Vehicle or Other Property**

A person who supplies directly or through a third person a motor vehicle or other property for the use of another whom the person knows or has reason to know would be likely, because of said person's youth, inexperience, incompetence, impairment, or otherwise, to use it in a manner involving unreasonable risk of physical harm to said person or others, is subject to liability for the injury or harm resulting.

## **CHAPTER 5. OTHER PROVISIONS**

### **SECTION 1. Liability Insurance**

The Tribe may purchase liability insurance or reinsurance to indemnify and protect it against loss or to protect the Tribe and some or all of its agents or Tribal officers or employees against loss on account of any judgment secured against it, arising out of any claim for personal injury or property damage caused by the Tribe, its agents, or Tribal officers or employees. The existence of any policy of insurance indemnifying the Tribe against liability for damages is not a waiver of sovereign immunity to any extent or in any manner beyond the terms of this Code, a consent to suit in any forum other than that specified in this Code, or a waiver of any other defense

## **SECTION 2. Sovereign Immunity**

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Dry Creek Rancheria unless otherwise provided by the Tribal Code.

## **SECTION 3. Applicable Law**

Tribal law, applicable federal law, and, to the extent adopted by Section (b)(3), California law shall apply and shall govern all claims and actions brought under this Code.

## **SECTION 4. No Jury Trial**

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

## **SECTION 5. Extinguishment and Preservation of Certain Claims, Actions, and Defenses**

(A) Any liability for monetary damages assumed by the Tribe for the acts or omissions of any agent, employee, or officer of the Tribe 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 Tribe. Any claim for monetary damages assumed by the Tribe which otherwise would lie against an agent, employee, or officer of the Tribe 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) Judgment in an action under this Code shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the Tribal officer or employee whose act or omission gave rise to the claim.

(C) This Code expressly preserves defenses of qualified or absolute immunity to actions for monetary damages against agents, employees, or officers of the Tribe 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 Tribe 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 Tribe 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 Tribe 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.

(D) A person who suffers an injury as a result of an act or omission of the Tribe or an agent, employee or officer acting on behalf of the Tribe 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 (A) worker's compensation, (B) unemployment compensation, or (C) Final Employment Decisions.

#### **SECTION 6. Severity and Effect**

This Code shall be of immediate effect upon vote of the Tribal Council. If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.