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## Title 57

### Tribal Entities

## TITLE 57

### NOOKSACK TRIBAL ENTITIES CODE

#### 57.010

#### GENERAL PROVISIONS

##### 57.010.010 SCOPE

The provisions of this Title shall apply to each tribal entity formed under the laws and sovereign powers of the Nooksack Indian Tribe, whether before or after the passage of this Title.

##### 57.010.020 PURPOSE AND CONSTRUCTION

- (1) To establish a uniform system of creation and regulation of tribal entities for both economic and governmental purposes;
- (2) To preserve the sovereign immunity and protect the credit and assets of the Tribe;
- (3) To address and define the status of Tribal sovereign immunity as it relates to Nooksack tribal entities;
- (4) To provide insulation of tribal economic entities from frequent shifts of policy due to tribal politics;
- (5) To furnish tribal entities with the information necessary to operate in accordance with law

57.010.030 The provisions of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

#### 57.020 DEFINITIONS

57.020.010 Charter: means the charter of a Nooksack tribal entity

57.020.011 Tribal Council: means the governing body of the Nooksack Indian Tribe as defined in Article III of the Constitution and By-Laws of the Nooksack Tribe.

57.020.012 Tribal Entity: includes any cooperative formed by the Tribal Council pursuant to the authority of the Tribal Constitution and By-Laws for Economic or Governmental purposes and any entity, which is controlled by the Tribal Council. For the purposes of this Title, an entity shall be deemed to be controlled by the Tribal Council if the majority of its Directors are chosen, selected or appointed by the Tribal Council. Entities governed by this Title include, but are not limited to, organizations entitled "authority", "enterprise", "corporation", "agency", "commission" or terms of like, import as deemed necessary by the Tribal Council, provided, however, that general committees, programs, departments and projects, of the Tribal Council shall not be deemed "tribal entities" for the purposes of this Title.

57.020.013 Tribe or Tribal: means all lands, waters, and any interests therein of which the Nooksack Tribe holds, or over which the Tribe has jurisdiction, notwithstanding the issuance of any patent or right-of-way.

#### 57.03 STATUS OF A TRIBAL ENTITY

57.030.010: For the purposes of taxation, regulatory jurisdiction and civil jurisdiction, a tribal entity created pursuant to the sovereign powers of the Tribe shall be deemed to be a subordinate arm of the government of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

57.030.020: The Nooksack Tribal Court shall have jurisdiction to decide all questions with respect to the status of a tribal entity formed pursuant to the sovereign powers of the Tribe.

#### 57.04 PRE-EXISTING TRIBAL ENTITIES

A tribal entity pre-existing passage of this Title shall continue to exist and to perform its several functions, in accordance with the provisions of this Title.

#### 57.050 ASSETS OF A TRIBAL ENTITY

Tribal entity assets shall be comprised of

- a) Assets of the Tribe which are formally assigned to it by Tribal Council resolution
- b) Assets it acquires from other non-tribal sources

57.050.010: No activity of a tribal entity nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned to the entity by Council resolution and in accordance with applicable laws.

#### 57.06 SOVEREIGN IMMUNITY AND WAIVER

##### a) **Sovereign Immunity of Tribal Entity**

A tribal entity possesses all the privileges and immunities of the Tribe, except as expressly and specifically limited by the tribal entity charter, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Title shall be deemed or construed to be a waiver of sovereign immunity of a tribal entity from suit or to be a consent of the tribal entity or the Tribe, to the jurisdiction of the United States or of any state or other jurisdiction with regard to the business of affairs of the tribal entity or to any cause of action, case or controversy, except as provided herein.

##### b) **Waiver of Sovereign Immunity of the Tribal Entity.**

Sovereign immunity of the tribal entity may be waived only by express resolution of the Tribal Council. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the tribal entity. Waivers of sovereign immunity shall not be general but shall be specific and strictly limited as to duration, grantee, transaction, property or funds, if any, of the tribal entity subject thereto. Neither the power to sue and be sued provided in the charter of the tribal entity, nor any express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon any property of the Tribe; nor upon any property of the tribal entity other than property specifically pledged or assigned. Nor shall said power to sue and be sued provided in the charter or any express waiver of sovereign immunity be deemed a consent to suit in respect to attachment or encumbrance of any such land.

##### c) **Sovereign Immunity of the Tribe**

All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to the existence of the tribal entity are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of the Tribe's sovereign immunity from suit or to be a consent of the Tribe to the jurisdiction of the United States, or of any state, or other jurisdiction with regard to the business affairs of the tribal entity or the Tribe for any cause of action, case or controversy, except as provided herein.

d) **Credit of the Tribe**

No tribal entity activity, or language contained in a tribal entity charter shall implicate or in any way involve the credit of the tribe.

**57.060.010: Inclusion in Charter**

The provisions of subsections a) through d) of this Section shall be included in the charter of each tribal entity by effect of this Title.

**57.07 CREATION AND REGULATION OF A TRIBAL ENTITY**

**57.070.010 Creation of Tribal Entity:**

A charter approved by the Nooksack Tribal Council pursuant to the Tribe's constitution, laws and inherent sovereign powers creates a Nooksack tribal entity.

a) **Tribal Entity Charter**

The charter for a tribal entity formed under this Title shall set forth:

- 1) **The** name of the tribal entity
- 2) **The** purpose for which the tribal entity is organized
- 3) **Provisions** for establishment of a governing body and determining membership thereof, if applicable
- 4) **The** powers of the tribal entity
- 5) **The** provisions of section **57.06** providing for sovereign immunity and regulation of its affairs
- 6) **Provisions** for bylaws directing management of the tribal entity and regulation of its affairs.
- 7) **Provision** designed to insulate the tribal entity from frequent shifts of policy due to tribal politics
- 8) **Provisions** describing the tribal entity's use of the tribal attorneys or other attorneys approved by the Tribal Council.

b) **Delegation of Essential Government Functions to Tribal Entities**

For purposes of allowing a tribal entity to utilize the provisions of the Indian Tribal Governments Tax Status Act of 1982, as amended, the Tribal Council may delegate one or more essential governmental functions to the tribal entity, such as the power to tax, the power of eminent domain, and police powers, provided, however, that the exercise of any such delegated shall be subject to periodic review by the Tribal Council.

c) **Liability of Members of Governing Body of Tribal Entities**

No member of the governing body or officers of any Nooksack tribal entity shall be liable to any creditor or the tribal entity by reason of his or her status or service as a member or officer, or by reason of acts done in the course of his or her official duties.

d) **Amendment of Tribal Entity Charter**

Any tribal entity formed under the laws and sovereign power of the Tribe, may be amended only by the Tribal council

e) **Dissolution**

A tribal entity may be dissolved by a majority vote of the Nooksack Indian Tribal council

f) **Disposition of Assets Upon Dissolution**

Upon dissolution of a tribal entity, its assets shall be distributed at the direction of the Tribal Council, or its designee, in the following order:

- 1) Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly
- 2) Any property or assets required to be distributed or transferred in any manner according to applicable laws shall be distributed or transferred accordingly
- 3) Claims of creditors of the tribal entity approved by the Tribal Council shall be paid accordingly from the assets or funds of the entity
- 4) Remaining assets shall be transferred to another tribal entity, to the Tribe, or distributed or transferred as the Tribal Council directs

g) **Facilitation of Business Opportunities**

**Authority to Enter Into Partnerships**

- 1) A tribal entity shall have authority to enter into partnerships with private and public persons, corporations, entities and agencies that are beneficial to carrying out the purposes of the Tribal entity.
- 2) Partnerships entered into pursuant to this section shall be governed by all applicable laws, regulations and policies of the Tribe, and in accordance with all lawful terms contained in written agreements relating thereto.

h) **Leases and Permits For Tribal Entities**

In order to facilitate the creation and maintenance of business and employment opportunities, the Tribal Council may issues leases and permits for the use of the Tribe's various resources, including natural resources, real property and personal property.

- 1) Leases and permits issued pursuant to this section must be in compliance with all applicable laws, and shall include the following information:
  - a. A detailed description of the resources to be used;

- b. A detailed description of the permitted use;
- c. The date by which the resource will become available;
- d. For permits and leases for resources that require annual quantities, the annual date by which such quantities will become or are expected to become available;
- e. The volume of resources covered by the lease or permit;
- f. Applicable environmental considerations that may be made part of the lease or permit;
- g. A provision providing that all terms of the lease are subject to all present laws of the Tribe and to all tribal laws as may be enacted after the date that the lease is entered into, unless expressly exempted.

i) **Severability**

In the event that any provision of this Title, or its application to any person, entity or circumstances is found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect to the extent possible.