

CONSTITUTION
OF THE TRIBAL COUNCIL
OF THE TOLOWA DEE-NI' NATION

P R E A M B L E

We, the members of the Tolowa Indians of the Tolowa Dee-ni' Nation, in order to establish a more effective form of Tribal Government, to better exercise the privileges and powers of self-government, to preserve Tolowa Tribal customs, to recognize our rights and privileges as members, to improve the economic conditions for ourselves and our Tribal lands, and to acquire lands as necessary for self-determination and the economy of our people, do hereby establish this Constitution for the members of the Tolowa Dee-ni' Nation.

The Tolowa Indians of the Tolowa Dee-ni' Nation shall hereinafter be referred to as the Nation.

ARTICLE I – Aboriginal Lands, Territory and Jurisdiction

Section 1. The Aboriginal Lands of the Nation's territory include the land bounded by Wilson Creek to the South, the Sixes River to the North, East to the Applegate watershed in the Coastal Range, and West to the Pacific Ocean, including Point St. George Lighthouse.

The above lands constitute our place of origin and our continued habitation and occupancy, demonstrated by the ancestral villages of our people within these boundaries. Yan'-daa-k'vt ("Yontocket") is the spiritual center of the Nation, and Xaa-wan'-k'wvt ("Howonquet") is the seat of the Tolowa government.

Section 2. The Nation's Territory consists of all Aboriginal Lands, service areas, and all lands subsequently and hereafter acquired by and for the Nation, whether within or outside of the Nation's Aboriginal Lands.

Section 3. It is hereby declared that title to these lands includes, but is not limited to, all surface and subsurface rights, and all accretions thereof.

Section 4. These lands shall be recognized by the United States Government as belonging to the Nation, and shall be so shown on the maps of the United States. Since the Nation has at no time relinquished any of its sovereign powers, we remain a sovereign nation within the United States, with the right to govern all the lands within our Territory.

Section 5. Jurisdiction. The laws of the Nation shall extend to:

- (a). All Tolowa Dee-ni' Nation citizens;
- (b). All persons who are eligible to be enrolled as Tolowa Dee-ni' Nation citizens, wherever located;
- (c). All persons throughout and within the Nation's Territory or service area who consent to the Nation's jurisdiction;
- (d). All activities throughout and within the Nation's Territory, or outside of the Nation's Territory if the activities are causing an adverse impact to the political integrity, economic security, resources or health and welfare of the Nation and its citizens; and
- (e). All property, lands, waters, natural resources, cultural resources, air space, minerals, fish, forests, wildlife, and other resources, and any interest therein, now or in the future, throughout and within the Nation's Territory.

ARTICLE II - Membership

Section 1. The membership of the Nation shall consist of persons who meet one of the following eligibility requirements:

- (a). all persons listed on the Plan for Distribution of Assets of the Smith River Rancheria, July 28, 1960, and their lineal descendants.
- (b). all siblings of those individuals listed as distributees on the Distribution Plan of July 28, 1960, as well as the lineal descendants of such siblings;
- (c). those persons who have successfully petitioned for membership under the provisions of Section 2 of this Article;
- (d). persons who may be adopted pursuant to Section 5 and 6 of this Article.

Section 2. A person of Tolowa Indian blood who satisfies the requirements of 1 (c) of this Article may petition the Tribal Council for admission into membership. The Tribal Council shall submit the petition to the Nation's membership in an election. Upon the concurrence of a majority of those voting in the election, the petitioner as well as the lineal descendants of such petitioner, upon submitting their enrollment application and who satisfy the requirements of 1 (c) of this Article shall be accepted into full membership with all rights and responsibilities of members, and her/his name shall be added to the official membership roll.

Section 3. A person shall not be eligible for membership if she/he is a recognized member of another Tribe; provided, a "recognized member of another tribe" is one who has been listed on

the official membership roll of, or has received a land allotment on another Reservation or Rancheria.

Section 4. A person shall not be considered ineligible for membership to the Nation:

- (a). if she/he is enrolled with another Tribe through a parent and yet meets the membership criteria of the Nation; provided, any person wishing to be enrolled as a member of the Nation must relinquish his or her membership with any other Tribe, Reservation, or Rancheria of which she/he may be a member;

or

- (b). if she/he inherits or acquires (not through allotment) land on another reservation or shared in the benefits of other Tribes and otherwise meets the membership criteria of the Nation.

Section 5.

- (a). All members of the Nation shall be listed on the official membership roll. The initial roll shall consist of all persons listed on the Plan of Distribution of the assets of the Smith River Rancheria, July 28, 1960.
- (b). All persons accepted into membership under any provision of this article shall be listed on the official membership roll. Persons may be deleted from the official membership roll only if their inclusion on the roll violates the provisions of this Constitution and only after that person has been provided with notice of the proposed deletion and an opportunity to be heard thereon.

Section 6. The Council shall have the power to enact ordinances which establish rules and regulations governing future membership, loss of membership, adoption, procedures for enrollment, and preparation and approval of an official membership roll. Such ordinances shall be consistent with Article XII of this Constitution; provided, no person shall be adopted into membership except as provided in Section 6 (Honorary Membership) unless such person is of Tolowa Indian Blood.

Section 7. The Council shall have the power to enact ordinances providing for the adoption of persons into honorary membership. Such honorary membership shall not entitle any person to any rights in Nation property or assets or to any other right or privilege guaranteed by this Constitution. Persons having honorary membership shall not be listed on the official membership roll.

ARTICLE III - Governing Body

Section 1. The governing body of the Nation shall be the Tribal Council. The Council shall consist of seven (7) members.

Section 2. The Council members shall be elected sixty (60) days after ratification of the Constitution. The three (3) Council members who receive the most votes shall hold office for three years; the two (2) Council members who receive the next highest number of votes shall serve for two years; and the two (2) Council members receiving the next highest number of votes shall serve for one year. Thereafter, each Council member elected shall serve three (3) years.

Section 3. At its first regular meeting after the annual election, the Council shall elect officers from among the current Council members. Separate elections shall be held at that time for Chairperson, for Vice-Chairperson, for Secretary and for Treasurer. Voting shall be by secret ballot.

Section 4. Officers of the Council shall serve for a period of one year or until their successors are chosen in accordance with Section 3 of this Article.

Section 5. Any eligible voter, as defined in Article IX, Section 4, shall be eligible to be a candidate for election to the Tribal Council.

Section 6. The Council shall meet on the first Regular Meeting after the election. At that time, the Council members shall take office and shall take an oath administered either by the Chairperson or Vice-Chairperson of the Council or by another Council member who is already in office.

Section 7. Members of the Tribal Council shall avoid actual or potential Conflicts of Interests in the performance of their duties, including situations when a Council Member is in a position to influence a decision that may result in a personal gain for that Council Member or for a relative as the result of the Nation's business dealings.

ARTICLE IV - Powers of the Council

Section 1. The Council shall have the following powers:

- (a). To represent the Nation and act in all matters that concern the general welfare of the Nation and to make decisions not inconsistent with, or contrary to, this Constitution or the Constitution and laws of the United States.

- (b). To negotiate and make contracts with federal, state, and local Governments and with any individual, firm, or company.
- (c). To employ legal counsel, and to set the legal counsel's fees, in accordance with federal law.
- (d). To acquire lands for the Nation.
- (e). To veto the sale, disposition, lease or encumbrance of the Nation's lands held by the Nation's funds, or other assets of the Nation.
- (f). To protect and preserve the wildlife and natural resources of the Nation; to regulate hunting, fishing, and trapping within the Nation.
- (g). To cultivate our arts, crafts, culture, language and history.
- (h). To negotiate permits and leases for business, home site and other purposes, and generally to provide for proper use and development of all lands of the Nation, natural resources and other property of the Nation.
- (i). To appropriate the Nation's funds for purposes of the Nation .
- (j). To enact ordinances to regulate the use of all the Nation's lands through zoning, taxation, and otherwise.
- (k). To waive the Nation's immunity from suit.
- (l). To manage and control land held by the Nation, and to establish community enterprises, and other economic projects and programs for the Nation.
- (m). To authorize, charter, and regulate associations and corporations formed by members of the Nation for business or charitable purposes and to authorize formation of corporations under Federal and State Law for economic, charitable, or public purposes.
- (n). To provide by resolution or ordinance the conditions upon which non-members may enter or remain within the Nation, and to provide for the removal or exclusion from the Nation of any non-members whose presence may be injurious to the Nation's members or to the interests of the Nation.
- (o). To regulate its own procedures, to appoint subordinate committees, commissions,

boards, the Nation's officials and employees not otherwise provided for in this Constitution to prescribe their salaries, tenure, and duties. Appointees may or may not be the Nation's members.

- (p). To establish and prescribe rules for governing the Nation's courts.
- (q). To accept diplomatic gifts on behalf of the Nation's members.
- (r). The Council may exercise such further powers, consistent with this Constitution, as needed to carry out the powers listed herein.

Section 2. The forgoing enumeration of powers shall not be construed to limit the powers of the Nation and in no way shall be deemed an abdication or forfeiture of the Nation's inherent attributes of sovereignty, and such powers may be exercised through the adoption of appropriate amendments to this Constitution.

Section 3. Secretarial Review:

Any resolution or ordinance which, by the terms of this Constitution or federal law is subject to the review or approval of the Secretary of the Interior shall be given to the Superintendent of the Northern California Agency of the Bureau of Indian Affairs within fifteen days of enactment. If the Superintendent shall fail to act on any ordinance or resolution submitted to him by the Council within ten days of receipt, the Council shall inquire of the Superintendent as to his reasons for failing to act. If the Council finds these reasons to be insufficient it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior. If within ninety days from the date the resolution or ordinance is submitted to the Secretary, the Secretary shall fail to act thereon, said ordinance or resolution shall become effective.

ARTICLE V - Duties or Officers

Section 1: The Chairperson

- (a). The Chairperson shall preside at all meetings of the tribal council.
- (b). The Chairperson shall execute on behalf of the Nation all contracts and other documents approved by the Council.
- (c). The Chairperson shall have general supervision of all other offices, delegates and committees of the Nation and see that their duties are properly performed.
- (d). When the Council is not in session, the Chairperson shall be the official

representative of the Nation.

- (e). The Chairperson shall appoint or remove all committee members, subject to approval of the Tribal Council.
- (f). The Chairperson shall vote only in case of a tie vote at the Council meeting.

Section 2. Vice Chairperson

In the absence of the Chairperson, the Vice-Chairperson shall preside and shall have all powers, privileges and duties of the Chairperson. She/he shall have power to vote at any meeting.

Section 3. Council Secretary

The Secretary shall have charge of all the Nation's correspondence and it shall be her/his duty to submit copies of all resolutions and ordinances to the Council, as well as to perform other duties as requested by the Council. The Secretary shall have the power to vote at all meetings of the Council.

Section 4. Treasurer

- (a). The Treasurer shall accept, give receipt for, keep, and safeguard all funds in custody of the Council. She/he shall deposit all such funds as directed by the Council and shall keep accurate records of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in her/his custody to the Council at regular meetings and at such other times as requested by the Council. She/he shall not pay or disburse any funds in custody of the Council except when properly authorized to do so by the Council.
- (b). The books and records of the Treasurer shall be audited at least once a year by a competent auditor employed by the Council, and at such other times as the Council may direct.
- (c). The Treasurer shall be required to give a surety bond satisfactory to the Council.
- (d). All checks shall be counter signed by those appointed by the Council to do so.
- (e). The Treasurer shall have the power to vote at all meetings of the Council.

Section 5. Any Council member who neglects to perform her/his assigned duties/or fails to attend regular council meetings without good cause will be in dereliction of her/his duties and action will be taken against her/him.

ARTICLE VI - Meetings of the Council

Section 1. Inauguration of Council Members:

At the first regularly scheduled council meeting following the election of the Council members, new members of the Council shall be inaugurated and take office, and this Council shall see that all new Council members have a correct and clear understanding of the Constitution and the management of the Nation's affairs, as well as the rules of conduct, of the Council.

Section 2. Regular Meetings

Regular meetings of the Council shall be held as designated in a resolution of the Council. Such designation shall follow as closely as possible the dates and times being followed prior to the adoption of this Constitution.

Section 3. Special Meetings

Special meetings may be called by the Chairperson on her/his own motion, or upon the written request of at least three Council members. Written notice shall be given to all Council members at least five (5) days prior to special meetings.

Section 4. Emergency Meetings

The Chairperson may, without first providing five (5) days' notice to the Council members, call an emergency meeting when a matter arises requiring the Council's immediate attention.

Section 5.

- (a). In the conduct of Council business, "Roberts Rules of Order" shall apply, except when they are inconsistent with the express provisions of this Constitution. All regular meetings shall be open to all members of the Nation. The Nation's members may participate in the discussion with the consent of the Chairperson.
- (b). The order of business at any regular or special meeting of the Council shall be as follows:
 - Call to Order
 - Roll Call
 - Moment of Silence
 - Approval of the Minutes of the last meeting
 - Unfinished Business
 - Reports
 - New Business
 - Adjournment

- (c). Voting at the Council meetings may be by “voice”, but at the discretion of the Chairperson, or upon the request of any two (2) members of the Council, a secret vote may be taken.

Section 6. Matters of business for the Council shall be decided by a majority vote. A quorum (a number competent to transact business) of the Council shall be four (4) or more members, which may include the Chairperson or Vice-Chairperson.

Section 7. Each official whether elected or appointed, shall take an oath of office prior to assuming her/his duties, which shall be as follows:

“I _____ do solemnly swear (or affirm) that I will support and defend the Constitution, laws and policies of the Tolowa Dee-ni’ Nation, that I will carry out faithfully and impartially, the duties of my office to the best of my ability, that I will cooperate, promote, and protect the best interests of my Nation in accordance with this Constitution.”

ARTICLE VII - Removal, Resignation, and Recall From Office

Section 1. If a member of the Council is found by the Council to have failed in the performance of her/his duties through gross neglect of duty, misconduct reflecting on the dignity of the Nation or the Council, or repeated unexcused absences from official functions, that member shall be removed from her/his position as a member of Council upon passage of a resolution by a 2/3 majority vote of the Council.

Section 2. Prior to removal pursuant to Section 1, a member of the Council who is accused of failing to perform her/his duties shall be given an opportunity to answer any and all charges at a designated Council meeting. The decision of the Council shall be final.

Section 3. If a member of the Council is removed from office pursuant to this Article, the position shall be declared vacant by the Council and the position shall be filled pursuant to Article VIII of this Constitution.

Section 4. Recall

- (a). The registered voters of the Nation shall have the right to recall any member or members of the Council by filing a petition with the Council Secretary signed by at least thirty percent (30%) of the registered voters. The Council Secretary shall provide a list of registered voters, if requested by the petitioners. Before signatures are obtained, the petitioners must file a copy of the petition with the Council Secretary. Any petition not filed with the Council Secretary before

signatures are obtained shall be invalid.

- (b). Within ten (10) days after receipt of the valid recall petition, the Council shall notify the accused Council person by registered mail, return receipt requested, and request in writing her/his presence at a meeting with the Council. The accused shall be advised of the charges against her/him and shall further be advised of her/his right to present her/his defense at a general meeting of the Nation. The Council shall hold an election on the recall within ten (10) days of notifying the accused.
- (c). Voting shall be by secret ballot and at least thirty percent (30%) of the registered voters must vote in such an election. A simple majority shall prevail. If the vote is against recall, the council person shall reassume her/his office in good standing. If the vote is for recall, her/his office shall be considered vacant.
- (d). If the council person who is the subject of the recall election is an officer, then a successful recall terminates his status as council person and officer. Thereafter, the council shall select a new member to fill that office in accordance with Article III.

ARTICLE VIII - Vacancy

Any vacancies which occur on the Council as a result of recall, removal, resignation, or death shall be filled in the following manner:

When a vacancy occurs the Council shall appoint, by majority vote, a qualified member of the Nation to fill the vacancy until the next general election. The appointed member shall not serve in the capacity of an Officer of the Council. Should that appointed member be elected, that appointed member shall fulfill only the remainder of the original term of office.

ARTICLE IX - Elections

Section 1. General elections to vote for Council persons shall be held every year on the third Saturday in May. The voting place shall be as designated in an election ordinance.

Section 2.

- (a). All elections shall be announced by special notice posted at least thirty (30) days before the election at the voting place and other public places. A reasonable effort will be made to contact all members of the Nation that are living off the Nation by mail, and absentee ballots shall be mailed to them.

- (b). Any elections held without proper notice shall be void.

Section 3. Nominations for Council persons shall be made at a regular council meeting of the Nation. Procedures for the nominations process shall be set forth in an election ordinance. Provided, however, that each nominee shall be a member of the Nation who is registered to vote with the Nation, twenty-one (21) years of age at the time of nomination, who has never been convicted of a felony or a crime of moral turpitude in any jurisdiction, and has continuously resided within Del Norte, Humboldt, Curry, Josephine or Coos counties for a period of one (1) year immediately prior to being nominated as a candidate for the Council.

Section 4.

- (a). All members of the Nation, eighteen (18) years of age or older and registered to vote with the Nation shall be eligible to vote in all elections provided for in this Constitution. The Council shall have the power to prescribe ordinances, governing the conduct of all elections provided for in this Constitution. All elections shall be by secret ballot.
- (b). In any event wherein a procedural problem or conflict develops between Indian custom and this Constitution, the provisions of this Constitution shall prevail.

Section 5. Special elections shall be held upon call by the Council as provided in Articles VII, VIII, X and XIII, and notice of them shall be given as in the case of general or regular election.

ARTICLE X - Referendum

Upon petition of at least thirty percent (30%) of the registered voters of the Nation, any enacted or proposed resolution or ordinances of the Council shall be submitted to popular referendum and the vote shall decide whether the ordinance or resolution shall thereafter continue in effect. At least fifty-one percent (51%) of the registered voters shall vote in such a referendum and two-thirds (2/3) majority shall prevail. Prior to obtaining signatures, a copy of the proposed petition shall be filed with the elected Council Secretary. The petition shall not be valid if the copy of the petition is not first filed with the Council Secretary. The Council shall meet and set the time and place for the referendum in accordance with existing election procedures. Before or during the petition process, the Council shall furnish a list of registered voters if requested to do so.

ARTICLE XI - Meetings of the Nation

The Council may, from time to time call meetings of all voters of the Nation for the

purpose of receiving reports. A General Membership Meeting shall be held at least once a year at the time of nominations of Councilpersons.

ARTICLE XII - Rights of Members

Subject to the limitations imposed by this Constitution, all members of the Nation shall enjoy equal political rights and opportunities to participate in the tribal government, its economic resources, assets and all the rights that are conferred upon a citizen, and no members shall be denied freedom of speech, religion or the right to peacefully assemble, nor shall any member be denied the right to petition the Tribal Council for redress of grievances, or otherwise be deprived of life, liberty, or property without notice and an opportunity to be heard.

ARTICLE XIII - Amendments

Section 1. In view of the changing times, it shall be the responsibility of the incumbent Council to review these Articles not less than every five (5) years beginning upon the effective date of this Constitution. This, however, does not preclude other changes as are considered necessary at any time. The proposed amendment(s) shall become a part of this Constitution upon approval by a majority of the registered voters of the Nation's voters voting in that election.

Section 2. Upon petition of at least thirty percent (30%) of the registered voters of the Nation, the Council shall call an election to amend this Constitution. A copy of the proposed amendment shall be posted at least thirty (30) days before the election is to be held. The proposed amendment shall become part of this Constitution upon approval by a majority of the registered voters of the Nation's voters voting in an election called for that purpose.

ARTICLE XIV - Savings and Severability

In the event that any provision of this Constitution is determined to be unconstitutional, illegal or invalid by a court of competent jurisdiction, the remaining provisions thereof shall remain in effect.

ARTICLE XV - Ratification

Section 1. Within thirty (30) days of submission of a draft Constitution to the Interim Council, the Interim Council shall call a meeting for the purpose of ratification of the draft Constitution by

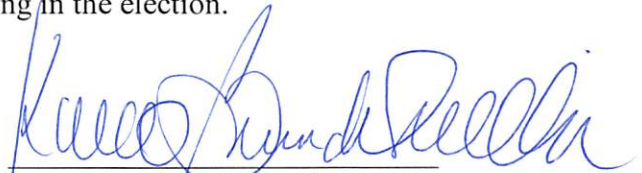
the Nation's membership. The Constitution shall be ratified if approved by a majority of persons eighteen (18) years of age or older who are listed on the initial base roll as defined in Article II, Section 5, provided that at least thirty percent (30%) of those eligible to vote/participate in the election.

Section 2. Upon approval by the membership of the Constitution, the Interim Council shall submit the Constitution to the Secretary of the Interior for approval, provided that approval by the Secretary shall not be necessary for this Constitution to be effective.

CERTIFICATION

I, the undersigned, as Chairperson of the Tribal Council of the Tolowa Dee-ni' Nation do hereby certify that the Tribal Council is composed of seven (7) members of which 6 were present constituting a quorum at a meeting duly noticed and convened on May 26, 2015 to certify the election results; and that the Tolowa Dee-ni' Nation held an election on the 16th day of May, 2015; and the Constitutional Amendment reflected in the forgoing document, that all references to 'Smith River Rancheria' or any of its derivatives are replaced with *Tolowa Dee-ni' Nation* was adopted by a majority vote of those voting in the election.

Dated on this 26 day of May, 2015



Kara Brundin-Miller, Chairperson
Tolowa Dee-ni' Nation Tribal Council

Attest:



Loren Bommelyn, Secretary
Tolowa Dee-ni' Nation Tribal Council