BLUE LAKE RANCHERIA
AIR QUALITY ORDINANCE
01 – 2000

The Business Council of the Blue Lake Rancheria, empowered by the tribal Constitution to enact ordinances, hereby ordains the following:

§1. Findings And Declarations

The Tribe finds and declares that —

(a) It wishes to reduce and control discharges of pollutants into the air of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction.

(b) Reduction and control of discharges of pollutants into the air of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction is necessary at this time to maintain air quality for the health, safety and welfare of residents and the environment of the Blue Lake Rancheria and other territory over which the Tribe has jurisdiction.

Therefore, the Business Council adopts this Ordinance to protect and promote the political integrity, economic security, health, safety and welfare of the Tribe, its members, and all persons living on, or passing through, the Blue Lake Rancheria and to protect and preserve the environment, lands, culture, religion, and natural resources of the Blue Lake Rancheria.

§2. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings:

(a) The term "air" means the ambient air, or atmosphere, external to buildings and indoor areas, of the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction.

(b) The term "approved combustibles" means paper, cardboard, lawn clippings, yard waste, brush, trees, native vegetation, and other materials as approved by the Tribal EPA, but shall not include hazardous or toxic materials, or any other material that would imperil or endanger the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction.

(c) The term "Burn Permit" means a permit issued by the Tribal Environmental Protection Agency for open outdoor fires on the Rancheria or other territory over which the Tribe has jurisdiction in accordance with the provisions of this Ordinance.

(d) The term "Business Council" means the Business Council of the Blue Lake Rancheria.

(e) The term "complainant" means any tribal member, Business Council member, Tribal EPA staff, other staff of the Tribe, or residents of the Rancheria who submit to the Tribal EPA a

written complaint, signed under penalty of perjury, of a violation of this Ordinance, any rules or regulations promulgated pursuant thereto, or any conditions of a Burn Permit, in accordance with the procedures set out in section 10, below.

(f) The term "energy efficient and low emission wood burning stove or other heating system" means a wood burning stove or other heating system, including electric or natural gas powered, which uses at least twenty-five (25) percent less energy and generates at least twenty-five (25) percent less air emissions than standard models.

(g) The term "hazardous material" means any material, or combination of materials, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may —

(1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(3) The term hazardous material shall include, but is not limited to, the following:

(A) all plastics, foam, and styrofoam, as those terms are commonly used, that is no longer being used or has been discarded;

(B) hazardous waste as defined in 40 C.F.R. section 261.3, as amended from time to time;

(C) any hazardous air pollutant listed under the Clean Air Act, as codified in part at 42 U.S.C. section 7412, as amended from time to time; and

(D) any hazardous substance contained in 49 C.F.R. section 172.101, Appendix A (List of Hazardous Substance and Reportable Quantities), as amended from time to time.

(h) The term "imminent fire hazard" mean a hazard which presents imminent dangers to the health and/or safety of a person, persons, property, or wildlife.

(i) The term "person" means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, the United States, Tribe, State, County, City, district or other political subdivision of any state, or any other group or combination acting as a unit.

(j) The term "pollutant" means any substance that will alter the quality of the air of the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction, but shall not include:

(1) air emissions from outdoor fires conducted pursuant to a Burn Permit;

(2) air emissions from outdoor fires exempted from the Burn Permit requirements; and

(3) air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could unreasonably imperil or endanger the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction.

(k) The term "quality of the air" means any chemical, physical, biological, bacteriological,

radiological, and other properties and characteristics of air.

(l) The term "Rancheria" means all land, air, and water located within the exterior boundaries of the Blue Lake Rancheria.

(m) The term "Tribal EPA" means the Tribal Environmental Protection Agency of the Blue Lake Rancheria.

(n) The term "Tribe" means the Blue Lake Rancheria, a federally recognized Indian tribe.

(o) The term "violation" means any violation of this Ordinance, any orders of the Tribal EPA carrying out this Ordinance, or any conditions of a Burn Permit.

(p) The term "violator" means any person who the Tribal EPA finds has committed a violation.
(1) The term "alleged violator" means any person alleged to have committed a violation.

§3. Jurisdiction

(a) The applicability of this Ordinance shall extend to all persons who discharge any pollutant into the air of the Rancheria or other territory over which the Tribe has jurisdiction.

(b) Any person who enters onto the Rancheria or other territory over which the Tribe has jurisdiction shall become subject to this Ordinance and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful enactments of the Tribe.

§4. Burn Permit

(a) No person shall set, or allow to be set, any open outdoor fire(s) within the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction without a valid Burn Permit issued by the Tribal EPA.

(b) The following are exempted from the permit requirements of sub-section (a):
(1) Fires used only for the cooking of food for human consumption.
(2) Fires set or permitted by any authorized public officer when such fire is necessary for any of the following purposes.
(A) The prevention of an imminent fire hazard.
(B) The setting of backfires necessary to save life or property.
(C) Disease or pest prevention where there is an immediate need for, and no reasonable alternative to, burning.

(c) A Burn Permit, or renewal thereof, is obtained at no charge by submitting an application therefore, on any form prescribed by the Tribal EPA, along with appropriate documentation, to the Tribal EPA, which shall collect the following information from applicants:
(1) the applicant's principal office, place of business, or residence;

(2) the location where the applicant intends to burn; and
(3) any other information deemed relevant and appropriate by the Tribal EPA.

(d) Based on the information provided in the application, the Tribal EPA shall conduct an inquiry on:
(1) the applicant's history of burning materials within the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction;
(2) whether the applicant has violated this Ordinance in the previous year;
(3) whether the applicant has been cited for causing a nuisance affecting air quality under the Nuisance Ordinance adopted by the Tribe, including, but not limited to, section 3(a)(2) of the Nuisance Ordinance; and
(4) whether the person has imperiled or endangered the quality of the air of the Blue Lake Rancheria or other territory over which the Tribe has jurisdiction due to the person's burning activities.

(e) Any Burn Permit issued by the Tribal EPA must conform to the following requirements:
(1) Burn Permits for open outdoor fires may be issued only for the disposal of approved combustibles that have been generated on or grown at the property where the burning will occur.
(2) Burn Permits shall only be issued to persons 18 years or older residing on or owning property within the Rancheria or other territory over which the Tribe has jurisdiction.
(3) Burn Permits shall be issued at no charge to eligible applicants who meet all other criteria.
(4) The Burn Permit shall be valid for no more than one year and shall expire on the last day of the current calendar year.
(5) The Tribal EPA shall not issue a Burn Permit to applicants —
(A) who have been cited for violations of this Ordinance where the Tribal EPA determines, in its discretion, that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the Rancheria or other territory over which the Tribe has jurisdiction;
(B) who have been cited for violations of the air provisions of the tribal Nuisance Ordinance where the Tribal EPA determines, in its discretion, that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the Rancheria or other territory over which the Tribe has jurisdiction;
(C) who's previous burning activities have, in the discretion of the Tribal EPA, imperiled or endangered the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction; and
(D) where the Tribal EPA determines that, due to meteorological conditions, the burning proposed by the applicant could cause smoke to create or contribute to an exceedance of a federal air quality standard, imperil or endanger the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction, or create a nuisance as defined in the tribal Nuisance Ordinance.
(6) The Tribal EPA may include any condition(s) in the Burn Permit that it deems necessary

to protect the quality of the air and the health and safety of the residents and/or environment of the Rancheria or other territory over which the Tribe has jurisdiction. The Tribal EPA may include in the Burn Permit the following conditions, and any other conditions the Tribal EPA deems necessary:

(A) Burning may only occur on permissive burn days, as determined by the Tribal EPA in consultation with the North Coast Air Quality Management District and local government agencies;

(B) The waste to be burned shall be reasonably free of dirt, soil and excess moisture and, whenever possible, shall be piled in such a manner as to burn with maximum possible heat intensity and minimum smoke.

(C) The waste to be burned shall be free of tires, tar paper, garbage or other types of rubbish likely to cause excessive smoke or odor.

(D) The waste to be burned shall be allowed to dry for the following minimum time periods before burning:

(i) Trees and branches over six (6) inches in diameter - thirty (30) days;

(ii) Brush, vines, bushes, prunings and small branches - fifteen (15) days;

(iii) Field crops, lawn clippings and weeds - seven (7) days; and

(iv) Other materials - drying times will be determined by the Tribal EPA.

§5. Energy Efficient and Low Emission Stove and Heating System Program

(a) Any person installing or replacing a wood burning stove or other heating system in a residence, business, or tribally-owned facility within the Rancheria or other territory over which the Tribe has jurisdiction must install an energy efficient and low emission stove or other heating system from a list of approved models prepared and maintained by the Tribal EPA.

(1) The Tribal EPA is authorized to grant waivers to persons for whom compliance with this requirement shall create a severe and undue economic hardship.

(b) The Tribal EPA shall prepare and maintain a list of energy efficient and low emission stove and heating systems that are approved for compliance with sub-section (a), above.

(1) The Tribal EPA shall strive to include affordable models of energy efficient and low emission stove and heating systems on the list of approved such appliances and systems.

(2) Such list shall be maintained for use by, and shall be made available upon request by, tribal members and residents of the Rancheria or other territory over which the Tribe has jurisdiction.

(c) The Tribal EPA shall seek to secure grant funds, including low-interest loans, from outside sources to assist persons who must comply with the requirements set out in sub-section (a), above, —

(1) who are low-income, or

(2) for whom compliance with this requirement will create an economic or financial hardship.

The unavailability of such funds shall not excuse compliance with the requirements of sub-

section (a), above.

§6. Notice to Tribal EPA

(a) Any person that discharges any pollutant into the air of the Rancheria or other territory over which the Tribe has jurisdiction shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify the Tribal EPA of said discharge and shall fully disclose to the Tribal EPA any and all information regarding the discharge, including, but not limited to, the type of pollutant discharged, the amount of pollutant discharged, the location of the discharge, and any other information required by the Tribal EPA.

(1) Notice to the Tribal EPA under this sub-section is not required for

(A) air emissions from outdoor fires conducted pursuant to a Burn Permit, unless notice is required as a condition of a Burn Permit;

(B) air emissions from outdoor fires exempted from the Burn Permit requirements; and

(C) air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could unreasonably imperil or endanger the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction.

(b) The initial notice of discharge or other prohibited activity required by sub-section (a), may be delivered orally to the Tribal EPA in person or over the phone. However, within three (3) days of providing oral notice of a discharge, written notice of the discharge must be provided to the Tribal EPA. All other information required to be provided to the Tribal EPA under sub-section (a) must be delivered to the Tribal EPA in writing or orally, at the Tribal EPA's discretion.

§7. Clean-up and Abatement

Any person who discharges any pollutant into the air of the Rancheria or other territory over which the Tribe has jurisdiction shall be liable for all costs associated with or necessary to clean up, abate, or remove said pollutants from the air of the Rancheria or other territory over which the Tribe has jurisdiction and restore the quality of the air of the Rancheria or other territory over which the Tribe has jurisdiction to the condition of the air as it existed immediately prior to the discharge.

§8. Authorized Activities of the Tribal EPA

(a) The Tribal EPA is authorized and directed to conduct the following activities to carry out the provisions of this Ordinance:

(1) Enforce and carry out the provisions of this Ordinance, including assessing civil fines and penalties under section 11 of this Ordinance.

(2) Enter at reasonable times into, on, or through any public or private property to conduct

routine inspections to monitor compliance with the provisions of this Ordinance and any rules or regulations promulgated pursuant to this Ordinance.

(3) Provide to the relevant fire control agencies information on burning activities within the Rancheria or other territory over which the Tribe has jurisdiction.

(4) After providing for comment by Tribal Members and residents of the Rancheria, promulgate rules and regulations as may be necessary to carry out the spirit and letter of this Ordinance, including:

(A) imposing restrictions, requirements, controls, and prohibitions regarding regulated activities; and

(B) defining and designating, by map, areas of the Rancheria or other territory over which the Tribe has jurisdiction where outdoor fires and burning of certain materials are limited, restricted or prohibited for the protection of human health, natural resources, cultural resources, and/or the environment.

(5) Work cooperatively with other tribes and federal, state, county and municipal governments to:

(A) coordinate activities and cooperate with such other governments as have similar or related responsibilities within their respective jurisdictions;

(B) develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the Rancheria or other territory over which the Tribe has jurisdiction, provided that the Business Council shall have ultimate authority to execute and enter into any such intergovernmental agreements.

§9. Prohibited Activities

(a) No person shall violate any provision of this Ordinance, any condition of a Burn Permit, or any rule or regulation adopted pursuant to this Ordinance.

(b) No person shall discharge any pollutant into the air of the Rancheria or other territory over which the Tribe has jurisdiction.

(c) No person shall burn or incinerate any hazardous material or any pesticide, as defined in the Pesticide Control Ordinance adopted by the Tribe, anywhere within the Rancheria or other territory over which the Tribe has jurisdiction.

(d) No person shall knowingly make false statements during or after an inquiry by the Tribal EPA, or aide, abet or conspire with a person to evade the provisions of this Ordinance.

(e) No person shall engage in a regulated activity in a faulty, careless or negligent manner.

(f) No person shall use fraud or misrepresentation in making an application for, or for renewal of, a Burn Permit.

§10. Enforcement Process

(a) The Tribal EPA is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance or any conditions of a Burn Permit.
  (1) Investigations of such violations by the Tribal EPA shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Business Council members, Tribal EPA staff, other staff of the Tribe, or residents of the Rancheria.
    (A) The written complaint shall be submitted on a form developed by the Tribal EPA and shall include, at a minimum, the following information:
      (i) name of the complainant;
      (ii) date and time of the alleged violation;
      (iii) location of the alleged violation; and
      (iv) a brief description of the factual basis for the complaint.
    (B) The written complaint must be submitted to the Tribal EPA, during normal business hours, within six (6) months of the alleged violation.
    (C) The Tribal EPA shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.

(b) Following an investigation, if the Tribal EPA determines that a violation has occurred, the Tribal EPA may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:
  (1) informally contact any alleged violator about possible violations of this Ordinance or practices which may result in violations of this Ordinance to assist the alleged violator in adhering to practices which protect air quality and comply with this Ordinance;
  (2) issue a warning of violation, in the form of a letter from the Tribal EPA to the alleged violator, explaining the basis for the warning, possible measures which the alleged violator may take to mitigate the basis of the warning, and an explanation of the steps the Tribal EPA may take if the alleged violator does not take positive corrective action;
  (3) assess a civil fine or penalty as described in section 11, against the alleged violator, following the procedures set out in sub-section (c), below; and/or
  (4) upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in sub-section (c), below.

(c) The following procedures shall govern enforcement actions taken pursuant to sub-section (b) (3), and (4), above:
  (1) The Tribal EPA shall issue a notice of violation, describing the violation and the proposed penalty or other enforcement action, to the person who is charged with the violation.
    (A) The notice of violation shall be served by personal delivery or U.S. mail, return receipt requested. Notice shall be considered received on the date of personal

delivery or three (3) days after the notice is mailed by U.S. mail.

(B) The notice shall include a warning that if the person does not respond within seven business (7) days, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.

(2) Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before the Tribal EPA on the proposed enforcement action described in the notice of violation.

(A) If a hearing is requested, the Tribal EPA must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to the Tribal EPA that the proposed enforcement action will result in great financial loss or harm to person or property before the Tribal EPA is required to hold a hearing, the Tribal EPA may hold a hearing immediately or may delay or reverse any enforcement action until the Tribal EPA holds the requested hearing.

(B) If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, the assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.

(3) At any hearing before the Tribal EPA, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the person is not guilty of the violation as described in the notice of violation.

(4) Within fifteen (15) days of the hearing, the Tribal EPA shall issue a decision on whether to affirm or retract the proposed penalty or other enforcement action described in the notice of violation, based on the evidence submitted by the alleged violator at the hearing.

(A) The Tribal EPA shall serve a notice of the decision on the violator. The notice of decision shall be served by personal delivery or U.S. mail, return receipt requested. Notice shall be considered received on the date of personal delivery or three (3) days after the notice is mailed by U.S. mail.

(5) The decision of the Tribal EPA pursuant to any administrative hearing on a proposed penalty or other enforcement action may be appealed to the Business Council upon written request submitted to the Business Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Business Council must state the grounds for overturning the Tribal EPA's decision.

(A) The Business Council shall hold a hearing within thirty (30) days, upon a finding that the violator has stated reasonable grounds for overturning the Tribal EPA's decision.

(B) The violator and the Tribal EPA shall have the opportunity to present oral arguments at the hearing.

(C) The written record from the administrative hearing before the Tribal EPA, together with all papers and requests filed in the proceeding before the Business Council, shall constitute the exclusive record for decision on appeal.

(D) The Business Council shall set aside the Tribal EPA's decision only upon a finding that the Tribal EPA's decision was arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with the law.

(E) Within sixty (60) days of the hearing, the Business Council shall issue a decision on the appeal.

(F) The Business Council shall serve a notice of the decision on the violator. The notice of decision shall be served by personal delivery or U.S. mail, return receipt requested.

(G) Decisions of the Business Council are final.

(d) The Tribal EPA and/or the Business Council, or a representative authorized by either body, may institute proceedings in any judicial forum of competent jurisdiction to enforce a penalty issued by the Tribal EPA and/or upheld by the Business Council on appeal.

(e) This ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in any court of competent jurisdiction for damages incurred from the emission of air pollutants or the open burning of any materials.

§11. Civil Penalties

(a) Any person discharging any pollutant into the air of the Rancheria or other territory over which the Tribe has jurisdiction or engaging in any other activity prohibited under this Ordinance is subject to a civil fine in an amount not to exceed five thousand dollars ($5,000.00) for each day in which the violation occurs, to be assessed by the Tribal EPA. In addition to any monetary fine, any person violating the provisions of this Ordinance regarding Burn Permits is subject to a civil penalty of probation or suspension, revocation, non-renewal, or denial of a Burn Permit, to be assessed by the Tribal EPA.

(b) In determining the type and amount of the penalty and/or fine, the Tribal EPA shall consider the appropriateness of such fine and/or penalty in light of the gravity of the violation, any effects on human health or the environment resulting from the violation, the size of the business of the person charged, and the effect on the person's ability to continue in business.

§12. Civil Damages and/or Injunctive Actions

In the event that any person, as a result of his or her violations of this Ordinance, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the Rancheria or other territory over which the Tribe has jurisdiction, the Tribal EPA or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

§13. Environmental Protection Fund

(a) Any monies collected by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.

(b) The Environmental Protection Fund shall be used for expenses related to protecting human

health and the environment within the Rancheria and other territory over which the Tribe has jurisdiction, enforcing the provisions of the various environmental ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the Rancheria and other territory over which the Tribe has jurisdiction.

§14. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe, including, but not limited to, the fire and burning provisions of Ordinance Number 88-05.

§15. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

§16. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Business Council, the Tribal EPA, or other staff of the Tribe acting pursuant to this Ordinance.

§17. Amendments

This Ordinance may be amended at any time by the Business Council.

§18. Effective Date

This Ordinance shall take effect immediately upon passage.

CERTIFICATION

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent, on this 2nd day of January, 2000.

Claudia Brundin, Chairperson — Date: Jan. 2, 2000

Melanie Shelanskey, Tribal Secretary — Date: Jan. 2 2000