



ORDINANCE NO. 17-04

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA DESIGNATING THE TRIBAL OFFICIALS, OFFICERS, AND EMPLOYEES PROTECTED FROM UNCONSENTED SUIT BY OFFICIAL AND TRIBAL SOVEREIGN IMMUNITY.

The Business Council of the Blue Lake Rancheria ("Business Council") hereby ordains as follows:

SECTION 1. Findings and Declarations. The Business Council of the Blue Lake Rancheria finds and declares that:

1. The Blue Lake Rancheria ("Tribe") is a federally recognized Indian tribe that enjoys sovereign immunity from suit.
2. Article V, Section 6(p) of the Constitution of the Blue Lake Rancheria ("Constitution") delegates to the Business Council the power to assert as a defense to lawsuits against the Tribe the sovereign immunity of the Tribe.
3. The Tribe, as a governmental entity, can act only through its authorized officials, officers, and employees.
4. Article V, Section 6(r) of the Constitution delegates to the Business Council the power to appoint, direct, and set the compensation of tribal employees and to establish policies and procedures for the employment of tribal personnel.
5. The Tribe has limited financial resources and does not, therefore, possess substantial revenues from which to pay the cost of defending lawsuits that are brought against its officials, officers, and employees when carrying out duties within their authority or scope of work.
6. The Tribe's ability to attract to the remote location of the Tribe's Indian Rancheria qualified people to serve in official positions or to take positions of employment would be substantially impaired unless, like other governmental entities, the Tribe can limit the liability of its officials, officers, and employees from suits brought against them in their official and individual capacities for acts committed while carrying out their official duties or within the course or scope of their employment.

7. The public interest requires decisions and actions to enforce laws for the protection and service of the public. Public officials who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices.

8. The Tribe is concerned that potential liability may chill the performance of the duties of a broad array of its tribal officers, officials, and employees, including Business Council members, department heads, Blue Lake Rancheria Tribal Court staff, tribal attorneys, emergency service workers, and other employees exercising discretionary authority of the Tribe.

9. To safeguard the public interest, responsible governmental employees must be able to faithfully carry out their duties without fear of protracted litigation.

10. The enactment of this ordinance is necessary to: attract qualified personnel to serve the Tribe as officers, officials, and employees to the Tribe's remote Indian Rancheria; to allow the Tribe's officers, officials, and employees to faithfully carry out their duties; and to preserve the tribal treasury, which is necessary to provide essential governmental services to tribal members.

11. This ordinance, which is declarative of existing tribal law and applies to conduct that has occurred before, and occurs after, the adoption of this ordinance, promotes the health and safety of the members of the Tribe and is, therefore, in the best interests of the Tribe.

SECTION 2. Adoption of New Ordinance Entitled "Limitation on the Liability of Tribal Officials, Officers, and Employees." A new ordinance entitled "Limitation on the Liability of Tribal Officials, Officers, and Employees" is hereby added to the Blue Lake Rancheria Tribal Code and shall provide as follows:

TITLE 1. GOVERNMENT

CHAPTER 12. LIABILITY

ARTICLE 3. LIMITATION ON THE LIABILITY OF TRIBAL OFFICIALS, OFFICERS, AND EMPLOYEES

§ 1.12.3.010 **Definitions.** As used in this ordinance, the following terms have the following meaning:

(A) "*Absolute Immunity*" means a personal immunity defense that bars any action against an individual in the conduct of their position, employment, or office.

(B) "*Action(s)*" means any judicial proceeding, quasi-judicial proceeding (including arbitration, mediation, a demand for arbitration, or a demand for mediation), or administrative enforcement mechanism or procedure brought by one party against another seeking to enforce legal rights, obligations, or requirements.

(C) “*Business Council*” means the Business Council of the Tribe as established by Article V, Section 4 of the Tribe’s Constitution.

(D) “*Elected Official*” means the Business Council Chairperson, Vice-Chairperson, Secretary-Treasurer, and Council Members at Large and any other persons duly elected to tribal office by vote of the General Council or Business Council.

(E) “*Employee*” means a person employed by the Tribe, its agencies, departments, or Tribal Entities for the purpose of providing tribal governmental services or programs.

(F) “*Individual Capacity Suit*” means a claim that seeks to impose personal liability on an individual for the individual’s actions taken under color of tribal law.

(G) “*Key Employee*” means a person employed in the operation of a Tribal Entity in a supervisory or management capacity that is empowered to make discretionary decisions regarding the operation of the Tribal Entity.

(H) “*Officer*” means a person who has been appointed, selected, or hired by, or who has entered into a contract with, the Tribe, the Business Council, or the Tribal Administrator to hold an office with the Tribe or to perform the duties of an officer of the Tribe and who exercises discretionary authority in the performance of his or her duties. Officers include, but are not limited to, directors of tribal government departments, directors/board members of Tribal Entities, tribal administrators, casino managers, gaming commissioners, tribal attorneys, and judges and court clerks of the Blue Lake Rancheria Tribal Court.

(I) “*Official Capacity Suit*” means a claim that is treated as a claim against the governmental entity that an Official, Officer, Key Employee, or Employee represents.

(J) “*Tribal Entity*” means any entity created and owned by the Tribe for economic or governmental purposes or any entity that is controlled by the Business Council. For purposes of this ordinance, an entity shall be deemed to be controlled by the Business Council if a majority of the persons serving on the body that governs the entity are chosen by the Business Council or are required to be members of the Business Council.

(K) “*Tribe*” means the Blue Lake Rancheria, a distinct political community, possessing inherent sovereignty and which maintains a government-to-government relationship with the United States of America.

§ 1.12.3.020 Suits Against Elected Officials, Officers, Key Employees, and Employees; Generally. All claims against Elected Officials, Officers, Key Employees, and Employees are subject to the defenses of sovereign immunity, absolute immunity, and qualified immunity to the fullest extent permitted by law.

§ 1.12.3.030 Assertion of a Defense of Immunity by Elected Officials, Officers, Key Employees, and Employees. To the fullest extent permitted by law, all Elected Officials, Officers, Key Employees, and Employees shall have the right to assert defenses of immunity

from suit in any Action that results from carrying out or performing the duties or obligations of their position, employment, or office. Immunity defenses include, but are not limited to, tribal sovereign immunity, official immunity, legislative immunity, judicial immunity, quasi-judicial immunity, prosecutorial immunity, qualified immunity, and executive privilege.

§ 1.12.3.040 Sovereign Immunity of Elected Officials, Officers, Key Employees, and Employees. To the fullest extent permitted by law, all Elected Officials, Officers, Key Employees, and Employees enjoy sovereign immunity from suit and cannot be sued without the consent of the Tribe. All Elected Officials, Officers, Key Employees, and Employees are, therefore, not liable for any injury resulting from any act or omission where the act or omission was the result of the exercise of the discretionary or policy-making authority of the Tribe which has been vested in such person, whether or not such discretion was abused or was the result of negligence on the part of such person; provided that the negligent act occurred while the Elected Official, Officer, Key Employee, or Employee was carrying out the duties of his or her position, employment, or office.

§ 1.12.3.050 Official Capacity Suits Against Elected Officials, Officers, Key Employees, and Employees. The Tribe's sovereign immunity shall cloak all Elected Officials, Officers, Key Employees, and Employees in all Actions brought against an Elected Official, Officer, Key Employee, or Employee in an Official Capacity Suit, unless that sovereign immunity was expressly waived by the Tribe in accordance with the Tribe's laws.

§ 1.12.3.060 Individual Capacity Suits Against Elected Officials, Officers, Key Employees, and Employees. All Individual Capacity Suits against Elected Officials, Officers, Key Employees, and Employees are barred by the doctrine of official immunity so long as the conduct at issue in the Action is within the scope of the Elected Officials, Officers, Key Employees, or Employees' duties and arises from the exercise of the discretionary or policy-making authority of the Tribe that has been expressly delegated to the Elected Official, Officer, Key Employees, or Employee.

§ 1.12.3.070 Discretionary Duties of Elected Officials, Officers, and Key Employees. All Elected Officials, Officers, and Key Employees are delegated the authority to exercise the discretionary or policy-making authority of the Tribe within the scope of their office or employment; provided that such authority is exercised in compliance with tribal law, including the Tribe's Constitution. For example, a tribal official cannot waive the Tribe's sovereign immunity, unless the waiver is authorized by the Tribe's Constitution.

(A) There is an irrebuttable presumption that the following tribal officials exercise the discretionary or policy-making authority of the Tribe in performing their official duties and that all of their acts or omissions exercise the discretionary or policy-making authority of the Tribe: Tribal Business Council member, Tribal Administrator, Tribal Court Judge, Tribal Court Clerk, Tribal Attorney, and the director, administrator, or administrative head of a tribal agency, department, or other subdivision of the Tribe.

(B) All job descriptions for other tribal Employees shall set forth any discretionary or policy-making authority of the Tribe that is delegated to the Employee. There is a rebuttable

presumption that the acts or omissions of such other tribal Employee involve the exercise of such delegated discretionary or policy-making authority of the Tribe, provided that such authority is exercised in compliance with tribal law, including the Tribe's Constitution.

SECTION 3. Repeal of Prior Inconsistent Codes and Ordinances. All ordinances or provisions of any previously enacted ordinances of the Tribe, except those ordinances that require approval of the General Council, that conflict in any way with the provisions of this ordinance are hereby repealed.

SECTION 4. Sovereign Immunity. The sovereign immunity of the Tribe and its Elected Officials, Officers, Key Employees, and Employees is in no manner waived by any provision of this ordinance.

SECTION 5. Severability. If any court of competent jurisdiction determines that any of the provisions of this ordinance are invalid, the remaining provisions of this ordinance shall remain in full force and effect. The Business Council declares that it would have enacted each of the sections of this ordinance separately and, to that end, declares that each of the provisions of this ordinance is severable.

SECTION 6. Effective Date. The provisions of this ordinance, which is declarative of existing tribal law, shall take effect immediately upon their passage and shall apply to conduct of Elected Officials, Officers, Key Employees, and Employees that occurred before and occurs after the adoption of this ordinance.


CERTIFICATION

As the Chairperson of the Business Council of the Blue Lake Rancheria, I hereby certify that the Business Council adopted the foregoing ordinance by a vote of 4 for, with 0 against, with 0 abstaining, and with 1 absent on this 6 day of November 2017.


CLAUDIA BRUNDIN, CHAIRPERSON

11-6-17
DATE OF APPROVAL

ATTEST:


LESLIE ALBRIGHT SECRETARY

11-6-17
DATE OF APPROVAL