ORDINANCE NO. 02-03

ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ESTABLISHING WORKERS' COMPENSATION FOR EMPLOYEES OF THE TRIBE

Section 1. **Findings and Policy.**

This Ordinance is adopted by the Business Council, pursuant to its authority granted under the Tribe's Constitution, for the purpose of addressing work-related injuries, establishing workers' compensation for tribal Employees and complying with Section 10.3 of the Tribal-State Gaming Compact between the Blue Lake Rancheria and the State of California, approved by the United States Secretary of Interior on May 5, 2000, and published in the Federal Register on May 16, 2000.

Section 2. **Purpose.**

The purpose of this Ordinance is to establish a systematic and uniform procedure for administration of worker's compensation benefits to all tribal Employees, including Employees of the Casino. This Ordinance shall also establish a systematic and uniform procedure to administer and define the Tribe's Worker's Compensation program, for meeting and resolving the Tribe's industrial injury liabilities, providing medical and vocational rehabilitation of tribal Employees who suffer work-related injuries, assessing risk of injury to Employees, and preventing abuse and fraud in the administration of this Ordinance.

Section 3. **Declaration of Policy.**

The Business Council declares the following objectives in adopting this Ordinance:

3.1 To provide sure and prompt medical treatment for injured Employees, and fair, adequate and reasonable income benefits to injured Employees and/or Dependents.

3.2 To provide a fair and just administrative system for delivery of medical and income benefits to injured Employees that eliminates litigation and the adversarial nature of the compensation proceedings to the greatest extent practicable.

3.3 To restore the injured Employee physically and economically to a self-sufficient status in an expeditious manner and to the greatest practicable.

3.4 To provide the sole and exclusive source and means by which Employees and/or Dependents may seek and qualify for remedies for injuries arising out of and in the course of employment with the Employer.

Section 4. **Scope.**

This Ordinance applies to all Employees of the Tribe.

Section 5. **Exclusive Remedy.**

This Ordinance shall provide the exclusive method for compensating Employees for injuries sustained in the course and scope of their employment by the Tribe. The liability of the Tribe for all injuries arising out of and in the course of employment with the Tribe is limited to the compensation provided to injured Employees and/or Dependents pursuant to this Ordinance. Such liability shall not be expanded except by amendment of this Ordinance by the Tribal Business Council.

Section 6. **Short Title.**

This Ordinance shall be known as the Blue Lake Rancheria's Worker's Compensation Ordinance.

Section 7. **Definitions.**

7.1 **"Accident"** means an event that causes or is believed to cause a Work Injury.

7.2 **"Administrator"** means the agency that is responsible for managing the Tribe's Worker's Compensation Program. Responsibilities include, but are not limited to, determining the compensability of claims, making payments to injured workers, medical providers and others; managing a trust account for the purpose of dispensing the Tribe's worker's compensation payments; taking reports to the Tribe regarding their program and individual claims. The Administrator's duties are more fully described at Section 9 of this Ordinance.

7.3 "Average Weekly Wage" means the average of the Employee's wages earned during the thirteen (13) calendar weeks preceding the date of work injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The thirteen weeks prior to the date of work injury are presumed representative, regardless or the wages earned. In the event that an Employee is employed for less than thirteen (13) consecutive calendar weeks immediately preceding the date of work injury, the average weekly wage shall be determined by multiplying the Employee's daily wage by the number of days normally worked in the business in the employer. Daily wage is the actual daily wage of the Employee in the employment engaged in at the date of the work injury.

7.4 **"Casino"** means the Blue Lake Casino owned and operated by the Tribe.

7.5 **"Child"** or **"Children"** means the child of an Employee, including a posthumous child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, an illegitimate child, and a stepchild, if such stepchild was, at the time of injury, a member of the Employee's family and substantially dependent upon the Employee for support. A child does not include any married children unless they are Dependents. A person might also qualify as a child according to tribal custom as determined by the applicable Tribal law.

7.6 **"Claimant"** means any Employee, who suffers an injury either specific or cumulative, arising from that employment or occurring in the course and scope of that employment.

7.7 **"Compensable"** or **"Compensable Injury"** means a Work Injury to an Employee which arises during a period of employment and while performing the duties of the employment in or on the premises of the Employer or wherever the Employer requires the Employee to perform the employment activities as more fully described in this Ordinance.

7.8 **"Council"** means the Business Council of the Tribe as established by the Tribal Constitution.

7.9 **"Days"** means calendar days unless otherwise expressly provided.

7.10 **"Dependent"** means the father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece or nephew or any other extended family member as approved by the Administrator, who at the time of the Compensable injury that causes the Employee's death is actually and necessarily dependent in whole or in part upon the earnings of the Employee.

7.11 **"Disability"** means incapacity to earn wages in the same or any other employment caused by a Work Injury.

7.12 **"Employee"** means a person, other than an independent contractor, employed by the Tribe or in the service of the Tribe under any contract of hire, express or implied, oral or written, where the

Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, Employee shall also include Council members, gaming commission members and committee members. For purposes of this Ordinance, Employee does not include independent contractors, contractors and outside consultants.

7.13 **"Employer"** means the Tribe.

7.14 **"Reservation"** means all land held or owned by the Tribe, including all lands held in trust by the United States of America for the benefit of the Tribe, whether or not such land has reservation status.

7.145 **"Spouse"** shall mean a husband or wife of the Employee. If an unmarried man and an unmarried woman have cohabited as husband and wife for over one year prior to the date of a Compensable Injury received by one or the other as an Employee, and that man and woman are the parents of a Child or Children, the surviving cohabitant shall be deemed a spouse for purposes of compensation under this Ordinance.

7.16 **"Tribe"** shall mean the Blue Lake Rancheria of California.

7.17 **"Work Injury"** shall include any injury or disease arising out of and in the course and scope of employment, including injuries to artificial members, dentures, hearing aids, eyeglasses, and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired or otherwise compensated for, unless injury to them is incident to an injury causing disability. Where this Ordinance contains conflicting references to injury and occupational disease, the references to occupational disease shall prevail.

Work Injuries under this section shall be either:

A. "Traumatic," defined as a sudden specific incident, occurring as a result of one incident or exposure which causes disability or need for medical treatment; or,

B. "Cumulative," defined as a repetitive motion injury occurring over a period of time, or the finding(s) and decision(s) of the Administrator to accept in full or in part any claim submitted by a claimant regarding a Work Injury.

Section 8. **Reporting Obligations.**

8.1 An Employee must report any injury, no matter how slight, to his/her supervisor within twenty-four (24) hours of an Accident. Once the Employee reports the injury, the Employee must seek medical attention at the employer directed medical facility within thirty (30) days. No compensation or medical benefits will be paid if a Work Injury is not reported within thirty (30) days of Work Injury or first losing time from work due to the Work Injury. If the Work Injury incapacitates the Employee in a way that prevents the Employee from reporting the Work Injury, the thirty (30) days will not begin to run until the inability to report the injury due to that incapacity ends. Another person on behalf of the Employee may report a Work Injury.

8.2 A supervisor, receiving a report or notice of a Work Injury from the Employee or another acting on the Employee's behalf, must promptly report the claim to the Administrator or to the Council's designee for reporting.

8.3 The Tribe shall post and keep posted in a conspicuous location frequented by Employees, and where the notice may be easily read by Employees during the hours of the workday, a notice which shall state the name of the Administrator. The notice shall advise Employees of their reporting obligations under this Section 8. The notice shall also include advice as to the injured Employee's right to receive medical care, to select and change the treating physician and the right

to receive temporary disability indemnity, permanent disability indemnity, vocational rehabilitation services, and death benefits, as appropriate.

Section 9. **Administrator.**

The Administrator will act on behalf of the Tribe in receiving and processing Worker's Compensation claims under this Ordinance. The responsibility of the Administrator to make determinations and decisions will include, but not be limited, to the following areas.

9.1 Based upon investigation and available information, the Administrator will make a determination of the responsibility of the Employer and will either accept or deny a claim. Within thirty (30) days of receipt of a First Report of Injury, the Administrator will advise the Employee and Employer of its determination.

9.2 The Administrator will determine the reasonableness and necessity of medical care and charges and will determine amounts payable under this Ordinance. The Administrator will also approve or disapprove any change of primary Physician, referral to a Referral Physician, or Surgical Procedure.

9.3 Based on information supplied by the Employer and/or Employee, the Administrator will determine the Compensation Rate payable for Temporary Total, Temporary Partial, and Permanent Partial Disability, and for Dependency.

9.4 The Administrator will determine the length of time during which Temporary Total Disability or Temporary Partial Disability Benefits are payable.

9.6 The Administrator will determine the amount of Permanent Partial Disability Benefits payable.

9.7 The Administrator will determine the eligibility of Dependents and the term of any Dependency Benefits payable.

9.8 In the event of the need to allocate Dependency Benefits between Dependents living in different households, the Administrator will make the necessary allocation, based on obligations, legal or otherwise of the descendent.

9.9 If an Employee's claim is subject to the limitations of Section 17, the Administrator will advise the Employee and Employer of the effect of this limitation in writing.

9.10 The Administrator will, on behalf of the Employer, vigorously pursue any cause of action assigned to the Employee under Section 19.

Section 10. **Insurance.**

The Tribe shall procure and maintain in effect insurance with sufficient coverage and policy limits to provide the benefits authorized by this Ordinance.

Section 11. **Scope of Coverage.**

All Employees are covered for Compensable Work Injuries whether the Accident and Work Injury occur on or off the Reservation. Benefits are limited as indicated in this Ordinance.

Section 12. **Medical Care and Examination for Claims.**

12.1 Employer Directed Medical. Employer shall furnish reasonable medical services and supplies to treat injured Employees, but the employer may designate the medical care providers from whom

the Employee shall seek treatment for injuries and occupational diseases under this Ordinance.

(1) The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the Employee.

(2) If an Employee obtains a written statement indicating the employer's prior approval of treatments by a non-designated provider, such medical services are covered under this Ordinance.

(3) If an Employee is dissatisfied with the medical care offered by the designated providers, the Employee shall submit a written statement to the employer indicating this dissatisfaction and the reasons for it.

a. Based on this statement, the Employee and employer may agree that an Employee shall be permitted to seek alternative treatments or care providers.
b. If the Employee and the employer cannot agree as to alternative care, the Employee may receive a second opinion by a care provider of the Employee's choice.
c. The Employee must receive the employer's prior approval before receiving any treatments from the care provider chosen by the Employee. If prior approval is not obtained, the employer is not responsible for any expense except the initial evaluation.
d. Other care providers used by the Employee may confer with and obtain information on the Employee's condition from the employer-retained physician or medical care provider.

12.2 Reasonable Examination. Whenever a worker makes a claim for compensation, the worker shall submit to reasonable, additional examinations by physicians, chiropractors, psychologists, podiatrists, or vocational experts that are provided and paid for by the employer or insurer upon written request of that party.

(1) An employer or insurer who requests such an examination shall pay the worker all necessary expenses, including transportation expenses.

(2) The worker is entitled to have a doctor that is selected by and paid by the worker present at the examination. The worker may also request and receive a copy of all reports of the examination.

12.3 Refusal. If the Employee, after a written request of the employer or insurer, refuses to submit to or in any way obstructs medical examinations, the Employee's right to begin or maintain any proceeding for worker's compensation is suspended, unless it is shown that the request is unreasonable.

12.4 Testimony. Any physician, chiropractor, psychologist, podiatrist or vocational expert who is present at any examination under §12.2 or attended to an Employee for any condition or complaint reasonably related to the condition for which the Employee claims compensation:

(1) May be required to testify as to the results of their examination.

(2) May be required to furnish information and reports, relative to the claim, to the worker, employer or insurer.

12.5 Privilege Waived. An Employee, who reports an injury alleged to be work-related or files an application for a hearing, waives all doctor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the worker claims compensation. Any physician, chiropractor, psychologist, podiatrist, dentist, hospital, or health care provider shall, within a reasonable time after written request, provide the worker, employer, or insurer with any information or written material reasonably related to any injury for which the worker claims compensation.

Section 13 Dispute Resolution.

13.1 Informal Disputes Resolution

Any Employee or Dependent who disagrees with a determination made by the Administrator may request a hearing before the Appeal Board. Any Employee or Dependent shall file a written request for a hearing before the Appeal Board within fifteen (15) days of receipt of a disputed written decision from the Administrator. The written decision of the Administrator shall contain a notice of the Employee's appeal rights, including the time within which the appeal must be filed, the consequences if an appeal is not timely filed, and the name and address where the appeal must be filed. "Filed" means delivered to the address indicated in the Administrator's decision before 5 p.m. If the Employee or Dependent files with the Appeal Board a request for a hearing, the Appeal Board may, within thirty (3) days, set a date on which the parties, or their legal representatives, may meet with one member of the Board to discuss and attempt to resolve the issues through mediation. The Board member will moderate the discussion and may offer opinions and advice to the parties but will not reach any decision on the issues. If the Employee or Dependents and the Employer's representative reach an agreement on any of the issues, such agreement will be reduced to writing by the parties and will be binding on the parties. Failure of any Employee or Dependent to request a hearing within the time specified herein renders the Administrator's decision final and waives any further right to appeal that decision to the Appeal Board or otherwise.

13.2 Hearing Before Appeal Board

If no meeting is requested under Section 13.1, or if a meeting under Section 13.1 fails to resolve the issue, the matter will be scheduled for a hearing before the full Appeal Board within ninety (90) days of the receipt of a written request for a hearing from the Employee or Dependents. The Employee or Dependents may request in writing one extension of the initial hearing date of up to ninety (90) days, which must be granted by the Board.

A. WRITTEN NOTICE OF HEARING DATE
The Appeal Board shall send written notice to each party informing him or her of the hearing date a minimum of thirty (30) days prior to the hearing.

B. INDEPENDENT ARBITER
The Council will appoint three (3) individuals to act as an Appeal Board to hear any issues and make any necessary final determination relative to Compensability of a Work Injury, medical care or charges, extent of Disability, Dependency, or any other issue that may arise under this Ordinance. The Appeal Board will hear the issue(s) *de novo*.

C. COMPOSITION OF APPEAL BOARD
The members of the Appeal Board will include one member selected by the Council, one member selected by the Employees of the Tribe and one other member who is neither a

member of the Council nor employed by the Tribe selected by the Council and approved.

D. CONDUCT OF HEARING
The Appeal Board will consider evidence, hear witnesses and receive exhibits in keeping with its goal of making a just final determination.

E. STANDARD OF PROOF
The Appeal Board will weigh the evidence, testimony of witnesses, and exhibits and will make its decision on the basis of the preponderance of evidence and credibility of the evidence and witnesses.

F. BURDEN OF PROOF
The burden of proof in any hearing before the Appeal Board will be on the Employee or Dependents. A Dependent shall at any time upon request furnish the Administrator with proof satisfactory to the Administrator of the nature, amount and extent of the contribution by the Employee for such Dependent's support and shall have the burden of proof on such issue in any hearing before the Appeal Board.

G. RIGHT TO COUNSEL
The Employee or Dependents may have legal representation at any hearing before the Appeal Board. The cost of representation will be borne by the Employee or Dependents.

H. LAW TO APPLY
The Administrator and Appeal Board shall follow Tribal law. In the absence of tribal law, California case law may be used as a non-binding source of guidance.

I. FINAL DECISION
Any final Decision of the Appeals Board must represent the concurrence of a majority of two of the Board members. An appeal Board Decision must be issued in writing and copies must be mailed to all interested parties. The Decision shall generally review the evidence and testimony and may compare the merits of the evidence or testimony of the opposing parties. The Decision shall state the final determination of the Appeal Board on all issues before it. All Decisions of the Board are final. No attorneys' fees, costs or punitive damages shall be awarded against any Employer in such action.

J. EFFECT OF REQUEST FOR HEARING

1. During the pendency of the action, the Employee or Dependents shall continue to receive all benefits approved by the Administrator in it s original written decision, but shall not receive any new benefits claimed before the Appeal Board.

2. Payments made to claimant during the pendency of the action shall not be recouped or recovered by the Administrator or the Employer, except in the case of fraud.

Section 14. **<u>Acts Outside Course or Scope of Employment</u>.**

14.1 Employees determined to be acting outside of the course or scope of their employment shall be afforded no coverage under this Ordinance.

14.2 An accident occurring to an Employee while on the way to or from work is not within the due course or scope of employment unless such travel is in direct connection of the Employee's work.

14.3 Liability for compensation shall not exist against the Tribe for any injury sustained by an Employee if the injury is caused by any of the following:

A. Where the injury is caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured Employee; or,

B. Where the injury is self-inflicted; or,

C. Where the Employee has willfully and deliberately caused his or her own death; or,

D. Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor; or,

E. Where the injury is caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the California Penal Code, by the injured Employee and the Employee is found to have committed such act by a preponderance of the evidence; or,

F. Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

Section 15. **Worker's Compensation Benefits.**

15.1 Worker's Compensation benefits shall include:

A. Medical Costs Covered. Usual and customary medical costs will be approved by the Administrator.

B. Medical Service Providers. Medical Services and providers will be approved by the Administrator.

15.2 Temporary Disability

A. If the injury causes temporary partial or temporary total disability, the disability payment is two-thirds (2/3) of the average weekly earnings. No payment is due during the first three (3) days after the Employee leaves work as a result of injury.

B. Such payments will be reduce by the sum of unemployment compensation benefits and extended duration benefits received by the Employee during the period of such disability. The injured Employee shall report any pensions, disability payments or earnings to the Third Party Administrator within ten (10) days of receipt of such funds.

15.3. Permanent Partial Disability

For purposes of this Ordinance, Permanent Partial Disability shall mean a permanent disability with a rating of less than 100 percent permanent disability.

A. In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured worker, and the Employee's age at the time of the injury, and consideration being given to the diminished ability of the Employee to compete in an open labor market.

1. The schedule of the administrative director of the California Department of Worker's Compensation may be used as guidance in determining the percentages of permanent disability, but is not prima facie evidence of a

percentage of disability.

15.4 Permanent Total Disability

A. Permanent total disability is a disability that precludes the injured Employee from any and all gainful employment. There shall not be any presumptions of permanent total disability.

B. Compensation shall be paid at the appropriate weekly rate for temporary disability subject benefits.

C. An Employee will receive permanent total disability benefits until age sixty-five (65) or when they become eligible for Social Security Disability.

15.5 No Compensation after Death or Retirement

No compensation under this section shall be payable subsequent to the death or retirement of the injured Employee.

15.6 No Compensation If Incarcerated

No compensation under this section shall be payable upon the incarceration of Employee.

15.7 Fatality Income Benefits

A. When an injury causes death within five (5) years from the date of the injury, the Employer will be liable for compensation to the Dependents of the injured Employee as provided for in this section. The Dependent(s) must be a spouse or a minor child, totally or partially dependent upon the injured worker, at the time of the injury and at the time of death in order to quality for benefits.

B. The death benefit will be four times the annual earning from the Tribe, not to exceed the following maximums:

Spouse minor child or children:	$115,000.00
Spouse only:	$95,000.00
Minor Child or Children Only:	$95,000.00
Additional Maximum Burial Allowance:	$5,000.00.

C. The death benefit will be paid at a weekly rate of two-thirds (2/3) of the average weekly wage of the deceased Employee while employed by the Tribe, subject to a maximum compensation rate $406.00 and a minimum rate of $224.00 per week. Benefits shall cease upon the remarriage of the Spouse, upon the minor child or children turning 18 years of age, or both.

D. The weekly compensation will be divided between the qualifying dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying dependent received equal support from the deceased Employee.

15.8 Limitations on Compensation

A In cases where it is determined that periodic benefits granted by the federal Social Security Act are paid to the Employee because of disability, the benefits payable under this Ordinance shall be reduced.

B The Employee may not claim compensation for disability if he or she was rehired in a

position where actual wages loss in comparison with earnings at the time of the injury equals or exceeds fifteen percent (15%).

C Compensation will be reduced by fifteen percent (15%), if the injury or occupational disease results from the Employee's:

(1) Failure to use safety devises that have been provided; or,

(2) Failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of workers and of which the worker has notice.

D Compensation, for a claim due to an injury or occupational disease, will be reduced if the Employee has been employed for a limited time, as follows:

(1) Employees are not eligible for compensation when employed full-time for a period up to four (4) months.

(2) Employees receive twenty-five percent (25%) of eligible compensation for an injury or occupational disease claim made while employed full-time for a period of four (4) to eight (8) months.

(3) Employees receive fifty percent (50%) of eligible compensation for an injury or occupational disease claim made while employed full-time for a period of eight (8) to twelve (12) months.

(4) Employees receive seventy-five percent (75%) of eligible compensation for an injury or occupational disease claim made while employed full-time for a period of twelve (12) to eighteen (18) months.

(5) Employees are eligible for full compensation after employed full-time more than eighteen (18) months.

(6) The timeframes, which are provided in §15.8.E above, shall be lengthened on a pro-rata basis for Employees who are employed on a part-time basis, including those Employees who are classified as full time but average less than forty (40) actual hours worked.

15.9 Pre-existing Medical Conditions

A If the worker has a pre-existing medical condition when an injury or occupational disease arises and that condition delays or prevents complete recovery; it shall be ascertained, as nearly as possible:

(1) The period over which the injury would have caused disability, were it not for the pre-existing condition; and,

(2) The extent of the impairment, which the injury would have caused, was it not for the pre-existing condition.

B Compensation shall only be awarded for the period and extent of the injury or occupational disease not attributable to the pre-existing medical condition.

15.10 Non-Compliance:

If the Administrator determines that there is an issue of non-compliance by the Employee with authorized medical treatment, the Administrator will notify the Employee in writing they have

seven (7) days to the Administrator to resolve the non-compliant issue or the Worker's Compensation Benefits will be denied from the date of the letter forward.

Documented evidence that the Employee has failed to follow Physician's restrictions on two or more occasions, while either at work or outside the workplace will result in a denial of future Worker's Compensation Benefits.

15.11 Exclusions From Coverage:

A If the injury follows repeated documented violations of work rules, it may be regarded as a self-inflicted injury. If the injury resulted from a documented violation of safety policies, determined after a thorough investigation by the Security Manager, it will be regarded as a self-inflicted injury and therefore not compensable. In order for this exclusion to apply, the employer shall be required to show that the Employee knew or reasonably should have known of the safety policies or workplace safety rules, whether as a result of a safety training program, exposure to an employer safety manual with which the Employee was directed to conduct their employment activities, or other reasonable means customarily used by the employer to inform Employees of its safety policies and work rules.

B No benefit shall be payable if the injury or occupational disease results from the Employee's use of alcohol or controlled substances as solely determined by laboratory analysis of a urine sample.

C No benefit shall be payable for heart attack, heart disease, or hypertension

D No benefit shall be payable for the death or permanent disability of an Employee if the Employee's death or permanent disability is caused by, aggravated, or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid or advice by a qualified health care provider.

E No benefit shall be payable for injury where refusal or failure of the injured Employee to obey written or verbal instructions by the employer, or failure or refusal to use a safety device or appliance furnished by the employer, which if obeyed or used, would have reasonably prevented or significantly reduced the likelihood of injury or death.

F Mental injuries such as stress or psychological condition, unless resulting from a physical injury, are not covered by this Ordinance.

G Tobacco: Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.

H Mold: Claims due to injuries or occupational disease caused by mold in the workplace shall not be compensable.

I For purposes of hourly Employees, injuries that occur on tribal property before clocking in for a shift or after clocking out completing a shift are not covered by this Tribal Ordinance.

J An injury occurring to an Employee while on the way to or from work is not within the course of employment except when such travel is directly connected with the Employee's work. This exception will not apply if the Employee deviates from the reasonably direct route of travel, or is not acting in the interest of the employer at the time of injury.

K For traumatic injury: The claim shall be denied if there is no specific incident which

caused the injury, and if the Employee is at no greater risk than the general public and is not performing employment related duties.

L For cumulative injury: The claim shall be denied if the Employee fails to report a claim within 30 days from the initial onset of pain or injury. The claim shall also be reduced for cumulative injury based on the Employee's length of employment.

M Compensation shall not be paid for any period during which an Employee:

(1) Declines or quits work within the Employee's physical restrictions; or,

(2) Is terminated for misconduct; or,

(3) Does not have authorization from the company's physician provider to be off work; or,

(4) Fails to report other employment.

Section 16. Statute of Limitations.

Except as otherwise provided herein, the right to benefits for Disability, Death or permanent impairment under this Ordinance shall be barred unless a Claim therefore is filed within thirty (30) days after occurrence of the Compensable injury with the Administrator. The time for filing a Claim shall not begin to run until the Employer or Dependents is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

Section 17. Compromise and Release.

Nothing in this Ordinance shall impair the rights of the parties to compromise any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the provisions herein. After reaching a compromise, a copy of the release or compromise agreement signed by both the claimant and the Administrator shall be presented to the Appeal Board for approval. If approved, the Administrator shall enter an award based on the release or compromise agreement.

Section 18. Claim Closure.

18.1 An Employee's compensation claim shall be closed after payment of the Employee's last medical treatment when the health care provider determines that the injured Employee has reached the point where no further material improvement would reasonably be expected from medical treatment or the passage of time; or,

18.2 When the insurer determines that the insurer will deny an Employee's claim for compensation, the Employee shall be informed about the availability of dispute resolution proceedings.

Section 19. Recovery or Payments Made Due to Error, Mistake, Erroneous Adjudication, Fraud, Etc.

19.1 Wherever any payment of Compensation under this Ordinance is made because of clerical error, mistaken identity, innocent misrepresentation by or on the behalf of the recipient thereof mistakenly acted upon, or any other circumstances of a similar nature not induced by fraud, the recipient thereof shall repay it. The Administrator must make a claim for such repayment or recoupment within one year of making any such payment or it will be deemed that any claim therefore has been waived. The Administrator may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

19.2 Whenever any payment of Compensation under this Ordinance has been made pursuant to a determination by the Administrator and timely protest or appeal there from has been made, where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it. The Administrator may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

19.3 Whenever any payment of benefits under this Ordinance has been induced by fraud, the recipient thereof shall repay any such payment together with a penalty of 50 percent of the total of any such payments. Such repayment or recoupment must be demanded within one year of the discovery of the fraud.

Section 20. **Subrogation of Claims**

20.1 **Definitions.** As used in this Section 20:

A. "Employee" includes the person injured and any other person to whom a claim accrues by reason of the injury or death of the former.

B. "Employer" includes insurer providing the insurance required by Section 10.

C. "Employer" means the Tribe.

20.2 **Survival of action.** The death of the Employee or of any other person, does not abate any right of action established by this chapter.

20.3 **Action against third person; rights of Employee and employer.** The claim of an Employee does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. Any employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation, or who pays or becomes obligated to pay an amount to the Department of Industrial Relations pursuant to California Labor Code Section 4706.5, may likewise make a claim or bring an action against the third person. In the latter event the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other benefits paid to the Employee or to his or her dependents.

20.4 **Copy of complaint; proof of service; joinder of plaintiffs; consolidation of actions.** If either the Employee or the employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If the action is brought by either the employer or Employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

20.5 **Action by employer alone; evidence of compensation payments and liability.**

If the action is prosecuted by the employer alone, evidence of any amount which the employer has paid or become obligated to pay by reason of the injury or death of the Employee is admissible, and such expenditures or liability shall be considered as proximately resulting from such injury or death in addition to any other items of damage proximately resulting there from.

20.6 **Action by Employee; evidence of compensation payments and liability or of loss of Employee's earning capacity; proof of other items of damage.** If the Employee joins in or prosecutes such action, either the evidence of the amount of disability indemnity or death benefit paid or to be paid by the employer or the evidence of loss of earning capacity by the Employee

shall be admissible, but not both. Proof of all other items of damage to either the employer or Employee proximately resulting from such injury or death is admissible and is part of the damages.

20.7 **Actions against third party; payment of excess recovery to Employee; employer's lien against judgment; costs and fees.** In the event of suit against such third party:

A. If the action is prosecuted by the employer alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the employer's attorney in effecting recovery both for the benefit of the employer and the Employee. After the payment of such expenses and attorney's fees, the court shall apply out of the amount of such judgment an amount sufficient to reimburse the employer for the amount of his expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 19.3 and shall order any excess paid to the injured Employee or other person entitled thereto.

B. If the action is prosecuted by the Employee alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employee's attorney in effecting recovery both for the benefit of the Employee and the employer. After the payment of such expenses and attorney's fee the court shall, on application of the employer, allow as a first lien against the amount of such judgment for damages, the amount of the employer's expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 19.3.

C. If the action is prosecuted both by the Employee and the employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys' fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys' fees the court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the employer for the amount of his expenditures for compensation together with any other amounts to which he may be entitled as special damages under Section 19.3.

D. The amount of reasonable litigation expenses and the amount of attorneys' fees under subdivisions A, B, and C of this section shall be fixed by the court. Where the employer and Employee are represented by separate attorneys they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.

Section 21. **Claim Files and Records Confidential.**

Information contained in the claims files and record of injured Employees under the provisions of this Ordinance shall be deemed confidential and shall not be open to public inspection. The Employee, Dependents or representatives of the same, be it an individual or an organization, may review a claim file or receive specific information there from upon the presentation of the signed authorization of the claimant. The Employer or its duly authorized representatives may review any files of their own injured Employees in connection with any pending claims. Physicians treating or examining Employees claiming benefits under this Ordinance, or physicians giving medical advice to the Administrator regarding any claim may, at the discretion of the Administrator, inspect the

claims files and records of the injured Employee; and other persons may make such inspection, at the Administrator's discretion, when such persons are rendering assistance to the Administrator at any stage of the proceedings on any matter pertaining to administration of this Ordinance.

Section 22. **Severability.**

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

Section 23. **Effective Date, Amendment.**

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended in accordance with the tribal law.

Section 24. **Sovereign Immunity.**

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Tribe from unconsented in Tribal, Federal or State court, or administrative proceeding except to the extent expressly stated herein.

CERTIFICATION

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council revised the Blue Lake Rancheria's Worker's Compensation Ordinance by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent at a duly called meeting of the Business Council with a quorum present on 23rd of August, 2002.

Claudia Brundin
Chairperson

August 23, 2002
Date of Approval

ATTEST:

Melanie Shelanskey
Secretary

August 23, 2002
Date of Approval