

BLUE LAKE RANCHERIA NUISANCE ORDINANCE

04-2000

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) Nuisances threaten and cause damage to the health and welfare of tribal members, residents and the environment of the Rancheria and other territory over which the Tribe has jurisdiction, as well as the economic stability, cultural integrity, and governmental structure of the Tribe.
- (b) Protecting the public and the environment from the effects of nuisances is one of the most important functions of a government.

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 "Business Council" means the Business Council of the Blue Lake Rancheria.
- (b) The term "person" means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, federal, tribal, state, county, city, or district government, or other political subdivision thereof, or any other group or combination acting as a unit whether incorporated or not, including a person acting in fiduciary or representative capacity.
- (c) The term "Rancheria" means all land, air, and water located within the exterior boundaries of the Blue Lake Rancheria.
- (d) The term "State" means the State of California or any administrative agency thereof.
- (e) The term "Tribal EPA" means the Tribal Environmental Protection Agency of the Blue Lake Rancheria.
- (f) The term "Tribe" means the Blue Lake Rancheria, a federally recognized Indian tribe.

- (g) The term "violation" means any violation of this Ordinance.
- (h) The term "waterway" means any lake, river, bay, stream, canal, or basin, whether navigable or not, located on the Rancheria or other territory over which the Tribe has jurisdiction.

§3. Jurisdiction

- (a) The applicability of this Ordinance shall extend to all persons who commit a public or private nuisance on or within 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. Acts Constituting Nuisance

- (a) Anything which is injurious to health or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any waterway, public park, square, street, highway or other public place, is a nuisance, including, but not limited to the following:
 - (1) an attractive nuisance, which is any area, structure or object which by its nature, location or character would tend to attract and substantially endanger the safety of any minor person;
 - (2) air pollution, which is the emission or escape of smoke, soot, noxious acids, fumes, stench, gases, industrial dust, or particulate matter within or affecting the Rancheria or other territory over which the Tribe has jurisdiction in such quantities as to annoy, discomfort, injure or inconvenience the health of any person, or threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces;
 - (3) water pollution, which means such alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters, or such discharge into any surface or underground body of water as will, or is likely to, render such waters harmful, detrimental or injurious to:
 - (A) public health, safety or welfare, or
 - (B) domestic, commercial, industrial, recreational, aesthetic, ceremonial or other legitimate uses, or
 - (C) livestock, domestic animals, wild animals, birds, fish, wetland plant species, or other aquatic life;
 - (4) unlawful dredge or discharge, which means causing any surface or groundwater to be diverted, obstructed, or impeded, or discharging any material into any waters without legal authority;
 - (5) groundwater depletion, which means extracting more water from any groundwater source underlying the Rancheria or other territory over which the Tribe has jurisdiction than can

be extracted annually, year after year, without eventually depleting the groundwater source;

- (6) refuse and waste, which means any material, regardless of its market value, which, by reason of its location or character, is unsightly or interferes with the reasonable use and enjoyment of adjacent properties, or which has detrimental effects upon adjacent property values, or which would hamper or interfere with the containment of fire upon the premises;
- (7) loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities;
- (8) erecting or continuing to use any building or structure contrary to any permit or license issued by the Tribe or any provision of any tribal laws;
- (9) explosives, inflammable liquids, corrosive, reactive, toxic or other dangerous substances, including but not limited to those substances deemed hazardous pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14) (defining "hazardous substance") and hazardous substances as defined in the Tribe's Air Quality Ordinance as amended from time to time, stored in any manner, in any amount other than that permitted by tribal ordinance; or
- (10) any violation of any zoning ordinance, building code or standards, or fire code adopted by the Tribe.

§5. Acts Constituting Public Nuisance and Private Nuisance

- (a) A public nuisance is a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- (b) A private nuisance is every nuisance not included in the definition of public nuisance, as set out in sub-section (a).

§6. Nuisance Prohibited

- (a) No person shall cause or maintain a nuisance, whether a public or private nuisance, within the Rancheria or other territory over which the Tribe has jurisdiction.

§7. Exemptions

- (a) Nothing which is done or maintained under the express authority of an ordinance, license, order or other authorized act of the Tribe shall be a nuisance.
- (b) No agricultural activities using established agricultural practices, as determined by the Tribal EPA upon an assessment of standard industry practice, shall be a nuisance.

§8. Civil Damages and/or Injunctive Actions

In the event that any person, as a result of his or her actions that constitute a violation, 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 other person authorized by the Tribe, or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief, including the imposition of penalties as set out in section 9, in any judicial forum of competent jurisdiction.

§9. Civil Penalties

Any person violating any provision of this Ordinance is subject to a civil fine not to exceed 1,000.00 dollars per violation, depending on the gravity of the violation and any effects on human health or the environment resulting from the violation, in addition to being responsible for property damage or personal injury.

§10. No Other Remedies Affected

Nothing in this Ordinance shall in any way limit an individual's right to pursue a private action for nuisance or other torts in any judicial forum of competent jurisdiction.

§11. Environmental Protection Fund

- (a) All monies collected or received 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.

§12. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

§13. 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.

§14. 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.

§15. Amendments

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

§16. 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
Claudia Brundin, Chairperson

Jan 2, 2000
Date

Melanie Shelansky
Melanie Shelansky, Tribal Secretary

Jan 2, 2000
Date