

# **PLANNING GUIDE FOR DEVELOPMENT OF TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

Prepared for:

Yurok Tribe Environmental Program

15900 Hwy 101 N  
PO Box 1027  
Klamath, CA 95548

October 29, 2016

Prepared by:

Orrin Plocher, Stan Thiesen, and Terry Williams  
of



**Freshwater Environmental Services**

78 Sunny Brae Center  
Arcata, California 95521  
Phone (707) 839-0091

## **TABLE OF CONTENTS**

LIST OF APPENDICES .....	1
1.0 INTRODUCTION .....	2
2.0 PURPOSE .....	3
3.0 SCOPE .....	4
4.0 SUMMARY OF YUOK PROJECT - BASIS OF PLANNING GUIDE .....	5
5.0 DEFINING SCOPE OF PROJECT .....	6
6.0 DEFINING ELEMENTS (WORK PRODUCTS) .....	7
7.0 CONTRACTOR PROCESS .....	8
8.0 RESOURCE SEARCH FOR CODE AND GUIDANCE DOCUMENTS .....	9
9.0 REVIEW OF DOCUMENTS .....	11
10.0 ORDINANCE DRAFTING .....	12
11.0 CLIENT – CONSULTANT MEETINGS .....	13
12.0 CONCLUSIONS.....	14

## **LIST OF APPENDICES**

APPENDIX A	Model Tribal Environmental Protection Ordinance
------------	---

## 1.0 INTRODUCTION

The Yurok Tribe of Northern California [The Yurok Tribe Home Page](#) worked in collaboration with the West Coast Watershed (WCW) <http://www.westcoastwatershed.com/favicon.ico> in the development of a regional plan for the North Coast Resource Partnership (NCRP) [North Coast Resource Partnership](#) focused on economic, environmental and community resiliency. This Planning Guide is a direct result of a specific project the Yurok Tribe undertook to enhance its environmental protection program.

## **2.0 PURPOSE**

Development of a Planning Guide and a Model Tribal Environmental Protection Ordinance (Appendix A) is intended to assist other Tribes to improve their environmental protection programs. The project focused on modification of existing Yurok Ordinances for land use and solid waste based on an extensive review of available Tribal Code.

### **3.0 SCOPE**

The Yurok Tribe project improved their existing environmental program by reviewing and revising current land use environmental ordinances and writing additional ordinances. Individual Ordinances were then consolidated into a single Ordinance to improve access to subject matter and streamline and clarify the enforcement process. This Planning Guide describes the planning process and options for other tribes to consider while undertaking similar projects to develop codes. The Model Tribal Environmental Protection Ordinance (Appendix A) generated for the Yurok project is offered to other tribal nations as a template for their similar efforts, with particular applicability to other North Coast tribal nations. The Planning Guide describes the steps and options necessary to develop a Tribal Environmental Protection Ordinance.

## **4.0 SUMMARY OF YUOK PROJECT - BASIS OF PLANNING GUIDE**

The Yurok Project consisted of developing a comprehensive Tribal Environmental Protection Ordinance (focus on land use and solid waste), a Model Tribal Environmental Protection Ordinance, and a Planning Guide for the development of similar Ordinances by other Tribes. The Model Tribal Environmental Protection Ordinance, and Planning Guide are being made available to other Tribes. The Planning Guide is a generic document that can be used for similar processes and is not limited to this specific case.

The following goals of the Yurok Tribe project are provided as example goals for similar projects:

- Combining individual ordinances into a single ordinance with subject Chapters;
- Improving the ease of searching for subject matters;
- Review and revision of existing chapters and addition of new chapters based on an extensive search of Tribal code and other sources;
- Consolidation of the general provisions of ordinances into a single chapter; and
- Consolidation of enforcement policies and procedures into a single chapter of the ordinances.

## 5.0 DEFINING SCOPE OF PROJECT

Developing the scope of a project and prioritizing elements is essential to success. Resources are limited and focus on elements that provide the most benefit is required. For environmental programs air quality, water quality and land use are extensive programs and the project should be limited to a manageable scope. Priorities should be set on elements such as:

- Subjects: What are the obvious gaps in code? What are the areas requiring clarification or greater detail?
- Values: What are the Tribe's values? Are they reflected in the code?
- Hot Issues: What are the current issues that are being experienced? Are they addressed clearly in the code?
- Enforcement Issues: What are the enforcement issues that could be improved by revising code? Where is the greatest volume of complaints and violations? Where is there a lack of guidance?
- Financial Limits: The scope of work is also defined by financial limitations.

Work In-house vs. Contractor/Consultant. The decision to perform the work in-house or to contract it out is influenced by several factors including the current in-house work load, the amount of time available to complete the project, and the cost of contract work. Contractors will not have the in-house knowledge and will typically need additional time to research the Tribe's code and procedures.

A realistic schedule must be set to meet the desired goals. Research of sources takes a significant amount of time. Time must be allowed for the draft review process which should have several iterations including review by tribal environmental program staff and by judicial staff.

## **6.0 DEFINING ELEMENTS (WORK PRODUCTS)**

Scope is further defined by focus on specific elements to improve the existing code, including:

- Revision of existing code for clarification, thorough coverage of subject matter, etc;
- The addition of new code to address gaps in the program;
- Formatting the code to facilitate search tools. This would include the possibility of combining all code into a single document. One method is to create a single ordinance with individual chapters addressing specific subjects; and
- Consolidating the description of the enforcement process. Individual ordinances each describing its enforcement process are revised and an enforcement process ordinance or chapter is created. This facilitates access to the enforcement process and significantly improves understanding of the enforcement process.



## **7.0 CONTRACTOR PROCESS**

Utilizing a contractor puts a greater burden on the early transfer of information. The contractor will not be aware of all the in-house documents and procedures that are utilized in the Tribe's program. The information relevant to the project must be delineated and transferred early on to meet schedule and financial goals. It is critical that the contractor has all relevant information necessary to improve existing code and add elements to code including existing tribal published code, informal documents, unwritten policy or procedures. Also a physical description of existing sites, equipment, etc. that are relevant to the code.

## 8.0 RESOURCE SEARCH FOR CODE AND GUIDANCE DOCUMENTS

The following sources were used to research existing tribal code and ordinances, government code and documents, and professional association documents to meet the objectives of improving existing Yurok code and developing new Code. These sources are relevant to any similar project.

### NARF NILL

The Native American Rights Fund (NARF) <http://www.narf.org/favicon.ico> provides legal assistance to Indian tribes, organizations, and individuals nationwide. NARF is a non-profit 501c(3) organization that focuses on applying existing laws and treaties to legal obligations of national and state governments. NARF is a consultant to policy makers and others engaged in drafting legislation.

The National Indian Law Library (NILL) [National Indian Law Library \(NILL\) of the Native American Rights Fund](#) of NARF is a law library devoted to federal Indian and tribal law. NILL maintains a unique and valuable collection of Indian law resources and assists people with their Indian law-related research needs. Through the Tribal Law Gateway [Tribal Law Gateway, National Indian Law Library, Native American Rights Fund \(NARF\)](#) one can find tribal codes, court opinions and other legal materials by Tribe. Searches are made by Topic or Subject or Name of Tribe.

### TLPI Tribal Court Clearinghouse

Tribal Law and Policy Institute (TLPI) [Tribal Law and Policy Institute](#) is a Native American operated non-profit organization. TLPI provides free publication resources, comprehensive training, and technical assistance for Native nations and tribal justice systems.

The Tribal Court Clearinghouse <http://www.tribal-institute.org/favicon.ico> is a comprehensive website established in June 1997. It is one of the most comprehensive websites on tribal justice system issues, and includes tribal, state, and federal resources. The Clearinghouse website contains extensive resources on tribal, state, and federal law along with extensive Indian country subject-matter resources, a training events calendar, and resources from all Tribal Law and Policy Institute webinars.

The Environmental Resources Index [Environmental Resources](#) was created to assist tribes who are currently developing environmental codes and legislation and contains extensive Environmental Law resource information. Much of the information is Tribal-specific, but some general environmental resources are also included. Tribal Environmental Laws and Codes can be found at the EnviroText website.

### NIJC Model Tribal Solid Waste Disposal Ordinance

The National Indian Justice Center, Inc. (NIJC) <http://www.nijc.org/favicon.ico> is an Indian owned and operated non-profit corporation with principal offices in Santa Rosa, California. The National Indian Justice Center was established in 1983 through the collective efforts of the National American Indian Court Judges Association, the American Indian Lawyer Training Program, and the Bureau of Indian Affairs in order to establish an independent national resource for Native communities and tribal governments.

The Regional Tribal Justice Center serves as an independent education and resource center dedicated to the needs of twenty-two (22) federally recognized tribes in the tri-county region (Lake, Mendocino, and Sonoma Counties in Northern California). Among its educational materials and training services the Center provides the Model Codes for Air Quality, Water Quality, Drinking Water and Solid Waste Disposal.

### Federal Government

United States Environmental Protection Agency (USEPA) American Indian Environmental Office (AIEO) leads EPA's efforts to protect human health and the environment of federal recognized Tribes by supporting implementation of federal environmental laws consistent with the federal trust responsibility, the government-to-government relationship, and EPA's 1984 Indian Policy [EPA Policy for the Administration of Environmental Programs on Indian Reservations \(1984 Indian Policy\) | Environmental Protection in Indian Country | US EPA](#). EPA maintains relevant Indian program information on their website.

### Local Government

Tribes should consult available code and policy documents issued by their specific state and county.

### Associations

Tribes should consult available association publications including (1) International Building Code (IBC) [ICC | International Code Council](#) and (2) The National Fire Protection Association (NFPA) [NFPA](#).

## **9.0 REVIEW OF DOCUMENTS**

Extensive research on tribal code, government code and regulations, and professional association publications must be performed. The NILL site is searched by key words relevant to the code that is being developed. The TLPI Clearinghouse for Environmental Resources lists specific tribal code by hyperlink. A database should be compiled of materials relevant to the project based on a quick scan of the documents retrieved. Documents should then be rated by specific criteria relevant to the researcher to reduce the volume of material to an amount that can be managed in performing a greater depth of review. The better rated documents are then given more weight as a resource in developing new code and enhancing existing code.

A bibliography of the better rated documents should be compiled and eventually actual copies of the documents made for in-depth review and use in drafting new code.

## 10.0 ORDINANCE DRAFTING

Following research and compilation of relevant documents drafts are made of revised code and of new code within the scope of the project. This is an iterative process. Initially edits are review by the contractor (or in-house project group, then the resulting version is submitted to the responsible project manager. Several iterations will be necessary to produce an acceptable product. The final review step is to submit the product to the stakeholders, e.g. tribal environmental programs, legal department, Tribal Council, etc. for the final reviews.

The final Chapters in the model include the following:

- Chapter 1-General provisions;
- Chapter 2-Solid Waste;
- Chapter 3-Onsite Waste Disposal;
- Chapter 4-Blight;
- Chapter 5-Illegal Dumping;
- Chapter 6-Vehicle Abatement
- Chapter 7-Aboveground Storage Tanks;
- Chapter 8-Underground Storage Tanks;
- Chapter 9-Grading; and
- Chapter 10-Enforcement.

A Tribe may want to consolidate some of the chapters. Below are the final chapters of the Yurok Ordinance and their major content:

- Chapter 1-Introduction and Definitions
- Chapter 2-General provisions;
- Chapter 3- Solid Waste
  - Vehicle Abatement
  - Illegal Dumping
  - Blight
- Chapter 4-Human Waste Disposal;
- Chapter 5-Storage Tanks
  - Aboveground Storage Tanks
  - Underground Storage Tanks;
- Chapter 8-Underground Storage Tanks;
- Chapter 6-Grading; and
- Chapter 7-Enforcement.

The first two chapters and the last chapter (Introduction and Definitions, General Provisions, and Enforcement) include content that is applicable to all of the chapters. The Enforcement Chapter contains broad authority for enforcement, enforcement options, and a process for enforcement. Within each if the chapters there is an enforcement section that includes a penalty matrix for the major violations in each chapter.

## **11.0 CLIENT – CONSULTANT MEETINGS**

Meetings between the Tribe (client) and the contractor/consultant should be scheduled at milestone events to include:

- First submittal of draft to client project management. This will initiate the project managers review. The client comments will then be provided to the contractor for incorporation.
- Final submittal of product to client project management. The project manager will perform a final review prior to scheduling transmittal of product to the tribe's stakeholders.
- Presentation of product to the majority stakeholders: environmental, legal, Council, etc. Stakeholders will perform their reviews and provide final comments to the project manager.

## **12.0 CONCLUSIONS**

A successful project will depend on a well-defined appropriate scope, the financial and personnel resources available, and an effective process of draft productions and review to ensure client goals are being addressed during the process. Always keep in mind that the goal is to improve the Tribe's Environmental Program Code and ensure that the Tribe's values and visions are achieved.

**APPENDIX A**  
**Model Tribal Environmental Protection Ordinance**



# **MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

## **CHAPTER 1 - GENERAL PROVISIONS**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>2</b>
<b>SECTION 1002.</b>	<b>Authority .....</b>	<b>2</b>
<b>SECTION 1003.</b>	<b>Findings .....</b>	<b>2</b>
<b>SECTION 1004.</b>	<b>Purpose.....</b>	<b>2</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>3</b>
<b>SECTION 1006.</b>	<b>Consensual Relations Among Non-Members, The Tribe and Tribal Members.....</b>	<b>4</b>
<b>SECTION 1007.</b>	<b>Primary Jurisdiction .....</b>	<b>4</b>
<b>SECTION 1008.</b>	<b>Inspection Authority .....</b>	<b>4</b>
<b>SECTION 1009.</b>	<b>Other Agencies.....</b>	<b>5</b>
<b>SECTION 1010.</b>	<b>Sovereign Immunity Preserved.....</b>	<b>5</b>
<b>SECTION 1011.</b>	<b>Severability .....</b>	<b>5</b>
<b>SECTION 1012.</b>	<b>Effective Date.....</b>	<b>5</b>
<b>SECTION 1013.</b>	<b>Repeal of Conflicting Ordinance Provisions .....</b>	<b>5</b>
<b>SECTION 1014.</b>	<b>Reservation of Rights.....</b>	<b>5</b>
<b>SECTION 1015.</b>	<b>Applicability .....</b>	<b>5</b>
<b>SECTION 1016.</b>	<b>Applicable Law and Regulations .....</b>	<b>6</b>
<b>SECTION 1017.</b>	<b>Citation or Use of Language from Other Laws .....</b>	<b>6</b>

## **SECTION 1001. Title**

This Ordinance shall be referred to as the [name of Tribe] Tribal Environmental Protection Ordinance or "Environmental Protection Ordinance."

## **SECTION 1002. Authority**

This Tribal Environmental Protection Ordinance is hereby adopted by [name of Tribe's Governing Body] pursuant to [Article/Section of the Tribe's Constitution] authorizing the [name of Tribe's Governing Body] to undertake such actions. The [name of Tribe] Tribal Council hereby enacts the following Environmental Protection Ordinance to protect the natural resources of the [name of Tribe] [Reservation/Rancheria].

## **SECTION 1003. Findings**

- (a) The people of [name of Tribe] have a primary interest in the protection and control of the land and other natural resources affected by the improper disposal of solid waste, inadequate management of hazardous materials and other practices that impact land, water and other natural resources within the [Reservation/Rancheria]. The quality of such land and other resources must be protected to insure the health, economic, aesthetic and cultural well-being of the [name of Tribe] People.
- (b) It is in the best interest of the [name of Tribe] Tribe and the residents of the [Reservation/Rancheria] to establish and maintain a comprehensive tribal environmental policy including solid waste management, hazardous materials management, the elimination of blight and the implementation of land use practices to reduce erosion and runoff. The objectives of which will be protect the health, safety and welfare of tribal members; to preserve the environment; and to provide for the maximum reuse of the resources contained in solid waste.

## **SECTION 1004. Purpose**

The purpose of the [name of Tribe] Environmental Protection Ordinance is to:

- (a) Protect the health and safety of [name of Tribe] members and all other persons within the [Reservation/Rancheria];
- (b) Protect the cultural, social and economic stability of residential, agricultural, commercial, industrial and environmentally sensitive lands within the [Reservation/Rancheria];
- (c) Protect the religious sites, historical and cultural values and traditions of the [name of Tribe], and the aboriginal character of the [Reservation/Rancheria]; and with this in mind not to import any provisions infringing upon the [name of Tribe] members right to practice its traditions and customs;
- (d) Prevent air, water and land from solid and hazardous waste pollution, including contamination of the [name of Tribe]'s aquifers, ground waters, surface waters, drinking water supplies, and all other natural resources;
- (e) Prevent the deterioration of the environment, standard of living, quality of life, welfare and well-being of all persons within the [Reservation/Rancheria];

- (f) Provide and promote [name of Tribe] environmental protection and services within the [Reservation/Rancheria], and to regulate environmental activities under principles of [name of Tribe] sovereignty;

## **SECTION 1005. Definitions**

- (a) *Constitution* means the constitution of the [name of Tribe] Tribe, as ratified on [Date].
- (b) *Council or Tribal Council* means the [name of Tribe] Tribal Council [or insert other name of tribal governing body], the governing body of the Tribe pursuant to [Article/Section] of the [name of Tribe] Constitution, or its duly authorized representative.
- (c) *Court or Tribal Court* means the [name of Tribe] Tribal Court, which was established by the [name of Tribe] Tribe Judicial Branch Ordinance [or insert other authority].
- (d) *Person* means any individual, corporation, partnership, association, agency, municipality, commission or department, including the [name of Tribe] or other federally-recognized Tribal government.
- (e) *Powers of Enforcement* means the bodies delegated by the Tribal Council with the authority to direct enforcement provisions of this Chapter, specifically including, but not limited to, the Executive Director [or equivalent authority] and the [name of Tribe] Tribal Chief of Public Safety [or equivalent Tribal Agency] delegated by the above mentioned to carry out the duties of the above mentioned in their absence.
- (f) *Property* means any property not owned by the [name of Tribe] Tribe (excepting land assignments), the federal or state government.
- (g) *Public* means the populous within or found to be a surrounding impact upon the territory of the [name of Tribe] Tribe as prescribed by [Reservation/Rancheria] boundaries set forth by congressional enactment, and the enrollment of the [name of Tribe] Tribe in its entirety.
- (h) *Public Property*. This term is commonly used as a designation of those things which are considered owned by “the public,” the state or community, and not restricted to dominion of a private person. It may also apply to any property owned by a state, nation, or municipality.
- (i) *Private Property*. Property that belongs absolutely to an individual and that person has the exclusive right of disposition. Property of a specific, fixed, and tangible nature, capable of being possessed and transmitted to another, such as houses, lands, vehicles, etc.
- (j) *[Reservation/Rancheria]* means all lands within the external boundaries of the [name of Tribe] Indian Reservation.
- (k) *Territory* means the established primary boundaries of the [name of Tribe] Tribe, as prescribed in the [name of Tribe] Constitution, [Article/Section], and those territories encompassed within and impacting in any way shape or form.
- (l) *[name of Tribe] Tribe* means the [name of Tribe] Tribe, federally recognized by the United States of America.
- (m) *Tribal Member* means a duly enrolled member of the [name of Tribe] Tribe.

**SECTION 1006. Consensual Relations Among Non-Members, The Tribe and Tribal Members**

Any person who is not a member of the Tribe who uses land anywhere within the exterior boundaries of the [Reservation/Rancheria], whether trust or non-trust land, enters into consensual relationships with the Tribe or its members, through commercial dealings, contracts, leases or other arrangements. Such person's use of land involving the storage, collection, transportation and disposal of solid or hazardous waste on the [Reservation/Rancheria] will have a demonstrably serious impact upon the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe and its members, unless such use is in compliance with the provisions of this Ordinance, and any regulations promulgated hereunder.

**SECTION 1007. Primary Jurisdiction**

The Tribal Court is the court of primary jurisdiction for violations occurring under this Ordinance.

**SECTION 1008. Inspection Authority**

For purposes of carrying out this Ordinance, the [name of Tribe] [name of Tribal Agency], or its designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the [name of Tribe] Tribal Court for inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.

#### **SECTION 1009. Other Agencies**

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; and
- (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 [Reservation/Rancheria], provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

#### **SECTION 1010. Sovereign Immunity Preserved**

Except as judicial review is authorized in this Ordinance, and in accordance with the [name of Tribe] Tribe's Supreme Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

#### **SECTION 1011. Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

#### **SECTION 1012. Effective Date**

This Ordinance shall take effect immediately after its adoption by [name of Tribe] Tribal Council.

#### **SECTION 1013. Repeal of Conflicting Ordinance Provisions**

All prior Ordinance provisions previously enacted by the [name of Tribe] Tribal Council and inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other previously enacted Ordinance, the provisions of this Ordinance shall control.

#### **SECTION 1014. Reservation of Rights**

Nothing in this Ordinance reduces or diminishes the trust responsibility of the United States, including the Secretary of the Interior, to the [name of Tribe] Tribe. The [name of Tribe] Tribe retains its authority to exercise its jurisdiction to the fullest extent possible.

#### **SECTION 1015. Applicability**

Because any violation of this Ordinance or any regulation adopted thereunder will demonstrably and seriously impact the environment, including land, water and air, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe, this Ordinance, and any regulations adopted thereunder, shall apply to all individuals within the exterior boundaries of the [Reservation/Rancheria], whether members or non-members of the [name of Tribe] Tribe and, and

all places and lands located anywhere within the exterior boundaries of the [Reservation/Rancheria], including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person as defined under this Ordinance.

All persons over the age of 18 years (eighteen) shall be treated as adults in the prosecution of a violation of this Ordinance. The parents or guardians of minors under the age of 18 years shall be held accountable for any prohibited actions committed by any minors for whom they are legally responsible.

#### **SECTION 1016.      Applicable Law and Regulations**

Compliance with this Code and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations. Where there is a gap in the Tribal law, regulations codes, the federal regulations cited in this code shall be incorporated by reference, as determined applicable by the YTEP Director. If any part of a federal law, code or regulation cited or adopted by reference in this Code is modified, any modifications are automatically incorporated by reference and become part of this Code, and supersede any of the provisions that were modified. The [name of Tribe] Tribe reserves the right to be more stringent than the federal regulations cited or adopted in this Code.

#### **SECTION 1017.      Citation or Use of Language from Other Laws**

Citation to statutory or administrative language, definitions, procedure, or provisions of Federal law in this Act does not establish jurisdiction, which otherwise does not exist, in such Federal government. Nothing in this Act may be deemed a waiver of tribal sovereign immunity, and if any Court of competent jurisdiction construes this provision as conflicting with any other provision in this Act, then this express retention of sovereign immunity shall control and prevail.

**Commentary: This Chapter does not cover the permitting of Municipal Solid Waste Land Fills ( MSWLF) and does not apply to the use of hazardous materials not designated as or meeting the criteria of Solid Waste or Waste.**

## **MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

### **CHAPTER 2 - SOLID WASTE**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>3</b>
<b>SECTION 1002.</b>	<b>Findings .....</b>	<b>3</b>
<b>SECTION 1003.</b>	<b>Purpose.....</b>	<b>3</b>
<b>SECTION 1004.</b>	<b>Scope .....</b>	<b>3</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>4</b>
<b>SECTION 1006.</b>	<b>Designation as Lead Tribal Agency .....</b>	<b>8</b>
<b>SECTION 1007.</b>	<b>Creation of Position of Solid Waste Program Manager.....</b>	<b>9</b>
<b>SECTION 1008.</b>	<b>Establishment of Solid Waste Management Committee .....</b>	<b>9</b>
<b>SECTION 1009.</b>	<b>Powers and Duties of the Solid Waste Management Committee ....</b>	<b>9</b>
<b>SECTION 1010.</b>	<b>Powers and Duties of the Solid Waste Program Manager .....</b>	<b>10</b>
<b>SECTION 1011.</b>	<b>Solid Waste Management Plan and Considerations .....</b>	<b>12</b>
<b>SECTION 1012.</b>	<b>Contents of Plan.....</b>	<b>12</b>
<b>SECTION 1013.</b>	<b>Resource Recovery and Reuse.....</b>	<b>13</b>
<b>SECTION 1014.</b>	<b>Residential Municipal Solid Wastes .....</b>	<b>13</b>
<b>SECTION 1015.</b>	<b>Commercial and Institutional Solid Wastes .....</b>	<b>15</b>
<b>SECTION 1016.</b>	<b>Collection and Transportation of Solid Wastes .....</b>	<b>15</b>
<b>SECTION 1017.</b>	<b>Prohibited Practices and Activities.....</b>	<b>16</b>
<b>SECTION 1018.</b>	<b>Prohibitions on Hazardous Waste.....</b>	<b>17</b>
<b>SECTION 1019.</b>	<b>Standards and Requirements Applicable to Hazardous Waste .....</b>	<b>18</b>
<b>SECTION 1020.</b>	<b>Prohibited Materials at Transfer Stations.....</b>	<b>19</b>
<b>SECTION 1021.</b>	<b>Special and Industrial Wastes.....</b>	<b>20</b>
<b>SECTION 1022.</b>	<b>General Requirements for Storage of Wastes .....</b>	<b>21</b>
<b>SECTION 1023.</b>	<b>Transfer Stations .....</b>	<b>21</b>
<b>SECTION 1024.</b>	<b>Transfer Station and Transportation Permits Program .....</b>	<b>22</b>
<b>SECTION 1025.</b>	<b>Permits for the Collection and Transportation of Solid Waste.....</b>	<b>22</b>

<b>SECTION 1026.</b>	<b>Permits for Solid Waste Transfer Stations .....</b>	<b>22</b>
<b>SECTION 1027.</b>	<b>Transfer Stations Regulations Summary .....</b>	<b>23</b>
<b>SECTION 1028.</b>	<b>Enforcement and Fines.....</b>	<b>23</b>



## **SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Solid Waste Chapter” or “Solid Waste Chapter” of [name of Tribe].

## **SECTION 1002. Findings**

- (a) The increasing volume and variety of solid waste and hazardous waste being generated on the [Reservation/Rancheria] and the often-inadequate and environmentally unsound methods of managing these wastes are creating conditions that threaten the public health, safety and welfare of tribal members and residents of the Reservation/Rancheria by contributing to land, air and water pollution, to the waste of dwindling natural resources, and to the general deterioration of the [Reservation/Rancheria] environment.
- (b) Pursuant to federal law as determined by the U.S. Supreme Court in such cases as *Montana v. United States*, 450 U.S. 544 (1981) and reaffirmed in *State v. A-1 Contractors* 117 S.Ct. 1404 (1997), the [name of Tribe] possesses inherent sovereign authority to regulate on-Reservation solid waste disposal that affect fundamental Tribal interests and public health and safety, including when such activities are conducted by non-members of the Tribe on privately owned land within the [Reservation/Rancheria].
- (c) Under the Solid Waste Disposal Act, 42 U.S.C. §6903(13) (as part of the Resource Conservation and Recovery Act), “Indian Tribe” is included within the definition of “municipality” for purposes of the Act. California Public Resources Code §49202 requires agreements between tribes and the State of California for solid waste disposal facilities located on Indian lands within the State.
- (d) Methods of solid waste management emphasizing source reduction, recovery and recycling of all solid waste are essential to the long-range preservation of the health, safety and welfare of the public, to the economic productivity of the [name of Tribe], to the environmental quality of the [Reservation/Rancheria], and to the conservation of natural resources.

## **SECTION 1003. Purpose**

The purpose of this Chapter is to:

- (a) Finance, implement, regulate and enforce environmental standards and criteria, orders and permit conditions, and exercise comprehensive Tribal regulatory authority over all solid waste and hazardous waste disposal matters within the exterior boundaries of the [Reservation/Rancheria];
- (b) Prevent air, water and land from solid and hazardous waste pollution, including contamination of the Tribe’s aquifers, ground waters, surface waters, drinking water supplies and other natural resources.

## **SECTION 1004. Scope**

The provisions of this Chapter shall apply to all existing and proposed solid waste disposal activities and to all activities which have the potential to affect cultural, ceremonial, religious, fishery, seasonal

residential, public health, safety, welfare, land, air or water quality and other fundamental interests of the [name of Tribe], including such activities conducted by nonmembers of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- (a) Landfills and open dumps (see also Chapter 5, “Illegal Dumping”);
- (b) Storage of animal waste;
- (c) Automobile graveyards and junkyards (see also Chapter 6, “Vehicle Abatement”);
- (d) Landfilling of sludge or septic system waste (see also Chapter 3, “Onsite Waste Disposal”);
- (e) Individual, residential, industrial, commercial or agricultural sewage treatment facilities; and
- (f) All activities that involve the storage, collection, transportation or disposal of solid and/or hazardous waste within the exterior boundaries of the [Reservation/Rancheria].

#### **SECTION 1005. Definitions**

- (a) *Applicant* means any person who has filed an application with [name of Tribal Agency] for approval to store, collect, transport or dispose of solid waste on the [Reservation/Rancheria].
- (b) *Closure* means the termination of the receiving, handling, recycling, treatment, composting or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.
- (c) *Collection* means the act of collecting solid waste or hazardous waste at the place of generation by an approved collection agent and does not mean removal.
- (d) *Composting* means the controlled microbial degradation of organic solid waste yielding a safe and nuisance-free product.
- (e) *Construction* means the erection or building of new structures or the acquisition, replacement, expansion, remodeling, alteration, modernization or extension of existing structures.
- (f) *Disposal* means the discharge, abandonment, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any soil, air or water.
- (g) *Disposal facility* means a facility permitted to receive and dispose of solid waste and includes all contiguous land and structures, other appurtenances and improvements on the land. It does not include a facility the principal function of which is handling, treatment or composting of manure or other solid waste not intended for disposal. [NOTE: the term “disposal facility” is used interchangeably with “Municipal Solid Waste Landfill Unit” or “MSWLF.”]
- (h) *Enforcement program* means the rules, regulations and procedures adopted by [name of Tribal Agency] to enforce this Chapter.
- (i) *Handling* means collection, transportation, storage, transfer or processing of solid

waste or hazardous waste.

(j) *Hazardous materials* means:

- (1) Any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive.
- (2) Any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by [name of Tribal Agency], the State of California or the United States of America; or 3) any substance that is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

(f) *Hazardous Wastes* means solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or
- (2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.c. 6901 et seq.), as amended.

(k) *Implementation schedule* means a schedule that indicates approximate dates for the orderly, timely implementation of Solid Waste Management Plan policies and programs and includes approximate dates for the establishment, expansion and closure of any solid waste facility identified and reserved in the Plan.

(l) *Municipal Solid Waste Landfill Unit* or “MSWLF” means a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257. An MSWLF unit also may receive as authorized under the Solid Waste Disposal Act, other types of Resource Conservation and Recovery Act, Subtitle D, wastes, such as commercial solid waste, nonhazardous sludge and industrial solid waste. An MSWLF may be publicly or privately owned. An MSWLF unit may be a new unit, an existing unit or a lateral expansion. A lateral expansion is the horizontal expansion of the waste boundary of an existing unit. An MSWLF must comply with all of the criteria under this Chapter.

(m) *Operator* means the person to whom the approval to construct and/or operate a solid waste facility or collection system is granted and any person who has filed an application with [name of Tribal Agency] for such approval.

(n) *Permit* means any authorization, license or equivalent control document issued by [name of Tribal Agency] under the authority of [name of Tribal Agency] regulating the siting, design, construction, operation, monitoring, corrective actions, closure, post-closure maintenance and financial assurance of solid waste facilities.

- (o) *Permittee* means a person, including but not limited to an operator, authorized and permitted to construct and/or operate a solid waste facility under this Chapter.
- (p) *Plan* means the Tribe's Solid Waste Management Plan.
- (q) *Pollutant* means any substance that will alter the quality of the waters of the [Reservation/Rancheria].
- (r) *Pollution* means the condition caused by the presence in or on soil, air or water of any solid waste, hazardous waste or substance derived therefrom in such quantity, of such nature and duration or under such condition that the quality, appearance or usefulness of the soil, air or water is significantly degraded or adversely altered.
- (s) *Processing* means the reduction, separation, recovery, treatment or recycling of solid waste or hazardous waste.
- (t) *Quality of the water or waters* means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.
- (u) *Recoverable* means the capability and likelihood of waste or byproduct being recovered from solid waste for a commercial or industrial use.
- (v) *Recovered material* means material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from and commonly reused within an original manufacturing process.
- (w) *Recycling* means the process of sorting, cleansing, treating and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.
- (x) *Removal* means the act of taking solid waste or hazardous waste from the place of generation.
- (y) *Resource recovery system* means a solid waste management system that provides for collection, separation, recycling and recovery of solid waste, including disposal of non-recoverable waste residue.
- (z) *Sanitary* means the maintenance of a location or parcel of [Reservation/Rancheria] land in which the following circumstances are avoided, including but not limited to:
  - (1) failure to contain solid waste resulting in windswept garbage;
  - (2) overbearing odors which represent a general public nuisance;
  - (3) on-site materials which present a fire hazard to the community; and
  - (4) on-site materials or a collection of solid or hazardous waste which presents a human health hazard.
- (aa) *Sanitary landfill* means a disposal facility employing a method of disposing of solid waste on land, without creating nuisances or hazards to public health or safety, by using methods to confine the solid waste to the smallest practical area, to reduce it to the smallest practical volume and to cover it with a layer of suitable cover material at specific designated intervals.
- (bb) *Segregated from other waste material* means any of the following:
  - (1) the placement of recyclable materials in separate containers;

- (2) the binding of recyclable material separately from the other solid waste; or
  - (3) the physical separation of recyclable material from other solid waste.
- (cc) *Solid waste* means all putrescible and non-putrescible solid, semisolid and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid and semisolid waste from a wastewater treatment plant, water supply treatment plant or air pollution control facility or other discarded containerized gaseous material resulting from industrial, commercial, mining or agricultural operations, or community activities; but not including hazardous waste; solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.
- (dd) *Solid waste facility* means a disposal facility; a transfer/processing station; a recycling facility; a composting facility; any resource recovery system or component thereof; any system, program or facility for resource conservation; and any facility used for the handling, treatment, composting or disposal of solid waste; whether such facility is associated with facilities generating such solid waste or otherwise; and includes all contiguous land and structures, other appurtenances and improvements on the land.
- (ee) *Solid waste management* means a planned program for effectively controlling the generation, handling, treatment, composting and disposal of solid waste in a safe, sanitary, aesthetically acceptable and environmentally sound manner.
- (ff) *Solid Waste Management Plan or Plan* means the formation of the Tribal policies for all solid waste collection, handling, transportation, disposal, treatment, storage, recycling and resource conservation on or off the [Reservation/Rancheria].
- (g) *Special Waste* means solid waste that is not a Hazardous Waste as defined herein that can be designated by the [name of Tribal Agency] as a Special Waste and may require special storage, management, transportation or handling because it is a:
  - (1) solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers; or
  - (2) solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or otherwise poses a threat to the health and safety of solid waste workers, handlers and/or transporters, that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features; or
  - (3) solid waste that otherwise requires specific storage, management, transportation or disposal requirements to protect public health or the environment.
- (gg) *SWDA* means the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”) and the 1984 Hazardous and Solid Waste Amendments (“HSWA”) to RCRA, and more particularly, subchapter IV - State or Regional Solid Waste Plans, SWDA §§ 4001-4010, 42 U.S.C.A. §§6941-

6949(a), which requires that the EPA promulgate criteria for Municipal Solid Waste Landfill Units (“MSWLF’s”) and which prohibits disposal of solid waste at landfills which do not satisfy such criteria. The 40 CFR Part 258 regulations contain the criteria for MSWLF’s, which became generally effective on October 9, 1993, although there are other effective dates under 40 CFR Part 258.

- (hh) *Toxic materials* means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.
- (ii) *Transfer/processing station* means a facility used to receive, temporarily store, process or transfer solid waste directly from smaller to larger vehicles for transport.  
“Transfer/processing station” does not include:
  - (1) a facility the principal function of which is to receive, handle, process, treat or compost manure in accordance with Tribal minimum standards;
  - (2) a facility the principal function of which is to receive or handle solid waste that has already been separated for reuse and is not intended for disposal; or
  - (3) the operations premises of a duly licensed solid waste collection operator who handles solid waste as an activity incidental to the conduct of a refuse collection and disposal business.
- (ji) *Treatment* means any method, technique or process designed or intended to change the physical, chemical or biological characteristics of solid waste or hazardous waste to render it less harmful to the quality of the soil, air and water; safer to handle; or easier to contain, manage or use as fuel, nutrient, soil amendment or other additive.
- (kk) *Tribe’s Solid Waste Disposal Program* means all the authorities, activities and procedures under this Chapter, the Tribe’s Waste Management Plan and any other Tribal laws or regulations that comprise the Tribe’s system of permits and prior approval and conditions for regulating the collection, handling, transportation and disposal, treatment and storage of solid waste, including all of the location, operation, design, groundwater monitoring, corrective action, closure, post-closure and financial assurance requirements under Part 258 Criteria for MSWLF’s.
- (ll) *Variance* means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.
- (mm) *Vector* means any insect, arthropod, rodent or other animal capable of transmitting a pathogen from one organism to another or of disrupting the normal enjoyment of life by adversely affecting the public health and well-being.
- (nn) *Waste* includes waste water and any and all other substances, liquid, solid, gaseous, radioactive, heat laden, associated with human habitation, or of human or animal origin, or from any of man’s activities including producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

#### **SECTION 1006. Designation as Lead Tribal Agency**

[name of Tribal Agency] shall be the lead agency for implementing this Tribal Solid Waste Disposal Chapter and for all purposes under 40 CFR Part 258.

[name of Tribal Agency] shall communicate with the EPA regarding the Tribe's solid waste program; prepare the application for EPA approval of the Tribe's solid waste program under the Part 258 Criteria; and make reports to the EPA in a manner and containing such information as the Committee approves, excluding any confidential or privileged information.

#### **SECTION 1007. Creation of Position of Solid Waste Program Manager**

There is hereby created the position of Tribal Solid Waste Program Manager. The Tribal Solid Waste Program Manager shall serve under the direction of the [name of Tribal Agency] and shall be appointed by [name of Tribal Agency], which appointment shall be confirmed by Tribal Council. The Tribal Solid Waste Program Manager shall cooperate with the Solid Waste Review Committee, the U.S. EPA and other federal agencies or the State of California, as necessary to carry out the intent of this Chapter and implement the Tribal Solid Waste Management Plan.

#### **SECTION 1008. Establishment of Solid Waste Management Committee**

There is hereby established a Solid Waste Review Committee, which shall be comprised of three Board Members, all of whom shall be members of the Tribe. The Board Members shall be appointed by the Chairperson of the Tribe with the advice and consent of Tribal Council.

#### **SECTION 1009. Powers and Duties of the Solid Waste Management Committee**

The Solid Waste Management Committee shall implement, administer and enforce this Chapter and the Tribe's solid waste program, pursuant to all of the powers and duties delegated to it herein. The Committee is not authorized to consent to jurisdiction, liability or waiver of sovereign immunity. The Committee shall also have the following powers and duties:

- (a) **Develop Tribe's Solid Waste Management Plan:** The Committee, with the assistance of the Program Manager, shall develop the Tribe's Solid Waste Management Plan ("Plan"), which shall include the identification of, and a plan for closing of all "open dumps" within the [Reservation/Rancheria], in accordance with the SWDA and Part 258 Criteria. **See Section 1012 for Contents of Plan.** The Committee shall submit the Plan to [name of Tribal Agency], in writing, for its review, modification and approval.
- (b) **Identify and Close All Open Dumps on the [Reservation/Rancheria]:** In compliance with the Solid Waste Disposal Act, the Committee shall identify and shall prohibit the disposal of any solid waste at all "open dumps" on the [Reservation/Rancheria]. The Committee shall also take whatever action is necessary to close in a timely manner all "open dumps" on the [Reservation/Rancheria] as required by the Part 258 Criteria. An "open dump" is a landfill that does not satisfy the 40 CFR Part 258 Criteria.
- (c) **Issue Solid Waste Disposal Permits:** The Committee shall have the authority and responsibility to issue permits for the collection and transportation of solid waste on the [Reservation/Rancheria]. This authority shall not be delegated to the Director of the Solid Waste Agency.
- (d) **Conduct Hearings:** In addition to the other powers conferred upon it herein, the

Committee shall have the power to hold all public or administrative hearings specifically provided for under this Chapter.

- (e) Take Remedial Action, Assess Civil Penalties and Revoke, Suspend or Modify Permits: The power of the Committee to enforce compliance with the Tribe's solid waste disposal program includes the power to take remedial action, assess civil penalties and revoke suspend or modify permits.
- (f) Promulgate Rules and Regulations and to Issue Solid Waste Guidance Documents: The Committee shall promulgate rules and regulations from time to time, as required by the Chapter, or to implement or enforce any provisions or requirements of the Chapter, including a system of civil fines, sanctions and penalties, for violations of this Chapter or any rules and regulations promulgated under this Chapter. All rules and regulations promulgated by the Committee within the scope of its authority and responsibility shall be submitted to the Tribal Council for its approval and adoption, before they are enforceable as Tribal law on the [Reservation/Rancheria]. The Committee shall adopt rules and regulations for landfills on the [Reservation/Rancheria] under the 40 CFR Part 257 Criteria; for the collection and transportation of solid waste; and other rules and regulations as required herein.
- (g) Apply for and Obtain Federal or State Financial and Technical Assistance to Implement the Tribe's Solid Waste Program: The Committee is authorized to apply, as soon as practicable, for federal or state financial aid, training and technical assistance, for development of the Tribe's Solid Waste Management Plan and to implement the Tribe's solid waste program. This shall include grants available from EPA's Regional Office as may be authorized under the SWDA; and includes any other federal grants, funds or assistance which may be available from the EPA; the U.S. Department of the Interior, Bureau of Indian Affairs; the U.S Department of Housing and Urban Development; the Administration for Native Americans; and any other federal state or other governmental agencies or sources; including any federal appropriations under the Indian Environmental General Assistance Program Act of 1992, P.L. 102-497.
- (h) Hire a Qualified Director for the Tribe's Solid Waste Agency: The Committee shall hire, subject to the approval of the Tribal Council, a qualified person with professional experience and certifications relating to the management and disposal of solid waste, to be the Director of the Tribe's Solid Waste Agency. The Director shall be an employee of the Tribe and shall be paid a salary established by the Tribal Council. The Director shall manage the Solid Waste Agency on a day-to-day basis acting within the scope of his or her duties and powers as set forth herein.
- (i) Prepare and File and Annual Report With [name of Tribal Agency]: The Committee shall prepare and file an annual report with the Tribal Council no later than July 1 of each year, which shall review the progress achieved under the Tribe's solid waste program, and shall include any reports requested by the Tribal Council. The Committee shall recommend what specific actions should be taken by the Tribal Council regarding the Tribe's solid waste program.

#### **SECTION 1010. Powers and Duties of the Solid Waste Program Manager**

The specific duties of the Tribal Solid Waste Program Manager shall include:



- (a) Assisting the Committee in developing the Tribe's Solid Waste Management Plan pursuant to the requirements of the Chapter; the SWDA; 40 CFR Parts 257 and 258; and 40 CFR Part 239. The goal of this plan shall be the proper collection and disposal of all solid waste on 40 CFR Parts 257 and 158 and this Chapter.
- (b) The development of rules and regulations and guidance documents which provide the technical standards and criteria for the collection and transportation of solid wastes.
- (c) The preparation of an inventory and location of all sites on the [Reservation/Rancheria] where solid waste has been disposed and a plan to close all sites as required under 40 CFR Part 258.
- (d) The preparation of technical reports for the Committee or [name of Tribe's Governing Body], as may be requested from time to time, including environmental assessments as may be necessary.
- (e) The preparation of the application to EPA for approval of the Tribe's solid waste program under 40 CFR Part 239 and Part 258.
- (f) The administration, supervision, monitoring, investigation and enforcement of solid waste collection, transportation and disposal on the [Reservation/Rancheria] in compliance with this Chapter and all laws, rules and regulations and guidance documents promulgated thereunder.
- (g) The investigation and preparation of applications for federal or state grants, funding and financial and technical assistance to implement the Tribe's solid waste program.
- (h) The providing of any assistance to the Tribal Council as requested from time to time, in matters involving the Chapter and the Tribe's solid waste program; assisting in public education as to matters involving solid waste collection and disposal on the [Reservation/Rancheria] collection and disposal on the [Reservation/Rancheria]; and assisting in any public, judicial or administrative hearings, as provided for under this Chapter.
- (i) The issuance of compliance, cease and desist and remedial action orders to any permittee under this Chapter as provided herein; and the application for injunctive relief to abate pollution and other unlawful activities under this Chapter herein.
- (j) Upon complaint by any person which establishes reasonable grounds, or upon its own motion, [name of Tribal Agency] shall investigate the activities of any permittee under this Chapter. In conducting an investigation, [name of Tribal Agency] shall have the authority, without reasonable notice, if necessary, to enter into the permittee's place of business, operation or facility, to inspect any books or records of the permittee, to inspect any of the permittee's property or sites of possible pollution and to take samples. In addition, [name of Tribal Agency] may require, or monitor such tests as it deems necessary, to ensure that the provisions of this Chapter or any permit conditions are being complied with by any owner/operator of an MSWLF, or transporter of solid waste. Such authority may be exercised by [name of Tribal Agency], including any authorized employee, agent or representative of [name of Tribal Agency], and including any agents of the U.S. Environmental Protection Agency who are specifically authorized by [name of Tribal Agency]. [name of Tribal Agency] shall, in addition, have those powers and duties set forth herein regarding

compliance monitoring of permittees.

[name of Tribal Agency] or its agents, are authorized to investigate the activities of any person who is suspected of violating or being in violation of any provisions of this Chapter, any rules or regulations promulgated hereunder or any permit conditions.

#### **SECTION 1011. Solid Waste Management Plan and Considerations**

Within 180 days of the passage of this Chapter, [name of Tribal Agency] shall present to the Tribal Council for its approval a Solid Waste Management Plan (Plan). Within thirty (30) days of its presentation by the [name of Tribal Agency] to the Tribal Council, Tribal Council shall publicize the existence of the Plan and make it widely available to all interested persons. Within sixty (60) days of its presentation, [name of Tribal Agency] shall hold public hearings at locations of its choice to permit interested parties to comment on the proposed Plan. The Plan, as proposed by [name of Tribal Agency], shall go into effect, and [name of Tribal Agency] shall commence its implementation, upon approval by the Tribal Council.

#### **SECTION 1012. Contents of Plan**

The Plan should include, at a minimum, those items listed below:

- (1) The Plan shall include the formation of Tribal policies for all solid waste collection, transportation, handling, treatment and disposal on or off the [Reservation/Rancheria]. If feasible, the Plan shall include a resource recovery program for the recycling of solid wastes and a program for the disposal of household hazardous wastes other than in the MSWLF on the [Reservation/Rancheria].
- (2) An estimation of the volume and composition of all solid waste which is generated on the [Reservation/Rancheria], and an estimation of the volume and composition of solid waste from sources outside the [Reservation/Rancheria] that may be disposed of in any MSWLF on the [Reservation/Rancheria] pursuant to any intergovernmental agreement that the [name of Tribe's Governing Body] may authorize;
- (3) An identification of the responsibilities of other Tribal agencies and entities involved in the implementation of the Tribe's solid waste disposal program and the distribution of federal or state funds to the Tribal authorities responsible for development and implementation of the Tribe's solid waste disposal program;
- (4) A review of the Tribal regulatory systems which are necessary to implement the Tribe's solid waste disposal program, and enforce the Chapter and rules or regulations promulgated hereunder;
- (5) A review of any contracts for the closing of all "open dumps" on the [Reservation/Rancheria], or the removal of solid waste disposed of at "open dumps" on the [Reservation/Rancheria] to duly authorized facilities off the [Reservation/Rancheria] and an assessment of such costs;
- (6) A review of the 40 CFR Part 257 Criteria and the authorization of the disposal of any solid waste on the [Reservation/Rancheria] under the Part

257 Criteria under the rules and regulations to be adopted by the Committee;

- (7) A study of how solid waste will be disposed of off the [Reservation/Rancheria], in compliance with the Part 258 Criteria, including an assessment of costs for constructing and operating Transfer Stations on the [Reservation/Rancheria] and an assessment of costs for the collection and transportation of solid waste on or off the [Reservation/Rancheria].
- (8) The Plan may also include any other matters which are relevant for the Tribe's solid waste disposal program.

### **SECTION 1013. Resource Recovery and Reuse**

Tribal policy is to encourage resource recovery and reuse. The Solid Waste Director will work with the government agencies and other tribal programs and entities to create an effective resource recovery system to conserve our resources and protect the quality of life at the [Reservation/Rancheria]. The Resource Recovery System shall be tailored to the needs of the Community. The system will specifically address:

- (a) Effective methods to reuse, recycle, and reduce solid waste;
- (b) The extent to which revenue can be generated through recovery or reuse of recycled materials;
- (c) The removal of disabled vehicles from the [Reservation/Rancheria];
- (d) The impact of improved solid waste practices on water and air quality;
- (e) The creation of sustainable employment opportunities for Tribal members;
- (f) The roles of existing and/or new organizations in implementing a Resource Recovery System.

### **SECTION 1014. Residential Municipal Solid Wastes**

- (a) Applicability. This Code is applicable to any person who owns, rents, leases, dwells in or operates any residential premises or related areas, buildings or structures. Such person is responsible for the solid waste management activities, such as storage, transportation, resource recovery, or disposal, of solid waste generated or managed at that premises.
- (b) Waste Containment. No person shall be allowed to keep in, on or about any dwelling, building or premise or any other place on the [Reservation/Rancheria] uncontained garbage or refuse of any kind that may be injurious to the public health, creates harborage for insects, rats, or other vermin or is offensive to the residents of the [Reservation/Rancheria]. It shall be unlawful to litter, throw or sweep into the streets, roads, alleys, parks, or any other public grounds any paper, nails, glass, refuse, waste, or rubbish of any kind. No person may permit garbage or refuse to accumulate and all persons shall remove the same from their property within twenty-four hours after being notified to do so by [name of Tribal Agency] or other authorized official of the [name of Tribe]. All waste shall be placed and stored in:
  - (1) solid waste containers of a type approved by [name of Tribal Agency];
  - (2) approved solid waste containers constructed of galvanized metal or heavy-duty

- plastic in good repair, leak proof, rodent proof, free from holes with a tight-fitting cover;
  - (3) individual containers not exceeding 32 gallons capacity except for special containers provided by a tribal collection service or other collection service that has a tribal collection and transportation permit;
  - (4) bulk containers or detachable containers, such as dumpsters, constructed of rigid and durable, rust-resistant and corrosion-resistant material, equipped with tight-fitting lids or doors to prevent entrance of insects or rodents, and leak-proof. Lids and covers must be closed except when adding or removing waste; and
  - (5) containers that are broken or otherwise fail to meet requirements of this Code must be promptly replaced with complying containers.
- (c) Container Storage. Refuse containers shall be stored in such a manner that spilling and animal pilferage is prevented and must be covered except when adding or removing waste. All refuse containers must be maintained in good repair and in a manner as necessary to prevent litter, nuisances, odors, insect breeding, and rodents. Containers shall be placed in the location(s) designated by the [name of Tribal Agency] prior to scheduled collection days and times.
- (d) Waste Storage. Enclosed storage areas for solid wastes or refuse containers such as storage rooms or buildings must be of rodent-proof construction which is readily cleanable with proper drainage. Storage rooms or buildings must be adequately vented and all openings must be screened.
- (e) Unconfined waste. Unconfined waste materials such as brush, leaves, tree cuttings, recyclables, bulky materials and other debris for manual pickup and collection shall be placed in the designated location (usually curbside) before scheduled times or collection days, or other special collection/cleanup events, as directed and approved by the [name of Tribal Agency].
- (f) Waste Accumulation. No person shall allow the accumulation of wastes, junk or other scrap materials to the extent that such accumulation is a potential hazard to the environment or public health except:
- (1) on property that is purely agricultural in character; or
  - (2) on property for special collection/cleanup events directed and approved by the [name of Tribal Agency].
- (g) [name of Tribal Agency] shall have the power to investigate all complaints of accumulation of wastes, junk or other scrap materials. Unlawful accumulation or storage of waste materials shall be reported to [name of Tribal Agency] for appropriate compliance or enforcement action pursuant to this Title.
- (h) Exceptions. This Code is not intended to prevent:
- (1) the beneficial use or reuse of materials, substances, energy, or other products derived from a resource recovery activity; or
  - (2) appropriate management of agricultural waste from a primarily agricultural operation that is managed or disposed of on land owned by the farming or ranching operation and which is not likely to create a public health hazard or

pollute the air or waters of the Tribe.

- (i) All such waste management is subject to review and approval by [name of Tribal Agency] and such exemption can be denied for just cause.

#### **SECTION 1015. Commercial and Institutional Solid Wastes**

- (a) **Section 1014 "Residential Municipal Solid Wastes"** shall also apply to commercial establishments and public facilities, permanent or temporary, in their handling of solid waste unless otherwise permitted or authorized a variance by [name of Tribal Agency].
- (b) Solid waste collection and transportation vehicles utilized by a commercial establishment, public institution or public facility for collection and transportation of any solid wastes to include residue, sludge, agricultural, inert, industrial waste, or special waste must be:
  - (1) loaded, covered and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area; and
  - (2) maintained in good repair and in sanitary condition.
- (c) Solid wastes shall be removed on a regular schedule or at least once a week from business, institutional, industrial or commercial areas and buildings or as scheduled by the [name of Tribal Agency]. Waste removal shall be scheduled as appropriate and needed for temporary public facilities or activities.

#### **SECTION 1016. Collection and Transportation of Solid Wastes**

This section should reflect the Tribe's collection procedures, and will vary depending on whether the Tribe has its own solid waste collection agency, whether it contracts for an outside agency to collect solid waste, or whether all persons and business entities are responsible for their own collection and disposal.

Listed below are general criteria that should be considered:

- (a) No person, firm, institution or corporation, other than that designated by [name of Tribal Agency], shall collect, transport, or dispose of solid waste for a fee within the [Reservation/Rancheria] without a \*permit from the [name of Tribal Agency]. All solid waste originating from multiple, commercial or industrial sources within the boundaries of the [Reservation/Rancheria] shall be collected and transported by:
  - (1) the [name of Tribal Agency], under the supervision of the [name of Tribal Agency]; or
  - (2) commercial waste collection and haulers permitted by [name of Tribal Agency].
- (b) All vehicles used by a person, firm, institution or corporation to collect, transport, or dispose of solid waste, whether for personal or private purposes or for a fee within

the [Reservation/Rancheria], to include residue, sludge, agricultural, inert, industrial, or special waste, must be:

- (1) equipped with a tight box and so covered, loaded and moved in such a manner that the contents will not fall, leak, scatter, or spill there from; and
  - (2) kept clean and in good repair.
- (c) Any waste material spilled or released from a transportation vehicle must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated. If the spilled or released wastes or materials are a special waste or a hazardous waste, substance or pollutant the release and any response action taken must be immediately reported to [name of Tribal Agency].
- (d) Tribal waste collection and transportation services shall be operated by the commercial collection services under the supervision of [name of Tribal Agency]; and/or a "Contract for Services" through the [name of Tribal Agency] with a person, firm, or corporation that has obtained a permit as described in this Code. [name of Tribal Agency] shall set and collect such rates/fees as necessary to provide the collection service. Rates shall be set only at a properly advertised public meeting(s) where user comment is encouraged. Nothing in this Section shall prohibit anyone from receiving a permit under this Code to service the same area.
- (e) Collection and transportation of trees, branches, and other bulky items that do not fit in approved containers shall be the responsibility of the generating resident, tenant or property owner unless other arrangements have been made with [name of Tribal Agency] or other authorized collection service.
- (f) Solid waste shall be collected and/or transferred at the areas or location(s) designated areas by the [name of Tribal Agency].

#### **SECTION 1017. Prohibited Practices and Activities**

The following practices and activities are prohibited within the exterior boundaries of the [Reservation/Rancheria] and are subject to potential compliance and enforcement action, including fines or other penalties.

- (a) Hazardous Waste Disposal. No hazardous waste shall be disposed of within the exterior boundaries of the [Reservation/Rancheria].
- (b) Disposal of Liquids. Bulk or non-containerized liquid wastes may not be placed in solid waste collection containers or boxes on the [Reservation/Rancheria]. Containers of one (1) gallon or less holding household liquid wastes shall be deposited within approved collection containers, boxes or transfer stations.
- (c) Waste Scavenging. Unauthorized scavenging of solid waste from collection sites, containers, storage sites, transfer sites or disposal sites is prohibited on the [Reservation/Rancheria] due to the liability of the Tribes for injury or health hazards while engaging in the act.
- (d) Construction and Demolition Wastes. Construction and demolition wastes shall not be disposed of in residential collection containers or boxes, on the construction or demolition site or any other site on the [Reservation/Rancheria] not specifically authorized by [name of Tribal Agency].

- (e) Animal Carcasses. Dead animals, including livestock and pets, may not be disposed of on public or Tribal lands or placed in solid waste collection containers without the written permission of [name of Tribal Agency].
- (f) Maintaining a Public Nuisance. No person(s) shall act in such a manner as to permit his property or residence or leased property to become dangerous or hazardous, or impair the safety, health or comfort of the public by the improper storage or discarding of solid waste, refuse or rubbish.
- (g) Polluting Streams or Waters. It shall be unlawful for any person(s) to throw or discharge into any creek, river, ditch, other water conveyance system, lake or pond any deleterious substance or solid waste such as refuse which is subject to decay.
- (h) Used or Scrap Tires. No tires may be disposed of at any location other than at a facility or site approved or permitted under this Chapter. Tires may not be delivered to a facility or location within the exterior boundaries of the [Reservation/Rancheria] that is not in compliance with this Chapter or abandoned upon any street, alley, highway, public place or private premises. Anyone hauling scrap tires to unapproved disposal sites (ravines, coulees, dumps, gravel pits, tree rows, etc.) is in violation of this Chapter and subject to enforcement action. If scrap tires are taken to a location which comes under enforcement action, the transporter and/or the original generator(s) may be liable for cleanup costs;
- (i) Used Motor Oil. Used motor or lubrication oil is designated as a special waste and may not be dumped, spilled, leaked, or otherwise improperly disposed of within the exterior boundaries of the [Reservation/Rancheria].
- (j) Major Appliances and Other White Goods. It shall be unlawful to store or dispose of any other unserviceable appliances or implements such as stoves, dish washers, refrigerators, washing machines, clothes dryers, water heaters or any other such items out-of-doors on residential premises or property. The owner or resident of a residential property is responsible for proper storage or disposal of such item(s) as required under this Chapter.
- (k) Lead Acid Batteries. No person shall place a used lead acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under this Chapter or the State.
- (l) Misleading Representations. It shall be a violation of this Chapter for any person to knowingly omit material information or make any false statement or representation in any label, record, report, or other document filed maintained or used for purposes or application or compliance with this Chapter or permits issued there under.

#### **SECTION 1018. Prohibitions on Hazardous Waste**

In order to protect the limited land, air and water resources of the [Reservation/Rancheria] from irremediable hazardous pollution and to protect the health, safety and welfare of all residents on the [Reservation/Rancheria] and surrounding communities, receiving, accepting, handling, transporting, treating, storing, composting, processing and disposing of hazardous waste is expressly prohibited within the exterior boundaries of the [Reservation/Rancheria], except that [name of Tribal Agency] may permit the establishment of a program for the collection, storage, transfer, transportation and

off-site disposal of hazardous waste generated or found on the [Reservation/Rancheria], subject to such conditions as [name of Tribal Agency] may impose.

#### **SECTION 1019. Standards and Requirements Applicable to Hazardous Waste**

- (a) Hazardous Waste Disposal. No hazardous waste disposal shall be conducted within the exterior boundaries of the [Reservation/Rancheria].
- (b) Hazardous Waste Management and Treatment Standards. This Chapter incorporates, by reference, all of the Criteria contained in 40 CFR Parts 262-279, as applicable. If any part of 40 CFR Parts 262-279 is modified, any modifications are automatically incorporated by reference and become part of this Chapter, and supersede any of the provisions that were modified. If any of the Parts 262-279 criteria are not actually restated in this Chapter, they are nevertheless incorporated by reference and are applicable. The TAT reserves the right to be more stringent than the federal regulations cited above.
- (c) Hazardous Waste Management and Treatment Requirements. All hazardous waste, as defined in this Chapter, and not excluded from regulation as a hazardous waste under 40 CFR §261.4(b) and that exhibits any of the characteristics of hazardous waste identified in 40 CFR Part 261 Subpart C to include: ignitability; corrosivity; reactivity; or toxicity; or is listed in 40 CFR Part 261 Subpart D; and has not been excluded from the lists in Subpart D under 40 CFR §§260.20 and 260.22 shall be generated, managed, stored, treated or transported in compliance with this Chapter and the following requirements:

Note that the California State Hazardous Waste Control Act [Cal. H&S Code 25100, et. Seq.] differs from RCRA in several significant areas and should be consulted when managing hazardous waste within the State of California.

- (1) Generators. A generator who treats, stores, or disposes of hazardous waste on-site must comply with 40 CFR Part 262 with respect to that waste to include:
  - (A) §262.11 for determining whether or not he has a hazardous waste;
  - (B) §261.5 for conditionally exempt small quantity generators;
  - (C) §262.12 for obtaining an EPA identification number;
  - (D) §262.34 for accumulation and temporary storage of hazardous waste;
  - (E) §262.40 (c) and (d) for recordkeeping;
  - (F) §262.43 for additional reporting; and
  - (G) §262.70 for farmers.
- (2) Transportation. Persons transporting regulated quantities of hazardous waste within the [Reservation/Rancheria] must comply with the standards and requirements of 40 CFR Part 263 if the transportation requires a manifest under 40 CFR Part 262.
- (3) Treatment and Storage. The standards of 40 CFR Part 264 apply to owners



and operators of all facilities which treat or store hazardous waste, except as specifically provided otherwise in this Chapter or 40 CFR Part 261.

- (d) Reuse and Recycling of Hazardous Waste. The following specific hazardous wastes that are recycled or reused shall comply with 40 CFR Part 266 and this Chapter:
  - (1) Recyclable Materials Used in a Manner Constituting Disposal;
  - (2) Recyclable Materials Utilized for Precious Metal Recovery;
  - (3) Spent Lead-Acid Batteries Being Reclaimed; and
  - (4) Hazardous Waste Burned in Boilers and Industrial Furnaces;
- (e) 7.05 Universal wastes. Batteries, pesticides, mercury containing equipment or lamps as described in 40 CFR Part 273, must be managed in compliance with 40 CFR Part 273 and this Chapter.

#### **SECTION 1020. Prohibited Materials at Transfer Stations**

The following solid waste materials shall not be accepted at any Transfer Station with the intent to dispose at a MSWLF off the [Reservation/Rancheria] under any conditions. Transfer Stations may be authorized to accept some materials by the [name of Tribal Agency] provided they have a program in place to transport the material to an authorized facility for disposal in accordance with applicable federal and state code:

- (a) Radioactive Wastes.
- (b) All regulated hazardous waste as defined herein.
- (c) Unregulated small quantity generator hazardous wastes
- (d) Infectious biomedical wastes which includes human tissue or human anatomical remains.
- (e) Animals or bedding exposed to infective agents.
- (f) Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as cartons or metal cans which are taped closed or tightly lidded to preclude loss of contents under severe compact conditions.
- (g) Bulk quantities of infectious-type wastes including blood, blood products or body fluids.
- (h) Any materials containing friable asbestos waste from building demolition or cleaning, and any friable asbestos wastes.
- (i) Bulk liquids of any kind.
- (j) Polychlorinated biphenyls (PCBs).
- (k) Car batteries.
- (l) Used oil.
- (m) 55 gallon drums.

- (n) Explosives.
- (o) Tires.
- (p) Oil or gas exploration wastes.

[name of Tribal Agency] may prohibit the disposal of other solid wastes at MSWLFs off the [Reservation/Rancheria] as it deems necessary in its discretion, under rules and regulations to be adopted by Tribal Council. [name of Tribal Agency] shall develop rules and regulations governing the disposal or prohibition of disposal of other solid wastes not listed herein, including, but not limited to, ashes and powders, and mineral wastes and soils. [name of Tribal Agency] shall develop rules and regulations for special wastes, which require special handling, treatment and disposal.

## **SECTION 1021. Special and Industrial Wastes**

- (a) A specific solid waste may be designated as a Special Waste and subject to the requirements of this Code, or other specific storage, management or disposal requirements, if so designated by [name of Tribal Agency]. Every person, commercial establishment, government agency or facility or industrial facility who generates or stores Industrial Waste or Special Waste as designated by [name of Tribal Agency] within the boundaries of the [Reservation/Rancheria] shall comply with this Code and with applicable regulations promulgated by the Tribal Council.
- (b) The following is a list potential special wastes that may be subject to specific permits and regulation on storage, treatment, disposal or discharge within the boundaries of the [Reservation/Rancheria] except at a designated sites specifically approved by [name of Tribal Agency]:
  - (1) General industrial wastes to include: Bulk liquids and semi-liquids; Sludge containing free moisture; or Industrial process wastes;
  - (2) Septic Tank Pumping and other sanitary wastes;
  - (3) Used oil, lead-acid batteries, major appliances (also known as "white goods"), and scrap metal;
  - (4) Infectious institutional wastes, laboratory wastes and surgical operating room pathological specimens and disposal fomites attendant thereto and similar emergency room and mortuary wastes;
  - (5) Wrecked, Junked or Unserviceable Vehicles;
  - (6) Abandoned Mobile Homes and Trailers;
  - (7) Vehicle Tires;
  - (8) Commercial Motor Vehicle and Farm Salvage;
  - (9) Dead Animals;
  - (10) Pesticide and Herbicide Wastes;
  - (11) Asbestos Containing Materials;
  - (12) Agricultural Wastes;
  - (13) Petroleum-Contaminated Soils.

## **SECTION 1022. General Requirements for Storage of Wastes**

- (a) Sanitary Site Conditions: The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the sanitary condition of said residence, premises or business establishment. No person shall place or deposit refuse or allow refuse to be placed or deposited on any public street, road or alley within the [Reservation/Rancheria].
- (b) Storage of Solid Waste for Collection: The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the storage and stockpiling of all solid waste accumulated for collection and disposal.
- (c) Container Specifications: Commercial establishments shall be required to store garbage in durable, rust-resistant, non-absorbent and easily cleanable containers with close-fitting covers. Residents who transport solid waste to community transfer stations shall be required to haul their solid waste in such a way that it does not result in littering or wind-swept garbage.
- (d) Ashes: Ashes, warm or cold, shall not be placed in plastic containers.
- (e) Hazardous Waste: No owner, occupant, business establishment or agency shall store hazardous waste within the boundaries of the [Reservation/Rancheria]. It shall be the responsibility of each occupant, business establishment or agency to locate a disposal service operating an EPA-approved site which accepts hazardous material and to arrange for its disposal.

## **SECTION 1023. Transfer Stations**

Applicability of Standards: This Chapter shall apply to all Transfer Stations and to all equipment used at transfer facilities on the [Reservation/Rancheria]. All owner/operators of Transfer Stations shall comply with any waste management operating criteria specified in this Chapter, rules or regulations, or in any conditions in the Transfer Station facility operation permit, or in guidance documents, or in orders of [name of Tribal Agency].

- (a) Prohibition on Hazardous Waste: The receipt, acceptance, handling, storage, or processing of hazardous waste at any Transfer Station for ultimate disposal is prohibited, provided that [name of Tribal Agency] may establish a program for the collection, transfer, storage, transportation and disposal at authorized facilities off the [Reservation/Rancheria] of hazardous waste generated or found on the [Reservation/Rancheria]. If an operator knows or has reason to believe that unauthorized hazardous waste has been received at a transfer station facility, the operator shall notify [name of Tribal Agency] within two (2) hours of discovery of such waste.
- (b) The owner or operator of a solid waste transfer facility shall implement a program to detect and prevent the receipt, acceptance, handling, storage, processing or shipment of unauthorized hazardous waste. This program must include at a minimum:
  - (1) Random inspections of incoming loads;
  - (2) Inspection of suspicious loads;

- (3) Maintenance of records of inspections;
- (4) Training of personnel to recognize hazardous waste; and
- (5) Procedures for notifying [name of Tribal Agency] if hazardous waste is discovered at the facility.

#### **SECTION 1024. Transfer Station and Transportation Permits Program**

Tribally chartered corporations or agencies, private enterprises and any other persons are required to obtain a permit from [name of Tribal Agency] to either collect and transport solid waste or to construct or operate a transfer station within the exterior boundaries of the [Reservation/Rancheria]. Any permittee shall be required to comply with this Chapter, and any rules or regulations promulgated thereunder, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued [name of Tribal Agency] under authority of this Chapter, and all applicable federal or Tribal laws, environmental in nature or otherwise.

No tribally chartered corporation or agency, private enterprise, or person may collect or transport solid waste, or construct or operate a Transfer Station within the exterior boundaries of the [Reservation/Rancheria] without first having obtained from [name of Tribal Agency] either: (1) a solid waste collection and transportation permit; or (2) a solid waste transfer station construction and/or operation permit.

Any qualified tribally chartered corporation, agency private enterprise or person may file an application with [name of Tribal Agency] for a permit to collect and transport solid waste, or to construct and/or operate a transfer station on the [Reservation/Rancheria].

#### **SECTION 1025. Permits for the Collection and Transportation of Solid Waste**

As a condition for the issuance of a solid waste collection and transportation permit, [name of Tribal Agency] shall require every vehicle operated by the transporter to be conspicuously marked to identify the solid waste transported. Every vehicle shall be marked with the trade name of the transporter, and the number of the solid waste transportation permit issued pursuant to this Section. Every vehicle and driver must be licensed by the State of California and must comply with all safety and insurance requirements of the State of California.

As a condition for the issuance of a solid waste collection and transportation permit, a transporter agrees to make an annual report by December 1 of each year to the [name of Tribal Agency] indicating the number and type of installation emptied or cleaned, the volume and nature of solid waste disposed of, the place and manner in which such solid waste was finally disposed and such other information as [name of Tribal Agency] may require. A renewal may be denied by [name of Tribal Agency] for failure of the permittee to properly and timely file such annual report.

#### **SECTION 1026. Permits for Solid Waste Transfer Stations**

Tribally chartered corporations or agencies, private enterprises and any other persons are required to obtain a permit from [name of Tribal Agency] to construct or operate a transfer station within the exterior boundaries of the [Reservation/Rancheria].

A permitting program shall be developed and implemented by [name of Tribal Agency] for Transfer Facilities. Recommended resources for permit program development include the California State program “Permitting Transfer/Processing Operations and Facilities” in Title 14 CCR. A Tier Permit System is used. Permit tiers are based on the amount of material being transferred or processed. Applicable statutes are provided in the table below.

#### **SECTION 1027. Transfer Stations Regulations Summary**

Transfer/Processing Regulatory Requirements	Title 14, Chapter 3, Article 6.0
State Minimum Standards	Title 14, Chapter 3, Articles 6.1, 6.2, 6.3, 6.35
Transfer/Processing Plan	Title 14, Section 18221.5
Transfer/Processing Report	Title 14, Section 18221.6
Definitions (Statute) Public Resources Code	PRC Sections 40194 and 40200
Definitions (Regulations)	Title 14, Section 17402

#### **SECTION 1028. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in Chapter 10 of this Ordinance, the following penalties may be applied in cases when provisions of this Chapter are violated.

General Rationale for Violation Level:

- Level I Non-hazardous wastes
- Level II Hazardous or Special waste
- Level II Transporter or Transfer Station

HARM means harm to public welfare (health. Safety) and/or negative impact on environment

Section 1014 Residential Municipal Solid Waste					
	Nature of Violation	Level	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Accumulation creates nuisance or hazard	I			
	Failure to remove waste per [name of Tribal Agency] schedule	I			
	Unapproved waste containers	I			
	Container size exceeds requirement	I			
	Container condition deteriorated	I			
(c)	Container storage creates nuisance or hazard	I			
	Container not located as required for pick up	I			
(d)	Waste storage area improperly constructed	I			
(e)	Unconfined waste not located properly for pick up	I			
(f)	Accumulation of waste creates hazard	I			
(h)	Rural site waste disposal not approved	I			

Section 1015 Commercial and Institutional Solid Waste					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Transportation vehicle not loaded, covered, moved per requirement	I			
	Transport vehicle not maintained in good repair and sanitary	I			
(c)	Wastes not removed per schedule	I			

Section 1016 Collection and Transportation of Solid Waste					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Transportation for fee without permit/approval	II			
(b)	Transportation vehicle not loaded, covered, moved per requirement	II			
	Transport vehicle not maintained in good repair and sanitary	II			
(c)	Wastes spilled not immediately cleaned up	II			
	Special and Hazardous wastes spilled not reported to [name of Tribal Agency]	II			
(f)	Waste not collected or transferred at designated sites	II			

Section 1017 Prohibited Practices and Activities					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous waste disposed within [Reservation/Rancheria]	II			
(b)	Bulk or non-containerized waste placed in solid waste container	I			
(c)	Waste scavenging	I			
(d)	Construction/Demolition waste improperly disposed	I			
(e)	Animal Carcass improperly disposed	I			
(f)	Waste handling creates public nuisance or hazard	I			
(g)	Waste discarded into water way	II			
(h)	Vehicle abandonment	I			
(i-l)	Specified wastes improperly disposed	II			
(m)	Misleading representation	I			

Section 1018 Prohibitions on Hazardous Waste					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
	Receiving, accepting, handling, transporting, treating, storing, disposing of hazardous waste without [name of Tribal Agency] permit/approval	II			

Section 1019 Standards and Requirements Applicable To Hazardous Waste					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous waste disposed within [Reservation/Rancheria]	II			
(c)	Generator requirements not met	II			
	Transportation requirements not met	II			
	Treatment or Storage requirements not met	II			
(d)	Reuse and Recycling requirements not met	I			
(e)	Universal Waste requirements not met	II			

Section 1020 Prohibited Materials at Transfer Stations					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Listed wastes received at Transfer Station without authorization and in compliance with program for disposal	II			

Section 1021 Special and Industrial Wastes					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Listed wastes stored, treated, disposed or discharged in violation of [name of Tribal Agency] requirements	II			

1022 General Requirements for Storage of Wastes					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a-d)	General Storage Requirements not met	I			
(e)	Storage of Hazardous waste in violation of [name of Tribal Agency] requirements	II			

Section 1023 Transfer Stations					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Receipt, handling, storage or processing of hazardous waste in violation of [name of Tribal Agency] requirements	II			
	Failure to notify [name of Tribal Agency] of receipt of unauthorized hazardous waste within two hours	II			
(b)	Failure to perform required elements of program to detect and prevent receipt, acceptance, handling, storage or shipment of unauthorized hazardous waste	II			

Section 1024 Transfer Station and Transportation Permits Program					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to comply with permit/approval	II			

	conditions for vehicle marking, driver license.				
(b)	Failure to make required reports to [name of Tribal Agency]	II			

Section 1025 Permits for the Collection and Transportation of Solid Waste

	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain Permit or Approval by [name of Tribal Agency] as required	II	\$\$	\$\$	\$\$
	Failure to notify [name of Tribal Agency] of receipt of unauthorized hazardous waste within two hours	II			
(b)	Failure to perform required elements of program to detect and prevent receipt, acceptance, handling, storage or shipment of unauthorized hazardous waste	II			

Section 1026 Permits for Solid Waste Transfer Stations

	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain Permit or Approval by [name of Tribal Agency] as required	II			
(b)	Failure to perform required elements of Permit or Approval program	II			

Section 1027 Transfer Stations Regulations Summary

	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to comply with requirements of Title 14 applicable to Transfer Stations	II			



**MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

**CHAPTER 3 - ONSITE WASTE DISPOSAL**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>2</b>
<b>SECTION 1002.</b>	<b>Findings .....</b>	<b>2</b>
<b>SECTION 1003.</b>	<b>Purpose.....</b>	<b>2</b>
<b>SECTION 1004.</b>	<b>Reference to the Tribe Residential Land Assignment Ordinance ...</b>	<b>2</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>2</b>
<b>SECTION 1006.</b>	<b>Privy Location Criteria.....</b>	<b>3</b>
<b>SECTION 1007.</b>	<b>Site Criteria and Prohibitions .....</b>	<b>3</b>
<b>SECTION 1008.</b>	<b>Construction Standards.....</b>	<b>3</b>
<b>SECTION 1009.</b>	<b>Maintenance Standards .....</b>	<b>4</b>
<b>SECTION 1010.</b>	<b>Enforcement and Fines.....</b>	<b>4</b>

## **SECTION 1001. Title**

This Chapter shall be referred to as the "[name of Tribe] Tribal Onsite Waste Disposal Chapter" or "Onsite Waste Disposal Chapter" of the [name of Tribe] Environmental Protection Ordinance.

## **SECTION 1002. Findings**

The [name of Tribe] Tribe finds that onsite disposal from the use of outdoor privies (outhouses) of human waste is affecting the water quality within the [name of Tribe] Indian [Reservation/Rancheria] and its tributaries and the health of members and nonmembers of the [name of Tribe] Tribe living with the [Reservation/Rancheria]. Improper onsite waste disposal within the [Reservation/Rancheria] causes pollution and impacts the quality of life within the [Reservation/Rancheria].

## **SECTION 1003. Purpose**

The purpose of this Chapter of the Ordinance is to establish a [name of Tribe] Tribal law defining the proper construction and use of outdoor privies and prohibiting the use of cesspools and other similar disposal methods. The purpose of this Chapter is to improve environmental health, public sanitation, and general aesthetics by requiring that privies are properly constructed and maintained.

## **SECTION 1004. Reference to the Tribe Residential Land Assignment Ordinance**

The [name of Tribe] Tribe Residential Land Assignment Ordinance [or equivalent Tribal Code] contains the following language:

Note: Below is suggested language. Tribe should develop its own language based on its code and criteria.

*An assignee(s) may be permitted to install an outhouse or composting type of indoor or outdoor toilet, if assignee(s) can demonstrate that the outhouse or toilet will not endanger a water source in any fashion, will not endanger the health of any person, and will meet the environmental, building safety or health standards of any applicable federal or Tribal statutes, ordinances or regulations. In no event will an outdoor toilet be allowed in a community or subdivision in which the housing density is more than one house per acre.*

## **SECTION 1005. Definitions**

- (a) *Cesspool* means a covered pit with open jointed lining into which sewage or waste is discharged, the liquid portion of which is disposed of by leaching into the surrounding soil and the solids or sludge being retained in the pit.
- (b) *Drip Line* means the boundary beyond the furthest extent of the roof, beyond which water will not drip from the roof.
- (c) *Human waste* means a waste type usually used to refer to byproducts of digestion, such as feces and urine.
- (d) *Privy* means a structure that is not connected to a plumbing system and which is used for the deposition of human body wastes.

- (e) *Public Nuisance means* anything which:
  - (1) Is injurious to health or well-being, or is indecent or offensive to the senses, or is an obstruction to the free use of the land or space, or interferes with the comfortable enjoyment of life or environment; and
  - (2) Affects at the same time the occupants of one (1) or more habitable units of a community or neighborhood, or any considerable number of persons, although the extent of the annoyance, damage, injury, offense, obstruction or interference inflicted upon individuals may be unequal.

#### **SECTION 1006.      Privy Location Criteria**

The criteria listed below in Sections are considered necessary for the protection of water quality and the prevention of human health hazards and nuisance conditions arising from the on-site storage or discharge of human wastes from residences, camps, recreational and travel trailers, temporary toilet buildings or convenience containers used for construction sites, work crews, or large gatherings.

On-site waste storage, treatment, disposal systems, or discharges of human wastes shall be located, designed, constructed, and operated in a manner to ensure that effluent, or any leachate, or contact water does not surface at any time, and that percolation of effluent will not adversely affect waters of the [Reservation/Rancheria]. The use of cesspools for on-site waste treatment and disposal shall be prohibited.

#### **SECTION 1007.      Site Criteria and Prohibitions**

All use of pit privies (outhouses) shall meet the criteria below:

- (a) No person shall discharge human waste or offal of any kind, in, or upon the borders of any surface waters (i.e., creek, stream, pond, lake, or reservoir) from which water is drawn for the supply of any portion of the inhabitants of the [Reservation/Rancheria], or in any manner that the drainage from any discharge or privy may be taken up by or in the waters.
- (b) No discharge or privies shall be located within 100 feet of a groundwater source (i.e., wells and springs).
- (c) The minimum soil depth immediately below the leaching trench shall be three feet. Soil depth is measured vertically to the point where bedrock, hardpan, impermeable soils or saturated soils are encountered.
- (d) No pit privy shall be located closer than fifty (50) feet to a property or land assignment boundary line. The property line setback of fifty (50) feet to a property line may be waived when the adjoining property owner agrees to the waiver in writing.
- (e) If the pit privy is constructed on a slope of hill, a ditch lined with gravel, rock or other durable material, shall be installed on the uphill side. The ditch shall be of sufficient size and design to divert all surface water from the pit.

#### **SECTION 1008.      Construction Standards**

The pit privy shall meet the following design requirements:

- (a) Pits shall have a minimum depth of five (5) feet and provide for proper dispersion of fluids.
- (b) Pits shall be flytight and rodent-proof.
- (c) The area around the privy building and pit shall be banked to divert surface waters away.
- (d) The drip line of the privy roof shall extend outside of the diversion bank. This may be accomplished by the installation of a rain gutter and drainage pipes.
- (e) The waste entry hole shall have a lid which, when closed, shall effectively seal out insects or vermin.
- (f) A vent extended from the pit chamber to the outside air shall be provided. A vent shall be designed to prevent entry of precipitation, be effectively supported and rigid, and screened (16 mesh/inch) to prohibit the entry of insects and rodents.
- (g) A supporting perimeter sill or reinforced concrete, six (6) inches in a minimum cross section, or equivalent material shall be provided and designed to connect and seal the privy building with soil grade.
- (h) A floor which covers the pit chamber shall be provided.

#### **SECTION 1009. Maintenance Standards**

Pit privies shall be maintained in a sanitary condition.

- (a) Wastes, other than human feces, urine, toilet paper and minor quantities of organic materials added for the purpose of odor control or pile digestion shall not be disposed of in pit privies. Dry lime, or its equivalent, may be added to the pit, as necessary, to control odor or insects.
- (b) When waste fills the pit to a height of eighteen (18) inches below grade, the pit shall be abandoned. Abandoned privies shall be covered by compacted soil. The compacted fill shall extend above the existing grade so as to exclude water.
- (c) Pit privies which are not properly maintained or which create a nuisance shall be abandoned and replaced.

#### **SECTION 1010. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in Chapter 10 of this Ordinance, the following penalties may be applied in cases when provisions of this Chapter are violated.

General Rationale for Violation Level:

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1007 Site Criteria and Prohibitions					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Waste discharge impacts surface water.	II			
(b)	Discharge is located within 100 feet of groundwater source.	II			
(c)	Criteria for minimum soil depth is not met.	I			
(d)	Criteria for property line minimum setback is not met. No waiver granted.	I			
(e)	Construction criteria for location on slope of hill is not met.	I			

Section 1008 Construction Standards					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Construction Standards are not met.	I			

Section 1009 Maintenance Standards					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Maintenance Standards are not met.	I			

# MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE

## CHAPTER 4 - BLIGHT

SECTION 1001.	Title .....	2
SECTION 1002.	Purpose.....	2
SECTION 1003.	Public Nuisance .....	2
SECTION 1004.	Prohibition of Property Blight .....	2
SECTION 1005.	General Conditions .....	3
SECTION 1006.	Definitions.....	3
SECTION 1007.	Descriptions of Property Blight and Prohibited Conditions and Activities.....	5
SECTION 1008.	Unsecured Building or Structure .....	5
SECTION 1009.	Abandoned Construction .....	5
SECTION 1010.	Attractive Nuisance.....	5
SECTION 1011.	State of Disrepair.....	5
SECTION 1012.	Exterior Property Conditions.....	6
SECTION 1013.	Single and Multiple Family Dwelling Landscaping Requirements .....	6
SECTION 1014.	Parkstrips .....	6
SECTION 1015.	Inadequate Solid Waste Management.....	6
SECTION 1016.	Hazardous Conditions .....	7
SECTION 1017.	Parking, Storing or Maintaining Certain Items on Property Used as a Residence .....	7
SECTION 1018.	Parking, Storing, or Maintaining Special Mobile Equipment .....	8
SECTION 1019.	Storing or Maintaining Household Item .....	8
SECTION 1020.	Storing or Maintenance of Boxes, Lumber, Dirt, and Other Debris.....	9
SECTION 1021.	Activities Prohibited on Property Used as a Residence .....	9
SECTION 1022.	Exclusions .....	10
SECTION 1023.	Enforcement and Fines.....	11

## **SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Blight Chapter” or “Blight Chapter” of the [name of Tribe] Tribal Environmental Protection Ordinance.

## **SECTION 1002. Purpose**

The purpose of this Chapter is to safeguard the culture and public image of [Reservation/Rancheria] and to promote the public health, safety and welfare requiring a minimum level of maintenance of private property to protect the livability, appearance and social and economic stability and prosperity of the [Reservation/Rancheria] and to protect the public from the health and safety hazards, public nuisances and the impairment of property values that result from the neglect and deterioration of property.

There currently exist within the [Reservation/Rancheria] unsanitary, unsafe, and uninhabitable dwellings, including eyesores as a result of abandoned materials or debris of any kind, including substances that have accumulated as the result of fires, vandalism, or similar causes, affecting the public health, comfort, safety, and welfare, which are hereby declared public nuisances. These nuisances constitute a menace to the health and safety of surrounding neighbors and residents. Therefore, a need exists for a nuisance abatement process and enforcement thereof on the [Reservation/Rancheria].

## **SECTION 1003. Public Nuisance**

Any property upon which there exists property blight as set forth in the provisions of this Chapter is hereby declared and determined to be a public nuisance.

A condition on any tract of real property within an area which is designated an area of population concentration by the Tribal Council which is unsafe, unsanitary, or an eyesore as the result of abandoned materials or debris of any kinds, including substances that have accumulated as the result of fires, vandalism, or similar causes, affecting the public health, comfort, safety, and welfare, is hereby declared a nuisance.

Accumulation, Unlawful: Any accumulation of garbage and waste materials on any premises, occupied or unoccupied, in a manner other than that authorized by this Chapter, is hereby declared to be a public nuisance and is prohibited.

Solid waste shall be transferred to the proper disposal site by the responsible party in a timely manner, to prevent noxious odors and other public nuisance conditions.

## **SECTION 1004. Prohibition of Property Blight**

The prohibition of property blight shall be encompassing of the following:

- (a) No person, whether as owner, agent, manager, guest, operator, business entity, assignee, lessee, tenant, sub-lessee, or occupant in possession of a property, shall maintain a blighted property or cause or permit property to be maintained as a blighted property.

- (b) No person, whether as owner, agent, manager, guest, operator, business entity, lessee, assignee, sub-lessee, tenant or occupant of a property, shall take any action or allow any action to be taken at that property in violation of any provision of this Chapter or any order issued pursuant to the provisions of this Chapter.
- (c) If the violation of any of the provisions of this Chapter or any rules and regulations promulgated pursuant thereto are determined be a nuisance or a hazard to the health and safety of humans or harmful to the environment, such activity may be restrained or enjoined at any time by the Tribal Council.

#### **SECTION 1005. General Conditions**

The presence of any one or more of the following conditions on property constitutes property blight:

- (a) Any condition that is detrimental to the public health, safety or general welfare or that constitutes a public nuisance as defined in this Chapter.
- (b) Any condition of deterioration or disrepair that creates a substantial adverse impact on neighboring properties.
- (c) The erection, construction, movement, alteration, of building, mobile home, trailer or structure in violation of the applicable building codes.

#### **SECTION 1006. Definitions**

- (a) *Boat* means a boat of any kind, whether self-propelled or propelled by any other means, including sailing vessels and all other structures adapted to be navigated on water from place to place for recreational purposes or for the transportation of merchandise or persons.
- (b) *Debris* means the scattered remains of carelessly discarded refuse or litter, something broken or destroyed; rubble or wreckage.
- (c) *Decorative Landscaping* means decorative non-live materials used to cover dirt in a garden or yard, such as rocks, gravel, or bark and does not include: pavement with asphalt, cement or any other impervious surface.
- (d) *Graffiti* means an unauthorized inscription, word, figure, mark, design or other inscribed material that is written, marked, etched, scratched, drawn, or painted on a surface.
- (e) *Household Item* means any item, including any part of the item, typically used in the interior of a dwelling. By way of example and not limitation, the term Household Item includes washing machines, sinks, stoves, heaters, boilers, tanks, mattresses, sofas, couches or futons, upholstered chairs, and indoor carpets. The term Household Item excludes furniture expressly designed for outdoor use such as, but not limited to, outdoor smokers traditionally used for preparing food products, such as fish.
- (f) *Landscaping* at a minimum, means live trees, shrubs, lawns, other live plant materials or Decorative Landscaping, that has been installed and covered the existing dirt surfaces.



- (g) *Liter* means solid waste that is scattered in a careless manner.
- (h) *Motor Vehicle* means a Passenger Motor Vehicle, truck, camper, recreational vehicle, motorcycle, motor scooter, golf cart, or other similar self-propelled vehicle. "Motor Vehicle" does not mean a motorized wheelchair, bicycle, tricycle or quadricycle.
- (i) *Nuisance Abatement* means the removal or termination or destruction of something that has been found to be a nuisance.
- (j) *Parkstrip* means the area between the curb of a road and the sidewalk or walkway.
- (k) *Passenger Motor Vehicle* means any motor vehicle designed, used and maintained primarily for the transportation of persons for noncommercial purposes. A passenger motor vehicle does not include a motor vehicle designed and equipped for human habitation, excepting a motor vehicle to which a camper has been temporarily attached.
- (l) *Paved* means treated or covered with concrete, asphalt or other similar material and maintained in such a manner as to provide a mud-free and dustless surface.
- (m) *Polluted Water* means water that contains any bacterial growth, including algae, remains of rubbish, fecal matter, chemicals, untreated sewage, refuse, debris, papers, or any other foreign matter or material that, because of its nature or location, constitutes an unhealthy or unsafe condition.
- (n) *Rubbish* means non-putrescible solid wastes, including ashes, consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.
- (o) *Seventy-Two Hours*: For purposes of this Chapter, an item is unlawfully parked, kept or stored on a piece of property in excess of seventy-two (72) hours, when all of the following conditions have been met:
  - (1) The item is located on the front or side yard of the property or on a road immediately adjacent to that front or side yard; and
  - (2) That item is visible from a road; and
  - (3) That item has not been removed from the visible front or side yard of the property or the road immediately adjacent to that front or side yard to an area that is not visible from a public road for at least twenty-four (24) consecutive hours during a seventy-two (72) consecutive hour period.
- (p) *Solid Waste* means all putrescible and non-putrescible solid and semi-solid wastes (except body wastes) and including, but not limited to, garbage, rubbish, ashes, incinerator residue, bulky wastes, street cleanings, solid market and industrial wastes, demolition and construction wastes and discarded commodities.
- (q) *Special Mobile Equipment* shall be defined as a vehicle, not self-propelled, not designed or used primarily for the transportation of persons or property, and only incidentally operated or moved over a highway, excepting implements of husbandry.
- (r) *Storage Structure* means a prefabricated or constructed enclosure that is not required to have a building permit and is not permanently affixed to the ground, but which is not on wheels or mobile.

- (s) *Weed Block* means material installed over a dirt surface in order to prevent the growth of weeds.

#### **SECTION 1007. Descriptions of Property Blight and Prohibited Conditions and Activities**

The existence of any one or more of the conditions or activities described in the following sections of this Chapter constitutes property blight.

#### **SECTION 1008. Unsecured Building or Structure**

Any building or structure that is unsecured constitutes property blight. A building or structure is unsecured when either of the following conditions exists:

- (a) The building or structure is inhabited, occupied or used without the consent of the owner or the agent of the owner; or
- (b) Unauthorized parties can readily gain entry to the building or structure without the consent of the owner or owner's agent.

#### **SECTION 1009. Abandoned Construction**

A partially constructed, reconstructed or demolished building or structure upon which work has been abandoned constitutes property blight. Work is deemed abandoned when there is no valid current **building or demolition permit** for the work or when there has not been any substantial work on the building or structure for a period of six (6) months or more.

#### **SECTION 1010. Attractive Nuisance**

Any property that is unsecured and constitutes an attraction to children or a harbor for vagrants, criminals or other unauthorized persons, vermin or disease, or is in a condition such that persons can resort thereto for the purpose of committing a nuisance or unlawful act, constitutes property blight.

#### **SECTION 1011. State of Disrepair**

Any building or structure that is in a state of disrepair constitutes property blight. A building or structure is in a state of disrepair when any of the following conditions exist:

- (a) Exterior walls or roof coverings have become deteriorated, do not provide adequate weather protection, or show evidence of the presence of termite infestation or dry rot; or
- (b) Broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers; or
- (c) Building exteriors, porches, walls, fences, retaining walls, carports, driveways, or walkways that are broken or deteriorated to the extent that the disrepair is visible from a road or neighboring properties; or
- (d) Any part of the property, including any building or structure located on the property that is visible from a road or neighboring property that is defaced with Graffiti.

## **SECTION 1012. Exterior Property Conditions**

The existence of anyone or more of the following exterior property conditions constitutes property blight:

- (a) The property contains overgrown, diseased, dead or decayed trees, weeds or other vegetation that:
- (b) Constitutes a fire hazard, or blocks the vision of motorists, or creates other condition(s) that are dangerous to the public health, safety, welfare; or
- (c) Creates the potential for the harboring of rats, vermin, vector, or other similar nuisances; or
- (d) Substantially detracts from the aesthetic and/or property values of neighboring properties; or
- (e) Is overgrown onto a public right-of-way at least twelve (12) inches; or
- (f) Is completely dead, over twelve (12) inches in height, and covers more than fifty percent (50%) of the front or side yard visible from any road.
- (g) The property fails to comply with applicable development permit requirements with respect to any landscaping.

## **SECTION 1013. Single and Multiple Family Dwelling Landscaping Requirements**

- (a) Family dwellings subject to a development permit shall be landscaped in accordance with the requirements of the development permit.
- (b) Family dwellings, not subject to a development permit, shall have landscaping installed in the non-paved portions of the front and side yards that are visible from any road.
- (c) Failure to meet the landscaping requirements of this Section constitutes property blight.

## **SECTION 1014. Parkstrips**

- (a) Any property subject to a development permit that imposes Parkstrip landscaping requirements shall have landscaping installed in the Parkstrip in compliance with the development permit.
- (b) Any property, not subject to a development permit, shall have landscaping installed in the non-paved portions of the Parkstrip.
- (c) Failure to meet the landscaping requirements of this Section constitutes property blight.

## **SECTION 1015. Inadequate Solid Waste Management**

The accumulation of solid waste constitutes property blight in the following situations:

- (a) The accumulation of solid waste is visible from a road or neighboring property and is present for more than seventy-two (72) consecutive hours; or

- (b) The accumulation of solid waste is being stored or disposed of in a manner that would allow the material to be transported by wind or otherwise onto or upon any road, or neighboring property, unless the method of storage or disposal is specifically allowed by this Chapter; or
- (c) The accumulation of litter or debris in vestibules or doorways of buildings constitutes property blight if it is visible from any road or neighboring properties and is present for more than seventy-two (72) consecutive hours.

#### **SECTION 1016. Hazardous Conditions**

Any property upon which there exists a hazardous condition constitutes property blight. A property is considered to have a hazardous condition prohibited by this Chapter if anyone or more of the following conditions exists on the property:

- (a) Land having a topography, geology, or configuration that, as a result of grading operations or improvements to the land, causes erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems that pose a threat of injury or are injurious to any neighboring property.
- (b) Any condition or object, including without limitation landscaping, fencing or signs, that obscures the visibility of road intersections to the public in a manner that constitutes a hazard.
- (c) Items are present that are inadequately secured or protected and, due to their accessibility to the public, may prove hazardous including, without limitation:
  - (1) Unused or broken equipment or machinery;
  - (2) Abandoned wells, shafts, or basements;
  - (3) Unprotected pools, ponds, or excavations;
  - (4) Structurally unsound fences or structures;
  - (5) Lumber, or accumulations of lumber or other construction materials; or
  - (6) Chemicals, motor oil, or other hazardous materials.
- (d) Any swimming pool, pond or other body of water that is abandoned, unattended, unfiltered, or not otherwise maintained, so that the water has become or is becoming polluted.

#### **SECTION 1017. Parking, Storing or Maintaining Certain Items on Property Used as a Residence**

The parking, storing or maintaining of anyone or more of the following items on property used as a residence constitutes property blight:

- (a) Any airplane or other aircraft, or any parts thereof in the front or side yard; or
- (b) Any construction or commercial equipment, machinery, vehicle having a manufacturer's gross vehicle weight rating often thousand (10,000) pounds or more, construction materials, except that the construction equipment, machinery, vehicle or materials may be temporarily kept within or upon the property for and during the

time that the equipment, machinery, vehicle, or materials are required in connection with the delivery, pick-up, construction, installation, repair, or alteration of improvements or facilities on the property, unless the activity is otherwise prohibited by this Chapter, by any permit issued pursuant to this Chapter, or by other applicable law; or

- (c) Any Motor Vehicle, Boat, un-mounted camper or trailer that is inoperable and is in an area visible from any road for a period of time in excess of seventy-two (72) consecutive hours where not secured with a tarp or other Impermeable material; or
- (d) Any household appliance or household debris in an area visible from any road or in an area accessible to the public except when the refrigerator is set out for bulky goods collection in accordance with this Chapter.

#### **SECTION 1018.      Parking, Storing, or Maintaining Special Mobile Equipment**

- (a) No Special Mobile Equipment shall be parked, stored, or maintained in an area visible from any road for a period of time in excess of seventy-two (72) consecutive hours.
- (b) The parking, storage, or maintenance of Special Mobile Equipment in a side or rear yard shall either be:
  - (1) In an accessory building constructed in accordance with the provisions of this Chapter; or
  - (2) In an area that provides for a five-foot (5') setback from any property line and, which is not visible from any road. In addition to the setback requirement, at least one thousand five hundred (1,500) square feet, or at least sixty percent (60%) of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.
- (c) No Special Mobile Equipment shall be parked, stored, or kept within five feet (5') of any required building exit, including exit windows.

#### **SECTION 1019.      Storing or Maintaining Household Item**

- (a) No Household Item shall be stored or maintained in an area visible from any road for a period of time in excess of seventy-two (72) consecutive hours.
- (b) The storage or maintenance of a Household Item(s) in a side or rear yard shall either be:
  - (1) In an accessory building constructed in accordance with the provisions of this Chapter; or
  - (2) In an area that provides for a five-foot (5') setback from any property line and, which is not visible from any road. In addition to the setback requirement, at least one thousand five hundred (1,500) square feet, or at least sixty percent (60%) of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.
- (c) No Household Item shall be stored, or maintained within five feet (5') of any required building exit, including exit windows.

- (d) Machinery installed in accordance with the provisions of this Chapter in the rear or side yard setback areas for household or recreational use.
- (e) This Section does not prohibit the storage, or maintenance of any of the following:
  - (1) Machinery installed in accordance with the provisions of this Chapter in the rear or side yard setback areas for household or recreational use; or
  - (2) Furniture designed and used for outdoor activities; or
  - (3) Any item stored or kept within an enclosed Storage Structure.

**SECTION 1020. Storing or Maintenance of Boxes, Lumber, Dirt, and Other Debris**

- (a) No boxes, lumber, dirt, or other debris shall be stored or maintained in an area visible from any road for a period of time in excess of seventy-two (72) consecutive hours.
- (b) The storage, or maintenance of boxes, lumber, dirt, or debris in a side or rear yard shall either be:
  - (1) In an accessory building constructed in accordance with the provisions of this Chapter; or
  - (2) In an area that provides for a five-foot (5') setback from any property line, and which is not visible from any road. In addition to the setback requirement, at least one thousand five hundred (1,500) square feet, or at least sixty percent (60%) of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.
  - (3) No boxes, lumber, dirt, or debris shall be stored or maintained within five feet (5') of any required exit, including exit windows.

**SECTION 1021. Activities Prohibited on Property Used as a Residence**

The following activities on any property used as a residence constitutes property blight:

- (c) The use of any camper, tent, recreational vehicle or motor vehicle for living or sleeping quarters in any place within the [Reservation/Rancheria], except in a location lawfully operated as a mobile home park or travel trailer park, subject to the following:
- (d) Nothing contained in this Chapter shall be deemed to prohibit bona fide guests of a [Reservation/Rancheria] resident from occupying a trailer, camper, tent, or recreational vehicle upon residential premises with the consent of the resident for a period not to exceed fourteen (14) days, except during cultural events or for use as fish camps when the period may be extended. The occupants must have the consent of the property owner and must maintain the areas around their camp and remove all debris and trash.
- (e) Any trailer, camper, or recreational vehicle so used shall not discharge any waste or sewage into the [Reservation/Rancheria]'s sewer systems except through the residential discharge connection of the residential premises on which the trailer, camper or recreational vehicle is parked.

**SECTION 1022. Exclusions**

This Chapter shall not prohibit the following:

- (f) An owner, lessee, or occupant of the property from repairing, washing, cleaning, or servicing personal property that is owned, leased, or rented by the owner, lessee, or occupant of the property so long as any repairing or servicing performed shall be completed within a seventy-two (72) consecutive hour period.
- (g) Repairing or servicing of a Motor Vehicle or part thereof within a completely enclosed building in a lawful manner where it is not visible from the road or other public or private property.

## SECTION 1023. Enforcement and Fines

In addition to the enforcement authority, provisions, and process contained in Chapter 10 of this Ordinance, the following penalties may be applied in cases when provisions of this Chapter are violated.

General Rationale for Violation Level:

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1008 Unsecured Building or Structure					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is unsecured per criteria.	I			

Section 1009 Abandoned Construction					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is abandoned per criteria.	I			

Section 1010 Attractive Nuisance					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building is Attractive Nuisance per criteria.	I			

Section 1011 State of Disrepair					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Building in State of Disrepair per criteria.	I			

Section 1012 Exterior Property Conditions					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Exterior Property Conditions are as described in section.	I			

Section 1013 Single and Multiple Family Dwelling Landscaping Requirements					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Landscaping requirements are not met.	I			

Section 1014 Parkstrips					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Landscaping requirements are not met.	I			



Section 1015 Inadequate Solid Waste Management					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Solid Waste management requirements are not met.	I			

Section 1016 Hazardous Conditions					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Hazardous Conditions as defined exist.	II			

Section 1017 Parking, Storing or Maintaining Certain Items on Property Used as a Residence.					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Conditions as defined exist.	I			

Section 1018 Parking, Storing or Maintaining Special Mobile Equipment					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Requirements are not met for time period, setback, useable space, location proximity to building exits, windows.	I			

Section 1019 Storing or Maintaining Household Item					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Storage requirements as defined are not met.	I			

Section 1020 Storing or Maintenance of Boxes, Lumber, Dirt, and other Debris					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Storage requirements as defined are not met.	I			

Section 1021 Activities Prohibited on Property Used as a Residence					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Requirements for use of tent, camper, recreational vehicle or motor vehicle are not met.	I			

# **MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

## **CHAPTER 5 - ILLEGAL DUMPING**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>2</b>
<b>SECTION 1002.</b>	<b>Findings .....</b>	<b>2</b>
<b>SECTION 1003.</b>	<b>Purpose.....</b>	<b>2</b>
<b>SECTION 1004.</b>	<b>Illegal Acts.....</b>	<b>2</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>4</b>
<b>SECTION 1006.</b>	<b>Effect of Chapter .....</b>	<b>5</b>
<b>SECTION 1007.</b>	<b>Enforcement and Fines.....</b>	<b>5</b>

## **SECTION 1001. Title**

This Chapter shall be referred to as the "[name of Tribe] Tribal Illegal Dumping Chapter" or "Illegal Dumping Chapter" of the [name of Tribe] Environmental Protection Ordinance

## **SECTION 1002. Findings**

The [name of Tribe] Tribe finds that improper dumping of waste matter on the [name of Tribe] Indian [Reservation/Rancheria] threatens the health, safety, and welfare of all persons on the [Reservation/Rancheria] and poses a threat to the Tribe's natural resources. Improper dumping on the [Reservation/Rancheria] causes pollution and impacts the quality of life on the [Reservation/Rancheria]. The [name of Tribe] Tribe adopts this Chapter of the [name of Tribe] Environmental Protection Ordinance to protect the [name of Tribe] Tribal community and environment.

## **SECTION 1003. Purpose**

The purpose of this Chapter is to establish a [name of Tribe] Tribal law prohibiting the open disposal, dumping, depositing, burying (other than small, residential compost piles of non-hazardous, organic materials produced on the premises and being tended for use as fertilizer) or unpermitted burning of any waste materials whatsoever on any lands or in any waters of the [Reservation/Rancheria], in order to end the public health hazard being perpetuated by numerous individuals: known and unknown to the [name of Tribe] Tribe; and, by bringing about the cessation of the illegal dumping, to hereby stop the resultant pollution of the soils, streams, groundwater, and the Klamath River itself, which in turn has endangered the natural environment and the fishery resources belonging to all of the [name of Tribe] Tribe.

The purpose of this Chapter is to improve environmental health, public sanitation, and general aesthetics by prohibiting the open dumping of solid waste on the lands of the [Reservation/Rancheria].

## **SECTION 1004. Illegal Acts**

- (a) *Littering and Dumping:* It is expressly prohibited and shall be unlawful, for any person to dispose of, or dump, throw, discard, litter, scatter, or place, or cause to be dumped, scattered or placed, any solid waste as defined under these regulations, including any special or hazardous waste as defined under these regulations, upon any public or private property or at or near an open dump site within the exterior boundaries of the [Reservation/Rancheria], on any other land within the exterior boundaries of the [Reservation/Rancheria], and any subsequently purchased land, or upon or into any river, lake, pond, or other stream or body of water within the exterior boundaries of the [Reservation/Rancheria].
- (b) *Littering from Motor Vehicle:* It is expressly prohibited and shall be unlawful for any person to dump, deposit, drop, throw, discard, or otherwise dispose of litter from any motor vehicle or vessel upon any public highway, upon any public or private property or body of water, nor shall any person transport by any means, garbage or refuse from any dwelling, residence, place of business, farm, or other site to another

site without adequate containment or a tarp to prevent such littering.

- (c) It shall be illegal to dump, place, deposit, store or accumulate any waste matter within the boundaries of the [Reservation/Rancheria] in a manner that is harmful to the public health and safety as determined by the [name of Tribal Agency] or [name of Tribe] Department of Public Safety.
- (d) *Open burning of solid waste:* It is expressly prohibited, and shall be unlawful, for any person to burn any solid, special or hazardous waste anywhere within the exterior boundaries of the [Reservation/Rancheria].
- (e) *Scavenging:* It is expressly prohibited and shall be unlawful for any unauthorized person to remove solid waste, special waste or hazardous waste at any point in the waste management system, including but not limited to, collection sites, containers, storage sites, transfer sites or disposal sites.
- (f) No person shall dispose of any wastes generated outside the boundaries of the [Reservation/Rancheria] on any lands or water bodies within the [Reservation/Rancheria] boundaries.
- (g) This Chapter shall not be construed to restrict a tribal member's use of his or her assignment or allotment, unless the placing, depositing or storing of such waste matter on such property creates a public health and safety hazard, a public nuisance, or a fire hazard as determined by the [name of Tribal Agency], [name of Tribe] Department of Public Safety or other governmental agency charged with the protecting the health, safety and welfare of the tribal community.
- (h) The dumping of waste matter is permitted only when approved by the [name of Tribe] Tribe through an established waste matter dumping project administered through [name of Tribal Agency]. Only the waste matter approved for dumping under the particular tribal project can be disposed of; any unauthorized dumping will be considered a violation of this Chapter. Dumping of waste matter is permitted only in the designated area during the hours specified by the Tribe under the waste matter project.
- (i) Any waste matter projects that allow for dumping will be implemented through the [name of Tribal Agency] or a Department designated by the [name of Tribe] Tribal Council. If warranted, [name of Tribal Agency] may be directed to institute a permit procedure for participation in the waste matter dumping project. Persons that utilize a waste matter dumping project must adhere to project guidelines or rules including permitting; any person not following these guidelines and rules will be in violation of this Chapter.
- (j) All Tribal Members and Landowners whose guest, renter or lessee dumps, stores, deposits, places, or accumulates waste matter on the tribal member's assignment, allotment, or land within exterior boundaries of the [Reservation/Rancheria] in violation of this Chapter will be liable for the actions of his or her guest, tenant, or lessee; Should the guest, tenant, or lessee fail to pay a fine or comply with other remedies levied against him or her pursuant to this Chapter of the [name of Tribe] Environmental Protection Ordinance, the Landowner will be fully responsible for all costs incurred by the Tribe including Fines and remedies.

## SECTION 1005. Definitions

- (a) *Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.
- (b) *Dumping* means the open disposal, depositing, burying, or non-permitted burning of any waste materials, other than at-home organic compost piles.
- (c) *Garbage* means all putrescible wastes, including animal, aquacultural, offal and carcasses, and recognizable industrial byproducts or substances that create a public nuisance or potential health hazard as determined by the Director of [name of Tribal Agency] or his or her authorized representative, but excluding sewage and human wastes.
- (k) *Hazardous Wastes* means solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:
  - (1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or
  - (2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.c. 6901 et seq.), as amended.
- (l) *Littering* means the improper disposal, depositing, release, leaking or placing of any solid waste or junk by any person, acting on his own or on behalf of a firm, corporation governmental subdivision or agency in any location, other than an approved solid waste collection, storage, treatment or disposal area within the boundaries of the [Reservation/Rancheria].
- (m) *Open burning* means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of emission of the gaseous combustion products.
- (n) *Person* means an individual, corporation, company, association, partnership, unit of Tribal government, state agency, federal agency, or other legal entity.
- (o) *Putrescible* means a solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as commercial kitchen wastes, offal, and carcasses.
- (p) *Refuse* means all nonputrescible waste.
- (q) *Solid waste* means any hazardous or nonhazardous garbage, refuse, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from residential, industrial, institutional, commercial and agricultural operations, and from community activities.

- (r) *Special Waste* means solid waste that is not a Hazardous Waste as defined herein that can be designated by the [name of Tribal Agency] as a Special Waste and may require special storage, management, transportation or handling because it is a:
- (1) solid waste that causes corrosion or decay or otherwise reduces or impairs the integrity of containment structures or storage containers; or
  - (2) solid waste that, if mixed or commingled with other solid waste, produces violent reaction, heat, pressure, fire or explosion, toxic by-products, reaction products, or otherwise poses a threat to the health and safety of solid waste workers, handlers and/or transporters, that require a higher level of containment, is a hazardous material, or impairs the integrity of containment features; or
  - (3) solid waste that otherwise requires specific storage, management, transportation or disposal requirements to protect public health or the environment.
- (s) *Waste materials* means any items or materials being disposed of, including (but not limited to) solid waste, trash, or garbage (defined as easily decomposable or illegally-dumped putrefactive animal and vegetable matter), rubbish (defined as non-putrefactive, non-organic materials and plant matter, such as yard trimmings), glass, metals, plastics, papers, asbestos, construction waste materials, cardboard, batteries, chemicals, tires, used vehicles or appliances, furniture, etc.

#### **SECTION 1006. Effect of Chapter**

Any person responsible for illegal dumping on the [Reservation/Rancheria] may be prosecuted before the [name of Tribe] Tribal Court pursuant to the stipulations **Chapter 10 of this Ordinance**. Container Sites (also known as the Transfer Stations) have been established on [Reservation/Rancheria] to receive and appropriately handle the waste materials and recyclables brought there for proper permitted disposal. Tribal members and other [Reservation/Rancheria] residents are given the alternative to dispose of their wastes either at these legally-permitted Waste Transfer Stations.

#### **SECTION 1007. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in **Chapter 10 of the Ordinance**, the following penalties may be applied in cases when provisions of this Chapter are violated.

#### **General Rationale for Violation Level:**

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Littering and Dumping of Household waste.	I			
	Dumping of Hazardous or Special waste.	II			
	Dumping of waste into watercourse.	II			
(b)	Littering from motor vehicle. Transport of waste without adequate containment.	I			
(c)	Dumping creates HARM.	HARM			
(d)	Open burning of solid, special or hazardous waste.	II			
(e)	Scavenging	I			
(f)	Failure to adhere to criteria in Permit or Authorization for dumping project.	II			

**MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

**CHAPTER 6 - VEHICLE ABATEMENT**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>2</b>
<b>SECTION 1002.</b>	<b>Findings .....</b>	<b>2</b>
<b>SECTION 1003.</b>	<b>Purpose.....</b>	<b>2</b>
<b>SECTION 1004.</b>	<b>Prohibition and Exemptions.....</b>	<b>2</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>3</b>
<b>SECTION 1006.</b>	<b>Enforcing Officer .....</b>	<b>4</b>
<b>SECTION 1007.</b>	<b>Immediate Hazards .....</b>	<b>4</b>
<b>SECTION 1008.</b>	<b>Notice of Violation.....</b>	<b>4</b>
<b>SECTION 1009.</b>	<b>Hazardous Waste Notice .....</b>	<b>5</b>
<b>SECTION 1010.</b>	<b>Vehicle Impoundment and Disposal.....</b>	<b>5</b>
<b>SECTION 1011.</b>	<b>Enforcement and Fines.....</b>	<b>9</b>



#### **SECTION 1001. Title**

This Chapter of the [name of Tribe] Tribal Environmental Protection Ordinance shall be referred to as the "[name of Tribe] Tribal Vehicle Abatement Chapter" or "Vehicle Abatement Chapter."

#### **SECTION 1002. Findings**

Abandoned vehicles are both a public nuisance and health hazard, jeopardizing the health, safety and welfare of individuals residing within the exterior boundaries of the [name of Tribe] Indian [Reservation/Rancheria]. Hazardous materials/wastes leak from abandoned vehicles polluting the soil, surface water and groundwater. Trash and garbage deposited inside these vehicles attracts vermin, known vectors of disease, and is, thus, a further source of public health concern.

#### **SECTION 1003. Purpose**

This Chapter prohibits abandonment of vehicles within the [Reservation/Rancheria] and establishes a procedure for abatement of abandoned vehicles therein and penalties for violation. This Chapter is intended to affect vehicles left unattended on the [Reservation/Rancheria] for a prescribed period of time on Tribal lands, roadways, public lands, or on privately held lands without the permission of the property owner.

#### **SECTION 1004. Prohibition and Exemptions**

- (a) No person shall abandon any vehicle within the bounds of the [Reservation/Rancheria]. Specifically, no person shall leave any vehicle unattended for more than [specify time period] on any public roadway or on privately held land (including but not limited to fee lands, allotments, assignments, and lands held by Tribal or other government) of another property owner, allottee, assignee or government without the permission of the owner, allottee, assignee or government unless the vehicle is parked legally in a marked parking area or otherwise approved parking area.
- (b) Any vehicle thus parked and left unattended for a period of not less than [specify time period] will be presumed abandoned under this Chapter.
- (c) Any person intending to leave a vehicle parked for more than [specify time period] must obtain permission in writing from the [name of Tribe] Tribe Public Safety Department or the property owner upon whose land the vehicle is parked, prior to leaving any vehicle unattended for more than [specify time period], and must notify YTPS of such intention.
- (b) No vehicle which the Police has reason to believe is disabled or abandoned shall be parked or left standing upon any road on the [Reservation/Rancheria] highway or other tribal property for a period in excess of [specify time period]. Any vehicle so parked or left standing may be taken into custody by the Police and held at the expense of the owner or person entitled to possession thereof. The Police may utilize its own personnel, equipment and facilities for the removal and preservation of such vehicles, or may hire other personnel, equipment and facilities for that purpose.
- (c) The last owner of the vehicle as shown by the records of the State Motor Vehicles Division shall be considered responsible for the abandonment of a vehicle in the

manner described above and liable for the cost of removal and disposition of the abandoned vehicle.

- (d) Notwithstanding the time provisions of subsection (b) of this section, if a vehicle disabled, abandoned, parked or left standing unattended on a road or highway right of way is in such a location as to constitute a hazard to motor vehicle traffic using the road or highway, the Police may immediately take such vehicle into custody.
- (a) No Owner of real property shall permit any Disabled or Abandoned motor vehicle to be parked, placed, or allowed to remain on their property in violation of the provisions of this Chapter.
- (b) Disabled motor vehicles shall not be permitted on rights-of-way of the streets, alleys or highways of the Tribe; provided, however, that this prohibition shall not apply to the towing or similar transportation of such vehicles; and provided further, that a reasonable time (not to exceed 72 hours from the time of disability) shall be permitted for the removal or servicing of the Disabled vehicle in an emergency caused by an accident or sudden breakdown of the vehicle.
- (c) Disabled motor vehicles or any part of a motor vehicle shall not be permitted in the front, side or rear yards of all parcels of Tribal lands, except as provided below:
  - (1) Disabled motor vehicles or parts of motor vehicles may be kept in an entirely enclosed garage or other entirely enclosed structure; or
  - (2) Disabled motor vehicles are permitted to be stored in conjunction with a permitted gasoline service station, auto repair garage, or vehicle yard, as those uses are defined in the applicable Tribal Land Use Ordinance, controlling the location and the operation of such uses, and provided that such use has complied with all appropriate permits and licenses and other necessary approvals.

## **SECTION 1005. Definitions**

- (a) *Abandoned Vehicle.* A vehicle is considered to be “abandoned” if it is left on a highway, public property, or private property in such an inoperable or neglected condition that the owner’s intent to relinquish all further rights or interests in it may be reasonably concluded. In reaching a reasonable conclusion, one must consider the amount of time the vehicle has not been moved, its condition, statements from the owner and witnesses, etc.
- (b) *Disabled Motor Vehicle* means a motor vehicle which is either: (a) dismantled, in whole or in part, or which is unable to be operated on a public street as the result of a mechanical defect, malfunction or absence of properly functioning required safety equipment. A mechanical defect or malfunction includes, but is not limited to, one (1) or more deflated or missing tires, or a motor vehicle resting on supports other than inflated tires. The absence of minor and non-essential parts such as antennas, or ornaments, hub caps, etc., shall not cause a motor vehicle to be deemed dismantled and thus disabled; or (b) Not licensed and insured as required by law for operation in the rights-of- way of the streets, alleys or highways of the Tribe, state or city agency.
- (c) *Hazardous Wastes* means solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or
  - (2) Meet the specifications, description or listing as a hazardous waste in 40 CFR Part 261 pursuant to 3001 of the Solid Waste Disposal Act (U.S.c. 6901 et seq.), as amended.
- (d) *Highway*. A way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.
  - (e) *Motor Vehicle* means a Passenger Motor Vehicle, truck, camper, recreational vehicle, motorcycle, motor scooter, golf cart, or other similar self-propelled vehicle. "Motor Vehicle" does not mean a motorized wheelchair, bicycle, tricycle or quadricycle.
  - (f) *Passenger Motor Vehicle* means any motor vehicle designed, used and maintained primarily for the transportation of persons for noncommercial purposes. A passenger motor vehicle does not include a motor vehicle designed and equipped for human habitation, excepting a motor vehicle to which a camper has been temporarily attached.
  - (g) *Public Nuisance Vehicle* means any vehicle that is abandoned, wrecked, dismantled, or any inoperative part thereof that is on public or private property, not including highways, and that creates a condition tending to reduce the value of private property, promotes blight and deterioration, invites plundering, creates fire hazards, constitutes an *attractive* nuisance endangering the health and safety of minors, harbors rodents and insects, or jeopardizes health, safety, and general welfare is a public nuisance.
  - (h) *Wrecked Vehicle* means any vehicle that is damaged to such an extent that it cannot be operated upon the highway. A vehicle which has been wrecked in a traffic accident, and which has been removed from the roadway to a storage facility, but which has not been claimed by its owner, will not be considered an abandoned vehicle for the purposes of this program.

#### **SECTION 1006.      Enforcing Officer**

This Chapter shall be enforced by the [name of Tribe] Tribal Police with support from the [name of Tribal Agency] and any other Abatement Officer designated by the Tribal Council. Any Tribal Police Officer may issue a citation for violation of this Chapter.

#### **SECTION 1007.      Immediate Hazards**

In the event that an Abandoned Vehicle presents an immediate hazard to the health or safety of the general public, the [name of Tribe] Tribal Police may immediately move the vehicle to a secure location and proceed with enforcement under this Chapter.

#### **SECTION 1008.      Notice of Violation**

- (a) Any Tribal law enforcement officer discovering an unauthorized Vehicle left unattended or inoperable within a public right of way or traveled waterway within the exterior boundaries of the [Reservation/Rancheria] shall place on the vehicle a

readily visible notice that the Vehicle is subject to impoundment under Tribal Code of Laws if it remains in the right of way for more than 48 hours. The Notice shall also state (1) the date and time the Notice was placed on the vehicle; (2) the identity of the officer who placed the Notice and; (3) the event identification number.

- (b) Upon discovery of an unauthorized motorized vehicle left unattended or inoperable within a public right of way, a law enforcement officer shall check any readily available records to learn the identity of the Vehicle owner. Upon determining ownership, an officer shall make a reasonable attempt to contact the owner.

#### **SECTION 1009. Hazardous Waste Notice**

In the event that the citing officer observes any fluids or other hazardous wastes stored in, leaking from or otherwise attendant to the Abandoned Vehicle the citing officer shall so indicate in the citation and will request inspection by [name of Tribal Agency]. Note: All hazardous materials found within an abandoned vehicle are assumed to be hazardous wastes.

Upon receipt of such a request for inspection, [name of Tribal Agency] shall inspect the site and take such enforcement and abatement action as are appropriate under its authority in **Chapter 10 of this Ordinance**. Such action will be consistent with the appropriate laws, ordinances, and policies of the [name of Tribe] Tribe as well as State, Federal, and local hazardous materials laws and regulations pertaining to such sites.

#### **SECTION 1010. Vehicle Impoundment and Disposal**

Upon expiration of the 48 hour period following posting of the notice of violation, and where the responsible party has not voluntarily abated the violation or filed an appeal, the vehicle abatement officer is authorized to remove the vehicle, or part(s) thereof, to a designated location, garage, authorized auto crusher, or other legal facility. Said facility shall store the vehicle for a minimum of fifteen (15) days prior to destruction and disposal. During such time, the legal owner of the vehicle may recover the vehicle by providing proof that all fees and penalties associated with abatement and due to any department of the [name of Tribe] Tribe have been paid and paying in full reasonable fees associated with the storage of the vehicle after impound.

- (a) Unauthorized Vehicles in a Public Right of Way
  - (1) Any law enforcement officer discovering an unauthorized Vehicle left unattended or inoperable within a public right of way or traveled waterway within the exterior boundaries of the [Reservation/Rancheria] shall place on the vehicle a readily visible notice that the Vehicle is subject to impoundment under Tribe Code of Laws if it remains in the right of way for more than 48 hours. The Notice shall also state 1) the date and time the Notice was placed on the vehicle; 2) the identity of the officer who placed the Notice and; 3) the event identification number.
  - (2) Towing and Impoundment - If a Vehicle remains in a public right of way for more than 48 hours from the posting of Notice under (a)(1), a law enforcement officer may take custody of the Vehicle and arrange for its impoundment.

- (3) Emergency removal of Vehicles in the Public Right of Way - Any Vehicle left within a public right of way and causing a hazard may be immediately taken into custody and impounded by a law enforcement officer.
- (b) Impoundment of Vehicles not Within a Public Right of Way
  - (1) Any Vehicle not located within a public right of way or traveled waterway within the exterior boundaries of the [Reservation/Rancheria] without the consent of the Landowner and which remains in such location for more than 24 hours, or which causes damage to real or personal property shall be subject to impoundment as hereinafter provided.
  - (2) Vehicles subject to impoundment may be impounded at any convenient place on the [Reservation/Rancheria] by any Landowner on which the vehicle is located or by a law enforcement official.
  - (3) Within 24 hours after impoundment, the individual who impounded the Vehicle (or their representative) shall register the Vehicle with the Tribal Court. The registration shall show a description of the Vehicle as well as the name and address of the registered owner (if such information is ascertainable).
- (c) Hearing
  - (1) Notice -Upon registration with Tribal Court, the court shall cause a notice of hearing to be served as hereinafter provided upon the owner of the Vehicle impounded.
  - (2) Time - The hearing shall be at a time and place indicated in the notice and not less than five days after service or mailing of the notice as provided herein, whichever is later, where the owner is known, unless the owner requests and is granted an earlier date, and not less than fourteen (14) days after posting and publication of the notice as provided herein where the owner is unknown.
  - (3) Failure to Appear - Failure of the owner to appear at the hearing shall be deemed an admission to all material allegations in the notice and the validity of the Vehicle impoundment.
  - (4) Hearing - The owner may be represented by counsel at the hearing. If the owner does not appear at the hearing, or after hearing, it appears to the court by a preponderance of the evidence that the impounded Vehicle was negligently or willfully driven on the [Reservation/Rancheria] outside of designated or traveled roads without the consent of the Landowner on whose land the Vehicle was found, the court shall order the Vehicle sold no earlier than fourteen (14) days from the date of the hearing to pay all damages caused by the impounded Vehicle unless the owner shall appear prior to the sale date and pay all such damages including costs of the hearing accrued to date. If the court finds that the Vehicle was impounded in bad faith, the individual impounding the Vehicle shall be responsible for paying

all costs of the impoundment.

- (5) Service of Notice - (a) Known Owners. If the owner of the Vehicle impounded is known, the notice of hearing may be personally served or sent by certified mail. (b) Unknown Owners. If the owner of the Vehicle is unknown, the notice shall be served by posting notice in two public places on the [Reservation/Rancheria] and by publication at least 7 days prior to the hearing.
  - (6) Contents of Notice - (a) The notice of hearing shall state that the Vehicle has been impounded, the reason for the impoundment, a general description of the place where the Vehicle was located, the present location of the Vehicle impounded, the fact that damages may be assessed, and information concerning the hearing in the following form:
- (d) Sale of Vehicle
- (1) Sale - If, within the time allotted in this Title, the owner of impounded Vehicle impounded has not appeared, or if after hearing in which the validity of the impoundment was sustained, the damages and charges accrued have not been paid to the presiding judge, the court shall order the Vehicle sold. The Vehicle may be sold at a private sale subject to the approval of the court or otherwise after notice and on such terms and conditions as the court shall require.
  - (2) Proceeds - After deducting all costs of sale and court costs, the proceeds of the sale shall be applied to the satisfaction of the judgment assessed in this action for damages and shall be paid over in that amount to the individual suffering damages from the Vehicle's improper operation. The surplus, if any, shall be transmitted to the owner if known. If unknown, the surplus shall be transmitted to the general fund of the Tribe.
- (e) Abandoned Vehicles—Removal and Disposal
- (1) Purpose - The purpose of this section is to provide a means for removal of Abandoned Vehicles from public and private property within the [Reservation/Rancheria].
  - (1) Persons Authorized to Dispose of Abandoned Vehicles - (a) Private Property: Any Landowner or their designated representative may request authorization for the disposal of any a Vehicle on the landowner's property in accordance with this Chapter. (b) Public Property: A Police Officer or other person authorized by the Police may request authorization for the disposal of any Abandoned Vehicle on public property.
  - (2) Inspection and Information from Law Enforcement - Prior to removal of a Vehicle under this Chapter, a Landowner must have the Vehicle certified as an Abandoned Vehicle by a law enforcement official. Upon the request of a Landowner, the law enforcement officer shall: (a) Conduct an inspection of the Vehicle; (b) Record the make and vehicle identification number and

license number of the Vehicle if available; (c) Verify that the approximate value of the Vehicle is equivalent to or less than the approximate scrap value of the Vehicle; and (d) Provide the registered and legal owner's name and address for the Vehicle.

- (3) Notice to Owner - (a) Upon receiving information on the Vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners by certified mail. The notice shall contain the following information: A description of the Abandoned Vehicle, the person's name attempting to dispose of the Abandoned Vehicle, the present location of the Abandoned Vehicle, including address if applicable, that the vehicle must be removed within 15 days from the date of mailing of the Notice to Owner, and that if the vehicle is not removed, the registered owner may be held responsible for up to two times the cost of removing the Abandoned Vehicle. The Notice shall be signed by the person seeking to dispose of the Abandoned Vehicle.
- (4) Liability for Failure to Remove Vehicle - If, after mailing notice to the registered owner, he registered owner fails to remove the Abandoned Vehicle the costs of removal may be recovered as follows:
  - (5) (a) The Landowner of the property upon which the Abandoned Vehicle is located is entitled to recover from the Abandoned Vehicle's registered owner any costs incurred in the removal of the Abandoned Vehicle. (b) If the Abandoned Vehicle is located on public property, the Police shall be entitled to recover twice the costs incurred in the removal of the Abandoned Vehicle.
- (6) Order for Disposal - (a) The Landowner shall present the Officer Inspection Report and proof that the registered and legal owner were sent notice as required under this Chapter to the Tribal Court. (b) Upon proof that the Landowner has sent notice to the registered and legal owner, that 15 days have elapsed since the Notice was sent, that the Vehicle has not been removed within the required 15 days, and that the Vehicle has been inspected as required by (e)(3) above, the Tribal Court shall authorize the disposal of the Abandoned Vehicle on an ex-parte basis.
- (7) Non-Owner Identifiable Abandoned Vehicles - (a) If an Abandoned Vehicle does not have any identification markings such as a license plate or a Vehicle Identification Number, the Landowner may immediately dispose of the Abandoned Vehicle upon approval under (e)(7). It shall not be necessary to send notice or wait the fifteen days otherwise required by this Chapter.
- (8) Release of Liability - A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made under this Chapter.

## **SECTION 1011. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in Chapter 10 of this Ordinance, the following penalties may be applied in cases when provisions of this Chapter are violated.

### **General Rationale for Violation Level:**

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1004 Prohibitions and Exemptions					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Vehicle left abandoned on private property in excess of prohibition time period.	I			
(b)	Vehicle left abandoned on public property in excess of prohibition time period.	II			
(c)	Vehicle left abandoned on public roadway.	II			
(d)	Vehicle left abandoned on public roadway constitutes a hazard.	II			



# MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE

## CHAPTER 7 - ABOVEGROUND STORAGE TANKS

SECTION 1001.	Title .....	2
SECTION 1002.	Findings .....	2
SECTION 1003.	Purpose.....	2
SECTION 1004.	Exemptions .....	2
SECTION 1005.	Definitions.....	2
SECTION 1006.	Presence and Use of ASTs .....	3
SECTION 1007.	Authority of the Tribal Environmental Program.....	3
SECTION 1008.	Standards for ASTs.....	4
SECTION 1009.	Compliance Monitoring for ASTs.....	5
SECTION 1010.	Prohibition of Unauthorized Storage Tanks .....	6
SECTION 1011.	AST Permits and Requirements for Tank Installers .....	6
SECTION 1012.	Inspection of Tank Systems.....	6
SECTION 1013.	Aboveground Storage Tank Release Report. ....	8
SECTION 1014.	Enforcement and Fines.....	8

## **SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Aboveground Storage Tanks Chapter” or “Aboveground Tanks Chapter” of the [name of Tribe] Tribal Environmental Protection Ordinance.

## **SECTION 1002. Findings**

The Council finds and declares that:

- (a) It wishes to regulate Aboveground Storage Tanks (AST) and administer AST operation, installation and removal as it deems necessary to protect the health and safety of tribal members and protection of the environment.
- (b) All AST use on the [Reservation/Rancheria] is subject to review and approval by [name of Tribal Agency]

## **SECTION 1003. Purpose**

The health and safety of our tribal members and their families and the quality of our air, land and water resources is an overriding cultural imperative for the Council and Tribe. Many Tribal members use the animals, plants, and aquatic resources on the [Reservation/Rancheria] for ceremonial, traditional, and subsistent purposes. The use of ASTs on lands within the exterior boundaries of the [Reservation/Rancheria] has been determined, by the Council and people, to be a potential threat to the health and safety of human, plant, and animal life, and to have potentially detrimental impacts upon the quality of the [Reservation/Rancheria]'s air, land and water resources.

Pursuant to enacting AST codes for environmental protection on Tribal lands, the [name of Tribe] Tribe hereby requires commercial operators to adhere to Tribal Code as it may be developed consistent with regulations promulgated in the California Aboveground Petroleum Storage Act (California **Health and Safety Code 25270**) and to regulations promulgated in 40 CFR Part 112, Spill Prevention Control and Countermeasure Plan.

## **SECTION 1004. Exemptions**

## **SECTION 1005. Definitions**

- (a) *Above Ground Storage Tank (AST)* means any receptacle 55 gallons or larger completely above the ground surface for the containment of **any regulated substance**.
- (b) *Closure or to close* means the process of properly removing or filling in place an aboveground storage tank (or AST) that is no longer in service.
- (c) *Exemption* means the Council maintains the authority to exempt through open session and/or public hearing any provisions of this Chapter on a case by case basis.
- (d) *Installation or to install* means the placement of an aboveground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the aboveground storage tank system that store or convey regulated substances. Installation also includes repair or modification of an aboveground storage tank system through such means as tank relining or the repair or replacement

of valves, fillpipes, piping, vents or in-tank liquid-level monitoring systems. Installation also means repair or modification of a leak detection device that is external to and not attached to the aboveground storage tank system and the installation, repair, or modification of a cathodic protection system.

- (e) **License** means a license issued by the [name of Tribal Agency] to conduct the installation or closure of aboveground storage tank systems or to inspect aboveground storage tank systems and the installation of leak detection devices or cathodic protection systems.
- (f) *Operator* means a person in control of or having responsibility for the operation, maintenance, or management of an aboveground storage tank (or AST) system.
- (g) *Owner* means a person who owns an aboveground storage tank system used for the storage, use, or dispensing or regulated substances. "Owner" also means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. It does not include a person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.
- (h) *Person* means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), joint venture, sole proprietorship, or governmental or private entity.
- (i) **Regulated substance** means a *hazardous substance* which means:
  - (1) Any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act; or
  - (2) Any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal Environmental Protection Agency pursuant to section 102 of CERCLA; or
  - (3) Any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act; or
  - (4) Any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and (v) Any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.
- (j) *Release* means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

#### **SECTION 1006. Presence and Use of ASTs**

ASTs are used by residences, for example heating oil, and also in commercial enterprises. Commercial enterprises may be either legal or illegal. These tanks are not directly subject to federal requirements as are underground storage tanks (USTs). However, in the interest of public health and safety the [name of Tribe] Tribal Council deems it necessary to regulate these tanks to the extent that public safety and the environment are protected.

#### **SECTION 1007. Authority of the Tribal Environmental Program**

[name of Tribal Agency] may:

- (a) Administer and enforce the provisions of this Chapter and any rules implementing it as pertains to the use and storage of hazardous substances and petroleum products in ASTs;
- (b) Determine whether filings made as a condition of this Chapter that originate from Federal, State, or local agencies with regard to hazardous substances or storage tanks be made to the Tribal enforcement agency or to the federal, state or local agency.
- (c) Enter and inspect the premises or any appurtenant property on the [Reservation/Rancheria] of an owner or operator to insure compliance with laws or rules pertaining to ASTs. The [name of Tribal Agency] may also have access to and copy any records relating to regulated substances at commercial enterprises for the purposes of determining compliance with this Chapter;
- (d) Abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling of any regulated or hazardous substances including petroleum products.

#### **SECTION 1008. Standards for ASTs**

- (a) Residential/Private Use Tanks
  - (1) Residential and private use tanks shall be used and maintained in a manner, consistent with any applicable Tribal Code, which protects the health and safety of the Tribe members and the environment. This includes adherence to any applicable Tribal Fire Codes and the National Fire Protection Association (NFPA) codes applicable to residences, including the use and maintenance of heating oil tanks. Among relevant codes are the most recent versions of NFPA 30 and 31.
- (b) Commercial Use Tanks Containing Petroleum Products
  - (1) Commercial use ASTs shall be used in a manner that protects the health and safety of the Tribe members and the environment. Federal and State statute address large tanks and large quantities of petroleum products at single locations. Commercial enterprises shall notify [name of Tribal Agency] of the existence of all ASTs, including those containing petroleum products located on-site. [name of Tribal Agency] may require compliance with:
    - (A) The Federal Spill Prevention Control and Countermeasure (SPCC) Rule 40CFR112 which applies to specific locations where petroleum products are present in excess of 1,320 gallons. Commercial operations with quantities of petroleum on-site may be required to file an SPCC Plan following the federal standard or as developed by [name of Tribal Agency] with the Tribe. Relevant measures included in the SPCC Plan are:
      - a) Inspection and Maintenance of Equipment
      - b) Secondary Containment, Spill Prevention and Control
      - c) Response to Spills and Notifications

d) Training

(c) Tanks Containing Regulated Substances

- (1) Residential and commercial use tanks containing regulated substances shall be used and maintained in a manner, consistent with any applicable Tribal Code, which protects the health and safety of the Tribe members and the environment. Owner/operators of such tanks shall notify [name of Tribal Agency] of their existence. The [name of Tribal Agency] may also have access to and copy any records relating to regulated substances for the purposes of developing rules under this code or enforcing this code, rules adopted under it, or a permit or an order issued under this code;
- (2) Owner/Operators of commercial use tanks shall notify [name of Tribal Agency] of the existence of all ASTs and containers (in excess of 55 gallons) of regulated substances, including those containing petroleum products located on-site. [name of Tribal Agency] may develop codes as it deems necessary within the framework of the following statute:

The following State Program is specific to the State of California. The Tribe should develop its program consistent with its location and criteria.

California State Health and Safety Code Chapter 6.95, Hazardous Materials Business Plan. The HMBP includes three elements:

- a) Business Activities and Owner/Operator Identification
- b) Chemical Inventory and Site Map
- c) Emergency Response Plan and Employee Training

**SECTION 1009. Compliance Monitoring for ASTs**

- (a) [name of Tribal Agency] may conduct an inventory of sites and locations on the [Reservation/Rancheria] where owners and operators have stored regulated substances in ASTs.
- (b) [name of Tribal Agency] may, as a condition of this Chapter, require the owner or operator of an AST system to develop and file an SPCC Plan with all elements as deemed necessary by the [name of Tribal Agency].
- (c) [name of Tribal Agency] may, as a condition of a permit, require the owner or operator of an AST system to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this code, rules adopted under this code, any order of the [name of Tribal Agency], and permit conditions.
- (d) The [name of Tribal Agency] may require the owner or operator of an AST system to submit reports on such compliance monitoring activities, including notice to the [name of Tribal Agency] of any noncompliance with permit conditions, rules adopted under this code, the provisions of this code, or any orders of the [name of Tribal Agency].

## **SECTION 1010. Prohibition of Unauthorized Storage Tanks**

A person shall not own or operate an AST on the [Reservation/Rancheria] unless he or she complies with the requirements of this code and any rules adopted by the [name of Tribal Agency] for the installation, operation and closure of AST systems.

## **SECTION 1011. AST Permits and Requirements for Tank Installers**

[name of Tribal Agency] may develop requirements for permit issuance and licensed installers similar to those of UST systems as a condition of this Chapter. The AST permit program or license installer program may have the following elements:

- (a) Applications for and issuance of permits;
- (b) Financial Responsibility;
- (c) Requirements for licensed installers;
- (d) Closure requirements;
- (e) Exemptions;

## **SECTION 1012. Inspection of Tank Systems**

The Tribe may contract with the Federal, State or authorized contractors to obtain the services of inspection officials licensed to conduct the Tribes' inspections. State inspection officials acting in this capacity shall act as contractors of the Tribes, not as officials of the State, and the [name of Tribal Agency] shall issue a tribal inspector's license to each such inspector. Any rights, responsibilities, or conditions of tribal inspector's licenses shall be contained in the contract.

- (a) Compliance inspections.
  - (1) [name of Tribal Agency] or any person designated by it, at any reasonable time and upon presentation of credentials, may enter and inspect the property, premises, place or any appurtenant property on the [Reservation/Rancheria] of an owner or operator at any time to insure compliance with tribal and federal laws or rules, permits or orders pertaining to AST systems. [name of Tribal Agency] shall also have access to and copies of any records relating to the AST system.
  - (2) In the course of an inspection under this Section, the employee or person designated by [name of Tribal Agency] may take samples of any substances, including samples from any soil or ground water or samples of any containers or labeling for the substances. If the employee or person designated by the [name of Tribal Agency] takes a sample of any regulated substance, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.
- (b) Installation or closure inspections.

- (1) After being issued a permit (or given [name of Tribal Agency] approval), an owner or operator may obtain an inspection by the [name of Tribal Agency] or any person designated by it instead of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the [name of Tribal Agency] of the date and location of the AST system installation or closure and shall establish with the [name of Tribal Agency] the time when an inspection may be conducted.
- (2) An owner or operator may conduct an installation or closure under this Section only if an inspector is present.
- (3) The owner or operator must pay an inspection fee to the [name of Tribal Agency] to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.
- (4) An owner or operator must keep a copy of an installation inspection report on file for as long as the [name of Tribal Agency] requires by rule. An owner or operator must keep a copy of a closure inspection report for three years after the date of closure.
- (5) Tribal or federal officials, such as health officers, sanitarians, fire officials or other persons designated or hired by the [name of Tribal Agency], may conduct inspections on behalf of the [name of Tribal Agency].

### **SECTION 1013. Aboveground Storage Tank Release Report.**

If an owner or operator of an AST system on the [Reservation/Rancheria] discovers or is provided with evidence that the tank may have released a regulated substance, he or she must immediately notify the [name of Tribal Agency] that a release may exist.

### **SECTION 1014. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in **Chapter 10** of this Ordinance, the following penalties may be applied in cases when provisions of this Chapter are violated.

General Rationale for Violation Level:

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1008 Standards for ASTs					
	Nature of Violation	LEVEL	1st Violation	2nd Violation	HARM
(a)	Failure to adhere to Tribal Fire Code or NFPA Code as applicable	I			
	Failure to maintain tank free of leaks	II			
(b)	Failure to notify Tribal Agency of presence of tank	II			
	Failure to develop and file SPCC Plan if required	II			
	Failure to maintain tank free of leaks	II			
(c)	Failure to notify Tribal Agency of presence of tank	I			
	Failure to file Hazardous Materials Business Plan if required	I			

Section 1009 Compliance Monitoring					
	Nature of Violation	LEVEL	1st Violation	2nd Violation	HARM
(b)	Failure to install equipment, collect samples, maintain records	I			
(c)	Failure to submit required reports	I			

Section 1010 Prohibition of Unauthorized Storage Tanks					
	Nature of Violation	LEVEL	1st Violation	2nd Violation	HARM
(a)	Use of Unauthorized tank	II			

Section 1011 Permits and Requirements for Tank Installers					
	Nature of Violation	LEVEL	1st Violation	2nd Violation	HARM



(a)	Failure to obtain permit for install, close tank	II			
(b)	Failure to have licensed installer for installation or closure of tank if required	II			

Section 1013 Aboveground Storage Tank Release Report					
	Nature of Violation	LEVEL	1st Violation	2nd Violation	HARM
	Failure to immediately notify [name of Tribal Agency] of evidence of tank release	II			

# **MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

## **CHAPTER 8 - UNDERGROUND STORAGE TANKS**

<b>SECTION 1001.</b>	<b>Title .....</b>	<b>2</b>
<b>SECTION 1002.</b>	<b>Findings .....</b>	<b>2</b>
<b>SECTION 1003.</b>	<b>Purpose.....</b>	<b>2</b>
<b>SECTION 1004.</b>	<b>Exemptions .....</b>	<b>2</b>
<b>SECTION 1005.</b>	<b>Definitions.....</b>	<b>2</b>
<b>SECTION 1006.</b>	<b>Authority of the Tribal Environmental Program.....</b>	<b>4</b>
<b>SECTION 1007.</b>	<b>Federal Standards in 40 CFR Parts 280, 281 .....</b>	<b>4</b>
<b>SECTION 1008.</b>	<b>Administrative Rules.....</b>	<b>4</b>
<b>SECTION 1009.</b>	<b>Financial Responsibility .....</b>	<b>5</b>
<b>SECTION 1010.</b>	<b>Compliance Monitoring.....</b>	<b>5</b>
<b>SECTION 1011.</b>	<b>Prohibition of Unauthorized Storage Tanks .....</b>	<b>6</b>
<b>SECTION 1012.</b>	<b>Permits and Requirements for Tank Installers .....</b>	<b>6</b>
<b>SECTION 1013.</b>	<b>Exemptions to Requirement of Licensed Installer .....</b>	<b>6</b>
<b>SECTION 1014.</b>	<b>Applications for Permits .....</b>	<b>6</b>
<b>SECTION 1015.</b>	<b>Licensing of Tank Installers .....</b>	<b>7</b>
<b>SECTION 1016.</b>	<b>Grounds for Denying, Modifying, Suspending or Revoking License .....</b>	<b>7</b>
<b>SECTION 1017.</b>	<b>Inspection of Tank Systems.....</b>	<b>7</b>
<b>SECTION 1018.</b>	<b>Underground Storage Tank Release Report. ....</b>	<b>8</b>
<b>SECTION 1019.</b>	<b>Enforcement and Fines.....</b>	<b>9</b>

## **SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Underground Tanks Chapter” or “Underground Tanks Chapter” of the [name of Tribe] Tribal Environmental Protection Ordinance.

## **SECTION 1002. Findings**

The Council finds and declares that:

- (a) It wishes to regulate UST and administer UST operation, installation and removal within the exterior boundaries of the [name of Tribe] Indian Reservation ([Reservation/Rancheria]).
- (b) UST regulation is necessary to maintain environmental integrity, and the health and welfare of the [Reservation/Rancheria] and its residents.
- (c) All UST use on the [Reservation/Rancheria] is subject to review and approval by [name of Tribal Agency].

## **SECTION 1003. Purpose**

The health and safety of our tribal members and their families and the quality of our air, land and water resources is an overriding cultural imperative for the Council and Tribe. Many Tribal members use the animals, plants, and aquatic resources on the [Reservation/Rancheria] for ceremonial, traditional, and subsistent purposes. The use of USTs on lands within the exterior boundaries of the [Reservation/Rancheria] has been determined, by the Council and people, to be a potential threat to the health and safety of human, plant, and animal life, and to have potentially detrimental impacts upon the quality of the [Reservation/Rancheria]'s air, land and water resources.

Pursuant, to the Code of Federal Regulations (CFR) 40 parts 280 and 281, known as the Underground Storage Tank Regulations, there is a jurisdictional need for implementing a [name of Tribe] Tribal Chapter for USTs.

Pursuant to enacting UST codes for environmental protection on Tribal lands, the [name of Tribe] Tribe (Tribe) hereby adopts CFR 40 parts 280 and 281 as the Tribal code for regulation of UST.

## **SECTION 1004. Exemptions**

Any owner or operator of an Aboveground Storage Tank (AST) is exempt from the provisions of this Chapter specific to USTs.

## **SECTION 1005. Definitions**

- (a) *Above Ground Storage Tank (AST)* means any receptacle 50 gallons or larger completely above the ground surface for the containment of any regulated substance.
- (b) *Closure or to close* means the process of properly removing or filling in place an underground storage tank that is no longer in service.
- (c) *Corrective action plan* means a plan or set of plans designed to define the nature, extent, and magnitude of contamination from a release and identify threats to public health, welfare and the environment; and also to describe the work necessary to

investigate, monitor, clean up, restore, abate, mitigate, remove or otherwise respond to and remediate a release. The term "corrective action plan" refers to either or both of two types of plans for responding to a release: a remedial investigation phase work plan or a cleanup phase work plan.

- (d) *Exemption* means the Council maintains the authority to exempt through open session and/or public hearing any provisions of this Chapter on a case by case basis.
- (e) *Installation or to install* means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents or in-tank liquid-level monitoring systems. Installation also means repair or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.
- (f) *License* means a license issued by the [name of Tribal Agency] to conduct the installation or closure of underground storage tank systems or to inspect underground storage tank systems and the installation of leak detection devices or cathodic protection systems.
- (g) *Operator* means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.
- (h) *Owner* means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances. "Owner" also means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. It does not include a person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.
- (i) *Person* means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), joint venture, sole proprietorship, or governmental or private entity.
- (j) *Regulated substance* means a *hazardous substance* which means:
  - (1) Any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act; or
  - (2) Any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal Environmental Protection Agency pursuant to section 102 of CERCLA; or
  - (3) Any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act; or
  - (4) Any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and (v) Any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.
- (k) *Release* means any spilling, leaking, emitting, discharging, escaping, leaching, or dis-

posing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

- (l) *Underground Storage Tank, UST* means any receptacle partially or completely placed under the ground for the storage of any material, including both hazardous and non-hazardous materials.

#### **SECTION 1006. Authority of the Tribal Environmental Program**

[name of Tribal Agency] may:

- (a) Administer and enforce the provisions of this code, any rules implementing it and orders and permits issued pursuant to it;
- (b) Enter and inspect the premises or any appurtenant property on the [Reservation/Rancheria] of an owner or operator at any time to insure compliance with laws or rules pertaining to underground storage tank systems. The [name of Tribal Agency] may also have access to and copy any records relating to regulated substances for the purposes of developing rules under this code or enforcing this code, rules adopted under it, or a permit or an order issued under this Chapter;
- (c) Accept and administer grants from the federal government and other sources; and
- (d) Abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling of any regulated substance.

#### **SECTION 1007. Federal Standards in 40 CFR Parts 280, 281**

Owners and operators of USTs on tribal lands must comply with federal UST regulations.

Environmental Protection Agency (EPA) has developed a series of compliance assistance brochures that provide best management practices to assist compliance. The Federal Standards for USTs include, but are not limited to the following requirements. The associated EPA available publication is listed with subject.

- (a) Demonstrating Financial Responsibility – EPA Publication EPA 510-F-13-001
- (b) Storage Tank Release Detection - EPA Publication EPA 510-F-13-003
- (c) Piping Release Detection - EPA Publication EPA 510-F-13-004
- (d) Overfill Prevention - EPA Publication EPA 510-F-12-003
- (e) Spill Buckets - EPA Publication EPA 510-F-12-001
- (f) Recordkeeping and Notification - EPA Publication EPA 510-F-12-002

#### **SECTION 1008. Administrative Rules**

[name of Tribal Agency] may adopt rules implementing this code. Such rules shall be at least as stringent as federal requirements, and shall include:

- (a) Reporting by owners and operators;
- (b) Financial responsibility;

- (c) Release detection, prevention and corrective action;
- (d) Standards for design, construction, installation, and closure;
- (e) Standards for upgrading existing underground storage tank systems, general operating requirements and maintenance;
- (f) Requirements for issuance, denial, renewal, modification, suspension and revocation of permits for the installation and closure of underground storage tank systems, on the [Reservation/Rancheria] and licenses for installers and inspectors;
- (g) Requirements for examination and training of inspectors and installers;
- (h) Requirements for qualifications of inspectors, use of inspectors and methods for conducting an inspection;
- (i) Development of a schedule of fees, including fees for licenses, license renewals, permits, and inspections;
- (j) Requirements for approval of corrective action plans;
- (k) The time between filing of a permit application with the [name of Tribal Agency] and the installation or closure of a tank;
- (l) A penalty schedule and a system for assessing administrative penalties, notice, and appeals.

#### **SECTION 1009. Financial Responsibility**

Financial responsibility required by this Chapter may be established in accordance with regulations promulgated by the [name of Tribal Agency] by any one, or any combination of, the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the [name of Tribal Agency] and consistent with Federal Regulations for Financial Responsibility for USTs. In promulgating requirements under this subsection, [name of Tribal Agency] is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Chapter.

#### **SECTION 1010. Compliance Monitoring**

- (a) [name of Tribal Agency] may conduct an inventory of sites and locations on the [Reservation/Rancheria] where owners and operators have stored regulated substances in underground storage tanks.
- (b) [name of Tribal Agency] may, as a condition of a permit (or [name of Tribal Agency] approval), require the owner or operator of an underground storage tank system to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this code, rules adopted under this code, any order of [name of Tribal Agency], and permit conditions ([name of Tribal Agency] approval).
- (c) [name of Tribal Agency] may require the owner or operator of an underground storage tank system to submit reports on such compliance monitoring activities, including notice to the [name of Tribal Agency] of any noncompliance with permit

conditions, rules adopted under this code, the provisions of this code, or any orders of the [name of Tribal Agency].

#### **SECTION 1011. Prohibition of Unauthorized Storage Tanks**

A person shall not own or operate an underground storage tank system on the [Reservation/Rancheria] unless he or she complies with the requirements of this code and any rules adopted by the [name of Tribal Agency] for the installation, operation and closure of underground storage tank systems.

#### **SECTION 1012. Permits and Requirements for Tank Installers**

- (a) A person may not install, or close, or cause to be installed or closed, an underground storage tank system on the [Reservation/Rancheria] without a permit issued by the [name of Tribal Agency] as provided in this code.
- (b) In addition, an owner or operator on the [Reservation/Rancheria] must obtain the services of a licensed installer for the installation or closure of an underground storage tank system, unless the installation or closure is:
  - (1) Inspected by the [name of Tribal Agency] , or
  - (2) Exempt as provided in the following Section

#### **SECTION 1013. Exemptions to Requirement of Licensed Installer**

The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, or a tank used for storing heating oil for consumptive use on the premises where stored, shall obtain a permit ([name of Tribal Agency] approval) for the installation or closure of the tank but is not required to obtain the services of a licensed installer.

#### **SECTION 1014. Applications for Permits**

- (a) Before the installation or closure of an underground storage tank system on the [Reservation/Rancheria], the owner or operator or the owner's or operator's designated licensed installer or remover shall file a permit application (or receive approval) with the [name of Tribal Agency] on forms provided by the [name of Tribal Agency]. The [name of Tribal Agency] may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tank system.
- (b) The application must, at a minimum, require the owner or operator to provide information concerning:
  - (1) The date of the underground storage tank system installation or closure;
  - (2) The location of the underground storage tank system installation or closure;
  - (3) The type of construction of the underground storage tank system;
  - (4) The contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and
  - (5) The name of the licensed installer who will be installing or closing the

underground storage tank system or the estimated date for [name of Tribal Agency] inspection if no licensed installer will be installing or closing the underground storage tank system.

- (c) After receipt of a completed application that meets the requirements of this code and any rules adopted, the [name of Tribal Agency] shall issue the permit (or approval). The decision of the [name of Tribal Agency] shall be final and may be appealed as provided Chapter 10 of this Ordinance.

#### **SECTION 1015. Licensing of Tank Installers**

- (a) An installer may not install or close an underground storage tank system on the [Reservation/Rancheria] unless he or she has a valid license issued by the [name of Tribal Agency].
- (b) The [name of Tribal Agency] shall grant an installer a license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the [name of Tribal Agency] or by an authorized agency/contractor and pays the license fee established by [name of Tribal Agency] rule.
- (c) The [name of Tribal Agency] may conduct written examinations to qualify individuals for installer licenses and provide public notice of the examinations.
- (d) An underground storage tank system installer license is valid for up to three years and is subject to periodic renewal as prescribed by [name of Tribal Agency] rule.
- (e) As a condition of renewal, the [name of Tribal Agency] may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

#### **SECTION 1016. Grounds for Denying, Modifying, Suspending or Revoking License**

- (a) The [name of Tribal Agency] may deny, modify, condition, suspend or revoke a license if the installer:
  - (1) Fails to achieve a passing grade on a written examination;
  - (2) Fails to pay a license fee;
  - (3) Commits fraud or deceit in the license application;
  - (4) Has had a similar license suspended or revoked by another jurisdiction; or
  - (5) Violates any tribal, state or federal law, rule, permit or order relating to the installation or closure of an underground storage tank system.
- (b) If the [name of Tribal Agency] modifies conditions, suspends or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may appeal any such action of the [name of Tribal Agency] to the Tribal Court of Appeals as provided in Tribal Code.

#### **SECTION 1017. Inspection of Tank Systems**

The Tribes may contract with the Federal, State or authorized contractors to obtain the services of inspection officials licensed to conduct the Tribes' inspections. State inspection officials acting in this capacity shall act as contractors of the Tribes, not as officials of the State, and the [name of



Tribal Agency] shall issue a tribal inspector's license to each such inspector. Any rights responsibilities, or conditions of tribal inspector's licenses shall be contained in the contract.

(a) Compliance inspections.

- (1) The [name of Tribal Agency] or any person designated by it, at any reasonable time and upon presentation of credentials, may enter and inspect the property, premises, place or any appurtenant property on the [Reservation/Rancheria] of an owner or operator at any time to insure compliance with tribal and federal laws or rules, permits or orders pertaining to underground storage tank systems. The [name of Tribal Agency] shall also have access to and copies of any records relating to the underground storage tank system.
- (1) In the course of an inspection under this Section, the employee or person designated by [name of Tribal Agency] may take samples of any substances, including samples from any soil or ground water or samples of any containers or labeling for the substances. If the employee or person designated by the [name of Tribal Agency] takes a sample of any regulated substance, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

(b) Installation or closure inspections.

- (1) After being issued a permit, an owner or operator may obtain an inspection by the [name of Tribal Agency] or any person designated by it instead of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the [name of Tribal Agency] of the date and location of the underground storage tank system installation or closure and shall establish with the [name of Tribal Agency] the time when an inspection may be conducted.
- (2) An owner or operator may conduct an installation or closure under this Section only if an inspector is present.
- (3) The owner or operator must pay an inspection fee to the [name of Tribal Agency] to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.
- (4) An owner or operator must keep a copy of an installation inspection report on file for as long as the [name of Tribal Agency] requires by rule. An owner or operator must keep a copy of a closure inspection report for three years after the date of closure.
- (5) Tribal or federal officials, such as health officers, sanitarians, fire officials or other persons designated or hired by the [name of Tribal Agency], may conduct inspections on behalf of the [name of Tribal Agency].

**SECTION 1018. Underground Storage Tank Release Report.**

If an owner or operator of an underground storage tank system on the [Reservation/Rancheria] discovers or is provided with evidence that the tank may have released a regulated substance, he or she must immediately notify the [name of Tribal Agency] that a release may exist.

## **SECTION 1019. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in **Chapter 10 of this Ordinance**, the following penalties may be applied in cases when provisions of this Chapter are violated.

General Rationale for Violation Level:

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1015 Federal Standards in 40 CFR Parts 280, 281					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to Demonstrate Financial Responsibility	II			
(b)	Failure to install and/or maintain release detection	II			
(c)	Failure to install and/or maintain piping release detection	II			
(d)	Failure to install and/or maintain overfill prevention	II			
(e)	Failure to install and/or maintain spill buckets	I			
(f)	Failure to maintain required records	II			
	Failure to make required notifications	II			

Section 1018 Compliance Monitoring					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(b)	Failure to install equipment, collect samples, maintain records	I			
(c)	Failure to submit required reports	I			

Section 1019 Prohibition of Unauthorized Storage Tanks					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Use of Unauthorized tank	II			

Section 1020 Permits and Requirements for Tank Installers					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to obtain permit for install, close tank	II			
(b)	Failure to have licensed installer for installation or closure of tank if required	II			

Section 1026     Underground Storage Tank Release Report					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
	Failure to immediately notify [name of Tribal Agency] of evidence of tank release	II			

# MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE

## CHAPTER 8 - GRADING AND EROSION CONTROL

SECTION 1001.	Title .....	2
SECTION 1002.	Findings .....	2
SECTION 1003.	Purpose.....	2
SECTION 1004.	Exemptions .....	2
SECTION 1005.	Definitions.....	2
SECTION 1006.	Activities Requiring Grading Permits or Tribal Agency Approval ..	4
SECTION 1007.	Identification of Environmentally-Sensitive Sites .....	5
SECTION 1008.	Exemptions .....	6
SECTION 1009.	Exceptions to Exemption .....	7
SECTION 1010.	Project Permit (Request for Approval) Application Submittal.....	7
SECTION 1011.	Permit Approval or Disapproval .....	8
SECTION 1012.	Permit Expiration or Revocation.....	8
SECTION 1013.	Soil Erosion and Stormwater Runoff Control Plan.....	9
SECTION 1014.	General Standards for Approval of Soil Erosion and Stormwater Control Plans.....	10
SECTION 1015.	Erosion and Sedimentation Control. ....	10
SECTION 1016.	Maintenance.....	14
SECTION 1017.	Inspections .....	14
SECTION 1018.	Stop–Work Orders and Emergency Actions.....	14
SECTION 1019.	Enforcement and Fines.....	15

## **SECTION 1001. Title**

This Chapter of the [name of Tribe] Tribe Environmental Protection Ordinance shall be referred to as the "[name of Tribe] Tribal Grading and Erosion Control Chapter" or "Grading and Erosion Control Chapter".

## **SECTION 1002. Findings**

The Council finds and declares that:

- (a) It wishes to regulate activities that result in disturbance of soil with adverse impact on soil stability, erosion rates and water quality within the exterior boundaries of the [name of Tribe] Indian [Reservation/Rancheria].

## **SECTION 1003. Purpose**

- (a) The purpose of this chapter is to prevent the pollution, impairment, or destruction of a natural resource or the public trust on the [Reservation/Rancheria] unless:
  - (1) there is no feasible and prudent alternative, and
  - (2) the activity is consistent with the promotion of the public health, safety and welfare in light of the Tribe's paramount concern for protection of the natural resources.
- (b) Specific objectives include the following:
  - (1) To prevent accelerated soil erosion and to control stormwater runoff resulting from man-made earth changes proposed within the [Reservation/Rancheria], both during and after construction.
  - (2) To assure that the [name of Tribe] Tribe and Tribal members control the volume and rate of stormwater runoff originating from the [Reservation/Rancheria] so that surface water and groundwater quality is protected, soil erosion is minimized, and flooding potential reduced.
  - (3) To develop specific penalties for violations regarding this chapter.

## **SECTION 1004. Exemptions**

Exemptions from the requirement to apply for a permit (or for [name of Tribal Agency] approval) of projects involving earth changes are delineated in Section 1004, "Exemptions".

## **SECTION 1005. Definitions**

The following terms and phrases shall have the meaning given herein, unless the context otherwise requires:

- (a) *Accelerated soil erosion*-- the increased movement of soils that occurs as a result of human activities and development.
- (b) *Best management practice (BMP)*--managerial practice, structural device, measure, facility, or activity which helps to achieve soil erosion and stormwater management control objectives at a designated site.

- (c) *Erosion Control Plan*--Soil Erosion and Stormwater Runoff Control Plan
- (d) *Earth change*--a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the Tribal lands. The term “earth change”, as used in this Chapter, shall not apply to the practice of plowing or tilling soil for the purpose of crop production.
- (e) *Earth material*-- is any rock, natural soil or fill or any combination thereof.
- (f) *Environmentally sensitive sites*--includes site with one or more of the following characteristics:
  - (1) Sites where driveways have been planned with a slope greater than ten percent (10%) (10 feet horizontal to 1 foot vertical).
  - (2) Sites with heavy clay soils (commonly termed hardpan clay), and soils classified in hydrological Group D in the soil surveys published by the Soil Conservation Service, U.S. Department of Agriculture.
  - (3) Sites which may cause sedimentation or flood onto adjacent land areas if earth changes occur.
  - (4) Sites located within one hundred (100) feet of a wetland.
  - (5) Other environmentally sensitive sites identified by the Tribal government as having a high potential for environmental degradation including flooding as a result of soil erosion or stormwater runoff on-site or off-site.
- (g) *Erosion*--see “soil erosion” definition.
- (h) *Excavation*--is the mechanical removal of earth material.
- (i) *Fill*--a deposit of fill material placed by mechanical means.
- (j) *Fill material*--soil, sand, gravel, clay, or any other non-polluting material.
- (k) *Floodplain*--the area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal channel. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the 100–year floodplain or 500–year floodplain.
- (l) *Grading*--any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.
- (m) *Land owner/ lessee*--the Tribe or any allottee/lessee of Tribal lands, including subsidiary commissions or entities.
- (n) *Land use*--a use of land which may result in an earth change, including but not limited to subdivision, site condominium, residential, commercial, industrial, recreational, agricultural practices, other development, private and public highway, road and/or stream crossing construction, and drainage construction.
- (o) *Maintenance agreement*--a binding agreement between the Tribal member and the Tribe which sets forth the location and design of best management practices, as well as the terms and requirements for stormwater and erosion control facility maintenance.
- (p) *Protected wetland*--a wetland which meets one or more of the following criteria:

- (1) by a wetland which is within five hundred (500) feet of a lake or stream;
  - (2) a wetland which is five (5) or more acres in size;
  - (3) a wetland set aside for protection by the Tribal Council; or
  - (4) a wetland subject to regulation the federal government.
- (q) *Sediment*--mineral or organic solid particulate matter that has been removed from its site of origin by: 1) soil erosion; 2) suspension in water; and/or 3) wind or water transport.
  - (r) *Sedimentation*--the process or action of depositing sediment.
  - (s) *Site*--any tract, lot, or parcel of land or combination of tracts, lots or parcels of land proposed for development.
  - (t) *Soil erosion*--the wearing away of land by the action of wind, water, gravity, or a combination thereof.
  - (u) *Soil erosion and stormwater runoff control plan*--maps and written information for a proposed land use or earth change which describe the way in which soil erosion and stormwater runoff will be controlled, during and after completion of construction.
  - (v) *Stop-work order*--a notice issued by [name of Tribal Agency] to the permittee to require the permittee to cease grading or development activities.
  - (w) *Stormwater runoff*--waters from rains falling within a tributary drainage basin, flowing over the surface of the ground or collected in channels, watercourses, or conduits.
  - (x) *Watershed*--a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.

#### **SECTION 1006. Activities Requiring Grading Permits or Tribal Agency Approval**

Except as specified in **Section 1008, "Exemptions"** below no person shall do any earth changes as defined in this chapter without first having obtained a grading permit or received approval from [name of Tribal Agency]. The [name of Tribe] Tribe has adopted the Uniform Building Code Chapter 70, Excavation and Grading. Permit Applicants are required to follow UBC Chapter 70 in designing grading plans.

**NOTE:** The term "Permit" shall refer to an actual permit issued in accordance with this code, or, to an Approval granted by [name of Tribal Agency] designated to administer this program.

**NOTE:** the term "Erosion Control Plan" shall refer to a soil erosion and stormwater runoff control plan required to be submitted with the permit application.

**Regulated Earth Changes.** Earth changes requiring a grading permit from [name of Tribal Agency] include the following activities which disturb land within five hundred (500) feet of a lake or stream, except for normal maintenance:

**NOTE:** This is suggested language for requiring a permit when the activity is within a specific proximity to a watercourse. The Tribe should determine its own requirements for issuing permits whether or not proximate to a watercourse.

- (a) Transportation facilities, including streets, access roads, common carrier pipelines, and mass transit facilities, except normal maintenance procedures such as earth or gravel road leveling and minor repairs or alterations to rights-of-way not affecting a lake or stream.
- (b) Site preparation for a single-family residence and multiple family residential developments.
- (c) Tribal buildings and service facilities, including but not limited to government buildings and facilities, commercial buildings, schools, vehicle maintenance facilities, and salt storage facilities.
- (d) Recreational facilities, including but not limited to parks, golf courses, beaches above the ordinary high water mark, campgrounds or trails, including Tribal or private facilities.
- (e) Utilities, including but not limited to underground pipelines or cables, except pole installation, service line and other earth changes of a minor nature, and emergency repairs.
- (f) Oil, gas, and mineral wells. Access roads to well production sites shall be subject to permit requirements.
- (g) Non-agricultural water impoundments and waterway construction or improvements.
- (h) Logging activities including access roads, except the principal area where the trees are being cut
- (i) Mining activities including access roads, except the principal area where minerals are being removed.
- (j) Earth changes on agricultural lands, including road construction and building construction, but not including plowing and tilling of soil for the purpose of crop production.
- (k) Earth changes on private land including road construction and terracing.
- (l) Earth changes for environmentally-sensitive residential sites.
- (m) Industrial or commercial use development sites, regardless of size, location, or environmental sensitivity.
- (n) All developments which includes housing, commercial, subsidiary enterprises, individual or other entity developments within the Tribe's jurisdiction regardless of size, location, or environmental sensitivity.
- (o) All multi-family developments regardless of size, location or environmental sensitivity.

#### **SECTION 1007. Identification of Environmentally-Sensitive Sites**

- (a) Tribal land owners and lessees are responsible for determining whether their sites are environmentally-sensitive as defined in **Section 1005, "Definitions"**.
- (b) [name of Tribal Agency] shall be requested to provide assistance to land owners and



lessees in identifying earth changes and environmentally sensitive sites subject to review by the [name of Tribal Agency].

#### **SECTION 1008. Exemptions**

Except as provided herein and in **Section 1009, "Exceptions to Exemptions"** below, a grading permit is not required for the following:

- (a) When approved by [name of Tribal Agency], grading in a self-contained area if there is no danger to private, public property, damage to the environment, fisheries habitat, or other aquatic resources or no runoff concerns or indications of wet areas.
- (b) An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than 5 feet (1.5 m) after the completion of such structure.
- (c) Cemetery graves.
- (d) Solid waste disposal sites regulated by the State Integrated Waste Management Act.
- (e) Excavations for wells, tunnels or utilities.
- (f) Surface mining in conformance with applicable regulations.
- (g) Exploratory excavations under the direction of soil engineers, geologists or engineering geologists.
- (h) An excavation which (1) is less than 2 feet (0.6 m) in depth, or (2) which does not create a cut slope greater than 5 feet (1.5 m) in height and steeper than 1 unit vertical in 1½ units horizontal (66.7% slope), and does not exceed 50 cubic yards (38.3 m<sup>3</sup>) on any one lot and does not obstruct a drainage course nor encroach upon a wetland.
- (i) A fill less than 1 foot (0.3 m) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (0.9 m) in depth, which is not intended to support structures, which does not exceed 50 cubic yards (38.3 m<sup>3</sup>) on any one lot and does not obstruct a drainage course nor encroach upon a wetland.
- (j) Routine tilling and field preparation activities associated with agricultural operations and those activities involved in the production of crops or livestock for wholesale trade.
- (k) Routine vegetation maintenance.

The following language is specific to the State of California. The Tribe should develop language as appropriate to its location and criteria.

- (l) Timber harvest and management activities when approved and carried out consistent

with the **California Forest Practices Act**. Activities which are not exempt from the local regulation pursuant to **Public Resources Code Section 4516.4** are subject to these regulations. Permits are required for private roads within timber harvest areas where the proposed improvements are in excess of the minimum road standards required by the **California Department of Forestry** for timber harvesting activities.

- (m) Routine road and drainage facility maintenance to include culverts.

#### **SECTION 1009. Exceptions to Exemption**

The following language is specific to Humboldt County, State of California. The Tribe should develop language as appropriate to its location and criteria.

- (a) The above exemptions shall not apply to activities conducted:
  - (1) within a Streamside Management Area or other wet area unless exempted by the provisions of **the Humboldt County Streamside Management Area Ordinance (see Zone Regulations Section 314-61.1)**;
  - (2) in areas of moderate to high geologic instability as delineated upon the County Geologic Hazards Maps; and
  - (3) which require a floodplain development permit.
- (b) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction.
- (c) Whenever [name of Tribal Agency] determines that any existing excavation or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from [name of Tribal Agency], shall within the period specified therein repair or eliminate such excavation or embankment so as to eliminate the hazard and be in conformance with the requirements of this code.

#### **SECTION 1010. Project Permit (Request for Approval) Application Submittal**

- (a) Each application for a grading permit shall be accompanied by a plan in sufficient clarity to indicate the nature and extent of the work. The plans shall give the location of the work, the name of the owner and the name of the person who prepared the plan. The plan shall include the following information:
  - (1) General vicinity of the proposed site.
  - (2) Dimensions, grade and depth of cut and fill, shown on a plot plan with typical cross-sections
  - (3) Method and standard for compaction'

- (4) Location of structures, utilities, existing and proposed drainage-ways, and major vegetation of the property. Show these features on adjacent property if they might be affected or are within 30 feet of the proposed grading. A map shall show or provide by narrative the location of discharge points to the nearest natural area (creek, ponds, fivers, etc.)
- (5) Description of erosion control methods.
- (6) If applicable, excess soil stockpile locations or disposal plans.
- (b) Grading in excess of 5,000 cubic yards shall be performed in accordance with an approved grading plan prepared by a civil engineer, and shall be designated as “engineered grading.” Engineered grading requirements are enumerated in the Uniform Building Code Chapter 70, “Excavation and Grading.”
- (c) Road Construction. The construction of roads on the [Reservation/Rancheria] shall make the best effort to meet the goals and guidelines of this chapter for soil erosion and stormwater runoff on all new roads constructed after the adoption of this chapter. Stormwater retention/detention shall be compatible to the current highway safety guidelines, maintenance practices, and general drain laws that govern natural surface water flow, concentration, location and/or velocity.
- (d) Permit applications shall be submitted to [name of Tribal Agency]. The permit application shall be made prior to the start of any earth change including construction of access roads, driveways, cutting of trees/timber and stump removal, or grading.
- (e) Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of these procedures regardless of any later actions taken toward compliance. Soil test borings, vegetative cutting for land surveys, percolation tests, and normal maintenance shall not be considered a start of work under these regulations.

#### **SECTION 1011. Permit Approval or Disapproval**

- (a) If [name of Tribal Agency] determines that the proposed project and Erosion Control Plan complies with the standards of this chapter, a permit shall be issued specifying the work approved. If the proposed plan does not comply with these standards, the permit request shall be modified or denied.
- (b) Upon request, [name of Tribal Agency] shall furnish the applicant or other interested person with a statement in writing of the reasons for permit denial or approval.
- (c) If necessary, [name of Tribal Agency] may request additional information from the applicant.

#### **SECTION 1012. Permit Expiration or Revocation**

- (a) Permits shall terminate automatically if construction has not commenced within one year of the date of issuance. The permit holder may request a one year extension if there are valid reasons to support such an extension.
- (b) Any permit issued by [name of Tribal Agency] under this chapter may be revoked or suspended, after notice and an opportunity for a hearing, for any of the following

causes:

- (1) A violation of a condition of the permit.
- (2) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or Erosion Control Plan.
- (3) A change in a condition that requires a temporary or permanent change in the activity.

#### **SECTION 1013. Soil Erosion and Stormwater Runoff Control Plan.**

A soil erosion and stormwater runoff control plan (Erosion Control Plan) shall be prepared for any earth change subject to permit requirements. The plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during construction and after construction is completed.

[name of Tribal Agency] shall develop a guidance document that specifies the degree of information required depending on the nature of the project, complexity and the degree to which it may affect runoff, impact erosions rates and impact water quality. An example of increasing amount of information required dependent on the nature of the project is shown below:

- (a) Level I (Minimal)
  - (1) Location of the site.
  - (2) Site characteristics, such as location of lake, stream, wetlands or existing buildings.
  - (3) Proposed earth change activity.
  - (4) Erosion control measures proposed. If there are severe development limitations in regards to the existing site characteristics, the enforcement officer(s), may require that a residential or environmentally sensitive plan be prepared by one of the following registered professionals: civil engineer, land surveyor, architect, and/or landscape architect.
- (b) Level II
  - (1) A map or maps at a scale of not more than two hundred (200) feet to the inch or as otherwise determined by the enforcement officer(s) , including a legal description and site location sketch which includes the proximity of any proposed earth change to lakes or streams or both; predominant land features; and contour intervals or slope description.
  - (2) A soils survey or written description of the soil types of the exposed land area contemplated for the earth change.
  - (3) A description and the location of the physical limits of each proposed earth change.
  - (4) Location of all lakes, streams, and protected wetlands partially or completely contained within the boundaries of the site or within fifty (50) feet of the site boundary.
  - (5) A description and the location of all existing and proposed on-site

stormwater management facilities and measures.

- (6) The timing and sequence of each proposed earth change.
  - (7) A description and the location of all proposed temporary soil erosion control facilities and measures.
  - (8) A description and the location of all proposed permanent soil erosion control facilities and measures.
  - (9) Stormwater runoff calculations.
  - (10) A program for the continued maintenance of all permanent soil erosion and stormwater runoff control facilities and measures as listed in **Section 1016, "Maintenance"**.
  - (11) Other information which the enforcement officer(s) requires to review the impact of the proposed earth change in relationship to the standards and requirements of this chapter.
- (c) Level III.
- (1) The permittee shall submit the same information as in **Section 1013, (b) "Soil Erosion and Stormwater Runoff Control Plan"** of this chapter and may need to submit additional information including but not limited to the following: off-site watershed boundaries; existing and proposed easements, and proposed drainage system including water movement onto and out of the proposed plat.

#### **SECTION 1014. General Standards for Approval of Soil Erosion and Stormwater Control Plans.**

- (a) [name of Tribal Agency] shall approve or disapprove Erosion Control Plans in accordance with published guidelines.
- (b) All earth changes subject to review under requirements of this chapter shall be designed, constructed, and maintained to provide for the detention of flood waters and to protect water quality.
- (c) Measures required for soil erosion and stormwater runoff control shall take into consideration natural features, proximity of the site to lakes, streams, and protected wetlands, extent of impervious surfaces, potential for soil erosion and flooding, and the size of the site.
- (d) Stormwater conveyance, storage, and infiltration facilities shall be designed to provide for non-erosive velocities of stormwater runoff.
- (e) Alterations to natural drainage patterns shall not create or increase downstream flooding or sedimentation.

#### **SECTION 1015. Erosion and Sedimentation Control.**

These minimum erosion and sedimentation control standards shall apply to all projects requiring building, grading, and development permits to prevent sedimentation or damage to onsite and

offsite property. These standards shall be incorporated into the project design and shall be adhered to during project construction:

(a) General Guidelines

- (1) Minimize soil exposure during the rainy season by proper timing of grading and construction.
- (2) Retain trees and natural vegetation to stabilize hillsides, retain moisture, reduce erosion, minimize siltation and nutrient runoff and preserve scenic qualities.
- (3) Vegetate and mulch denuded areas to protect them from winter rains.
- (4) Divert runoff away from steep, denuded slopes or other critical areas with barriers, berms, ditches or other facilities.
- (5) Design grading to be compatible with adjacent areas and result in minimal disturbance of the terrain and natural land features.
- (6) Limit construction, clearing of vegetation and disturbance of the soil to areas of proven stability. Mitigate geologic hazards and adverse soil conditions when they are encountered.
- (7) Reduce sediment transport off the site to the maximum extent feasible through the use of Best Management Practices (BMPs).
- (8) Propose a new or modified erosion and sediment control technique if the technique is preferred and meets the intent of these regulations. Obtain approval from the County prior to implementation.
- (9) Conduct frequent site inspections to ensure that control measures are working properly and to correct problems as needed.
- (10) Employ other means of erosion and sediment control as required by [name of Tribal Agency] as applicable.

(b) Sediment Control

- (1) Use sediment basins, silt traps, or similar measure to retain sediment transported by runoff water onsite.
- (2) Collect and direct surface runoff at non-erosive velocities to the common natural watercourse of the drainage area.
- (3) Avoid concentrating surface water anywhere except swales or watercourses.
- (4) Prevent mud from being tracked onto the public roadway by traveling over a temporary gravel construction entrance or washing off vehicle tires before entering a public or private driveway.

(c) Slope Construction

- (1) Minimize length and steepness of slopes by benching, terracing or constructing diversion structures.
- (2) Preserve, match, or blend cuts and fills with the natural contours and

undulations of the land.

- (3) Round sharp angles at the top and sides of cut and fill slopes.
- (4) Maintain cut and fill slopes at less than two-to-one (2:1, run: rise) slope unless a geological and engineering analysis indicates that steeper slopes are safe and erosion and sediment control measures can successfully prevent erosion.
- (5) Where a cut or fill slope occurs between two lots, make the slope a part of the downhill lot if possible.

(d) Protection of Watercourses and Drainage Inlets

- (1) Prepare drainage-ways to handle concentrated or increased runoff from disturbed areas by using appropriate lining materials or energy absorbing devices to reduce the velocity of runoff water.
- (2) Trap sediment-laden runoff in basins to allow soil particles to settle out before flows are released to receiving waters, storm drains, streets or adjacent property. This standard is not mandatory for grading conducted between April 15 and October 15 and when the site is fully winterized and stabilized prior to October 15. Remove trapped sediment to a suitable location on-site or at a disposal site approved by the County.

The following language is specific to Humboldt County, State of California. The Tribe should develop language as appropriate to its location and criteria.

- (3) Do not grade or drive equipment in a Streamside Management or Other Wet Areas except as allowed through the **County Streamside Management Area Ordinance**.
- (4) Deposit or store excavated materials away from watercourses.
- (5) Protect all existing or newly installed storm drainage structures from sediment clogging.
- (6) Use straw bales, filter fabric wraps and drainage inlet protections in a manner that does not cause additional erosion or flooding of a roadway.

(e) Disposal of Excavated Materials

- (1) Stockpile topsoil on the site for use on areas to be revegetated.
- (2) Place stockpiled soil in locations, so that if erosion occurs, it will not contribute to offsite sediment discharge.
- (3) Protect stockpiled soil promptly through the use of appropriate BMPs to reduce the risk of erosion and sediment transport. Apply mulch or other protective coverings on stockpiled material that will be exposed through the winter season.

- (4) Dispose of excavated material not used at a suitable location on-site or at a location approved by the County.
- (f) Dust Control
  - (1) All construction areas, including disposal sites, shall be treated and maintained as necessary to minimize the emission of dust. Maintenance shall be conducted as necessary to prevent a nuisance to offsite properties.
  - (2) All construction sites, including driveways, shall be maintained as necessary to minimize the emission of dust and prevent the creation of a nuisance to adjacent properties.
- (g) Revegetation
  - (1) Apply temporary seeding and mulching to denuded areas prior to October 15 unless the project is conditioned otherwise.
  - (2) Establish a permanent vegetative cover on denuded areas not otherwise stabilized. Permanent vegetation ground cover must control soil erosion satisfactorily and survive severe weather conditions.
  - (3) Retain a vegetative barrier whenever possible around property boundaries.
  - (4) Use self-sustaining, non-invasive plants that require little or no maintenance and do not create an extreme fire hazard.
  - (5) Use native plant species whenever feasible.



#### **SECTION 1016. Maintenance**

- (a) All soil erosion and stormwater runoff control facilities and measures shall be maintained in accordance with permit conditions.
- (b) The person(s) or Tribal department responsible for maintenance shall be designated in the Erosion Control Plan or in the permit application submitted to [name of Tribal Agency]. Options include:
  - (1) The owner or lessee of the property.
  - (2) The Tribal department, provided that provisions for financing necessary maintenance are included in the deed restrictions or other contractual agreements.
  - (3) [name of Tribal Agency] may set up a drainage district.
- (c) [name of Tribal Agency] will make the final decision of what maintenance option is appropriate in a given situation. Natural features, proximity of site to lakes, streams and protected wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision.

#### **SECTION 1017. Inspections**

- (a) If, upon inspection, site conditions are found not to be as stated in the permit or approved Erosion Control Plan, the permit will be invalid. No earth disrupting work shall be undertaken, or continued, until revised plans have been submitted and a valid permit issued.
- (b) Requests for revisions must be submitted in writing to and approved by [name of Tribal Agency] before being effective unless approved by the field inspector on the site. If approved, a revised site plan shall be submitted for review and approval.

#### **SECTION 1018. Stop–Work Orders and Emergency Actions**

- (a) If necessary to assure compliance with the permit requirements, standards, and other provisions of this chapter, or to protect public health, safety and welfare, [name of Tribal Agency] may issue a stop-work order for the purpose of preventing or minimizing accelerated soil erosion, stormwater runoff, or other conditions posing imminent and substantial danger to public health, safety, welfare, or natural resources.
- (b) If necessary to protect public safety or water resources, including lakes, streams, protected wetlands, and other receiving bodies of water, [name of Tribal Agency], or Tribal department designated by the Tribal Council, may initiate emergency action to abate imminent and substantial danger and risk.
- (c) Except as otherwise provided through maintenance agreements, the land owner/lessee may be held responsible for reimbursing the Tribe for all costs incurred as a result of emergency action, including administrative costs, provided that a finding is made that the land owner/lessee violated provisions of this chapter, a permit, or an approved maintenance agreement.

- (d) The stop-work order, when issued, shall require all specified earth change activities to be stopped.
- (e) If [name of Tribal Agency] determines that soil erosion and sedimentation of the waters regarding this Tribe has or will reasonably occur from a parcel of land in violation of this chapter, it may seek to enforce the chapter by notifying the person who owns the land or leases the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of specific soil and sedimentation control measures which, if implemented by the land owner or lessee, would bring the owner or lessee into compliance.
- (f) A person who owns land or leases land subject to this chapter shall implement and maintain soil erosion and stormwater runoff control measures in conformance with this chapter within ten (10) days after the notice of violation has been given as specified in subsection above.

### **SECTION 1019. Enforcement and Fines**

In addition to the enforcement authority, provisions, and process contained in Chapter 9 of this Ordinance, the following penalties may be applied in cases when provisions of this chapter are violated.

General Rationale for Violation Level:

- Level I
- Level II

HARM means harm to public welfare (Health, Safety) and/or negative impact on environment

Section 1006 Activities Requiring Grading Permits or Agency Approval					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to apply for Permit or Agency Approval for work requiring Permit or Approval.	II			

Section 1007 Identification of Environmentally-Sensitive Areas					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to determine site is within environmentally - sensitive area prior to start of work.	II			

Section 1009 Exceptions to Exemption					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to eliminate hazard as determined by Agency within specified period of time.	II			

Section 1015 Erosion and Sedimentation Control					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM

(a)	Failure to follow Control Measures as determined applicable and incorporated as condition of permit.	I			
-----	--	---	--	--	--

Section 1016 Maintenance					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to maintain control facilities and measures in accordance with permit.	I			

Section 1018 Stop-Work Orders and Emergency Actions					
	Nature of Violation	LEVEL	1 <sup>st</sup> Violation	2 <sup>nd</sup> Violation	HARM
(a)	Failure to stop work following issuance of Order	II			
(b)	Failure to implement control measures within 10 days following notice from Agency	II			

# **MODEL TRIBAL ENVIRONMENTAL PROTECTION ORDINANCE**

## **CHAPTER 10 - [NAME OF TRIBE] TRIBE ENFORCEMENT POLICIES**

SECTION 1001. Title .....	2
SECTION 1002. Purpose.....	2
SECTION 1003. Primary Jurisdiction .....	2
SECTION 1004. Jurisdiction .....	2
SECTION 1005. Inspection Authority .....	2
SECTION 1006. Other Agencies.....	2
SECTION 1007. Enforcement Policy.....	2
SECTION 1008. Enforcement Process .....	3
SECTION 1009. Categorical Exclusions .....	5
SECTION 1010. Citations .....	5
SECTION 1011. Monetary Civil Fines or Penalties.....	6
SECTION 1012. Civil Penalties.....	6
SECTION 1013. Civil Damages and/or Injunctive Actions.....	6
SECTION 1014. Criminal Prosecution .....	6
SECTION 1015. Criminal Penalties .....	6
SECTION 1016. Court Action and Injunctions .....	6
SECTION 1017. Cleanup and Abatement .....	6
SECTION 1018. Immediate Hazards .....	8
SECTION 1019. Depredation of Natural Resources .....	8
SECTION 1020. Lien on Property .....	8
SECTION 1021. Enforcement Costs.....	8
SECTION 1022. Restitution.....	8
SECTION 1023. Community Service .....	9
SECTION 1024. Remedies Cumulative .....	9
SECTION 1025. Enforcement by Federal Agencies.....	9
SECTION 1026. Environmental Protection Fund .....	10

The intent of this Chapter is to provide a full selection of enforcement provisions that may or may not apply to all Tribes. Tribes should select the provisions that best meet their compliance enforcement goals.

**SECTION 1001. Title**

This Chapter shall be referred to as the “[name of Tribe] Tribal Enforcement Chapter” or “Enforcement Chapter” of the [name of Tribe] Tribal Environmental Protection Ordinance.

**SECTION 1002. Purpose**

The purpose of this Chapter is to standardize enforcement processes and options.

**SECTION 1003. Primary Jurisdiction**

The Tribal Court is the court of primary jurisdiction for violations occurring under this Ordinance.

**SECTION 1004. Jurisdiction**

The applicability of this Ordinance shall extend to all persons within the exterior boundaries of the [Reservation/Rancheria]. This Ordinance overrides and superseded any previously approved or applicable rules and regulations and orders of the Tribe.

**SECTION 1005. Inspection Authority**

For purposes of carrying out this Ordinance, the [name of Tribe] Tribe Environmental Program [name of Tribal Agency], or its designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the [name of Tribe] Tribal Court for inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.

**SECTION 1006. Other Agencies**

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; and
- (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 [Reservation/Rancheria], provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

**SECTION 1007. Enforcement Policy**

It is the policy of the [name of Tribe] Tribe to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Indian lands, resources or harm to the health, safety or welfare of the Tribal population.

It is also the policy of the [name of Tribe] Tribe, consistent with the principles of due process, to provide effective procedures for enforcement.

#### **SECTION 1008. Enforcement Process**

[name of Tribal Agency] is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance.

Investigations of such violations by [name of Tribal Agency] shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the [Reservation/Rancheria].

- (a) The written complaint shall be submitted on a form developed by [name of Tribal Agency] and shall include, at a minimum, the following information:
  - (1) name of the complainant;
  - (2) date and time of the alleged violation;
  - (3) location of the alleged violation; and
  - (4) a brief description of the factual basis for the complaint
- (b) The written complaint must be submitted to [name of Tribal Agency], during normal business hours, within six (6) months of the alleged violation.
- (c) [name of Tribal Agency] 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.

Following an investigation, if [name of Tribal Agency] determines that a violation has occurred, [name of Tribal Agency] 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:

- (a) 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 the environment and comply with this Ordinance;
- (b) Issue a warning of violation, in the form of a letter from [name of Tribal Agency] 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 [name of Tribal Agency] may take if the alleged violator does not take positive corrective action;
- (c) Assess a civil fine or penalty as described in **Section 1011, “Monetary Civil Fines or Penalties,”** against the alleged violator, following the procedures set out in the section below; and/or
- (d) 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 section below.

The following procedures shall govern enforcement actions taken pursuant to sections above:

- (a) [name of Tribal Agency] shall issue a notice of violation, describing with particularity the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.
  - (1) The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
  - (2) The notice shall include a warning that if the person does not respond within seven (7) business days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.
- (b) 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 [name of Tribal Agency] on the proposed enforcement action described in the notice of violation.
  - (1) If a hearing is requested, [name of Tribal Agency] 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 [name of Tribal Agency] that the proposed enforcement action will result in great financial loss or harm to person or property before [name of Tribal Agency] is required to hold a hearing, [name of Tribal Agency] may hold a hearing immediately, or may delay or reverse any enforcement action until [name of Tribal Agency] holds the requested hearing.
  - (2) If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
- (c) At any hearing before [name of Tribal Agency], the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.
- (d) Within fifteen (15) days of the hearing, [name of Tribal Agency] shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
- (e) [name of Tribal Agency] shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail,

return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.

The decision of [name of Tribal Agency] on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning [name of Tribal Agency]'s decision.

- (a) The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
- (b) The violator and [name of Tribal Agency] shall have the opportunity to present oral arguments at the hearing.
- (c) The written record from the administrative hearing before [name of Tribal Agency], together with all papers and requests filed in the proceeding before [name of Tribal Agency], shall constitute the exclusive record for decision on appeal.
- (d) The Tribal Court shall set aside [name of Tribal Agency]'s decision only upon a finding that [name of Tribal Agency]'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 Tribal Court shall issue a written decision on the appeal.
  - (1) The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.
- (f) Decisions of the Tribal Court are final.

[name of Tribal Agency] and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by [name of Tribal Agency] and/or upheld by the Tribal Court on appeal.

This Ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred as a result of a violation of this Ordinance.

#### **SECTION 1009. Categorical Exclusions**

The Tribal Council may by regulation exclude categories of uses, activities or projects from requirements of this Ordinance for substantial and widespread economic and social impacts.

#### **SECTION 1010. Citations**

The provisions of this Ordinance shall be enforced by [name of Tribal Agency]. Any [name of Tribal Agency] employee, Tribal Public Safety Officer, or any person officially appointed by the Council in consultation with the Director of [name of Tribal Agency] may issue the following for violations:

Cease Orders, Citations, or Notices of Violation: Upon determination that any person is violating the provisions of this Ordinances, a cease order, citation, or notice of violation will be served.



It shall be a civil offense, for which a fine of not less than \$100.00 shall be assessed, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe carrying out this Ordinance.

#### **SECTION 1011. Monetary Civil Fines or Penalties**

The maximum monetary civil fine or penalty that may be imposed for a violation of this Ordinance is the maximum permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, as amended. Tribal Council by resolution and without amending this Ordinance may adjust the minimum monetary civil fine or penalty amounts specified in this Ordinance.

#### **SECTION 1012. Civil Penalties**

Any person violating any provision of this Ordinance may be assessed a civil penalty by the Tribal Court not to exceed \$5,000.00 per occurrence of violation, plus \$1,000.00 per day until the violation is remediated, plus associated costs.

#### **SECTION 1013. 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 [Reservation/Rancheria], [name of Tribal Agency] or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

#### **SECTION 1014. Criminal Prosecution**

Notwithstanding any of the provisions stated herein, the [name of Tribe] Tribe reserves the option to seek criminal prosecution of any person in violation of this Ordinance for violation of any applicable criminal law by the appropriate authorities. Any person, including Tribal members and non-Tribal members, who violates this Ordinance shall be subject to prosecution in Tribal Court.

#### **SECTION 1015. Criminal Penalties**

Any individual violating any provision of this Ordinance may be guilty of a crime. All criminal violations will be referred to the U.S. Environmental Protection Agency for further action.

#### **SECTION 1016. Court Action and Injunctions**

Upon failure of any person to comply with any provisions of this Ordinance, the Council, by and through its attorney, shall petition a court of competent jurisdiction for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, and to levy such fines in accordance, as the facts may warrant.

#### **SECTION 1017. Cleanup and Abatement**

Any person who is found in violation of this Ordinance shall be liable for all costs associated with or necessary to clean up, abate or remove said pollutants, waste materials, and abate any resulting

environmental contamination of the [Reservation/Rancheria] to their conditions that existed immediately prior to the violation. If environmental contamination is present additional cleanups shall be overseen by [name of Tribal Agency] and will comply with the [name of Tribe] [reference cleanup standards for contaminated properties that are currently in effect]. Cleanups shall be considered complete upon review and approval by [name of Tribal Agency].

#### **SECTION 1018. Immediate Hazards**

In the event that a violation of this Ordinance creates an immediate hazard to the health or safety of the general public, or environmental, the [name of Tribe] Tribal Police may immediately secure location and proceed with enforcement under this Ordinance.

#### **SECTION 1019. Depredation of Natural Resources**

A person commits the offense of Depredation of Natural Resources if the person:

- (a) Commits an offense defined in this Ordinance, and
- (b) Knowingly, intentionally, or recklessly uses a poison, chemical, or other hazardous substance within the [Reservation/Rancheria] or on Tribal lands, and By such use may cause any of the following:
  - (1) Creation of a serious hazard to humans, wildlife, or domestic animals, or
  - (2) Degradation or harm to the environment or natural resources, or
  - (3) Pollution of an aquifer, spring, river, or body of water.

Each potential hazard or harm to humans or a distinct natural resource shall constitute a separate offense, regardless of whether the harm arises from the same occurrence.

#### **SECTION 1020. Lien on Property**

Any Tribal Court order finding a violation under this Ordinance and imposing monetary fines or penalties, restitution, or other money judgment may be recorded as a judgment lien on the violator's interest in real and personal property.

#### **SECTION 1021. Enforcement Costs**

Any reasonable cost associated with the enforcement of an order issued pursuant to this Ordinance may be assessed by the Tribal Court against the violator. This may include, but is not limited to, document reproduction costs, filing fees, and attorney fees and costs.

#### **SECTION 1022. Restitution**

The Tribal Court, when finding a violation under this Ordinance, may:

- (a) Order restitution;
- (b) Order the defendant to reimburse the [name of Tribe] Tribe and any federal, state, or local government concerned, for the costs incurred by such entity for the eradication or cleanup associated with the violation by the defendant, or on premises or in property that the defendant owns, resides, or does business in;
- (c) Order the defendant to reimburse the [name of Tribe] Tribe for any costs incurred by Tribal law enforcement for enforcement actions associated with a violation of this Ordinance by the defendant; and
- (d) Order restitution to any person injured as a result of the offense through direct and proximate harm or, if the injured person is deceased, to that person's estate.

Any reasonable cost associated with the enforcement of an order issued pursuant to this Ordinance may be assessed by the Tribal Court against the violator. This may include, but is not limited to, document reproduction costs, filing fees, and attorney fees and costs.

#### **SECTION 1023. Community Service**

Individuals cited under this Ordinance may request community service in lieu of fines based upon financial hardship. Such requests shall be made in writing to the Tribal Court. Upon review of the citation and any information supplied by the responsible party, the Tribal Court may, at its discretion, allow for community service to be performed in lieu of payment due. In the event that community service is offered, no less than one hour of community service shall be ordered for every ten dollars so waived.

In determining the amount of community service to be performed, the Tribal Court may take into account any concurrent citations issued under this or other Ordinances of the [name of Tribe] Tribe. The [name of Tribe] Tribal Court shall determine the manner in which the community service shall be performed. Such manner may include but not necessarily be limited to working for the [name of Tribe] Tribe Environmental Program in which case the responsible party shall be given thirty days to contact the [name of Tribe] Tribe Environmental Program and make arrangements to perform the service. In order to accommodate persons of limited physical capacity, the Court may arrange for other appropriate service to be performed, which may include cleanup of illegal dumpsites, other outdoor labor, paperwork or other indoor labor, or services performed for other departments, such as tutoring Tribal youth, donating fish to the elders food program, or other tasks as the Court may find appropriate.

Should the responsible party fail to make arrangements to perform community service, or to appear to perform or complete community service within ninety days from the ruling in Tribal Court, the [name of Tribe] Tribe Environmental Program shall refer the matter to the Tribal Prosecutor's Office for refilling the original charges in Tribal Court for collection of the original amount owed in relation to the citation as well as any other sanctions deem proper and necessary.

#### **SECTION 1024. Remedies Cumulative**

Any and all remedies provided in this Ordinance shall be deemed cumulative. The Tribal Police, or authorized official, shall in addition thereto have the right to exercise and enforce all rights and remedies otherwise created or existing, including the right of injunction, the right of abatement of nuisances, the right of action for damages, and the right of prosecution for violation of any of the provisions of this Ordinance.

#### **SECTION 1025. Enforcement by Federal Agencies**

Ability to request enforcement by state or federal agencies of their respective laws and regulations governing solid or hazardous waste handling, treatment, disposal or releases where those laws and regulations may be applicable.

**SECTION 1026. Environmental Protection Fund**

Any funds collected through this Ordinance shall be deposited into the Environmental Protection Fund of the [name of Tribe] Tribe. The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the [Reservation/Rancheria], promoting environmental projects, and furthering environmental education for tribal members and residents of the [Reservation/Rancheria].