



RESIGHINI RANCHERIA

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RESOLUTION NO: 2003-41
DATE APPROVED: December 17, 2003

RESOLUTION TO ADOPT THE RESIGHINI RANCHERIA TRIBAL
SOLID WASTE DISPOSAL ORDINANCE NUMBER 04-2003.

WHEREAS, The Resighini Rancheria is a federally recognized Indian Tribe and exercises tribal powers of self-government under the authority; of the Indian Reorganization Act of 1934 (48 Stat. 9670); and,


WHEREAS, The Resighini Rancheria is eligible for all rights and privileges afforded to federally recognized Indian Tribes; and,

WHEREAS, The members of the Resighini Rancheria have a primary interest in the protection, control and conservation of the natural resources of the Rancheria, and the quality of all of our natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the people of the Rancheria; and,

WHEREAS, Pursuant to federal law as determined by the U.S. Supreme Court, the Resighini Rancheria 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 within the Reservation; and,


WHEREAS, Regulation or elimination of all illegal dumping and disposal of solid waste onto the lands and into the waters of the Resighini Rancheria is necessary at this time in order to maintain the quality of our natural resources for their beneficial use by members of the Resighini Rancheria and by residents and guests of the Reservation.

NOW THEREFORE BE IT RESOLVED THAT, the Business Council hereby adopts the Resighini Rancheria Tribal Solid Waste Disposal Ordinance Number 04-2003, effective this December 17, 2003.




CERTIFICATION

This is to certify that Resolution 2003-41 was approved at a duly noticed meeting of the Resighini Rancheria Tribal Business Council on December 17, 2003, at which a quorum was present and that this Resolution was adopted by a vote of 4 FOR 0 AGAINST 0 ABSTAIN. This Resolution has not been rescinded or amended in any way.



RICK R. DOWD
Tribal Chairman

12-17-03
Date



ATTESTOR

12-17-03
Date

**RESIGHINI RANCHERIA
TRIBAL SOLID WASTE DISPOSAL ORDINANCE
Number 04-003**

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RESIGHINI RANCHERIA TRIBAL SOLID WASTE DISPOSAL ORDINANCE

Section 1 - Short Title, Findings and Purpose

101 Short Title: This Ordinance shall be known as the Tribal Solid Waste Disposal Ordinance of the Resighini Rancheria.

102 Findings: The Business Council of the Resighini Rancheria hereby finds as follows:

- (A) The increasing volume and variety of solid waste and hazardous waste being illegally dumped on and generated on the Rancheria and the often inadequate existing methods of managing solid waste and hazardous waste are creating conditions that threaten the public health, safety and welfare of tribal members and residents of the Rancheria by contributing to land, air and water pollution, to the production of flies, rodents and litter, to the waste of dwindling natural resources, and to the general deterioration of the Rancheria environment.
- (B) The Yurok People of the Resighini Rancheria have a primary interest in the protection and control of the land and other natural resources affected by the improper disposal of solid waste within the Resighini Rancheria, and the quality of such land and other natural resources must be protected to insure the health, economic, aesthetic and cultural well-being of the Rancheria community.
- (C) Open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies and pollutes the land, air and water of the Rancheria.
- (D) Inadequate and environmentally unsound practices for the disposal or use of solid waste and hazardous waste have created greater amounts of soil, air and water pollution and other problems for public health and the environment on the Rancheria. The traditional methods of solid waste and hazardous waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.
- (E) 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 *Strate v. A-1 Contractors* 117 S.Ct. 1404 (1997), the Resighini Rancheria 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 illegally dumping waste material on the Rancheria.

- (F) 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 §44202 requires agreements between tribes and the State of California for solid waste disposal facilities located on Indian lands within the State.
- (G) 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 Resighini Rancheria, to the environmental quality of the Rancheria and to the conservation of natural resources.
- (H) Disposal of solid waste and hazardous waste in or on the land without careful planning and management will present a danger to public health and the environment.
- (I) Methods are available to separate recoverable materials from solid waste. The recovery and conservation of such materials can produce numerous benefits to the Resighini Rancheria and the United States, including economic benefits in the way of savings realized by conserving material in order to reduce the value or quantity of materials that ultimately become solid waste.
- (J) It is in the best interest of the Resighini Rancheria and the residents of the Rancheria to establish and maintain a comprehensive tribal solid waste management policy, the objectives of which will be to manage and control solid waste and to prohibit the introduction of hazardous waste into the Rancheria in order to 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.
- (K) Such protection of Reservation resources is not adequately provided for under existing legislation, and such protection will be furthered by the passage, adoption and implementation of this Ordinance.

103 Purpose: The general purposes of this Ordinance are to:

- 1) 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 and all Tribal lands of the Rancheria;
- 2) protect fundamental Tribal cultural, ceremonial, religious, fishery, and economic stability of residential, agricultural, commercial, industrial, forest, wetlands, riparian and environmentally sensitive lands within the exterior boundaries of the Rancheria;
- 3) prevent the deterioration of the environment, standard of living, quality of life, health, safety and welfare of all persons within the exterior boundaries and all Tribal

- lands of the Rancheria;
- 4) provide and promote Tribal environmental protection and services within the Rancheria and to regulate environmental activities under principles of Tribal sovereignty; and
- 5) 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.

104 Authority and Scope:

Authority: This Tribal Solid Waste Disposal Ordinance is hereby adopted by the Business Council pursuant to Article V, Section 3 of the Tribe's Constitution authorizing the Business Council to undertake such actions.

Scope: The provisions of this Ordinance 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 Tribe, including such activities conducted by non-members of the Tribe or on privately owned lands. Activities to be regulated hereunder include but are not limited to:

- (A) Landfills and open dumps;
- (B) Storage of animal waste;
- (C) Automobile graveyards and junkyards;
- (D) Landfilling of sludge or septic system waste;
- (E) Individual, residential, industrial, commercial or agricultural sewage treatment facilities; and
- (F) Construction and operation of solid waste transfer stations (SWTS's).
- (G) All other activities that involve the storage, collection, transportation or disposal of solid and/or hazardous waste within the exterior boundaries of the Rancheria.

105 Applicability: Because any violation of this Ordinance or any regulation adopted hereunder 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 hereunder, shall apply to all persons and businesses on the Resighini Rancheria, to all land under the Tribe's jurisdiction, trust or fee, and to all activities in areas with the potential to affect the environment, public health and safety and other

fundamental interests of the Tribe.

106 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 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 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 2 - Definitions

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

"Applicant" means any person who has filed an application with the Resighini Rancheria Environmental Protection Authority (REPA) for approval to store, collect, transport or dispose of solid waste on the Rancheria.

"Aquifer" means any geologic formation capable of yielding a significant amount of potentially recoverable water.

"Beneficial uses" means all lawful uses of waters identified in the Tribal Water Quality Ordinance. Uses may include but are not limited to domestic, commercial, industrial, agricultural, traditional, cultural and recreational, and uses by fish and wildlife for habitat or propagation.

"Business Council" means the governing body of the Resighini Rancheria.

"Closure" means the closure and cleanup/removal of any open dump site or other site on the Reservation where solid waste has been deposited.

"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.

"Composting" means the controlled microbial degradation of organic solid waste yielding a safe and nuisance-free product.

"Construction" means the erection or building of new structures or the acquisition, replacement, expansion, remodeling, alteration, modernization or extension of existing

structures.

“Council or Tribal Council” means the governing body of the Resighini Rancheria.

“Corrective action program” is the corrective action program developed by the owner or operator of a SWTS after a finding by REPA that corrective action is necessary.

“Designated use” means a use that is specified in water quality standards as a goal for a water body segment, whether or not it is currently being attained.

“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.

“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.

“Energy recovery” means the production of energy or energy resources from the handling or disposal of solid waste.

“Enforcement program” means the rules, regulations and procedures adopted by the Business Council to enforce this Ordinance.

“Handling” means collection, transportation, storage, transfer or processing of solid waste or hazardous waste.

“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 name by the EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or if otherwise emitted into the environment.

“Historical uses” means all uses that have historical significance for the Tribe, its people or its members.

“Impervious barrier” means any material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the underlying surface.

“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 closure of any solid waste identified in the Plan.

“Mitigation” means a measure taken to reduce adverse impacts on the environment.

“Open burning” means the combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion; (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and (3) control of the emission of the combustion products.

“Open dump” means any site at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is susceptible to open burning or is exposed to the elements, vectors and scavengers, and includes any facility that fails to satisfy standards found in this Ordinance, Tribal regulations and/or 40 CRF Part 258.

“Operator” means the person to whom the approval to construct and/or operate a solid waste collection system is granted and any person who has filed an application with REPA for such approval.

“Permit” means any authorization, license or equivalent control document issued by REPA under the authority of the Resighini Rancheria regulating and enabling the permittee to engage in permissible activities as provided in this Ordinance.

“Permittee” means a person, including but not limited to an operator, authorized and permitted to engage in permissible activities as provided in this Ordinance.

“Person” means any individual, corporation, partnership, association, agency, municipality, commission or department, including the Resighini Rancheria or other federally-recognized Tribal government.

“Plan” means the Tribe’s Solid Waste Management Plan.

“Pollutant” means any substance that will alter the quality of the waters of the Reservation.

“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.

“Post-closure maintenance” means all activities undertaken at a closed solid waste site to maintain the integrity of containment features and to monitor compliance with applicable performance standards.

“Potential uses” means all uses attainable in the water body, whether or not they are explicitly stated as designated uses in the water quality standards or presently potential uses.

“Processing” means the reduction, separation, recovery, treatment or recycling of solid waste or hazardous waste.

“Quality of the water or waters” means any chemical, physical, biological, bacteriological, radiological and other properties and characteristics of water which affect its use.

“Recoverable” means the capability and likelihood of waste or byproduct being recovered from solid waste for a commercial or industrial use.

“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.

“Recycling” means the process of sorting, collecting, cleansing, treating and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.

“Removal” means the act of taking solid waste or hazardous waste from the place of generation or from which it is stored, deposited or dumped.

“Reservation or Rancheria” means all land, air and water located within the exterior boundaries of the Resighini Rancheria, and all lands under the jurisdiction of the Resighini Rancheria.

“Reservation waters or waters of the Reservation” means any water, surface or underground, contained within, flowing through or bordering upon the Resighini Rancheria or any portion thereof.

“Resighini Rancheria Environmental Protection Authority or REPA” means the Tribal Agency authorized to enforce this Ordinance and the regulations promulgated hereunder.

“Resource recovery system” means a solid waste management system that provides for collection, separation, recycling and recovery of solid waste, including disposal of nonrecoverable waste residue.

“Riparian” refers to land on the banks of a body of water, such as a lake, pond, river or stream.

“Sanitary” means the maintenance of a location or parcel of 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.

“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.

“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.

“Solid waste” means all putrescible and nonputrescible 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.

“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.

“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.

“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.

“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.

“**Toxic materials**” means any chemical or mixture that presents an unreasonable risk or injury to human health or the environment.

“**Transfer/processing station or SWTS**” means a solid waste transfer station, a facility used to receive, temporarily store, process or transfer solid waste directly from smaller to larger vehicles for transport. “Transfer/processing station or SWTS” does not include 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.

“**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.

“**Tribal Court**” means the Resighini Rancheria Tribal Court or any other court recognized by the Business Council as the Tribal Court.

“**Tribal lands**” means all lands over which the Tribe has jurisdiction, joint or several.

“**Tribe’s Solid Waste Disposal Program**” means all the authorities, activities and procedures under this Ordinance, 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, and post-closure assurance requirements.

“**Tribal Water Quality Ordinance**” means Resighini Rancheria Tribal Ordinance Number 01-2002, adopted October 15, 2002 and any amendments thereto.

“**Variance**” means an authorized written permission for a delay or exception in the application of a given law, ordinance or regulation.

“**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.

“**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.

"Water quality criteria" means specific levels of water quality which, if reached, are expected to render a body of water suitable for its beneficial use.

Section 3 – Resighini Rancheria Environmental Protection Authority

301 Designation as Lead Tribal Agency

The Resighini Rancheria Environmental Protection Authority (REPA) shall be the lead agency for implementing this Tribal Solid Waste Disposal Ordinance and for the enforcement of the provisions hereof.

302 REPA Powers and Duties

The REPA shall implement, administer and enforce this Ordinance and the Tribe's solid waste program, pursuant to all of the powers and duties delegated to it herein. The REPA shall also have the following powers and duties:

(A) Develop the Tribe's Solid Waste Management Plan:

The Plan shall include the formation of Tribal policies for all solid waste collection, transportation, handling, treatment and disposal on or off the 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.

The Plan shall also include:

(1) An estimation of the volume and composition of all solid waste which is generated on the Rancheria, and an estimation of the volume and composition of solid waste from sources outside the Rancheria.

(2) A review of the Tribal regulatory systems which are necessary to implement the Tribe's solid waste disposal program, and enforce the Ordinance and rules or regulations promulgated hereunder;

(3) A review of any contracts for the closing of all "open dumps" on the Rancheria, or the removal of solid waste disposed of at "open dumps" on the Rancheria to duly authorized facilities off the Rancheria and an assessment of such costs;

(4) A study of how solid waste will be disposed of on or off the Rancheria, to include the costs for constructing and a transfer station on the Rancheria and an assessment of costs for the collection and transportation of solid waste off the Rancheria.

The Plan may also include any other matters which are relevant for the Tribe's solid waste disposal program.

The REPA shall submit the Plan to the Business Council, in writing, for its review, modification and approval, within twelve (12) months of the enactment of this Ordinance.

(B) Identify and Close All Open Dumps on the Rancheria, Enforcement Action:

It is unlawful to dispose of solid waste on Tribal Lands, wherever situated. Open dumps are prohibited on the Rancheria. The REPA shall identify and shall prohibit the disposal of any solid waste at all "open dumps" on the Rancheria. The REPA shall also take whatever action is necessary to close in a timely manner all "open dumps" on the Rancheria, and REPA shall take timely enforcement action against all persons suspected of unlawfully disposing of solid waste on Tribal Lands.

(C) Issue Solid Waste Disposal Permits:

It is unlawful to operate any solid waste disposal collection service or transfer station without a Tribal Permit. The REPA shall have the authority and responsibility to issue permits for the location, design, construction, operation, closure, post-closure and any other requirements for any solid waste collection service or solid waste transfer station located on the Rancheria.

Section 4 – Hazardous Waste/Solid Waste

401 Prohibitions of Hazardous Waste

In order to protect the limited land, air and water resources of the Rancheria from irremediable hazardous pollution and to protect the health, safety and welfare of all residents on the Rancheria and surrounding communities, receiving, accepting, handling, transporting, treating, storing, composting, processing and disposing of hazardous waste is expressly prohibited on all Tribal lands, except that REPA may permit the establishment of a program for the collection, storage, transfer, transportation and disposal off the Rancheria of hazardous waste generated or found on the Rancheria, subject to such conditions as REPA may impose.

402 Prohibited Materials

Absent a permit issued by REPA, it shall be unlawful to bring any of the following materials onto Tribal lands:

- (1) Radioactive wastes.
- (2) All regulated hazardous materials as defined herein.
- (3) Unregulated small quantity generator hazardous wastes.
- (4) Infectious biomedical wastes which includes human tissue or human anatomical remains.
- (5) Animals or bedding exposed to infective agents.
- (6) Sharps, needles and lancets or any other medical associated wastes.
- (7) Bulk quantities of infectious-type wastes including blood, blood products and body fluids.
- (8) Any materials containing friable asbestos waste from building demolition or cleaning, and any friable asbestos materials.
- (9) Sewage or sewage sludge wastes.
- (10) Bulk liquids of any kind.
- (11) Polychlorinated biphenyls (PCBs).
- (12) Discarded batteries.
- (13) Used oil.
- (14) Previously used 55 gallon drums.
- (15) Explosives.
- (16) Discarded tires.
- (17) Oil or gas exploration wastes.
- (18) Discarded white goods.

- (19) Non-operating motor vehicles of any kind.
- (20) Travel trailers and recreational vehicles more than 10 years old or uninhabitable.
- (21) Refrigerants.
- (22) Pesticides, more than one pint for household purposes.
- (23) Herbicides, more than one quart for household purposes.

403 Prohibition on Disposal in Open Dumps/Landfills

In order to protect the limited land, air and water resources of the Rancheria from irremediable hazardous pollution and to protect the health, safety and welfare of all residents of the Rancheria and surrounding communities, disposal of solid waste in any open dump or landfill is expressly prohibited on all Tribal lands.

404 Prohibition on Open Burning

In order to protect the limited land, air and water resources of the Rancheria from irremediable hazardous pollution and to protect the health, safety and welfare of all residents of the Rancheria and surrounding communities, without a permit issued by REPA, open burning as defined herein is expressly prohibited on all Tribal lands.

405 Storage

- (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 located on Tribal lands.
- (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: Except as provided herein, no owner, occupant, business establishment or agency shall store hazardous waste on Tribal lands. 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.

406 Collection

[RESERVED] This section will reflect the Tribe's solid waste/hazardous waste 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.]

407 Disposal

In order to protect the limited land, air and water resources of the Rancheria from irremediable hazardous pollution and to protect the health, safety and welfare of all residents of the Rancheria and surrounding communities, solid waste disposal and hazardous waste disposal as defined herein is expressly prohibited on all Tribal lands.

Section 5 - Resource Recovery Program

501 Policy and Program

Tribal policy shall be that solid wastes which are reusable shall be recycled if economically feasible. The REPA shall conduct a study regarding the recycling of solid wastes on the Rancheria, as part of the Tribe's Solid Waste Management Plan. Such study shall include an analysis of technological and economically feasible systems for the collection, separation containerization and marketing of solid wastes that are recyclable. The study shall identify potential markets for recyclable solid wastes. The REPA shall present its study to the Business Council within twelve (12) months of the passage of this Ordinance.

Section 6 - Permit and Inspection Program

601 Solid Waste Facility and Transportation Permits

Tribally chartered corporations or agencies, private enterprises and any other persons are required to obtain a permit from REPA to either collect and transport solid waste or to construct or operate a solid waste transfer station (SWTS) on Tribal lands. Any permittee shall be required to comply with this Ordinance, and any rules or regulations promulgated hereunder, all Tribal environmental standards and criteria, all relevant guidance documents, all permit conditions, all

orders issued by the REPA under authority of this Ordinance, 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 SWTS on Tribal lands without first having obtained from the REPA either: (1) a solid waste collection and transportation permit; or (2) a solid waste facility construction and/or operation permit.

Any qualified tribally chartered corporation, agency private enterprise or person may file an application with REPA for a permit to collect and transport solid waste, or to construct and/or operate a SWTS on Tribal lands.

602 Permits for the Construction and Operation of a SWTS

Any application for a permit to construct and/or operate a SWTS must contain all of the following information, tests, and data that are necessary to demonstrate that the permittee will comply with all of the provisions of this Ordinance; the Tribal Water Quality Ordinance; the SWDA; applicable federal law; and all solid waste rules or regulations, technical standards or criteria or applicable guidance documents. In addition, the REPA may require that a permittee acquire or perform such additional information, tests or studies as he/she deems reasonably necessary to demonstrate compliance with this Ordinance.

The permit application to construct and/or operate a SWTS must contain the following minimum information:

- (1) A legal description and area map of the site of the proposed facility.
- (2) A title report showing ownership of the site of the proposed facility and all encumbrances, covenants, conditions, restrictions, reservations to title and easements and rights of way on or across the site.
- (3) Proof that the applicant is the owner or holds an interest or lease in the proposed site; that all taxes, fees and lease payments are current; and if not, that the applicant has a notarized consent of the owner approving the use of the land for the purposes set forth in the application; approval from the Business Council; and if the land is leased or permitted under Title 25 of the United States Code, approval of the Secretary of the Interior or his/her authorized delegate, and a certified copy of the lease or permit, with all exhibits and attachments thereto.
- (4) A general design plan for the facility certified by a professional engineer.
- (5) A map and aerial photograph of the area to be used for the SWTS showing all land use and political jurisdiction within five miles of the SWTS site. The map and aerial

photograph shall be of sufficient scale to show all homes, airports, wells, water ways, topography, roads and other objects that may be affected.

- (6) A report indicating the following:
 - (a) The population and area to be served by the proposed site and life expectancy of the facility;
 - (b) The geological formation, aquifer characteristics and groundwater elevations below the lowest elevation of the site. Such data will be obtained by soil boring and other appropriate means;
 - (c) The source and characteristics of construction material to be used;
 - (d) Reliable data on existing ground water quality within 2,000 feet of the site;
 - (e) Topography of the site and drainage patterns; and
 - (f) Location of the 100 year flood plain as approved by the REPA in relation to the site.
- (7) A design and plan of operation for the facility, certified by a professional engineer, which identifies how the SWTS will meet the standards and criteria of the Ordinance for the location, design, performance, operating standards, groundwater monitoring, and financial assurance requirements
- (8) A financial statement, estimating the cost of construction, operation, closure and of the site, explaining the applicant's financial condition and the applicant's ability to fund the continued operation, closure and post-closure of the site in compliance with the Ordinance.

The REPA shall not issue a solid waste construction and/or operation facility permit unless the Tribe has issued a land use permit, or lease, authorizing the operation of the SWTS facility.

The REPA may issue a solid waste construction and/or operation facility permit, only if it finds, on the basis of information contained in the application and otherwise available to it, and only after conducting a public hearing as specified herein, that the applicant will comply with the Ordinance, Tribal and federal laws, and all rules or regulations, technical standards and criteria, guidance documents and permit conditions.

The REPA must also find that the applicant has the financial and technical ability to construct and/or operate and close the SWTS as required by the Ordinance.

The burden of proof shall rest on the applicant to demonstrate compliance with all Tribal solid waste criteria and requirements. The issuance or denial of any permit by the REPA is completely discretionary. In issuing any permit, the REPA may impose permit conditions which are more stringent than provided under the Ordinance, if such are reasonably necessary. The REPA shall not issue a solid waste construction and/or operation facility permit, unless it is convinced that the primary consideration of the permittee is to prevent environmental damage and protect the public health. The long-term protection of the Tribe's public health, environment and natural resources shall be a critical consideration for the REPA's issuance or denial of a permit.

A solid waste operation facility permit shall be valid for the operation and closure period designated and required for such SWTS, but such permit is subject to revocation, suspension or modification as provided herein. Any condition imposed on any solid waste construction and/or operation facility permit issued by the REPA may only be modified after a public hearing which is duly noticed regarding modification of such permit.

603 Permits for the Collection and Transportation of Solid Waste

As a condition for the issuance of a solid waste collection and transportation permit, the REPA 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 REPA 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 the REPA may require. A renewal may be denied by the REPA for failure of the permittee to properly and timely file such annual report.

Solid waste permits for the collection and transportation of solid waste must be renewed annually by the REPA on a calendar basis. The REPA shall adopt rules and regulations for solid waste collection and transportation on the Rancheria, including the operation of SWTS's, and may impose whatever condition it deems reasonably necessary to protect the environment, and the health, safety and welfare of the Tribe and its members before issuing any permit under this Section.

604 Public Hearing on SWTS Permit Application

No solid waste construction and/or operation facility permit shall be issued unless there has been a public hearing conducted by the REPA at which the applicant and all interested persons shall have an opportunity to present relevant evidence and be heard on whether the permit should be granted, or whether there are any special conditions which should be included in such permit. All

applications for a solid waste construction and/or operation facility permit, including all documentation required for such permit, shall be available for public review and inspection at least sixty (60) days in advance of the hearing. The REPA shall publish weekly notice of such public hearing on each application beginning at least sixty (60) days in advance of the hearing in the most widely circulated newspaper on the Rancheria for three consecutive weeks. The REPA shall also post notice of the public hearing near the proposed permanent site for a SWTS, but viewable to the public, and at all Tribal offices, at least sixty (60) days in advance of the hearing. The REPA may designate issues it deems most relevant for the public hearing in the public notice, but the REPA shall consider all issues which are raised at the hearing. The public hearing shall be continued until all persons have had an opportunity to present their views.

605 Oath and Application Filing Fees

Each report and application filed shall be signed or notarized under oath in a form approved by the REPA. Each application shall be accompanied by a reasonable filing fee established by the REPA to reflect the Tribe's costs of processing the application or preparing an environmental assessment, the public notice and hearing and the costs of technical and legal consultants to review the application, prepare the permit, exhibits and guidance documents.

606 Other Fees and Taxes

In order to recover operating costs, the Tribe may impose reasonable fees on each permittee who constructs or operates a SWTS, or collects and transports solid waste. Any fees to be imposed by the Tribe shall be specifically referred to in each permit. In addition, the Tribe may impose taxes on each permittee who operates a SWTS, or collects and transports solid waste. The payment of such fees or taxes shall be a condition of maintaining such permit.

Section 7 - Closure and Financial Assurances

Section 701 Closure Care Requirements for SWTS's

The owner or operator of a permitted SWTS shall comply with this Section in closing and discontinuing operation of the facility.

The owner or operator must prepare a written closure plan that describes the steps necessary to close a SWTS. The closure plan, at a minimum, must include the following information:

- (1) A description of plan to remove all construction from the site.
- (2) A description of steps to be taken to restore site the as near as practicable to its preconstruction, pre-SWTS use condition.
- (3) A statement regarding where all construction materials are being disposed of

and a statement from the disposal facility that they will accept the material.

- (4) A complete breakdown of the estimated costs of closure.
- (5) A schedule for completing all closure activities.

The owner or operator must notify REPA that a closure plan has been prepared and placed in the operating record by the date of the first receipt of solid waste.

Prior to beginning closure of a SWTS, the owner or operator must notify the REPA that a notice of intent to close the unit has been placed in the operating record.

The owner or operator must begin closure activities no later than 30 days after the date on which the closure plan was submitted to REPA and closure must be completed no later than one hundred eighty (180) days thereafter. During the closure period the owner or operator shall take and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed SWTS.

Following closure the owner or operator must supply the REPA with a certification signed by an independent registered professional engineer that verifies that closure has been completed in accordance with the closure plan, and shall place such certification in the operating record.

703 Financial Assurance Requirements for Closure, Post-Closure and Corrective Action

(A) Financial Assurance for Closure.

The owner or operator of SWTS must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the SWTS should closure ever be required during the operational life of the facility. The owner or operator must notify the REPA that the estimate has been placed in the operating record.

The cost estimate must equal the cost of closing the SWTS as provided in the closure plan.

During the operational life of the SWTS, the owner or operator must annually adjust the closure estimate for inflation.

The owner or operator must increase the closure cost estimate and the amount of financial assurance provided, if changes to the closure plan increase the maximum cost of closure at any time during the operating life. The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Section (C) herein, if the cost estimate exceeds the maximum cost of closure at any time during the operating life of the SWTS. The owner or operator must notify the REPA that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(B) Financial Assurance for Corrective Action.

An owner or operator of a SWTS required to develop a corrective action plan and undertake a corrective action program by REPA must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required by REPA. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the REPA that the estimate has been placed in the operating record.

The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed.

The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or SWTS site conditions increase the maximum cost of corrective action.

The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must notify the REPA that the justification for any reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

The owner or operator of a SWTS required to undertake a corrective action program by REPA must establish, in a manner in accordance Section (C), financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage and financial assurance for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with Section (C).

(C) Allowable Financial Mechanisms.

The Business Council requires that an owner or operator of a SWTS provide financial assurance to ensure that funds necessary to meet the costs of closure and corrective action will be available in a timely fashion when they are needed. There are four mechanisms available to provide financial assurance, including a trust fund; a surety bond; a letter of credit; an insurance policy; or a combination of the four mechanisms. Any mechanism(s) that is/are used by an owner or operator must be approved by REPA, and must be legally valid, binding and enforceable under state, federal and Tribal law.

The financial assurance mechanism(s) must be obtained by the owner or operator before the initial receipt of waste in the case of closure cost estimates; and no later than one hundred twenty (120) days after the corrective action remedy has been approved by REPA.

The REPA must approve the actual financial assurance mechanism(s) and financial assurance agreements that is/are provided by the owner or operator.

The REPA shall also require that liability and property damage insurance coverage be provided by an owner or operator for claims arising from personal injury or property damage, including any claims arising from operation of the SWTS.

If a trust fund mechanism is used, the trustee must be an entity who has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal agency. Trust fund payments must be made as approved by REPA and contained in the trust document. The REPA must approve the terms of any trust agreement which is to be used as a financial assurance mechanism. The trust agreement shall be irrevocable. Trust funds shall only be released to reimburse the owner or operator for closure and corrective action costs actually incurred, but only if sufficient funds remain in the trust to cover the remaining costs.

If any surety bond is used, the surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in federal bonds in Circular 570 of the U.S. Department of the Treasury.

If any letter of credit is used, the issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal agency.

Section 8 - Enforcement Program/Administrative Procedures

- 801 Enforcement Policy:** It is the policy of the REPA to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to Rancheria resources or harm to the health, safety or welfare of the Rancheria population. It is also the policy of the REPA, consistent with the principles of due process, to provide effective procedures for enforcement.
- 802 Enforcement Agency:** The REPA shall be responsible for enforcing the provisions of this Ordinance. Specifically, the REPA shall conduct investigations when a complaint is received by the Business Council, or other Tribal agency, or if REPA believes that a violation of this Ordinance has occurred.
- 803 Enforcement Activities:** Where a written and verified complaint shall be filed with the REPA and reviewed by the REPA alleging that, or where the REPA itself shall have cause to believe that, any person is violating any solid waste regulation or permit condition, the REPA shall cause a prompt investigation to be made.
- 804 Notice of Violation; Cease and Desist Order:** If the REPA finds after an investigation pursuant to Section 803 of this Ordinance that a violation of any regulation or permit

condition exists, the REPA shall promptly notify both the alleged violator and the Business Council in writing.

In the case of an apparent violation of this Ordinance, the REPA is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation.

In the case of a continuing violation or a threatened violation, the REPA is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

Failure to comply with a Cease and Desist Order shall constitute a violation of this Ordinance. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the REPA at an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation of this Ordinance which will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

- 805 Informal Conferences:** The REPA shall afford the alleged violator or his or her representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the REPA determines that there may be either imminent environmental damage to a Rancheria resource or adverse impact upon the health, safety and welfare of the Rancheria population. Informal conferences may be used at any stage in the enforcement proceedings, except that the REPA may refuse to conduct informal conferences with respect to any matter then pending before the REPA or the Tribal court.
- 806 Reports Required:** The REPA shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed and any decisions reached with respect to further enforcement action.
- 807 Enforcement Hearings:** If the alleged violator and the REPA are unable to resolve the matter via an informal conference, the REPA is authorized to conduct adjudicatory hearings to determine if a violation of this Ordinance has occurred. In such a hearing the REPA Investigating Officer shall present the case to the Director, REPA, and two members of the Business Council, hereafter the REPA Hearing Committee, to establish that the person(s) charged has (have) committed a violation of this Ordinance. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative.
- (A) Burden of Proof. The REPA Investigating Officer shall have the burden of proving that a violation of this Ordinance has occurred and that a person charged was

responsible for the violation. The REPA Hearing Committee shall rule that a violation of this Ordinance has occurred if it finds that the charges are supported by substantial evidence and that a preponderance of the credible evidence supports a finding that a violation has occurred.

- (B) Enforcement Orders. Within thirty (30) days after the date of any enforcement hearing, the REPA Hearing Committee shall issue a written decision. If the REPA Hearing Committee determines that a violation has occurred and that the person(s) charged was (were) responsible for the violation, the decision shall include an Enforcement Order.

808 Civil Penalties and Corrective Action: An Enforcement Order shall direct any person(s) found to have committed a violation of this Ordinance to take whatever corrective action the REPA Hearing Committee deems appropriate under the circumstances. An Enforcement Order may impose civil penalties not in excess of in accordance with a schedule of civil penalties prescribed in the Committee's rules. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of this Ordinance does not take corrective action in accordance with the Order within a prescribed time frame. If a person who has been found to have committed a violation does not take corrective action within the prescribed time frame, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the corrective action.

- (A) Emergency Orders. Notwithstanding any other provision of this Ordinance, if the REPA determines that noncompliance with this Ordinance is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Business Council, that it is not practicable to assure prompt protection of the public health, welfare or environment of an administrative or judicial enforcement action under this Part, the REPA may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.
- (B) Revocation of Permit. Failure of any person to comply with any Enforcement Orders will result in an immediate revocation of his or her permit. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties and then petition for reinstatement of the permit with the REPA.

809 Judicial Enforcement: The Tribal Court shall have jurisdiction of all cases and controversies arising under this Ordinance.

- (A) The REPA may request the Business Council to authorize the REPA to file an action in Tribal Court pursuant to this Ordinance for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of this Ordinance (except that any suit against the Tribe or a tribal department or agency shall be for injunctive relief only and not for penalties or other money damages), in any of the following instances:
- (1) whenever a person has violated, or is in violation of, any provision of this Ordinance, including but not limited to a regulation, permit or order issued pursuant to this Ordinance;
 - (2) whenever a person submits false information under this Ordinance or regulations promulgated under this Ordinance; or
 - (3) whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the REPA shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (1) and (2) above.
- (B) Any person who in violation of this Ordinance stores, collects, transports or disposes of any solid waste or hazardous waste within the boundaries of the Rancheria or on other Tribal lands, shall be liable for all costs associated with or necessary to clean up, abate or remove said waste from such Tribal lands and restore the quality of the land and waters of the Rancheria to their condition as they existed immediately prior to the storage, collection, transportation or disposal.

810 Special Provisions for Tribal Departments and Agencies: In any case in which the Business Council or any Tribal agency or department is alleged to have violated the terms and conditions of a solid waste permit, or to have conducted activities without a permit, the REPA shall bring the matter to the attention of President/Chairperson who shall consider taking action to ensure compliance with this Ordinance. If the matter cannot be resolved informally, the REPA shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending a course of corrective action if necessary.

Section 9 – Appeals

901 Judicial Review: Any person who is aggrieved by the issuance or denial of a solid waste permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file an appeal with

the Tribal Court. The Court is authorized to hear such appeal, using the substantial evidence standard of review.

902 Request for Reconsideration: As an alternative to Judicial Review, any person who is aggrieved by the issuance or denial of a solid waste permit without respect to whether that person, corporation or other entity is a party to such permit application, or who is the subject of an Enforcement Order, may file a Request for Reconsideration with the Business Council pursuant to Rules for Hearings Before the Tribal Council Ordinance, Section 4, 4.3. The Business Council shall process such request using the substantial evidence standard of review.

Section 10 - Other Provisions

1001 Severability: If any provision of this Ordinance, or the application thereof, is held invalid, the remainder of this Ordinance, or applications of such provisions, shall not be affected.

1002 Amendments

The Business Council of the Resighini Rancheria reserves the sole right to amend this Tribal Solid Waste Disposal Ordinance and to issue rules affecting all aspects of the Ordinance. Provisions in the Ordinance allow the Business Council full flexibility to enact measures which will benefit the Tribe. The inclusion of these provisions does not necessitate their implementation, but allows the Business Council flexibility to alter the Ordinance according to the evolving needs of the Resighini Rancheria.

1004 Effective Date

This Ordinance shall become effective on December 17, 2003

Section 11 - Sovereign Immunity

1101 Sovereign Immunity Preserved: Nothing in this Ordinance is intended to, nor should be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages from the Tribe.

APPENDIX A
PERMIT APPLICATION FORM
[to be completed by REPA]