



HABEMATOLEL POMO OF UPPER LAKE

TITLE 9. LAND USE

CHAPTER 9.2. SOLID WASTE DISPOSAL

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ARTICLE 1. TITLE

This chapter shall be titled the Habematolel Pomo of Upper Lake Chapter 9.2. Solid Waste Disposal and may be cited as the HPUL Solid Waste Disposal Code. This chapter shall be codified as Chapter 2 of Title 9 of the Habematolel Pomo of Upper Lake Book of Codes.

ARTICLE 2. PURPOSE

The Tribe adopts this Chapter in order to protect and promote the political integrity, economic security, health, safety and welfare of the Habematolel Pomo of Upper Lake (“Tribe”), its members, and all persons living on, or passing through, the Habematolel Pomo of Upper Lake lands and to protect and preserve the environment, lands, cultural, religion and natural resources of the Tribe. Specifically, this Chapter addresses the collection, storage, transportation and disposal of solid waste on all lands under the jurisdiction of the Tribe.

ARTICLE 3. JURISDICTION

SECTION 3.1. APPLICABILITY

- (A) The applicability of this Chapter shall extend to all persons who collect, transport, handle, store, or dispose of solid waste within the Reservation or other territory over which the Tribe has jurisdiction.
- (B) Any person who enters onto the Reservation or other territory over which the Tribe has jurisdiction shall become subject to this Chapter and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful enactments of the Tribe. Such person’s use of land involving the storage, collection, transportation and disposal of solid or hazardous waste on the Reservation 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 Chapter, and any regulations promulgated hereunder.

SECTION 3.2. JURISDICTION

- (A) HEPA shall have authority to enforce this Chapter in accordance with Article 7, including issuance of citations and prosecution for violations under this Chapter. The Executive Council reserves all rights and powers to enforce this Chapter, as necessary.
- (B) The Habematolel Pomo of Upper Lake Tribal Court shall have authority to adjudicate violations of this Chapter and render appropriate penalties in accordance with this Chapter. If no Tribal Court is in operations, the Executive Council, or its express designee, shall act as the Tribal Court for all references within this Chapter.

ARTICLE 4. DEFINITIONS

SECTION 4.1. DEFINED TERMS

For purposes of this Chapter, the following terms shall have the meanings ascribed below:

- (A) **“Approved Disposal Site”** shall mean any site designated and approved by HEPA for the collection and disposal of solid waste;
- (B) **“Bulk Waste”** shall mean waste which is oversized and whose large size precludes or complicates its handling by normal solid waste collection and disposal methods, including, but not limited to, construction and demolition debris; discarded residential, commercial, and industrial appliances, equipment, and furniture; trees and stumps; and vehicle parts and tires.
- (C) **“Ceremonial Purposes”** shall mean burning of unprocessed, plant-based material in accordance with and for traditional purposes only;
- (D) **“Chapter”** shall mean this Chapter 9.2. Solid Waste Disposal;
- (E) **“Composting”** shall mean depositing in an appropriate on-site container at a residential location vegetative material from a household’s waste stream to create a mixture of organic matter used for fertilizing and conditioning land, such as for use in gardens;
- (F) **“Disposal”** shall mean the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water within the Reservation or other territory over which the Tribe has jurisdiction so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged in any waters, including groundwaters; provided that composting is excluded from the definition of disposal;
- (G) **“Executive Council”** shall mean the Executive Council of the Habematolel Pomo of Upper Lake;
- (H) **“Hazardous Waste”** shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
 - (1) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

- (2) Post a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.
- (3) The term Hazardous Waste including the following:
 - (a) All plastics, foam, and Styrofoam, as those terms are commonly used, that is no longer being used or has been discarded;
 - (b) Hazardous Waste as defined in [40 C.F.R. Section 261.3](#), as amended from time to time;
 - (c) Any hazardous air pollutant listed under the Clean Air Act, as codified, in part at [42 U.S.C. Section 7412](#), as amended from time to time; and
 - (d) Any hazardous substance contained in [49 C.F.R. Section 172.101, Appendix A \(List of Hazardous Substances and Reportable Quantities\)](#), as amended from time to time;
- (I) **“HEPA”** shall mean the Habematolel Environmental Protection Agency, an agency of the Habematolel Pomo of Upper Lake;
- (J) **“Littering”** shall mean throwing solid waste out of any vehicle or scattering solid waste in any manner;
- (K) **“Nuisance”** shall mean a condition that occurs as a result of the handling treatment, storage, or disposal of solid waste, which condition is injurious to human health or the environment, is indecent or offensive to the senses, is an obstruction to the free use of property, or interferes with the comfortable enjoyment of life or property;
- (L) **“Open Dump”** shall mean any facility or site at which solid waste is disposed of that is not an approved disposal site, does not protect the environment, is susceptible to open burning or is exposed to the elements, vectors and scavengers;
- (M) **“Person”** shall mean any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, federal, tribal, state, county, city, or district government, or other political subdivision thereof or any other group or combination acting as a unit whether incorporated or not, including a person acting in fiduciary or representative capacity;
- (N) **“Recycling”** shall mean the recovery of materials from solid waste for re-use or re-manufacturing to create a new product;

- (O) **“Recovery”** shall mean the recovery of materials or energy from solid waste;
- (P) **“Reservation”** shall mean all lands within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation located in Lake County, California and all lands owned by the Tribe both fee and non-fee land and lands held in trust for individuals and all lands considered “Indian lands” under federal, state or tribal law;
- (Q) **“Residential Solid Waste”** shall mean wastes generation by the normal activities of households, including, but not limited to, food wastes, rubbish, yard waste, ashes, etc.
- (R) **“Sludge”** shall mean any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plan, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects;
- (S) **“Solid Waste”** shall mean any garbage, trash, rubbish, refuse, sludge, glass, metals, plastics, papers, asbestos, cardboard, batteries, chemicals, tires, used vehicles and used vehicle parts, appliances, furniture and any other discarded material, including solid, liquid, semisolid, or continued gaseous material resulting from industrial, commercial, mining, construction and agricultural operations, and from community activities, such as ashes, dead animals, abandoned vehicles, street and parking lot cleanings. Solid waste shall not include solid or dissolved materials in domestic sewage;
- (T) **“State”** shall mean the State of California or any administrative agency thereof;
- (U) **“Storage”** or **“Store”** shall mean confining, containing or stockpiling of solid waste prior to collection and transport to an approved disposal site or facility authorized to accept solid waste that is outside the boundaries of the Reservation or other territory over which the Tribe has jurisdiction.
- (V) **“Tribal Court”** shall mean the Habematolel Tribal Court established pursuant to Tribal Ordinance. If a Tribal Court is not in operation, the Executive Council, or its designee, shall operate as the Tribal Court;
- (W) **“Tribal Member”** shall mean an enrolled member of the Habematolel Pomo of Upper Lake;
- (X) **“Tribe”** shall mean the Habematolel Pomo of Upper Lake, a federally-recognized Indian tribe, or an authorized official or agency thereof;
- (Y) **“Violation”** shall mean any violation of this Chapter.

ARTICLE 5. STORAGE, TRANSPORT AND DISPOSAL OF SOLID WASTE

SECTION 5.1. RESPONSIBILITY FOR STORAGE, TRANSPORT AND DISPOSAL OF SOLID WASTE

- (A) Any person who generates solid waste, disposes of solid waste or causes disposal of solid waste shall be responsible for the proper storage, transport and disposal of that solid waste. Responsibility includes, but is not limited to, liability for any costs incurred in the clean-up of solid waste that is improperly stored, transported, or disposed of as set forth in this Chapter.
- (B) Any person transporting solid waste or any person who by contract, agreement or otherwise, arranges for the recovery, transport, or disposal of solid waste is responsible for the proper transport and disposal of solid waste. Responsibility includes, but is not limited to, liability for any costs incurred in the cleanup of solid waste that is improperly stored, transported, or disposed of as set for in this Chapter.
- (C) Anyone 18 years of age or older shall be treated as an adult in any violation of this Chapter. The parent(s) or the legal guardian(s) of any minor under the age of 18 years, in violation of this Chapter, shall be held accountable for any violations of this Chapter by any minors for whom they are legally responsible.

SECTION 5.2. STORAGE OF SOLID WASTE

- (A) Solid waste may be stored at residences, businesses or Tribal offices within the Reservation or other territory over which the Tribe has jurisdiction for no longer than the periods described below. There shall be no private dumps.
 - (1) Residential Solid Waste: No more than 14 days.
 - (2) Bulk Waste: No more than 30 days.
 - (3) Unregistered or non-operational vehicles of any kind, including, but not limited to, cars, boats, alternative terrain vehicles, campers, trailers: No more than six (6) months.
 - i. Note: No person or business may store any vehicle at any time in which he/she/it 1) does not have a bill of sale or pink slip for the vehicle and/or 2) has obtained the vehicle for financial gain, which may include receipt of an inoperable vehicle.
- (B) Any person storing solid waste on the Reservation or other territory over which the Tribe has jurisdiction must store solid waste in durable containers with close fitting lids in a

neat and tidy fashion. Containers shall be maintained in such a manner so as to prevent the creation of a nuisance or a threat to the public health.

- (C) No person shall store hazardous waste at their residence or business location except under the following conditions:
- (1) Small quantities of hazardous waste associated with regular and normal residential use may be stored at a person's residence for no longer than 90 days.
 - (2) Small quantities of hazardous waste associated with regular and normal business use and practice may be stored at the business location, including the Tribal Offices, for no longer than 90 days.
 - (3) Any person storing hazardous waste at a residence or business location must take precautions to protect the health, safety and welfare of the residents and environment of the Reservation or other territory over which the Tribe has jurisdiction.
 - (4) No hazardous material shall be stored in such a manner as to create a nuisance.

SECTION 5.3. TRANSPORTATION OF SOLID WASTE

After the temporary periods have expired for storage of solid waste, as outlined in Section 5.2, solid waste must be transferred to a solid waste hauler permitted under Tribal, State or local law, disposed of according to the HEPA's garbage program, or transported by the solid waste generator to a landfill, transfer center or approved disposal site.

Any person transporting solid waste within, on or through the Reservation or other territory over which the Tribe has jurisdiction shall cover, tie or otherwise secure such solid waste so no waste will be blown or dropped from the transport vehicle.

SECTION 5.4. DISPOSAL OF SOLID WASTE

- (A) No person shall dump, abandon, scatter, deposit or dispose of solid waste anywhere within the Reservation or other territory over which the Tribe has jurisdiction, except within an approved disposal site.
- (1) Littering Prohibited. No person shall litter anywhere within the Reservation or other territory over which the Tribe has jurisdiction.
- (B) No person shall burn or incinerate solid waste without a permit authorized by the Tribe, or the County if the Tribe does not have a permit program in place, unless the burning is

for Ceremonial Purposes only. No person shall burn or incinerate hazardous waste or any pesticide for any purpose anywhere within the Reservation or other territory over which the Tribe has jurisdiction.

- (C) No person shall improperly dump, deposit or dispose of solid waste in a trash bin or other temporary solid waste storage container that is not intended for that person's use.
- (D) No person shall maintain an open dump on their property, whether owned or rented, residential or business.
- (E) Owners of vehicles that are unregistered, or which are not operation for a period of six (6) months shall immediately dispose of the vehicle by arranging for a sale of the vehicle, or placement of the vehicle in a closed garage, or transportation of the vehicle to a junkyard licensed to accept vehicles.

SECTION 5.5. APPROVAL OF DISPOSAL SITES ON RESERVATION

- (A) No site for the disposal of solid waste shall be operated within the Reservation or other territory over which the Tribe has jurisdiction without a state and/or Tribal permit, as applicable, to operate as an approved disposal site.
- (B) No site for the collection of recycling materials from multiple generators shall be operated within the Reservation or other territory over which the Tribe has jurisdiction without a state and/or Tribal permit, as applicable, to operate as an approved recycling collection site.
 - (1) Individual households or businesses collecting recycling materials generated on-site by that individual household or business are exempt from this requirement but must submit their recycling for redemption within six (6) months of collection.

ARTICLE 6. RECYCLING AND COMPOST PROGRAM

SECTION 6.1. CREATION OF RECYCLING AND COMPOST PROGRAM

The HEPA and/or Executive Council is authorized to create and adopt, subject to Executive Council approval, such regulations as are necessary for the safe and sanitary collection, handling, transport, storage, and disposal of recycled materials, including composting, within the Reservation or other territory over which the Tribe has jurisdiction.

SECTION 6.2. PARTICIPATION IN RECYCLING AND COMPOST PROGRAM

All persons within or passing through the Reservation or other territory over which the Tribe has jurisdiction, including residents and businesses, are encouraged, and may be required pursuant to

any HEPA regulations adopted pursuant to Subsection (A), to implement source separation to allow for recycling and composting of materials from the solid waste and recycling program. It is the generator's responsibility to provide separation containers meeting the approval of the HEPA.

ARTICLE 7. ENFORCEMENT

SECTION 7.1. WARNING

- (A) HEPA may issue a written warning to an individual in violation or suspected in violation of this Chapter, as appropriate. Generally, a warning shall be issued when a violation or suspected violation of this Chapter has occurred and HEPA desires to provide a specific period of time in which the violators must comply with this Chapter or be subject to further enforcement. The warning may be in the form of a letter signed by HEPA and copied to the Executive Council and Tribal Administrator. The warning shall include the action an individual must take in order to comply with this Chapter and may require a receipt from a transfer station, dump, junkyard or proof of sale as proof of proper disposal. If proof of compliance is not provided by the deadline indicated on the warning, HEPA shall issue a citation for the violation.
- a. Individuals in receipt of a warning, who can demonstrate financial hardship, may request that HEPA assist with the disposal of vehicles that are unregistered or which are not operational for a period of six (6) months. HEPA may arrange for removal of such vehicles in accordance with this Chapter. Individuals shall be eligible for HEPA assistance once in a lifetime, unless otherwise approved by the Executive Council. The Executive Council may require that additional assistance is conditioned on repayment of costs associated with the assistance through automatic deduction of his/her Tribal benefits.

SECTION 7.2. CITATION

HEPA shall issue a citation to any individual that is suspected of violating this Chapter. The citation shall contain the following information:

- (A) Reason for citation (i.e., the offense for which the person is being cited);
- (B) Date(s) and time(s) of the suspected offense(s) if witnessed or the date and time of discovery of the offense;
- (C) Detailed information regarding the location(s) of the violations;
- (D) The date, time and location where the cited person is to appear before the Tribal Court for a hearing.

(E) The name and signature of the person from HEPA who is issuing the citation.

SECTION 7.3. PROSECUTION

Any individual in violation of this Chapter (or parents and/or legal guardian in the case of a minor) may be subject to prosecution in the Habematolet Tribal Court.

SECTION 7.4. BURDEN OF PROOF

All violations of this Chapter shall be subject to the preponderance of evidence standard.

(A) If three (3) or more pieces of addressed mail or any other name-labeled property is found within any illegal disposal of solid waste (i.e., illegal dumping), it shall be a rebuttable presumption that the illegal disposal of solid waste was committed by the individual named on the mail or other name-labeled property. An individual may rebut this presumption by providing proof, including but not limited to, of an agreement, including informally via text message, etc., to allow dumping on the said property, proof of payment, statements of witnesses evidencing dumping or video evidence. Individuals allowing dumping in violation of this Chapter on his/her property and/or residence, shall be held at a minimum jointly liable for the violations.

SECTION 7.5. EMERGENCY CLEANUP

HEPA shall have the right, in consultation with the Executive Council and Tribal Administrator, to begin emergency cleanup work in any area wherein hazardous waste has been illegally disposed. HEPA shall provide notice to the property owner of the cleanup, which may include posting notice on the residence or building door.

ARTICLE 8. PENALTIES

SECTION 8.1. CIVIL PENALTIES

Any person violating any provision of this Chapter is subject to a civil fine not to exceed \$2,000.00 per violation, depending on the gravity of the violation and any effects on human health or the environment resulting from the violation. Generally, penalties shall be issued in accordance with the following matrix:

Citation Number	Penalty
First Citation	\$250.00 fine + cleanup fees + up to 75 hours community service
Second Citation	\$500.00 fine + cleanup fees + up to 150 hours of community service

Third Citation	\$1,000.00 fine + cleanup fees + up to 200 hours of community service
Fourth Citation	\$2,000.00 fine + cleanup fees + up to 300 hours of community service

Community service shall include the pickup of trash on all Tribal property and adjoining roadsides. Cleanup fees shall include any cost to remove the materials illegally disposed. Cleanup fees may be waived if the person violating this Chapter cleans up the area where the violation occurred, as certified in writing by the EPA Department.

SECTION 8.2. CIVIL DAMAGES AND/OR INJUNCTIVE ACTIONS

In the event that any person, as a result of his or her actions that constitute a violation, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the Reservation or other territory over which the Tribe has jurisdiction, the HEPA or other person authorized by the Tribe, or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief including the imposition of penalties as set out in Section 1 above, in any judicial forum of competent jurisdiction.

SECTION 8.3. NO OTHER REMEDIES AFFECTED

Nothing in this Chapter shall in any way limit an individual’s right to pursue, in any judicial forum of competent jurisdiction, a private action for damages results from actions that would be considered violations of this Chapter.

SECTION 8.4. ENVIRONMENTAL PROTECTION FUND

- (A) All monies collected or received by the Tribe as a result of violations of this Chapter shall be deposited with the Tribe to be credited to the Environmental Protection Fund.
- (B) The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the Reservation and other territory over which the Tribe has jurisdiction, enforcing the provisions of the various environmental ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the Reservation and other territory over which the Tribe has jurisdiction.

ARTICLE 9. OTHER PROVISIONS

SECTION 9.1. SOVEREIGN IMMUNITY

Nothing in the provisions of this Chapter constitutes consent by the Habematolel Pomo of

Upper Lake or its sub-organizations to be sued in any court. Neither this Title nor any action (or inaction) taken by the Habematolel Pomo of Upper Lake or its sub-organizations pursuant to this Title represents a waiver of the Tribe's sovereign immunity for any purpose.

SECTION 9.2. AMENDMENTS

This Chapter, or any section herein, may be amended by a majority vote of the Executive Council.

SECTION 9.3. SEVERABILITY

If any part of this Chapter is found void and without legal effect, the remainder of the Chapter shall continue to remain in full force and effect, as though such part had not been contained therein.

SECTION 9.4. EFFECTIVE DATE

This Chapter shall take effect on the date it is approved by the Executive Council.

CERTIFICATION

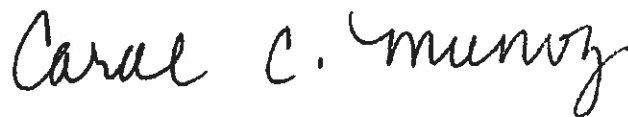
As a duly-elected official of the Habematolel Pomo of Upper Lake, I do hereby certify that, at a meeting duly called, noticed, and convened on the 27 day of August, 2021, at which time a quorum of 6 was present, this Chapter 9.2. Solid Waste Disposal was duly adopted by a vote of 5 FOR, 0 AGAINST, 1 ABSTAINED, and said Chapter has not been rescinded or amended in any form.



Executive Council Chairperson

08/27/2021
Date

ATTEST:



Tribal Secretary

08/27/2021
Date



