

YUROK TRIBE CULTURAL RESOURCES PROTECTION ORDINANCE

Section 1. Authority

- (A) This Ordinance is issued by the authority of the Yurok Tribal Council as provided by the Constitution of the Yurok Tribe.

Section 2. Purpose

- (A) Whereas the Tribal Council is authorized by Article IV of the Constitution of the Yurok Tribe "to preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren, on and on, forever;" and
- (B) Whereas the Tribal Council wishes to fulfill and balance the preservation, promotion, and protection of cultural resources without regulating Yurok ceremonies and traditional practices;
- (C) Now, therefore, be it resolved that the following ordinance governing the protection of cultural resources is hereby enacted and shall be effective upon the date of approval by the Tribal Council.

Section 3: Findings and Declarations

- (A) The Tribe finds and declares that it wishes to protect cultural resources and to establish a systematic process to implement that protection.
- (B) The Tribal Council has directed various tribal departments and committees to preserve, promote, and protect cultural resources. In turn, the cultural resource missions of the various tribal departments and committees with cultural resource functions is to carry out the Yurok Tribe's commitment to preserve, archive, protect, document, restore, return, re-inter and promote the culture, heritage, language, and religion of the Yurok people.
- (C) Therefore, the Tribal Council adopts this Cultural Resources Protection Ordinance to protect and promote the political integrity, economic security, health, safety and welfare of the Tribe, its members, and all persons living on or passing through the Yurok Reservation; and to protect and preserve the environment, lands, culture and resources of the Tribe, wherever those resources may exist.

Section 4: Definitions

- (A) "Advisor to Court" refers to a person the Court may seek to appoint to help the Court

reach a disposition in each case that is consistent with the purposes of this ordinance and with the Yurok cultural imperatives.

- (B) "Ancestral Lands" refers to the indigenous territory of the Yurok Tribe as described in Article I Section 1 of the Constitution of the Yurok Tribe.
- (C) "Complainant" refers to any individual, including but not necessarily limited to the Tribe, who submits a claim of violation under this Ordinance pursuant to Section 6, any rules or regulations promulgated pursuant thereto, or any conditions of an issued permit, in accordance with the procedures set out in Section 7.
- (D) "Cultural Resources" is used herein to include:
- (i) Traditional Cultural Properties – defined as a place of importance because of an association with cultural practices or beliefs rooted in a living community and are important in maintaining and continuing the cultural identity of the community.
 - (ii) Districts – defined as a grouping of traditional cultural properties, sites, buildings structures, or objects that are linked historically, aesthetically, or traditionally by function, theme, physical development or by plan. The properties within a district are usually contiguous, but noncontiguous districts are possible.
 - (iii) Sites – defined as a location of a significant event or of historical or traditional human occupation or activity, including burials.
 - (iv) Ceremonial Site – defined as a location where a traditional Yurok ceremony is conducted, either collectively or individually.
 - (v) Buildings – defined as a structure constructed principally to shelter any kind of human activity.
 - (vi) Structures – defined as a functional construction which does not primarily shelter human activity.
 - (vii) Objects – defined as a construction with primarily artistic or functional value, and can be small and/or simply constructed. While objects can be moveable, they are primarily associated with a spatial setting or specific function.
 - (viii) Cultural items – defined as including associated and unassociated funerary objects and human remains, sacred objects, and objects of cultural patrimony.
- (E) "Inadvertent Discovery" refers to the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of the ground.
- (F) "Person(s)" refers to any Indian or non-Indian individual, corporation, firm, partnership, joint venture, association, social club, estate, and trust, as well as the United States, Tribe, State, county, city, district, municipality, other political subdivision of any state, or any other group or combination acting as a unit, in addition to associated staff.
- (G) "Reservation" refers to all land, minerals, vegetation, air, and water located within the

exterior boundaries of the Yurok Reservation.

- (H) "Respondent" refers to any person subject to a claim of violation by a complainant or found in violation of this Ordinance.
- (I) "Tribal Council" refers to the governing body of the Yurok Tribe under the authority of the Constitution of the Yurok Tribe.
- (J) "Tribe" refers to the Yurok Tribe, a federally-recognized sovereign nation, except as used in subparagraph F.
- (K) "Violation" refers to any alleged or determined infringement of this Ordinance.
- (L) "Yurok ceremonial practitioners" refers to any person of Yurok affiliation engaging in or demonstrating knowledge of traditional Yurok ceremonial practices.
- (M) "Yurok cultural practitioners" refers to any person of Yurok affiliation engaging in or demonstrating knowledge of traditional Yurok cultural practices
- (N) "Yurok Tribal Member" or "Tribal Member" refers to any individual identified by the Yurok Tribe Enrollment Department as being a certified, enrolled member of the Yurok Tribe according to Article II Section 1 of the Constitution of the Yurok Tribe.

Section 5. Scope and Jurisdiction

- (A) Any person(s) who enters onto the Yurok Reservation shall be subject to this Ordinance and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful ordinances of the Tribe.
- (B) The applicability of this Ordinance shall extend to all person(s) who engage in the activities described in Section 6, or that violate Section 7 or any other section of this ordinance as applicable, which are governed by this Ordinance.
- (C) This Ordinance does not attempt to regulate traditional and/or ceremonial activities, including:
 - (i) Conducting ceremonies and the maintenance of access to traditional ceremonial sites by known Yurok ceremonial practitioners;
 - (ii) Visitation, internment, brushing, and maintenance of cemeteries by persons affiliated with a particular cemetery, or their designee(s);
 - (iii) Restoration, rehabilitation, and construction of traditional buildings by Yurok cultural practitioners and their designees;
 - (iv) Reburial or reinterment of cultural resources inadvertently discovered, per Yurok traditional methods, except when resources are exposed through ground-disturbing activities; and

- (v) Traditional gathering activities by Yurok cultural practitioners.

Section 6. Prohibited Activities

- (A) No person shall violate any provision of this Ordinance or any rule or regulation adopted pursuant to this Ordinance. Such violations may include failure to obtain a permit when required and not complying with Section 9 in the event of an inadvertent discovery.
- (B) No person shall damage, deface, destroy, desecrate, remove, excavate, or otherwise disturb cultural resources or conduct activities with the potential to damage, deface, destroy, desecrate, remove, excavate, or otherwise disturb cultural resources without a valid Cultural Resources Management permit issued by the Yurok Tribal Council.
- (C) No person shall violate any condition of a permit, including:
 - (i) Failing to respond to directives given by enforcement personnel pursuant to this ordinance.
 - (ii) Willful exposure, destruction, or removal of any cultural resources within the Yurok Reservation.
 - (iii) Knowingly making false statements during, or after, an inquiry by Yurok Tribal Council and Yurok Tribal Police or aid, abet or conspire with a person to evade the provisions of this Ordinance.
 - (iv) Engaging in a regulated activity in a faulty, careless or negligent manner.
 - (v) Using fraud or misrepresentation in making an application for, or for renewal of, a permit.

Section 7. Cultural Resource Management Permits

- (A) A Cultural Resource Management Permit will be required prior to conducting any ground-disturbing activities, as well as other activities which have the potential to damage, deface, destroy, desecrate, remove, excavate, or otherwise disturb cultural resources within the jurisdiction outlined in Section 5.
- (B) Persons who meet the exemptions identified in Section 5(C) are not required to obtain a permit under this ordinance.
- (C) The Yurok Tribal Council has the sole authority to issue Cultural Resource Management Permits per this Ordinance under the advisement of staff and committee members outlined in Section 9.
- (D) Any permit issued under this Ordinance must conform to the following requirements:
 - (i) All permit holders must comply with any and all conditions applied to a permit, this may include that activities can only be conducted while a Tribal cultural monitor is present and/or following a Tribal cultural resources survey.

- (ii) Changes in scope of a project or undertaking will require a reassessment of the permit and its conditions and may require issuance of a superseding permit.
- (iii) Permits shall only be issued to persons 18 years of age or older unless there is written consent from a parent or guardian.
- (iv) The length of applicability for permits shall be at the discretion of the Yurok Tribal Council and shall be reasonable based upon the purpose of the permit.
- (v) No permit shall be issued to applicants that have been cited for violations of this Ordinance when it is determined by the Tribal Council that such violations indicate the applicant could pose a threat to the cultural integrity of the Reservation.

Section 8. Inadvertent Discovery

- (A) Any person who, during the course of any activity, discovers cultural resources including but not necessarily limited to human remains and funerary objects shall immediately follow the Yurok Tribe's Inadvertent Discovery Protocol and Procedures.

Section 9. Roles and Responsibilities

- (A) The Yurok Tribe Cultural Resource Programs work to promote and protect all Yurok cultural resources throughout Yurok Ancestral Lands. The following describes the Tribe's cultural resource programs and their functions:
 - (i) The Tribal Archaeologist documents and records site damage, conducts field surveys, and performs research for compliance studies under the National Historic Preservation Act.
 - (ii) The NAGPRA Coordinator is responsible for managing inadvertent discoveries, intentional excavations, repatriation and disposition negotiations and transfers of cultural items and all other related functions under the Native American Graves Protection and Repatriation Act (NAGPRA).
 - (iii) The Tribal Heritage Preservation Officer is responsible for dealing with cultural resources, particularly those eligible for or on the National Register of Historic Places, consultation for cultural resources within Ancestral Lands, concurrence for projects requiring Section 106 of the National Historic Preservation Act, and authorizing Tribal cultural monitors, as well as for maintaining a Tribal Register of Historic Places and managing the Tribal Inventory for the Yurok Reservation.
- (B) The Tribal Archaeologist, NAGPRA Coordinator, and the Tribal Heritage Preservation Officer have a role in ensuring this Ordinance is complied with, as well as gathering and providing pertinent information to the Tribal Council for permit issuance and to the Tribal Police and may act as an Advisor to Court as requested.
- (C) There are two Committees of knowledgeable elders and community members that serve as an advisory capacity to staff and the Tribal Council for the purpose of cultural resources protection.
 - (i) The Culture Committee serves in two advisory functions. The primary function is

to advise the Tribal Heritage Preservation Officer under Section 106 of the National Historic Preservation Act per the Memorandum of Understanding between the Yurok Tribe and the National Park Service. The second function is as an advisory body to the Yurok Tribal Council, enabled by approved bylaws as adopted by the Tribal Council.

(ii) The Native American Graves Protection and Repatriation Act (NAGPRA) Committee serves

as an advisory group to the Yurok Tribal Council. This Committee is enabled by their approved bylaws as adopted by the Tribal Council to advise the Tribal Council on all matters involving repatriation, disposition, reburial, excavation, legal and illegal removal of human remains, funerary objects, and cultural items of the Yurok Tribe and members, as well as matters involving repatriation from museums or Federal agencies.

Section 10. Mitigation and Abatement

- (A) Any person who damages, defaces, destroys, desecrates, removes, excavates, or otherwise disturbs cultural resources of the Tribe shall be liable for all costs and actions associated with, or necessary to abate and/or mitigate effects to the cultural integrity of the Tribe; and restore the property or landscape to the condition as it existed immediately prior to the damage as determined by the Yurok Tribal Court.

Section 11. Enforcement

- (A) Claims of violations may be investigated by the Yurok Tribal Police, in collaboration with the Tribal Archaeologist, NAGPRA Coordinator, and the Tribal Heritage Preservation Officer.
- (B) Yurok Tribal Police Officers may issue citations to any person believed to have committed a violation of this Ordinance.
- (C) Any person who violates this Ordinance may be subject to prosecution before the Yurok Tribal Court.

Section 12. Civil Penalties

- (A) Any person violating the terms of this Ordinance within the Yurok Reservation is subject to a civil fine in an amount not to exceed five thousand dollars (\$5,000) for each cultural resource or for each day in which the violation occurs. Violation of human remains, is a mandatory minimum fine of five thousand dollars (\$5,000).
- (B) If a permit provision is not complied with by the permit holder, in addition to monetary fines defined in subparagraph A, the civil penalty of suspension, revocation, non-renewal, or denial of the permit, as well as denial of any and all future permits may be applied.

- (C) In determining the type and amount of the penalty and/or fine, the Yurok Tribal Court shall consider the appropriateness of such fine and/or penalty in light of the gravity of the violation, any effects on cultural resources and the environment resulting from the violation and the economic conditions of the person charged, with the exception of human remains, which is a mandatory minimum \$5,000 fine. To guide the assessment of fines, the following matrix of mandatory minimum fines shall be consulted:

Violation	Fine
Minor impact to a cultural resource, inadvertent	\$100
Minor impact to a cultural resource	\$200
Moderate impact to a cultural resource, inadvertent	\$300
Moderate impact to a cultural resource	\$500
Theft and/or removal of a cultural resource, non-human items	\$1,000
Severe impact to a cultural resource, inadvertent	\$1,000
Severe impact to a cultural resource	\$5,000
Violations involving human remains	\$5,000

- (D) In assessing penalties or fines, the Yurok Tribal Court may assign community service in addition to or in lieu of fines payment. In no case will the amount of community service calculated at the Tribal minimum wage be greater than the allowable fines appropriate to the violation.
- (E) Fines and community service described under this Section are wholly separate from Mitigation and Abatement described in Section 10.
- (F) The Court may also impose the sanction of banishment for a Tribal Member for a period to be determined by the Court or exclusion of a non-Tribal Member for period to be determined by the Court. Such orders will be consistent with the gravity of the offense(s).

Section 13. Civil Damages and/or Injunctive Actions

- (A) In the event that any person, as a result of a violation 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 Yurok Reservation, the Yurok Tribal Council or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in the Yurok Tribal Court.

Section 14. Cultural Resource Protection Fund

- (A) Any fines or administrative fees collected by the Tribe pursuant to this Ordinance shall be deposited with the Tribe to be credited to the Cultural Resources Protection Fund.

- (B) The Cultural Resources Protection Fund shall be used for expenses related to protecting cultural resources within Yurok Ancestral Lands, subject to the Yurok Tribal Council budget review process.

Section 15. Confidentiality

- (A) The Tribe shall withhold from the public information about the location, character, or ownership of cultural resources if the Tribe determines that disclosure may cause a significant invasion of privacy; risk harm to cultural resources; or impede the use of a traditional or ceremonial site by practitioners.

Section 16. Severability

- (A) If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, its invalidity does not affect other provisions or applications of this Ordinance and to this end the provisions of this Ordinance are severable.

Section 17. Sovereign Immunity

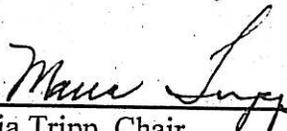
- (A) The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Tribal Council or staff of the Tribe acting pursuant to this Ordinance.

Section 18. Amendments

- (A) This Ordinance may be amended at any time by the Tribal Council.

CERTIFICATION

Approved this 9th Day of September, 2009.



Maria Tripp, Chair



Cynthia McKernan
Recording Secretary