

YUROK TRIBE AIR QUALITY ORDINANCE

SECTION 1. AUTHORITY

This Air Quality Ordinance (AQO) regulating and controlling the discharges of pollutants into the air of the Yurok Indian Reservation (YIR) is established by the Yurok Tribal Council (Council) under the authority delegated to it by Article IV, Section 5 of the Constitution of the Yurok Tribe (Tribe), as ratified on November 19, 1993.

Article IV, Section 5 states in part “...*the Yurok Tribal Council shall have the authority to enact legislation, rules and regulations not inconsistent with the Constitution to further the objectives of the Yurok Tribe as reflected in the Preamble to this Constitution, [and to] enact civil and criminal laws*”.

Section 301 of the Clean Air Act, the Tribal Authority Rule, gives Tribes the authority to be treated in the same manner as states to carry out the provisions of the Clean Air Act.

Section 302 of the Clean Air Act, identifies that Tribes, and the agencies of Tribes, within the United States have the authority to act as Air Pollution Control Agencies.

Under the authority vested in Article IV, Section 5 of the Constitution of the Yurok Tribe AND PROVISIONS OF THE CLEAN Air Act the Yurok Tribal Council does hereby ordain as follows:

SECTION 2. PURPOSE

This AQO establishes a procedure and penalties for the discharge of pollutants into the air of the exterior boundaries of the YIR. The discharge of pollutants on public and private lands within the exterior boundaries of the YIR is a public nuisance and hazard potentially jeopardizing the health, safety, and welfare of persons, property, and the environment within the exterior boundaries of the YIR. Furthermore the discharge of pollutants into the air negatively impacts air quality within the exterior boundaries of the YIR.

SECTION 3. FINDINGS AND DECLARATIONS

The Yurok Tribe Council finds and declares the following:

1. It wishes to reduce and control the discharge of pollutants into the air of the YIR.
2. Regulation and control of air pollution is necessary to maintain environmental integrity, political integrity, health and welfare of the YIR and YIR residents.
3. This Ordinance and all air pollution emissions are subject to review by the Yurok Tribe Environmental Program (YTEP).
4. The Yurok Tribe Council maintains authority to amend this Ordinance or grant exemptions from provisions of this Ordinance.

SECTION 4. JURISDICTION

- 4.1 The applicability of this AQO shall extend to all persons, whether Indian or non-Indian, who discharge any pollutant into the air of the YIR.
- 4.2 Any person who enters within the exterior boundaries of the YIR shall become subject to this Ordinance and all rules, regulations, and applicable orders of the Tribe, and shall be deemed to have consented to the jurisdiction of the Tribe, and shall be subject to civil and or criminal jurisdiction in the Yurok Tribal Court for violations of this Ordinance and all applicable rules, regulations, and orders of the Tribe.

SECTION 5. DEFINITIONS

For purposes of this AQO, the following words shall have the following meanings:

- 5.1. The term "air" means the ambient air, or atmosphere, external to buildings and contained within indoor areas, of the YIR.
- 5.2. The term "approved combustibles" means paper, cardboard, lawn clippings, yard waste, brush, trees, native vegetation, and other materials as approved by the Yurok Tribe Environmental Program (YTEP), but shall not include hazardous or toxic materials, or any other material that would imperil or endanger the quality of the air of the YIR.
- 5.3. The term "Burn permit" means a written approval, issued by YTEP, for open outdoor fires on the YIR in accordance with the provisions of this AQO.
- 5.4. The Term "Campfire" means a fire which is used for cooking, personal warmth, lighting, ceremonial, or aesthetic purposes, including fires contained within outdoor fireplaces and enclosed stoves with flues or chimneys, stoves using jellied, liquid, solid, or gaseous fuels, portable barbecue pits and braziers, or space heating devices which are used outside any structure, mobilehome, or living accommodation mounted on a motor vehicle. "Campfire" does not include portable lanterns designed to emit light resulting from a combustion process.
- 5.5. The term "Tribal Council" means the Tribal Council of the Yurok Tribe.
- 5.6. The term "complainant" means any tribal member, Tribal Council member, YTEP staff, other staff of the Tribe, or residents of the YIR who submits a written complaint to YTEP, signed under penalty of perjury, of a violation of this AQO, any rules or regulations promulgated pursuant thereto, or any conditions of a Burn permit, in accordance with the procedures set out in section 10, below.

- 5.7. The term “energy efficient and low-emission wood burning stove or other heating system” means a wood burning stove or other heating system, including those powered by electricity or natural gas, which uses at least twenty-five (25) percent less energy, and generates at least twenty-five (25) percent less emissions than standard models.
- 5.8. The term “fire suppression equipment” means any substance (water, sand, fire retardant etc.) or equipment (shovel, fire extinguisher, etc.) in such quantity and quality to adequately suppress the outbreak of an open fire.
- 5.9. The term “forest fire” means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain, or other flammable vegetation.
- 5.10. The term “hazardous material” means any material, or combination of materials, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
 - 5.10.1. cause, or significantly contribute to, an increase in either mortality or serious, irreversible, or incapacitating reversible, illness; or
 - 5.10.2. pose either a substantial present, or potential, hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
 - 5.10.3. The term “hazardous material” shall include, but is not limited to, the following:
 - 1.10.3.1. all plastics, foam, and styrofoam, as those terms are commonly used, that is no longer being used or has been discarded;
 - 1.10.3.2. hazardous waste as defined in 40 C.F.R. section 261.3, as amended from time to time;
 - 1.10.3.3. 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
 - 1.10.3.4. any hazardous substance contained in 49 C.F.R. section 172.101, Appendix A (List of Hazardous Substance and Reportable Quantities), as amended from time to time.
- 5.11. The term “imminent fire hazard” means a hazard which presents an immediate danger to the health and/or safety of a person(s), property, or wildlife.

- 5.12. The Term “open fire” means any fire, controlled or uncontrolled, including a campfire, burning outside of any structure, mobile home, or living accommodation mounted on a motor vehicle. “Open fire” does not include portable lanterns designed to emit light resulting from a combustion process.
- 5.13. The term “person” means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, the United States, Tribe, State, county, city, district or other political subdivision of any state, or any other group or combination acting as a unit.
- 5.14. The term “pollutant” means any substance that will alter the quality of the air of the YIR, but shall not include:
 - 5.14.1. air emissions from outdoor fires ignited pursuant to a burn permit;
 - 5.14.2. air emissions from outdoor fires exempted from the burn permit requirements; and
 - 5.14.3. air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could imperil or endanger the quality of the air of the YIR.
- 5.15. The term “air quality” means any chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of air.
- 5.16. The term “Reservation” means all land, air, and water located within the exterior boundaries of the YIR.
- 5.17. The term “Yurok Tribe Environmental Program” or “YTEP” means the Environmental Program Department of the Yurok Tribe.
- 5.18. The term “Tribe” means the Yurok Tribe, a federally recognized Indian tribe.
- 5.19. The term “uncontrolled fire” means any fire which threatens to destroy life, property, or resources and either: (1) is unattended by any person; (2) is attended by persons unable to prevent its unrestricted spread; or (3) is burning with such velocity or intensity that it could not be readily controlled with those ordinary tools available to private persons at the fire scene.
- 5.20. The term “violation” means any violation of this AQO, any orders of YTEP enforcing this AQO, or any conditions of a burn permit.
- 5.21. The term “violator” means any person who YTEP finds has committed a violation. The term “alleged violator” means any person alleged to have committed a violation.

SECTION 6.0. PRINCIPAL AIR QUALITY PROVISIONS

- 6.1. No person shall set, or allow to be set, any forest or open fire(s) within the YIR without a valid burn permit issued by the YTEP (SECTION 7.0).
- 6.2. Fires set to improve cultural or ceremonial resources of the Tribe will go through the Burn permit process, but fees shall be waived.
- 6.3. The Tribe shall create a Tribal Smoke Management Plan (SMP), which will detail the functions of a Tribal Smoke Management Program, including the issuance of burn permits.
- 6.4. The Tribal Smoke Management Program, through a Smoke Management Coordinator (SMC), shall be responsible for soliciting, reviewing, approving, and tracking burn permits for properties within the boundaries of the YIR.
- 6.5. The following are exempted from the permit requirements of SECTION 7.0:
 - 6.5.1. Fires used only for the cooking of food for human consumption, including fires used for smoking or curing of foods.
 - 6.5.2. Campfires or cultural, ceremonial, religious fires recognized by the Tribe, so long as those fires are attended to and fire suppression equipment is at hand. Exempted fires are limited to those of a non-spreading variety less than three feet in diameter.
 - 6.5.3. Fires set or permitted by any authorized public officer when such fire is necessary for any of the following purposes:
 - The prevention of an imminent fire hazard.
 - The setting of backfires necessary to save life or property.
- 6.6 Energy Efficient and Low Emission Stove and Heating System Program
 - 6.6.1 Any person installing or replacing a wood burning stove or other heating system in a residence, business, or tribally-owned facility within the YIR must install an energy efficient and low emission stove or other heating system from a list of approved models prepared and maintained by YTEP. YTEP is authorized to grant waivers to persons for whom compliance with this requirement shall create a severe and undue economic hardship.
 - 6.6.2 YTEP shall prepare and maintain a list of energy efficient and low emission stove and heating systems that are approved for compliance with subsection 6.6.1, above. YTEP shall strive to include affordable models of energy efficient and low emission stove and heating systems on the list of approved such appliances and systems. Such list shall be maintained for

use by, and shall be made available upon request by, tribal members and residents of the YIR.

- 6.6.3 YTEP shall seek to secure grant funds, including low-interest loans, from outside sources to assist persons who must comply with the requirements set out in subsection 6.1 and 6.2, above,

6.6.3.1 Who are low-income; or

6.6.3.2 For whom compliance with this requirement will create an economic or financial hardship.

The lack of availability of such funds shall not excuse compliance with the requirements of subsection 6.6.1 and 6.6.2, above.

6.7 Notification

Any person who discharges any pollutant into the air of the YIR shall immediately, but in any case not less than twenty-four (24) hours from the time of the discharge, notify YTEP or Yurok Tribe Public Safety of said discharge; and shall fully disclose to YTEP all information regarding the discharge, including, but not limited to, the type of pollutant discharged; the amount of pollutant discharged; the location of the discharge; and any other information required by YTEP. For those without telephone service for whom contacting YTEP or YTPS within 24 hours would create a hardship, notice must be made as soon as practicable.

6.7.2 Notice to YTEP under this subsection is not required for:

6.7.2.1 Air emissions from outdoor fires conducted pursuant to a Burn permit, unless notice is required as a condition of a Burn permit;

6.7.2.2 Air emissions from outdoor fires exempted from the Burn permit requirements; and

6.7.2.3 Air emissions from indoor fires normally associated with residential/domestic or business practices, but not including the burning of hazardous materials or any other substances that could unreasonably imperil or endanger the quality of the air of the YIR.

- 6.8 The initial notice of discharge or other prohibited activity required by subsection 6.7, may be delivered orally to YTEP in person or over the phone. However, within three (3) days of providing oral notice of a discharge, written notice of the discharge must be provided to YTEP. All other information required to be provided to YTEP under subsection 6.7 must be delivered to YTEP in writing or orally.

6.9 Clean-up and Abatement

Any person who discharges any pollutant into the air of the YIR shall be liable for all costs associated with, or necessary to clean up, abate, and/or mitigate effects to the air of the YIR; and restore the quality of the air of the YIR to the condition of the air as it existed immediately prior to the discharge.

6.10 Authorized Activities of YTEP and Yurok Tribe Department of Public Safety

YTEP, YTFP, and Public Safety staff are authorized and directed to conduct the following activities to enforce the provisions of this Ordinance:

- 6.10.1 Issue citations (Department of Public Safety) or notices of violation (YTEP, YTFP) under section 11 of this Ordinance.
- 6.10.2 Enter at reasonable times into, on, or through any public or private property to conduct routine inspections to monitor compliance with the provisions of this Ordinance, and any rules or regulations promulgated pursuant to this Ordinance.
- 6.10.3 Provide to the relevant fire control agencies information on burning activities within the YIR.
- 6.10.4 Coordinate with Tribal and local land management agencies, as needed, to enforce the provisions of this ordinance.
- 6.10.5 After providing for comment as necessary, promulgate rules and regulations as may be necessary to carry out the spirit and letter of this Ordinance, including:
 - 6.10.5.1 Imposing restrictions, requirements, controls, and prohibitions regarding regulated activities; and
 - 6.10.5.2 Defining and designating, by map, areas of the YIR where outdoor fires and burning of certain materials are limited, restricted or prohibited for the protection of human health, natural resources, cultural resources, and/or the environment.
- 6.10.6 Work cooperatively with other tribes and federal, state, county and municipal governments to:
 - 6.10.6.1 Coordinate activities and cooperate with such other governments as have similar or related responsibilities within their respective jurisdictions;

6.10.6.2 Develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the YIR, provided that the Tribal Council shall have the ultimate authority to execute and enter into any such intergovernmental agreements.

6.11 Prohibited Activities

6.11.1 No person shall violate any provision of this Ordinance or any rule or regulation adopted pursuant to this Ordinance.

6.11.2 No person shall violate any condition of a burn permit, including:

6.11.2.1 Burning on a designated no-burn day.

6.11.2.2 Burning after approved hours.

6.11.2.3 Failing to have certified staff on-site at a burn, when required by this Ordinance.

6.11.2.4 Failing to mark roadways during a burn, when warranted.

6.11.2.5 Inundating sensitive areas with smoke.

6.11.2.6 Taking longer than two hours during a burn to correct a problem identified by SMP or other enforcement personnel.

6.11.2.7 Failing to respond to directives given by enforcement personnel pursuant to this ordinance or the SMP.

6.11.3 Discharging any pollutant into the air of the YIR.

6.11.4 Burning or incinerating any hazardous material or pesticide anywhere within the YIR.

6.11.5 Knowingly making false statements during, or after, an inquiry by YTEP, or aid, abet or conspire with a person to evade the provisions of this Ordinance.

6.11.6 Engaging in a regulated activity in a faulty, careless or negligent manner.

6.11.7 Using fraud or misrepresentation in making an application for, or for renewal of, a Burn permit.

SECTION 7.0. BURN PERMIT PROCESS

- 7.1. Any Burn permit issued by YTEP must conform to the following requirements:
 - 7.1.1. Burn permits for open outdoor fires may be issued only for the disposal of approved combustibles.
 - 7.1.2. Burn permits shall only be issued to persons 18 years of age or older residing on, or owning, property within the YIR.
 - 7.1.3. The Burn permit shall be valid for no more than one year, and shall expire on the last day of the current calendar year.
 - 7.1.4. The Tribal Council has designated YTEP as the Tribal department charged with enforcing the terms of this ordinance. YTEP shall not issue a Burn permit to applicants:
 - 7.1.4.1. Who have been cited for violations of this AQO where YTEP determines that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the YIR;
 - 7.1.4.2. Who have been cited for violations of the air provisions of the tribal Nuisance Ordinance where YTEP determines that such violations indicate the applicant could pose a threat to the health and safety of the residents or environment of the YIR;
 - 7.1.4.3. Whose previous burning activities have imperiled or endangered the quality of the air of the YIR; and
 - 7.1.4.4. Where YTEP determines that, due to meteorological conditions, the burning proposed by the applicant could cause smoke to create or contribute to a violation of a Tribal or federal air quality standard, imperil or endanger the quality of the air of the YIR, or create a nuisance as defined in the tribal Nuisance Ordinance.
 - 7.1.5. YTEP may include any condition(s) in the Burn permit it deems necessary to protect the quality of the air and the health and safety of the residents and/or environment of the YIR. YTEP may include in the Burn permit the following conditions, and any other conditions YTEP deems necessary:
 - 7.1.5.1. Burning may only occur on permissive burn days, as determined by YTEP in coordination with the California Air Resources Board, North Coast Air Quality Management District, and local government agencies;

7.1.5.2. The waste to be burned shall be reasonably free of dirt, soil and excess moisture and, whenever possible, shall be piled in such a manner as to burn with maximum possible heat intensity and minimum smoke.

7.1.5.3. The waste to be burned shall be free of tires, tarpaper, garbage or other types of rubbish likely to cause excessive smoke or odor.

7.1.5.4. The waste to be burned shall be allowed to dry for the following minimum time periods before burning:

7.1.5.4.1. Trees and branches over six (6) inches in diameter - thirty (30) days;

7.1.5.4.2. Brush, vines, bushes, prunings and small branches - fifteen (15) days;

7.1.5.4.3. Field crops, lawn clippings and weeds - seven (7) days; and

7.1.5.4.4. Other materials - drying times will be determined by YTEP on a case-by-case basis.

SECTION 8.0. ENTRY AND INSPECTION

For purposes of carrying out this Ordinance, YTEP, or its designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the Yurok Tribal Court for sampling, inspection, and observational purposes.

SECTION 9.0. CITATIONS

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

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

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

SECTION 10.0. ENFORCEMENT PROCESS

10.1 YTEP is charged with conducting investigations, including inspections of relevant properties, of violations of this Ordinance or any conditions of a Burn permit.

10.1.1. Investigations of such violations by YTEP shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Tribal Council members, Tribal Environmental Programs Office staff, Tribal Police Officers, other staff of the Tribe, or residents of the YIR.

10.1.1.1. The written complaint shall be submitted on a form developed by YTEP and shall include, at a minimum, the following information:

- name of the complainant;
- date and time of the alleged violation;
- location of the alleged violation; and
- a brief description of the factual basis for the complaint.

10.1.1.2. The written complaint must be submitted to YTEP, during normal business hours, within six (6) months of the alleged violation.

10.1.1.3. YTEP shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.

10.2. Following an investigation, if YTEP determines that a violation has occurred, YTEP may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:

10.2.1. Informally contact any alleged violator about possible violations of this Ordinance, or practices which may result in violations of this Ordinance, to assist the alleged violator in adhering to practices which protect air quality and comply with this Ordinance;

10.2.2. Issue a warning of violation, in the form of a letter from YTEP to the alleged violator, explaining the basis for the warning; possible measures which the alleged violator may take to mitigate the basis of the warning; and an explanation of the steps YTEP may take if the alleged violator does not take positive corrective action;

10.2.3. Assess a civil fine or penalty as described in section 11, against the alleged violator, following the procedures set out in section 10.3, below; and/or

10.2.4. Upon a finding that a violation is taking place or appears imminent, and

that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in section 10.3, below.

10.3. The following procedures shall govern enforcement actions taken pursuant to sections 10.2.3 and 10.2.4, above:

10.3.1. YTEP shall issue a notice of violation, describing with particularity; the violation and the proposed penalty, or other enforcement action, to the person who is charged with the violation.

10..1.1. The notice of violation shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.

10..1.2. The notice shall include a warning that if the person does not respond within seven business (7) days of the date of receipt, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.

10.3.2. Within seven (7) days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before YTEP on the proposed enforcement action described in the notice of violation.

10..2.1. If a hearing is requested, YTEP must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to YTEP that the proposed enforcement action will result in great financial loss or harm to person or property before YTEP is required to hold a hearing, YTEP may hold a hearing immediately, or may delay or reverse any enforcement action until YTEP holds the requested hearing.

10..2.2. If the alleged violator does not request a hearing within seven (7) days of receipt of the notice of violation, an assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.

10.3.3. At any hearing before YTEP, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the finding of violation is erroneous as described in the notice of violation.

- 10.3.4. Within fifteen (15) days of the hearing, YTEP shall issue a decision on whether to affirm the proposed penalty, or other enforcement action described in the notice of violation.
- 10..4.1. YTEP shall serve a written notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested. Notice shall be considered received on the date of personal service or three (3) days after the date the notice is dispatched by U.S. mail.
- 10.3.5. The decision of YTEP on appeal may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision after the initial hearing. The request for a hearing before the Tribal Court must state the grounds for overturning YTEP's decision.
- 10..5.1. The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
- 10..5.2. The violator and YTEP shall have the opportunity to present oral arguments at the hearing.
- 10..5.3. The written record from the administrative hearing before YTEP, together with all papers and requests filed in the proceeding before YTEP, shall constitute the exclusive record for decision on appeal.
- 10..5.4. The Tribal Court shall set aside YTEP's decision only upon a finding that YTEP's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
- 10..5.5. Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.
- 10..5.6. The Tribal Court shall serve a notice of the decision on the violator. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.
- 10..5.7. Decisions of the Tribal Court are final.
- 10.4. YTEP and/or the Tribal Court, or a representative authorized by either body, may institute proceedings in Tribal Court to enforce a penalty issued by YTEP and/or upheld by the Tribal Court on appeal.
- 10.5 This ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in Tribal Court for damages incurred from the emission of air pollutants or the open burning of any materials.

SECTION 11.0. CIVIL PENALTIES

- 11.1 Any person discharging any pollutant into the air of the YIR or engaging in any other activity prohibited under this Ordinance is subject to a civil fine in an amount not to exceed five thousand dollars (\$5,000.00) for each day in which the violation occurs, to be assessed by YTEP. In addition to any monetary fine, any person violating the provisions of this Ordinance regarding burn permits is subject to a civil penalty of suspension, revocation, non-renewal, or denial of a burn permit, to be assessed by YTEP.
- 11.2 In determining the type and amount of the penalty and/or fine, YTEP shall consider the appropriateness of such fine and/or penalty in light of the gravity of the violation, any effects on human health or the environment resulting from the violation, the size of the business of the person charged, and the effect on the person's ability to continue in business.

SECTION 12.0. CRIMINAL PENALTIES

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

SECTION 13.0. CIVIL DAMAGES AND/OR INJUNCTIVE ACTIONS

In the event that any person, as a result of his or her violations of this Ordinance, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the YIR, YTEP or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

SECTION 14.0. ENVIRONMENTAL PROTECTION FUND

- 14.1 Any monies collected by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.
- 14.2 The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the YIR, 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 YIR.

SECTION 15.0 SEVERABILITY

If any provision of this Ordinance of the application, thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without regard to the invalid provision or application and to this end the provision of this Ordinance are severable.

SECTION 16.0. SOVEREIGN IMMUNITY

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Tribal Council, YTEP, or other staff of the Tribe acting pursuant to this Ordinance.

SECTION 17.0. AMENDMENTS

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

SECTION 18.0. EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage.

CERTIFICATION

Approved this seventh day of April, 2005:



Council Chairperson



Recording Secretary



YUROK TRIBE
Smoke Management Plan

Prepared by the
Yurok Tribe Environmental Department
Kevin McKernan, Director

October 2003

1. INTRODUCTION

1.1. Jurisdiction

The Yurok Tribe (Tribe) maintains jurisdiction over burning activities within the exterior boundaries of the Yurok Indian Reservation (YIR). Such jurisdiction shall be exercised to the fullest extent, including issuing Tribal burn permits, burn advisories, monitoring program compliance, and issuing notices of violations.

In the interest of exercising this jurisdiction over the air resources of the YIR, the Council of the Yurok Tribe (Council) approved the Air Quality Ordinance (AQO) on 7 April 2005. This document, attached as Appendix A, details the Tribe's sovereign powers, enables this Smoke Management Program (SMP), and sets restrictions on activities impacting the air quality of the YIR and penalties for violations of those restrictions.

1.2. Purpose

The purpose of this SMP is to establish policies and procedures to control timber and agricultural field burning, wildland fire, and domestic burning. It is in the interest of the Tribe to encourage responsible burning activities that minimize impacts on the health and visibility within the YIR and its surrounding areas. The SMP will be operated in cooperation and coordination with Tribal, federal, state, and local jurisdictions in both Humboldt and Del Norte Counties. The SMP will conform to air quality regulations as applicable.

1.3. Smoke Management Goals and Objectives

As a basis for developing its burning emissions control effort, the Yurok Tribe adopts the following goals and objectives:

- a. To conduct prescribed burns only when weather conditions are conducive to good smoke dispersion.
- b. To protect identified smoke-sensitive areas and minimize adverse effects on local air quality or visibility impacts due to burning operations.
- c. To respond quickly to smoke-caused problems and adjust operational procedures as necessary to prevent reoccurrence.
- d. To keep the general public informed of burning progress on a daily and seasonal basis through use of public information releases and public notification media pathways (automated telephone information line, the internet, local newsmedia, radio, etc.).
- e. To restrict unnecessary burning and encourage utilization of alternate methods of disease control, production enhancement, and waste disposal.
- f. To promote cooperation with Tribal, Federal, State, and local agencies responsible for controlling air quality in surrounding areas and strive for consistency to ease interagency relations.

1.4. Coordination with Existing Guidance

This document is designed to meet criteria established by the United States Environmental Protection Agency (USEPA) in the *Interim Air Quality Policy on Wildland and Prescribed Fires (1998)* for certification as a Smoke Management Plan. In the future, the Tribe may incorporate this document into their Tribal Implementation Plan under the Air Quality Program of the Tribe.

In their Interim Policy, the USEPA identifies seven components required for an SMP.

<u>Component:</u>	<u>Found here in Section:</u>
• Authorization to Burn	2, 5, 6
• Minimizing Air Pollution Emissions	5, 6
• Smoke Management Components of Burn Plans	5, 6
• Public Education and Awareness	2
• Surveillance and Enforcement	2, 5, 6
• Program Evaluation	2, 4, 5, 6
• Optional Air Quality Protection	not presently implemented

1.5. Background

Burning timberlands, agricultural areas, wildlands, and domestic waste has been a common practice not only on the YIR, but also within surrounding communities. Smoke management is the practice of restricting open burning to those periods when atmospheric and field conditions are appropriate, thus minimizing adverse impacts on the general population in smoke-sensitive areas and on nearby Class I Airsheds within the boundaries of the Redwood National Park. The Tribe's SMP will strive to effectively coordinate and monitor all field burning activities.

A successful SMP requires three activities to be conducted with reliability and accuracy:

- a. Forecasting meteorological conditions, and
- b. Communicating forecast and burn advisories, and
- c. Burning in accordance with burn advisory restrictions.

All three activities require responsible judgment and action. To minimize the possibility of undesirable results, SMP staff will continually work to reduce errors in routine operations and to enhance the overall SMP.

Efforts to enhance the SMP include the development of more precise data gathering methods and equipment; utilization of more sophisticated forecasting techniques; better communications procedures; and increased training, outreach, and education to make burning results more predictable.

1.6. Classification

The Tribe recognizes that all types of fire contribute to regional haze. Congruent with the Regional Haze Rule set by the USEPA, the Tribe sets the following standards for classification of fire types as part of the natural background conditions for air quality, or as contributors to anthropogenic regional haze:

<u>Fire Type</u>	<u>Classification</u>
Fires for native ecosystem maintenance	Natural
Fires for native ecosystem restoration	Anthropogenic
Fires for cultural, ceremonial, or religious purposes	Natural
Fires for land management	Anthropogenic
Fires for disease treatment or prevention	Anthropogenic
Wildfires managed for resource objectives	Anthropogenic
Wildfires with limited management for health or safety	Natural

“Cultural, ceremonial or religious purposes” include burning lands for basketry materials, medicinal and ceremonial plants, and subsistence plants.

In making these classifications, the Tribe will use the primary and predominant purpose for the fire and will disregard all other associated purposes.

It is expected that all anthropogenic fires will have elements of emissions reduction or will utilize fire alternatives. This SMP is one such way of reducing impacts of these fires. The Tribe will also seek to control emissions from fires natural in source for the purposes of preserving human and ecosystem health standards where they may exist.

Emissions from both types of fires will be tracked.

2. PROGRAM OPERATIONS

2.1. Program Organization

The SMP will be implemented and monitored by the Smoke Management Coordinator (SMC), an employee of the Tribe within the Yurok Tribe Environmental Program (YTEP), or the Yurok Tribe Forestry Program (YTFP; Forestry), with assistance from other staff as necessary.

Staff of YTEP or YTFP, including, but not limited to the SMC, will accept applications, register permits, collect fees, authorize burning, and maintain a database of appropriate information. YTEP/YTFP will be responsible for the operation and maintenance of air quality samplers, both stationary and mobile, and will monitor major burning activities to assure that no air quality standards are being violated.

2.2. Permit Process

The SMC will be responsible for responding to queries for forms, assisting landowners in completing appropriate forms, and processing, documenting, filing, and approving or disapproving applications for burn permits. The SMC is additionally responsible for providing follow-up on approved applications after burning activities have been completed to collect necessary post-burn information. Further information about the permit process is included in Sections 5 and 6 below, providing information for users of the system.

2.3. Burn Advisories

The SMC will be responsible for issuing daily burn forecasts based on weather forecasting available for the YIR area and updating that information as needed. Under normal operating conditions, the general forecasts for each area will be issued each day by 9:00 am. A discussion of various aspects of daily burn forecasts is presented in subsequent sections.

2.3.1. Forecast Areas

For the purpose of issuing daily burn advisories within the YIR, the portion of the YIR lying within Del Norte County will be known as the YIR, Downriver Section; the portion of the Reservation within Humboldt County will be known as the YIR, Upriver Section.

2.3.2. Burn Advisories

Prior to ignition of any materials, advisories for conducting such burning must be obtained by the SMC. Advisories will be based on field registration and burn permit data and forecasted meteorological conditions. The SMC is solely responsible for assessing the conditions in order to issue burn advisories within the YIR.

In addition to identification of areas affected and the earliest and latest ignition times, advisories may also include registrations or guidance regarding fuel conditions, wind speed, wind direction, ignition methods, or other factors important to smoke dispersion.

The SMC will take into account the following factors in approving a burn day:

- a. Ventilation Conditions, including surface and transport wind speed and direction, prevailing visibility, amount and location of acreage already authorized.
- b. Plume characteristics, including mixing depth, atmospheric stability.
- c. Downwind impact area concerns.
- d. Field conditions, including fuel type, moisture content, burning monitoring crew resources, field conditions, types of communications available.
- e. Air quality considerations, including effects on visibility, particulate loading, and exposure time.
- f. Synoptic conditions, including high/low pressure areas, approaching fronts, and precipitation probabilities.
- g. Burn status of neighboring Tribal and local jurisdictions.

Though burning may not be advised due to one or more of these factors, burning releases are not tied to, or limited by, specific values for mixing height, fuel moisture content, or other parameters.

Advisories prepared by the SMC will be based on general atmospheric dispersion conditions, which, over suitable transport distance, are reasonably predictable.

Dispersion forecasts and related advisories regarding burning may not necessarily be appropriate or safe considering specific conditions at a given site. If necessary, burning advisories issued by the SMC will be amended as weather conditions, ambient smoke levels, or other factors change. These amendments will be communicated by telephone, radio, or in person upon request of the affected permit holders.

A diary of advisory records will be maintained for use in subsequent smoke intrusion analysis or enforcement actions.

2.3.3. Communication

Routine communication regarding burn activities, including burn advisories, will be handled by phone or radio when available. Information may include weather observations, smoke drift observations, progress of burning and availability of additional burning.

The National Oceanic and Atmospheric Administration (NOAA) National Weather Service broadcasts weather data on 162.400 MHz out of Eureka, California.

2.4. Location, Amount, and Timing of Burns

The location, amount, and timing of any burning to be conducted in the forecast areas will be based on the SMC's judgment of downwind effects and acceptable air quality. Every effort will be made to make the burn season for agriculture, timber, and wildland burning as short as possible. Burning may only be conducted for agriculture, timber, or wildland burns Tuesday through Friday. Domestic burning will be done on a zone-cycle system, with Humboldt County communities authorized to burn on approved Tuesdays and Saturdays and Del Norte County communities authorized for Wednesdays and Sundays.

Burning will be limited to the hours of 9:00 am through 3:00 pm on approved days. No ignition can occur after 3:00 pm except with special authorization from the SMC. Violations of the requirements of the SMP may result in penalties according to both the Penalties section of this SMP and also the AQO.

2.5. Best Management Practices

The SMC will be responsible for compiling a library of Best Management Practices (BMPs) for both the SMP and for land managers in working under this SMP and under the AQO. These BMPs will be formally adopted by the Tribe where necessary and will be available to land managers in their preparation of burn plans. Land managers will be encouraged to utilize BMPs wherever feasible.

2.6. Surveillance and Enforcement

The application for, and receipt of, a burn permit from the SMC indicates consent for surveillance of burning activities and allows surveillance personnel to enter onto properties under active burn. Surveillance personnel include Yurok Tribal Public Safety Officers and the SMC. The SMC is responsible for basic burning surveillance and complaint investigation, and may notify the Yurok Tribal Public Safety Department if they believe that the AQO has been violated. The Yurok Tribal Public Safety Department may also independently investigate complaints, confirm permits for active burns, check certifications on-site at burns, and issue citations as necessary under the jurisdiction given through the AQO.

The surveillance and enforcement element of the SMP is intended to keep permit applicants in compliance with the Tribal AQO. As indicated in the AQO, penalties for repeat violators and violators exceeding the National Ambient Air Quality Standards (NAAQS) standards are the most severe.

2.7. Public Involvement

2.7.1. Public Education

The SMC will be responsible for coordinating an aggressive program to educate residents and property owners on the YIR on topics such as domestic burning do's and don'ts; how to file complaints about smoke intrusion in sensitive areas; availability of certification courses; the AQO and its enforcement; and other topics deemed appropriate. Educational conduits will include print media, radio, television (if possible), signage, and meetings.

2.7.2. Petition for Special Status Designation

Members of the community with health conditions making them sensitive to changes in local air quality may petition the SMP for designation as a Smoke Sensitive Location (SSL). The SMC is responsible for maintaining a spatial database with each SSL identified, to be used in the decision-making process for burn permits and burn advisories. Community members will be notified of their ability to petition the SMP through local media outlets, as well as through community meetings and advertisements at local health centers.

2.7.3. Project Comment

The input of the community will be solicited on each proposed agriculture/timber/wildlands burning project. Members of the public will be encouraged to visit a website or call a telephone number for information on upcoming burns and will be given information on how and when to comment. For projects over 20 acres in size, projects near smoke sensitive areas, or projects which may impact air quality for more than one day, the public will be given at least ten days prior to a burn to comment on the project. For all other projects, at least five days will be given for comment. Emergency burns will be approved on a case-by-case basis and public comment on emergency burns may be collected and received after burning has occurred.

2.7.4. Program Evaluation

Public input will be received throughout the burn season. One method of input will be through complaints, praises, or other comments on specific burning projects. Additionally, public comment will be solicited through community meetings, newsletters, and media announcements to obtain input evaluating the previous year's burning activities. This evaluation will preferably take place prior to commencement of the subsequent year's activities, to allow for comments to be incorporated into program design.

3. METEOROLOGICAL AND AIR QUALITY PARAMETERS

3.1. Synoptic Weather Data

General meteorological data for the SMP will be obtained from the National Weather Service Office by direct computer linkage. The SMC will develop burning recommendations according to general forecast guidelines.

Burn forecasts may be updated throughout the day by the SMC based on an assessment of current and forecasted plume transport and dispersion conditions.

3.2. Wind

Wind direction and wind speed data will be determined chiefly through:

- a. Available local meteorological data sources (available on-line),
- b. Visual tracking of smoke plume movements, and
- c. Remote wind observation sites accessible on-line or by telephone.

Information will be recorded on appropriate forms and diaries. Accurate wind direction predictions may be the most critical factor in effective smoke management. The predicted wind direction establishes which areas shall be allowed to burn to avoid impacts on smoke sensitive areas.

Since wind direction varies with altitude, the determination and forecasting of winds at all levels anticipated to contain smoke is important. Upper level transport winds will carry a substantial portion of pollutant materials. Since time is required for smoke to mix through all levels, initial impacts may occur far downwind of the burn site.

3.2.1. Surface Winds

Wind flows at the surface will be developed based on wind observations augmented by smoke observations and experience with local terrain-induced flow phenomena.

3.2.2. Upper Wind Levels

From this data, allowing for transverse horizontal dispersion, potential impact areas at long distances (10 to 60 miles downwind) will be identified for proposed burning. If such trajectories indicate substantial impact on sensitive areas, burning will be restricted accordingly in proposed areas. Often the "backward" plume effect will be applied to the wind flow field to determine areas from which burning emissions would cause receptor impacts. To provide for adequate transport and dispersion wind speeds above the surface (2,000 – 10,000 feet) should be 5-20mph and generally increase with height.

3.3. Inversions and Mixing Heights

Inversions and vertical dispersion information for the SMP will be determined from the closest early morning rawinsonde measurements available. Other useful information on upper level winds and stability will be sought from the National Weather Service throughout the day as conditions may warrant.

3.4. Field Fuel Moisture Conditions

In general, determination of proper field fuel moisture conditions for burning will be left up to individual permit holders, including periods following light rainfall and nighttime periods of high relative humidity and dew.

3.5. Precipitation

Generally, field burning is not conducted during periods of precipitation or some time after. As a rule of thumb, one day of drying time is required for each 1/10 of an inch of rainfall received. However, drying period conditions may vary from site to site depending on site location and timing of precipitation within the burning season.

3.6. Visibility

Prevailing visibility and the nature of visibility impairment will be factors considered when burn advisories are prepared and issued. In particular, whenever, in the absence of high humidity or rain, prevailing visibility is less than 5 miles, general burning will be strictly limited. Every effort will be made to avoid smoke impacts on the Klamath airport.

3.7. Air Stagnation Advisories

Air stagnation advisories are issued by the California Air Resources Board when atmospheric dispersal conditions are poor for an extended period of time (36 hours or more) and buildup of air pollutants is expected. All open burning is prohibited when such an advisory is in effect. If the SMC determines that a local air stagnation advisory is warranted for areas of the YIR, such an advisory will be issued and burning will be prohibited.

3.8. Air Quality Monitoring

The Tribe conducts routine air quality monitoring at one stationary site and with mobile sampling equipment throughout the YIR in five smoke sensitive communities:

Stationary Sampling –	Notchko Weather Station
Mobile Sampling –	Weitchpec Elementary
	Jack Norton Elementary
	Terwer Gauge
	Klamath Headstart
	Margaret Keating School

Routine Tribal air quality monitoring consists of 1-in-6 or 1-in-3 day rotating sampling for PM-10 and PM-2.5 (particulate matter of 10 and 2.5 microns in size). The air quality sampling program also conducts monitoring for compliance assurance and to record unusual air quality events.

The Tribe uses standards set by the State of California in making air quality determinations.

The air quality monitoring program will continue in the same manner during the burn season, and the results of sampling will be used to make determinations on compliance with air quality standards and the success of this SMP in protecting smoke-sensitive areas from harmful air quality.

3.9. Complaints

Complaints are an indirect measure of air quality and will be used by the SMC in identifying smoke-affected areas where burn impacts may need to be reduced.

All public comments will be recorded in a diary kept by the SMC. Documented complaints provide important additional information when planning burning advisories and analyzing the impacts of burning activity. Accordingly, the SMC will receive and respond to such complaints, to the extent that such activity does not compromise overall program management needs.

4. PROGRAM DOCUMENTATION

Well-organized records of weather data, air quality data, burn advisories, permits applied for and issued, educational forum attendance records, fee schedules and payment records, and acreage accomplishments will be maintained on a daily basis. Such records will establish a database to be used for subsequent program evaluations, improvement and quality assurance, as well as supporting burn management decisions.

Standardized procedures will be adopted for the gathering of information and issuance of advisories. These procedures will be facilitated through use of standard forms, logs, checklist, and flow diagrams.

4.1. Annual Reporting

Data obtained throughout the burn season will be summarized in an annual report. This report will be utilized to analyze the success of each year's SMP. This report will include data collected by the SMC, data obtained from land managers, monitoring data, enforcement data, and public comments. The report will be available to the community no more than six months following the close of a burn season.

4.2. Plan Review

Following preparation of the annual report, the SMP will be reviewed for accuracy, attainability, and completeness and revised as appropriate.

4.3. Records Retention

All base records prepared pursuant to the SMP shall be maintained for no less than seven years, and preferably for the entire life of the Program. The permitting database and annual reports shall be maintained for the life of the Program.

5. USER INSTRUCTIONS – AGRICULTURE/TIMBER/ WILDLANDS BURNING

5.1. Regulation and Authority

All agricultural, timber, and wildlands burning conducted within the boundaries of the YIR is subject to the AQO. The AQO defers to this SMP for the setting out of the specific burning program guidelines. Persons or entities found in violation of this SMP are in violation of the AQO and subject to the penalties therein.

5.2. Registration

It is the responsibility of each landowner requesting to conduct burning activities to request, complete, and return the appropriate forms to the YTEP/YTFP Smoke Management Office. Field registration is required for all wildland, timber, or agricultural lands for which one-time burning is planned; field registration is also required for brush pile burning where piles are greater than five feet in diameter. Registration fees will be assessed based upon the acreage to be burned. Field Registration is an application for a burn permit.

A sample Field Registration form can be found in Appendix B. Registration forms can be obtained by contacting:

Information Request – Field Burning Registration
Smoke Management Program
PO Box 1027
Klamath, CA 95548
(707) 482-1350

It is important to note that registration does not constitute an authorization to burn. The Tribe's SMC issues burn authorizations, which are valid pursuant to a daily burn determination. A burn determination is made after weather assessments have been conducted for a given day.

5.3. Implied Consent

The application for and receipt of a burn authorization from the SMC implies landowner consent to on-site surveillance during burning activities, as enabled through the AQO.

5.4. Alternatives Analysis

Each application for field registration must be accompanied by a list of possible alternatives to burning, and reasons why those alternatives have been rejected in favor of burning on a property. It is the applicant's responsibility to demonstrate why alternatives are not reasonable. Permit requests may be denied for lack of comprehensive alternatives analysis.

5.5. Emissions Reduction

Each application for field registration must be accompanied by a listing of actions taken or planned to minimize emissions. Such actions may include bailing of coarse materials; fuels load reduction through thinning; chipping of woody debris; plans for spot or strip burning, etc. In the event that there are more applicants for burning than the SMC deems can safely burn at a given time, priority will be given to landowners who demonstrate active interest in emissions reduction.

5.6. Minimum Certification Required

All burns must be conducted by trained personnel with experience in prescribed fire and smoke management techniques. At a minimum, the applicant and/or burn boss in a field burning exercise must provide proof of the following:

1. Completion of a federal/state land manager course dedicated to smoke management and direct experience or attendance at an approved smoke management workshop and direct experience.
2. Certification as a Prescribed Burn Manager, through completion of a prescribed fire course and direct experience or completion of the Inter-Agency Basic Prescribed Fire course and direct experience.

A landowner may burn less than 10 acres of land without a prescribed burner on-site provided that a certified prescribed burner has prepared a burn plan for the site and the landowner follows those instructions.

5.7. Fees

For field burning, the cost per acre shall be three dollars (\$3.00). This fee must be paid with each permit issued.

5.8. Conditions on Burning

For the Tribe's SMP to operate efficiently, each person requesting to conduct burning should first obtain guidance regarding burn methods from the SMC. Weather conditions may limit the number of acres that can be burned with minimum smoke impacts. It may be necessary to limit some burning operations and recommend the burning of a select number of fields to minimize smoke impacts. The SMC reserves the right to withhold all burn authorizations.

5.8.1. Burning may commence

Authorization to burn for timber, agriculture, or wildland burning events may be issued by the SMC when all of the following conditions are met:

- a. The field registration forms have been completed and filed with the Tribe's SMP.
- b. The public has had opportunity to comment on the proposed burn.
- c. Proper weather conditions exist to disperse smoke adequately.
- d. Firefighting equipment is on site (at a minimum, a water tender and experienced operators).
- e. The field has been prepared and identified by the SMC as ready to burn.
- f. If smoke from the burn may impair visibility along a roadway, flags or signage is on hand to warn motorists of a prescribed burn in progress.
- g. A burn permit has been issued to the responsible operator.
- h. The burn's planned activities will not violate any provisions of the AQO.

5.8.2. During a burn

During a burn, the land manager must do the following:

- a. If smoke from the burn may impair visibility along a roadway, flags or signage must be placed to warn motorists of a prescribed burn in progress.
- b. For projects over 20 acres in size, projects near smoke sensitive areas, or projects which may impact air quality for more than one day, visual monitoring must be conducted as described in the application. Monitoring reports must be submitted to the SMC within four days of the burn's conclusion.
- c. Only the amount of material that could reasonably be expected to burn within 24 hours may be ignited in any one day. Material to be burned must be ignited as rapidly as practicable.
- d. Only organic materials may be burned; this SMP is subject to the limitations set by the AQO, found attached to this document.
- e. If the SMC or another regulatory body finds that the permit holder is violating the AQO, violating air quality standards, or inundating smoke sensitive areas, the permit holder has no more than two hours to correct the situation.
- f. In the event that air quality conditions change significantly during the course of a day, the SMC has the authority to rescind authorization to burn and the permit holder must immediately halt all ignitions and suspend new ignitions. At the time that notification is given to halt ignitions, the SMC will set timeframes for mop up to be initiated and completed and will additionally publicize actions to be taken to protect public health.
- g. Land managers are responsible for intermittent monitoring for three days after a burn to ensure that smoke impacts have been alleviated. The results of this monitoring will be submitted to the SMC no more than four days after the burn's conclusion.

5.9. Visual Monitoring

For projects less than 20 acres in size, visual monitoring must be conducted by the land manager at least four times daily during and immediately subsequent to the burn at equal intervals. Monitoring results should be documented and monitoring reports must be submitted to the SMC within four days of the burn's conclusion.

For projects more than 20 acres in size, projects near smoke sensitive areas, or projects which may impact air quality for more than one day, visual monitoring must be conducted by the land manager. A detailed visual monitoring plan should be included with the Field Registration Form. The Burn Plan should include the method and location of visual monitoring and the interval between dispersal monitoring observations. Monitoring results should be documented and monitoring reports must be submitted to the SMC within four days of the burn's conclusion.

6. USER INSTRUCTIONS – SEASONAL DOMESTIC BURNING

6.1. Regulation and Authority

All domestic burning conducted within the boundaries of the YIR is subject to the AQO. The AQO defers to this SMP for the setting out of the specific burning program guidelines. Persons or entities found in violation of this SMP are in violation of the AQO and subject to the penalties therein.

6.2. Registration

It is the responsibility of each landowner requesting to conduct burning activities to request, complete, and return the appropriate forms to the YTEP/YTFP Smoke Management Office.

Seasonal Domestic Burn Permit: A Seasonal Domestic Burn Permit is required for all households prior to performing burns of household organic wastes, either in brush piles (less than five feet in diameter) or in burn barrels. When applying for a seasonal domestic burn permit, each household must be familiar with alternatives to burning of household organic wastes, as well as materials which are under no circumstances to be burned under a seasonal domestic burn permit. A sample Seasonal Domestic Burn Permit can be found in Appendix C.

Registration forms can be obtained by contacting:

Information Request – Seasonal Burn Permit
Smoke Management Program
PO Box 1027
Klamath, CA 95548
(707) 482-1350

It is important to note that registration does not constitute an authorization to burn. The Tribe's SMC issues burn authorizations. A burn determination is made after weather assessments have been conducted.

6.3. Implied Consent

The application for and receipt of a burn authorization or permit from the SMC implies landowner consent to on-site surveillance during burning activities, as enabled through the AQO.

6.4. Minimum Certification Required

While no certification is required for a seasonal domestic burn permit, the Yurok Tribe will waive the permit fee upon confirmed attendance at a one-hour educational class on domestic burning.

6.5. Fees

For domestic burning, the cost per property per season shall be \$50.00. This cost may be waived upon confirmed attendance at a one-hour domestic burning educational class. This class will include material on safe burning practices as well as alternatives to domestic burning.

6.6. Restrictions on Burning

Seasonal authorization to burn for domestic burning events may be issued by the Coordinator when the permit forms have been completed and filed with the Tribe's SMP and the Coordinator has discussed with the applicant proper burning procedures. The domestic user may burn throughout the season only when all of the following conditions are met:

- a. The SMC has declared an approved burn day.
- b. It is an assigned burn day for the permit holder (each permit will indicate, by geographic location, whether approved burn days are Tuesday and Saturday or Wednesday and Sunday) between the hours of 9am and 3pm.
- c. The SMC has confirmed that proper weather conditions exist to disperse smoke adequately.
- d. Fire suppression equipment is on site and at hand (at a minimum, a pressurized water supply, a rake, and a shovel).
- e. The area around the burn barrel or brush pile has been cleared of vegetation, to eliminate the potential for inadvertently spreading fire. Adequate clearing may consist of mowing, tilling, limbing, or raking.
- f. Persons are available to attend to the burn at all times, from ignition to cold ash.
- g. The burn will comply with all provisions of the AQO.

If, during the course of a burn, the SMC or another regulatory body finds that the permit holder is violating the AQO, violating air quality standards, or inundating smoke sensitive areas, the permit holder must immediately cease burning activities.

In the event that air quality conditions change significantly during the course of a day, the SMC has the authority to rescind authorization to burn. Once notice is received that burning authorization has been suspended, the permit holder must immediately halt all ignitions and suspend new ignitions.

7. APPEALS

Decisions made by the SMC under this SMP may be appealed to the Tribal Court. Decisions which are appealable include award of a burn permit, denial of a burn permit, and notices of violation. The appeals process for violations is described in the AQO.

Decisions to award or deny a burn permit are considered administrative decisions. The appeals process is as follows:

The decision of the SMC may be appealed to the Tribal Court upon written request submitted to the Tribal Council within five (5) days of the receipt of the notice of decision. The request for a hearing before the Tribal Court must state the grounds for overturning the SMC's decision.

- a. The Tribal Court shall hold a hearing within thirty (30) days of receiving the notice of appeal.
- b. The applicant and the SMC shall have the opportunity to present oral arguments at the hearing.
- c. The written record from the SMC's decision-making process as well as any supplemental information provided by the SMC, together with all papers and requests filed by the applicant as part of the appeal shall constitute the exclusive record for decision on appeal.
- d. The Tribal Court shall set aside the SMC's decision only upon a finding that the SMC's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
- e. Within sixty (60) days of the hearing, the Tribal Court shall issue a written decision on the appeal.
- f. The Tribal Court shall serve a notice of the decision to the applicant. The notice of decision shall be served by personal service or U.S. certified mail, return receipt requested.
- g. Decisions of the Tribal Court are final.

8. PENALTIES

Prohibited activities, the enforcement process, and penalties are given in the AQO, found here in Attachment A.

Yurok Tribe Application for Field Registration 2003	<i>for office use only</i>
	Tracking Number: 03-FR-
	Date Received: _____
	Payment Received: _____
	Permit Approved: _____
	Permit Mailed: _____
	Comment Op/Cl: _____

Applicant Name: _____ Date: _____

Mailing Address: _____

Fields Applied For:			
Field No.	APN	Location (T/R/S)	Acres

Fees Due: \$XX.00 per acre x _____ acres: \$

IMPORTANT: *Your application for Field Registration does NOT constitute permission to burn! You will receive a copy of your Permit through the mail within two weeks of receipt of your completed application and fees. Once you receive your Permit, you are expected to comply with the provisions of the Air Quality Ordinance and the Tribal Smoke Management Plan.*

I agree to comply with the Tribal Air Quality Ordinance and Smoke Management Plan.	
_____ (applicant signature)	_____ (date)

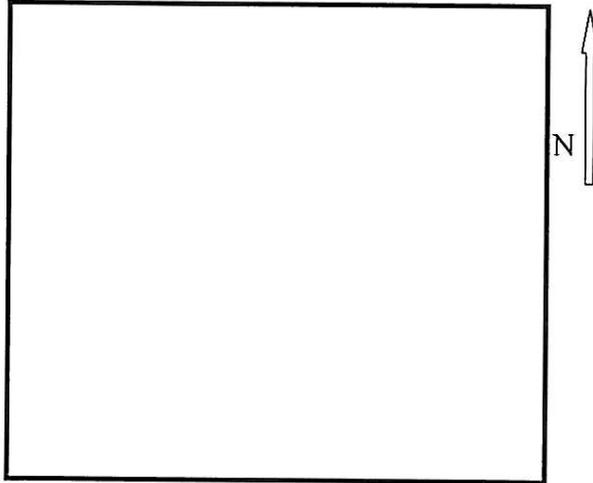
DETAILED INFORMATION SHEET

copy as necessary - fill out one sheet per section

Please locate and identify in the Section below: Fields to be burned, access roads, highways, houses, other sensitive areas or hazards, and include arrows to sensitive areas outside of this section. When more than one field is shown, label each field using the field number from page

T: _____ R: _____ Section: _____

Field Number(s): _____



Primary Purpose of Burn: _____

Special Burn Considerations: _____

Alternatives Analysis:

Attach an evaluation of alternatives considered for burning activities.

Emissions Reduction:

Attach a description of emissions control measures which will be taken in this project.

Certification:

Attach proof of certification congruent with Section 5.5 of the Smoke Management Plan.

Monitoring:

If required by the Smoke Management Plan, attach a detailed visual monitoring plan.

