Yurok Tribal Code, Environmental Protection

YUROK TRIBE ENVIRONMENTAL POLICY ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance establishing/regulating Yurok Environmental Policy.

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GENERAL PROVISIONS

SECTION 4001. Short Title

This Ordinance shall be referred to as the Yurok Environmental Policy Act or “YEPA.”

SECTION 4002. Findings

The Yurok Tribal Council finds and declares as follows:

(a) The Yurok Tribe Constitution mandates that the Tribe “restore, enhance, and manage the tribal fishery, tribal water rights, tribal forests and all other natural resources” and “provide for the health, education, economy, and social wellbeing of our members and future members.”

(b) Major State and Federal Actions regarding the use and development of lands and resources on and affecting Yurok Ancestral Territory and Yurok Tribal Resources may have long-term and irreversible impacts on the Tribe’s ecological, spiritual and
cultural resources, and may threaten the political integrity, the economic security, the health, welfare, and safety of the tribe and its members.

(e) There is a critical need to review and assess the effects of proposed Major State and Federal Actions in a manner that reflects ‘the Yurok way’, incorporating Yurok laws, values, traditional and contemporary knowledge and methods of decision-making.

SECTION 4003. Purpose
The purpose of this Ordinance is to insure that no Major State or Federal Action which may have a significant adverse impact within Yurok Ancestral Territory, or may significantly adversely impact Yurok Tribal Resources and Yurok Tribal Rights, advances prior to compliance with the provisions in this Ordinance.

SECTION 4004. Sovereign Immunity Preserved
Except as judicial review is authorized in this Ordinance, and in accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 4005. Severability
If any section, subsection, clause or phrase of this Chapter is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity or constitutionality of the remainder of this Chapter.

SECTION 4006. Effective Date
This Ordinance shall take full effect immediately after adoption by Council.

SECTION 4007. Ordinance Adopted by Emergency Legislative Act.
This Yurok Environmental Policy Ordinance was adopted by emergency legislative act, pursuant to Section 5009 of the Yurok Public Hearing Ordinance on June 6th, 2019. The Yurok Tribal Council found that there was an immediate and urgent threat to the welfare of Tribal members and the Tribe.

SECTION 4008. Definitions
(a) "Environmental Assessment" means a concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, and shall include brief discussions of the proposal, alternatives, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(b) "Environmental Impact Statement" means a public document incorporating the matters set out in § 4204(a).
"Environmental Department" refers to the Yurok Tribal Environmental Program or its designee, which may comprise professional consultants or contractors retained by the Yurok Tribe.

"Major State or Major Federal Action(s)" means state or federal actions that have a significant direct and demonstrable adverse effect on Yurok Ancestral Territory or Yurok Tribal Resources.

"Yurok Ancestral Territory" has the same meaning as in Article 1, Section 2 of the Yurok Tribe Constitution.

"Yurok Tribal Resources" means any natural, cultural, religious, and human resources within Yurok ancestral territory.

"Yurok Tribal Rights" means the Yurok Tribe's rights recognized in federal, tribal, or state law.

CHAPTER 1. PARTICIPATION IN MAJOR STATE OR FEDERAL ACTION

SECTION 4101. Alternatives to Exercising Environmental Review Process

(a) For any Major State or Federal Action covered by this Ordinance, where other program and resource commitments preclude undertaking the Tribe’s environmental review process, and other opportunities to participate in the Major State or Federal Action exist, the Environmental Department may decide not to proceed with environmental review under this Ordinance. Other opportunities include government-to-government consultation and participation required by tribal, state, or federal law.

(b) Before making a determination under §4101(a) the Environmental Department shall consult with the Office of Tribal Attorney and any other Tribal Department that has jurisdiction by law or special expertise with respect to the subject matter of the proposed action.

CHAPTER 2. ENVIRONMENTAL REVIEW PROCESS

SECTION 4201. Lead and Cooperating Departments

(a) The Environmental Department, or its designee, shall be the Lead Department for the purpose of preparing environmental documents, consultation and scoping, making determinations regarding the environmental impacts of proposed major state or federal actions, issuing findings of no significant impacts, certifying environmental impact statements, and selecting alternatives and mitigation measures deemed most effective to implement the policies set forth in this Ordinance. The Environmental Department may designate another Tribal Department as the Lead Department upon concurrence of the Tribal Department if it has significant expertise or jurisdiction over the major action.

(b) The Environmental Department may request the cooperation of a Tribal Department which has jurisdiction by law or special expertise with respect to any environmental impact involved in a Major State of Federal Action. Each cooperating agency shall:

(1) Participate in the YEPA process at the earliest possible time; and
(2) Assume, on request of the Environmental Department, responsibility for developing information and preparing environmental analyses including portions of any environmental assessment or environmental impact statement for which the cooperating department has special expertise.

SECTION 4202. Environmental Assessment

(a) For every proposed Major State or Federal Action an environmental assessment shall be performed and prepared by the Environmental Department.

(b) Before finalizing the environmental assessment, the Environmental Department shall consult with and solicit comments from any Tribal Department which has jurisdiction by law or special expertise with respect to any potentially involved environmental impact.

(c) The environmental assessment shall include a recommended determination that the proposed action will or will not significantly impact the quality of the natural environment.

(d) An environmental assessment shall not be necessary if the Environmental Department decides that the action is one which normally requires an EIS.

SECTION 4203. Finding of No Significant Impact

(a) If the environmental assessment indicates that the proposed action will not significantly impact the quality of the natural environment, the Environmental Department shall give notice to potentially impacted or interested parties of the proposed action and intent to issue a Finding of No Significant Impact ("FONSI"), with Council's consent. Such parties shall have a thirty-day (30) period within which to submit written comments.

(b) After receipt of written comments, the Environmental Department shall develop the environmental assessment, preliminary recommended determination, a summary of comments received, and any response to those comments, along with a final determination.

(c) The final determination shall either:

(1) Issue a FONSI; or

(2) Require that an environmental impact statement be prepared.

(d) If the Environmental Department issues a FONSI, no further action shall be required under this Ordinance with respect to the proposed action, and the action may proceed.

SECTION 4204. Environmental Impact Statement

(a) If the environmental assessment indicates the proposed action will significantly impact the quality of the natural environment, the Environmental Department shall prepare a draft environmental impact statement concerning the proposed action. The draft environmental impact statement shall include:

(1) A description of the proposed action, its purposes and the environment, which will be affected;
(2) A description of any effect it may have on population or growth;
(3) The relationship of the proposed action to land use plans for the affected area;
(4) The positive and negative, known and probable, effects of the proposed action on the environment. This should include secondary as well as primary effects;
(5) Alternatives to the proposed action that might reduce or eliminate adverse impacts including sufficient analysis of the environmental benefits, costs and risks of such alternatives;
(6) A brief section summarizing environmental effects that are adverse and unavoidable;
(7) A brief discussion of the extent to which the proposed action involves tradeoffs between short-term gains at the expense of long-term environmental losses, or vice-versa; and
(8) A description of impacts that irreversibly curtail the range of potential uses of the environment.

(b) The Environmental Department shall, together with any cooperating departments, utilize a systematic, interdisciplinary approach, which will insure the integrated use of Yurok traditional ecological and cultural knowledge, science, planning and decision-making.

(c) The Environmental Department shall identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.

(d) The Environmental Department shall publicly notify release of the draft environmental impact statement and provide a sixty (60) day period, from the date of notice, within which the public can submit written comments and request a public hearing. The Environmental Department may grant a fifteen (15) day extension when it believes such an extension is necessary. Copies of all comments shall be kept in the Tribal Office for public inspection.

(e) Any public hearing on a draft environmental impact statement shall be conducted no more than ninety (90) days after public notice is given.

(1) Copies of the draft EIS shall be kept in the Tribal Office for public inspection.
(2) Copies shall be provided electronically.
(3) Copies shall be provided at no more than the cost of printing and mailing.

(f) After receipt of written comments and a public hearing, if any is requested, the Environmental Department shall prepare a Final EIS which takes into account, assesses, and responds to all comments received. The Final EIS should make meaningful reference to any opposing view not adequately discussed in the draft EIS and should indicate the Environmental Department's response to the issues raised.
(g) The final EIS shall be presented to Tribal Council in a Council action or equivalent meeting, and shall take effect within thirty (30) days of the meeting, unless Tribal Council enacts a joint resolution of disapproval within the thirty (30) day time period.

(h) The Final EIS shall be publicly notified and be provided electronically to any party who submitted comments.

CERTIFICATION

THE FOREGOING EMERGENCY ORDINANCE, ENTITLED THE YUROK ENVIRONMENTAL POLICY ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON JUNE 6, 2019, AT WHICH QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 7 FOR, 0 OPPOSED AND 0 ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

DATED THIS 6TH DAY OF JUNE 2019

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Joseph L. James, Chairperson
Yurok Tribal Council

ATTEST:

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Mindy Natt, Secretary
Yurok Tribal Council